

## **General Transport Conditions (GTC) RurtalBahn Cargo GmbH**

Status: 12 November 2014

### **1. Scope**

- 1.1. We shall provide our services (transport of goods, transshipment, [intermediate] storage and other services related to transport) according to the following GTC and the conditions stipulated in section 1.3. The GTC are also applicable to our international transport, as far as these are not contrary to mandatory law. The GTC shall not apply to contracts with consumers in terms of section 13 BGB (German Civil Code).
- 1.2. The general terms and conditions of the customer only apply upon specific written confirmation on our part.
- 1.3. In addition to the GTC, the following conditions shall apply as amended:
  - CIM
  - SQAS Rail
  - RID regulations for the carriage of dangerous goods by rail
  - General Contract of Use for Wagons (GCU)  
Directive of the Verband Deutscher Verkehrsunternehmen [Association of German Transport Companies (VDV)] "Inspection of freight wagons in railway operations" VDV 758
  - ADSp in its respective latest version for warehousing and freight forwarding and  
other usual forwarding services, unless these are specifically agreed upon.
- 1.4 The execution and binding nature of an electronic exchange of contract and performance data is only valid upon written confirmation on our part.

The GTC and our other General Terms and Conditions may be amended at any time by us, unless the changes are unacceptable to the customer. The modified GTC and other General Terms and Conditions shall be provided to the customer in text form (e.g. by e-mail or other electronic means of communication) no later than one month before the proposed date of entry into force. The customer's consent shall be deemed to have been given if he has not filed his opposition prior to the proposed effective date of the change. We will inform the customer of this de facto acceptance separately in our offer, which contains the modified GTC and other General Terms and Conditions.

### **2. Conclusion of the contract, individual contracts**

- 2.1. The basis for the services to be provided by us is a written contract to be concluded with the customer. Other conditions, changes or additions to the contract must be in writing and are not part of the contract, even if we do not expressly contradict them.
- 2.2. The contract contains key performance data, which are required for the conclusion of individual contracts, in particular freight contracts (e.g. relation, cargo, car type, cargo unit, remuneration).
- 2.3. Only written orders are legally binding. Orders which are placed verbally or by telephone must be confirmed subsequently in writing in order to be legally binding. The same applies for verbal side agreements and amendments to the contract.
- 2.4. Orders, delivery call-offs and any changes or additions thereto may also occur – after prior written agreement – via remote data transmission or machine-readable data carriers.
- 2.5. Payments for visits or the preparation of offers, projects, etc. shall not be granted. Customers must treat the conclusion of the contract confidentially and may only refer to business relations with us in promotional materials subject to our written consent.
- 2.6. The contracting parties undertake to treat all commercial or technical information that is not already public knowledge but is known to them through the business relationship as a trade secret. Subcontractors shall be bound accordingly.
- 2.7. We may request changes to the delivery object even after the conclusion of the contract, as

far as this is reasonable for the customer. In the case of such a modification to the contract, the effects, especially those regarding the increase or decrease in costs as well as the delivery, are to be given adequate consideration by both sides.

2.8. Customary trade terms are to be interpreted in accordance with the applicable Incoterms as amended.

2.9 We are entitled to assign the carriage in whole or in part to one or more substitute carriers.

### **3. Waybill**

3.1. Unless otherwise agreed, a waybill in accordance with section 408 HGB (German Commercial Code) shall be issued by the customer. The waybill shall not be signed by us; printed or stamped name or company details shall not constitute a signature.

3.2. If the customer places the transfer order without the use of a waybill, the customer shall be liable in accordance with section 414 HGB for the accuracy and completeness of all data contained in the transport order.

### **4. Cars and load units**

4.1. We shall provide cars and load units which are suitable for the transport.

4.2. The customer is responsible for the correct specification of the required number and type of cars and load units as well as all destinations, dates / slots and complete shipping documents; for the supply of cars and load units before entering into a contract of carriage, section 412 para. 3, section 415 and section 417 HGB shall apply accordingly.

4.3. When loading deadlines are exceeded, we shall charge a demurrage in the amount of the costs incurred by us plus a handling fee.

4.4. The customer has to check the provided cars and load units prior to loading for their suitability for the intended purpose and for visible defects and shall notify us immediately of any complaints.

4.5. The customer is liable for all damage to cars and load units which is caused by the customer or a third party contracted by the customer, including the follow-up costs for a required workshop visit. The customer shall not be liable if the damage is due to a defect which was already present at the moment of transfer. Damage and accidents must be reported immediately to our cargo control centre.

4.6. The customer is responsible for ensuring that unloaded cars and load units are usable, i.e. completely emptied, properly cleaned, and disinfected if necessary, as well as being returned complete with loose components and on time to the agreed transfer point or terminal. In the case of default, we shall collect a fee in the amount of the costs incurred by us plus a handling fee. Any further claims to damages shall remain unaffected thereby.

4.7. The customer is obliged to use the cars and load units provided by us solely for the contractually agreed purpose.

4.8. If the customer transfers cars, the customer warrants only to transfer cars of which the owners are affiliated with the GCU, or to put us in such a position as though the cars involved meet the requirements of the GCU. Section 4.3 sentence 1 shall not apply if it is agreed that we shall provide cars for transport as a means of carriage or the transferred car itself is to be transported as cargo on its own wheels.

### **5. Load limits and loading regulations**

5.1. The customer is responsible for loading and unloading, unless agreed otherwise. When loading and unloading, the relevant directives (VDV 758) and standards are to be observed. We have the right to inspect cars and load units for safe loading.

5.2. If the customer realises that an agreed date cannot be adhered to for any reason, the customer is to ensure that the cargo control centre is informed of this immediately and in writing, including the reasons and the expected duration of the delay, by email or fax.

5.3. Force majeure, within the meaning of German case law, and labour disputes shall release the contracting parties from their performance obligations for the duration of the disruption and to the extent of its impact. The contracting parties are required to make all reasonable efforts to provide the necessary information immediately and to adapt their obligations to the changed circumstances in good faith. We are fully or partially exempt from the obligation to accept the ordered transport/service and entitled to withdraw from the contract if the transport/performance is no longer usable or feasible for us, taking economical aspects into

consideration, due to the delays caused by force majeure or the labour dispute.

- 5.4. If the customer breaches its obligations under section 5.1, if there is a significant deviation between the agreed and actual load, if the permissible gross weight is exceeded or if the carriage is hindered by the nature of the goods or of the loading, we will ask the customer to remedy the situation within a reasonable period. Following expiry of the deadline without a satisfactory result, we are entitled to assert our rights in accordance with section 415 para. 3 sentence 1 HGB.
- 5.5. The customer is obliged to remove loading and unloading waste from the loading location, including access roads, immediately at the customer's own expense.

## **6. Cancellation provisions**

If the customer cancels planned orders, the following compensation is due to us despite the order cancellation:

- 6.1 for cancellations less than 24 hours before the scheduled departure time, we are to receive from the customer 75% of the agreed fee for the cancelled single order or group of orders,
- 6.2 for cancellations up to 48 hours before the scheduled departure time, we are to receive from the customer 50% of the agreed fee for the cancelled single order or group of orders,
- 6.3 for cancellations earlier than 48 hours before the scheduled departure time, we are to receive from the customer 25% of the agreed fee for the cancelled single order or group of orders.

## **7. Obstacles**

In the context of section 419 para. 3 HGB, we are entitled to park the loaded means of transport. For the duration of said parking, we are liable for the safekeeping of the consignment by exercise of due care and diligence.

## **8. Presumed loss**

In the event of presumed loss in accordance with section 424 para. HGB, a further period of 30 days after the delivery date applies to both domestic and cross-border traffic uniformly.

## **9. Dangerous goods**

- 9.1 When transporting dangerous goods, the customer must comply with the applicable regulations for dangerous goods.
- 9.2 Dangerous goods will only be accepted/delivered by us if written agreement with the sender/receiver is provided for the acceptance of the security and custody duties until the time of collection or provision and, in the case of goods of classes 1, 2 and 7, also for the physical transfer/acceptance of the goods.
- 9.3 As part of the customer's share of liability, the customer shall release us from all obligations which occur towards third parties concerning transport, storage or other handling, as well as those which result from the nature of the goods and the non-observance of the customer's due diligence.
- 9.4 We will not store or park dangerous goods or pressurised gas tank cars which are empty, uncleaned or not yet degassed. Storage and parking requires a special written agreement.

## **10. Prices and invoicing**

- 10.1 The prices agreed by individual contract apply.
- 10.2 Invoices are due and payable without delay upon receipt of the invoice. If payment is not made within 14 days of receipt of the invoice, we may charge interest at the rate of nine percentage points above the respective base rate of the Deutsche Bundesbank and also additional costs in amount of 40,-€ We may request that the customer provide us, upon first request, with an interest-free advance payment or security in the form of a directly enforceable bank guarantee, letter of credit or bank guarantee payable on first demand from a major bank located in the European Union. Security against insolvency is a precondition for acceptance of the security. If the customer does not satisfy the written request for security within 10 calendar days, we may refuse to provide the service without further notice, until the security is provided.
- 10.3 If, after having provided the security, the customer is still in default and does not immediately meet its payment obligations after further payment requests, we are entitled to cover said

payment through application of the security, as well as to claim rights to the payment of a further security, provided that the demands are undisputed as to the amount and reasons.

- 10.4 Securities must be returned upon request, provided that the conditions for their granting are met with regard to this purpose.
- 10.5 If advance payments are requested by us, these are to be paid within five banking days prior to the maturity of the respective consideration. They will be offset upon the next invoicing cycle.
- 10.6 The value date shall be considered by us as the date of payment.
- 10.7 If you discontinue payment, insolvency proceedings are opened against your assets or parts of your assets, or judicial or extrajudicial settlement proceedings are applied for, we shall be entitled at any time to withdraw from the contract.
- 10.8 Any objections by the customer regarding the invoice must be made in writing within six weeks of receipt of the invoice. If objections are not made within the stated time period, this shall be deemed as approval. In the case of objections, statutory claims by the customer which are founded and are presented after the deadline remain unaffected.

## 11 Offsetting

- 11.1 Offsetting or retention against our claims is excluded, unless the counterclaim is undisputed or legally binding.
- 11.2 The pledge of claims is excluded for both contracting parties. The assignment of a claim against us is excluded.

## 12 Customs and other administrative regulations

Regulations involving customs and other administrative authorities shall be fulfilled by us or our agents, as long as the respective goods are transported by us. We shall charge separate fees for these services, as well as for delays for which we are not responsible but which are occasioned by the performance of these services.

## 13. Liability

- 13.1 Our liability for loss or damage is limited to an amount of 8.33 units of account per kilogram of the gross weight of the shipment. In the case of partial loss or partial damage, section 431 para. 2 HGB shall apply accordingly. The value of the unit of account is to be determined in accordance with section 431 para. 4 HGB.
- 13.2 In any event, our liability shall be limited to an amount of one million euro or two units of account per kilogram per damage event, whichever is higher.**
- 13.3 The amount of liability other than for damage to goods, with the exception of personal injury and damage to third-party goods, is limited to three times the amount that would be payable for the loss of the goods, to a maximum amount of EUR 100,000.00 per damage event. Section 431, para. III and section 433 HGB remain unaffected.
- 13.4 Provided that damage claims are otherwise not based on intent or gross negligence or we are not liable due to mandatory legislation, claims against us, our employees or our vicarious agents for compensation of any type which surpass the claims regulated in the GTC are excluded. This does not apply to the breach of contractual obligations. Compensation claims in these cases are limited to the foreseeable, typical damage.
- 13.5 The customer shall allow us the opportunity to inspect the damage.

#### **14. Jurisdiction, applicable law**

- 14.1 The exclusive place of jurisdiction for all disputes resulting from the contractual relationship (including counterclaims, claims in proceedings concerning cheques and promissory notes) is Düren, Germany, to the extent permitted by law. We can, however, sue you at your general place of jurisdiction.
- 14.2 The law of the Federal Republic of Germany shall apply to the legal relations between domestic parties. In all other respects, to the extent permitted by law, German law shall apply exclusively. The contract language is German.