

## General Terms and Conditions (GTC) of Rail Cargo Austria AG (RCA)

Status: 1 January 2017

### 1. Scope, deviating and supplementing provisions

- 1.1. These General Terms and Conditions ("GTC") apply to the national and international transportation of goods and other transport related services (such as handling, (temporary) storage) provided by RCA to the extent that the General Austrian Forwarders' Terms and Conditions (AÖSp; applicable to the operator business) or the General Conditions of the Union Internationale des Sociétés de Transport combiné Rail-Route (International Union of Combined Rail and Road Transport Companies - UIRR; rolling road) do not apply. These GTC apply to any contracts entered into with the customer/consignor.
- 1.2. The application of the general terms and conditions of the customer/consignor is subject to RCA's express written confirmation.
- 1.3. Unless the following provisions provide otherwise and to the extent the application of these provisions does not breach mandatory law, the relevant law applies (in particular, the Act on Carriage of Passengers and Rights of Passengers (*Eisenbahnbeförderung- und Fahrgastrechtegesetz - EisBFG*) in connection with domestic transports and in connection with international transports, the Uniform Rules Concerning the Contract of International Carriage of Goods by Rail – CIM).
- 1.4. The following provisions (in their respective applicable version) apply to these GTC and are available under [www.railcargo.com](http://www.railcargo.com):
  - Austrian Goods Tariff (ÖGT)
  - Loading Tariffs of RCA
  - General Terms and Conditions of BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft for the Cargo Clearing Process (Cargo Clearing Process)
- 1.5. The customer/consignor agrees to comply with all administrative law applicable on a national and EU level as well as to comply with the state of the art.

### 2. Consignment note, transport order

- 2.1. To the extent not agreed otherwise the customer/consignor must issue a CIM Consignment Note, respectively a CUV Wagon Note. The relevant sample documents are available under [www.railcargo.com](http://www.railcargo.com).
- 2.2. The "CIM Consignment Note Manual (GLV-CIM)" applies to the completion of the CIM Consignment Note; The "CUV Wagon Note Manual (GLW-CUV)" applies to the completion of the CUV Wagon Note. Both manuals are available under [www.railcargo.com](http://www.railcargo.com).
- 2.3. The complete consignment note/wagon note issued by the customer/consignor is deemed the transport order. If the customer/consignor issues the transport order without using a consignment note/wagon note, it is liable for the correctness and completeness of any information included in the transport order. In order to ensure the safe transportation the customer/consignor shall affix the note "food, animal feed or contact material" to the consignment note if food or animal feed or the respective packaging is transported.
- 2.4. The customer/consignor shall generally use the electronic consignment note/wagon note. Other ways of transmitting the transport order (eg paper consignment note, fax) are permitted but subject to the applicable charges pursuant to the Austrian Goods Tariff (ÖGT).
- 2.5. If the transport order to does not refer to the mass (weight) of the goods to be transported, RCA is deemed instructed to weigh the goods. The weighing is subject to variations of the system due to technical reasons and deviations in the range of plus/minus 0.5% are thus disregarded.

### 3. Wagons, loading units and loading equipment of RCA, loading deadlines

- 3.1. Following a written order (via e-mail or fax) using the provided order form (available under [www.railcargo.com](http://www.railcargo.com)) RCA will, in the case of transportation of food and animal feed or the respective packaging and subject to availability, provide the customer/consignor with suitable wagons, loading units and loading equipment. The provided equipment shall be in a technical condition and state of cleanliness to permit its intended use.
- 3.2. The order shall be made no later than at 8 am on the working day preceding the day on which the wagons are required. Any subsequent cancellation is subject to the applicable charges pursuant to the Austrian Goods Tariff (ÖGT).
- 3.3. The wagon order must include the following information: number and type, destination station, weight of the goods, NHM, furthermore, whether the goods are food, animal feed or the respective packaging and, if necessary, the required loading equipment.
- 3.4. If RCA provides exchangeable loading equipment, any exchange is subject to remuneration pursuant to the Austrian Goods Tariff (ÖGT).
- 3.5. The customer/consignor shall inspect the provided wagons, loading units and loading equipment prior to loading whether they are suitable for the intended purpose as well as whether there are any recognisable defects (inspection of the cargo hold) and shall promptly notify RCA of any complaints.
- 3.6. The deadline for loading and unloading is in each case 7 hours, commencing at the separately agreed service times. If the loading or unloading deadlines are exceeded, demurrage fees will be charged pursuant to the Austrian Goods Tariff (ÖGT). Furthermore, RCA must be compensated for any resulting damages or losses and RCA shall be indemnified for any claims of third parties.
- 3.7. If the customer/consignor is not able to timely accept the designated wagons and RCA must thus park the wagons on the tracks, RCA will charge demurrage fees pursuant to the Austrian Goods Tariff (ÖGT) and will also charge any resulting infrastructure costs incurred by RCA.
- 3.8. The customer/consignor is liable for any damages and losses relating to the wagons, the loading units and loading equipment caused by it or any third parties instructed by it including any subsequent costs in connection with any repair time in a workshop. The customer/consignor is not liable if the damages are caused by a defect already existing at the time of the handing over. The customer/consignor shall promptly report any damages or accident to RCA.
- 3.9. The customer/consignor is responsible to return unloaded wagons and loading units at the agreed handover point or terminal by the specified date and time in a condition suitable for their re-use (ie fully emptied, properly disinfected or cleaned and complete including any unattached parts). In the event of non-compliance RCA will charge a remuneration for the costs incurred pursuant to the Austrian Goods Tariff (ÖGT). RCA reserves the right to claim any further damages in connection with the above.

- 3.10. The customer/consignor shall use the wagons, loading units and loading equipment handed over by RCA only for the contractually intended purpose.
- 3.11. In any event RCA will charge the remuneration pursuant to the Austrian Goods Tariff (ÖGT) for ordered and already provided but unused wagons or loading units. Furthermore, RCA must be compensated for any resulting damages or losses and indemnified for any claims of third parties.
- 3.12. The customer/consignor must notify RCA via e-mail or fax if empty or loaded wagons as well as loading units are ready for collection.

#### **4. Wagons provided by the customer/consignor**

- 4.1. The "General Contract for the Use of Wagons (GCU)" applies to the use of wagons by RCA as a means of transport.
- 4.2. The customer/consignor warrants to only hand over such wagons whose keeper is a signatory to the GCU or to place RCA in the same position as if the respective holder is a signatory to the GCU.
- 4.3. The customer/consignor shall ensure that the wagons handed over to RCA are maintained by a certified entity (Entity in Charge of Maintenance, ECM). Otherwise RCA is entitled to refuse acceptance of the wagons.

#### **5. Loading provisions**

- 5.1. To the extent not agreed otherwise the customer/consignor is responsible for the loading and unloading.
- 5.2. To the extent not agreed otherwise, the responsibility of the customer/consignor for loading and unloading pursuant to point 5.1 in connection with the combined transport also includes the loading of the intermodal transport unit (ITU) on or from the wagon (transshipment).
- 5.3. The Loading Tariff of RCA applies to the loading and unloading (available under [www.railcargo.com](http://www.railcargo.com)). RCA is entitled to verify whether the wagons or ITUs are loaded in compliance with operational safety requirements.
- 5.4. If the customer/consignor breaches its obligation under point 5.1 or if there is a substantial deviation between the agreed cargo and the actual cargo loaded or if the permissible total weight is exceeded or the performance of the transportation is impeded due to the type of the goods or the loading method, RCA will request the customer/consignor to remedy the situation within a reasonable period of time. If this period has expired without any results, RCA is entitled to also assert its rights according to Art 22 CIM.
- 5.5. The customer/consignor shall seal covered wagons, containers, swap body trailers, semi trailers or other ITUs of closed design used for the purpose of combined transport which are handed over for transportation after loading. The seals must be of such type and design which is suitable for the identification of the goods and for their use as evidence in connection with the relevant transport law and, if applicable, must comply with the requirements of customs and other administrative authorities.
- 5.6. The customer/consignor shall promptly remove any waste created at the loading points, including all access routes, during the loading and unloading at its own cost.

#### **6. Delivery period**

- 6.1. The delivery period does not include Saturdays, Sundays or public holidays.
- 6.2. If time tables are notified to the customer/consignor, such time tables are not deemed to constitute an agreement on the delivery period within the meaning of Art 16 section 1 CIM.

#### **7. Subsequent disposals and instructions**

- 7.1. Any disposals by the customer/consignor to subsequently amend the transportation contract are only permitted if the following is entered in the consignment note: "consignee not authorised to take control of the goods". Other entries in the consignment note may be agreed separately.
- 7.2. Disposals of the customer/consignor (Art 18 and 19 CIM) and instructions in connection with circumstances preventing carriage and circumstances preventing delivery (Art 20, 21 and 22 CIM) have to be issued pursuant to GLV-CIM and communicated in appropriate written form (letter, telefax, e-mail and the like).
- 7.3. In case of an amendment of the transportation contract, which results in a transportation which should have terminated outside of a specific customs territory (e.g. the European Union), terminating in such customs territory or vice versa, the amendment can only be implemented subject to the prior consent of the customs office of departure.

#### **8. Dangerous goods**

- 8.1. The customer/consignor must comply with the regulations applicable for the transportation of dangerous goods (pursuant to ADR, RID or, if applicable, the IMDG-Code). In particular, the customer/consignor has to notify RCA of the dangerous goods in writing and provide all information and documentation required for the performance of its duties.
- 8.2. Dangerous goods will only be accepted/delivered by RCA subject to an agreement with the customer/consignor relating to the assumptions of the safety obligations and the duty of care until the collection and, as applicable, provision. Each consignment must comply with the regulations applicable for the carriage of dangerous goods prior to their acceptance.
- 8.3. The customer/consignor is liable towards RCA for any damages or loss, and releases RCA from any obligation which arose, in connection with the transportation, the safe keeping or other actions towards third parties as well as in connection with the quality of the goods and the non-compliance by the customer/consignor to act diligently.

#### **9. Charges, invoicing, prohibition of set-off**

- 9.1. The charges payable by the customer/consignor include:
  - a) freight rates, ie all charges for, or related to, the transportation of goods between the place of acceptance and the place of delivery;
  - b) ancillary charges, ie charges for any additional services performed by RCA;
  - c) customs duties, ie customs duties, taxes and other amounts collected by customs and other administrative authorities;
  - d) any other costs incurred by RCA and supported by appropriate documentation.

- 9.2. RCA's outgoing invoices are marked "CF-invoices" (invoicing via the Central Freight Rate Calculation System). The payment of such invoices is subject to the cargo clearing procedure. Other payment procedures are subject to a specific agreement; in this case points 9.3 and 9.4 apply.
- 9.3. To the extent not agreed otherwise CF-invoices not settled via the cargo clearing procedure are immediately payable at the invoice date without any deductions. In the event of a payment default the statutory default interest rate of 9.2 percentage points above the applicable base rate issued by the Austrian National Bank applies.
- 9.4. RCA may request the customer/consignor to pay the charges in advance or to provide any other security.
- 9.5. Points 9.6 and 9.7 apply if cash is collected from the customer/consignor pursuant to a corresponding agreement.
- 9.6. Advance information in connection with recurring direct debits of constant amounts: Based on a SEPA direct debit mandate to be specifically agreed in each individual case or an existing and migrated SEPA mandate the amount due will be debited until further notice from the account of the customer/consignor on a monthly, quarterly, six-monthly or annual basis according to the respective agreement, however, at the earliest at the respective due date. If the due date is a Saturday, Sunday or public holiday, the next following working day is deemed the due date. The customer/consignor must ensure that the relevant account has sufficient funds available. The customer/consignor will be informed of the due date and the specific amount in each individual case in due time.
- 9.7. Advance information for individual direct debits (due to individual services, eg invoice): Based on a SEPA direct debit mandate to be specifically agreed in each individual case the amount due will be debited from the account of the customer/consignor at the earliest at the respective due date. If this day is a Saturday, Sunday or public holiday the next following working day is deemed the due date. The customer/consignor must ensure that the relevant account has sufficient funds available. The customer/consignor will be informed about the due date and the specific amount in each individual case in due time.
- 9.8. The customer/consignor is not permitted to set-off of any of its claims against claims of RCA or to withhold performance due to any claims against RCA unless the counter claim is undisputed or established by a binding court decision.

#### **10. Customs and other administrative provisions**

- 10.1. Provided that RCA, or any party instructed by it, complies with customs and other administrative provisions, RCA charges a remuneration pursuant to the Austrian Goods Tariff (ÖGT) for such services as well for any delay resulting from the performance of these services which is not attributable to RCA.
- 10.2. RCA is entitled to reject consignments if the seals attached by the customs and other administrative authorities are compromised or defective and/or any deadlines imposed by the customs authorities have expired or are expected to expire during the transportation.
- 10.3. The customer/consignor warrants that
  - 10.3.1. goods which are produced, stored or carried for Authorised Economic Operators (AEO) or delivered to or taken over by them (i) are produced, stored, treated or processed and loaded at safe plants or handling sites and/or (ii) are protected from unauthorised access during the production, storage, treatment or processing, loading or transportation.
  - 10.3.2. that the personnel employed for the production, storage, treatment or processing and taking over of such goods is reliable.
  - 10.3.3. business partners who act on its behalf are aware that they also must take measures to secure the above-mentioned supply chain.
- 10.4. The customer/consignor shall indemnify RCA for any potential damages caused by the non-compliance with customs and other administrative provisions.

#### **11. Specific provisions regarding the combined transport**

- 11.1. RCA transports empty and loaded ITUs and performs supplementary services (eg completion of the required transport documents) subject to a specific agreement. ITUs within the meaning of these GTC are in particular containers, swap body trailers and semi-trailers.
- 11.2. ITUs must comply with the relevant applicable law and technical requirements. The customer/consignor ensures that the transportation units are approved for transport by rail and codified as well as in a conditions which complies with the relevant applicable standards.
- 11.3. ITUs handed over to RCA by the customer/consignor must be safe to operate and suitable for the cargo. The customer/consignor is liable for any damages caused by unsuitable, defective or unsafe ITUs.

#### **12. Liability**

- 12.1. To the extent not agreed otherwise the relevant laws (Uniform Rules concerning the Contract of International Carriage of Goods by Rail – CIM), as applicable from time to time, apply to the national and international carriage of goods by rail. With regard to any other services related to the transportation of goods (such as handling, (interim) storage) RCA is only liable for damaged goods, their partial or total loss in the case of RCA's fault and only up to the amount of 8.33 SDR per kilogram of the damaged or lost goods.
- 12.2. RCA's liability is limited to direct damages. RCA does in particular not accept any liability if
  - 12.2.1. the damage is caused by force majeure, acts of God, war and civil war or warlike events, industrial actions, lockouts, industrial unrest, political acts of violence, riots, other events of civil unrest, sabotage, confiscation or interventions by the government or by order of an administrative authority.
  - 12.2.2. the damage is caused by theft resulting from breaking and entering, robbery or any other criminal acts of third parties.
- 12.3. The customer/consignor is liable for its own mistakes and omissions as well as of those employed by it to perform its contractual obligations, in particular with regard to all consequences resulting from defective packaging and defective loading and unloading, the consequences resulting from incorrect, inaccurate or missing information contained in the order to RCA as well as generally for defective performance or for the non-compliance with customs legislation or any other administrative provisions and shall indemnify RCA for any claims of third parties.
- 12.4. To the extent claims for damages have not been caused by intent or gross negligence within the meaning of Art 36 CIM or RCA is not liable under mandatory law, any claims for compensation against RCA, its employees or those employed by it to perform its contractual obligations exceeding the entitlements under these GTC are excluded.

**13. Lapse of time**

Subject to mandatory law and the GCU, all claims against RCA lapse within one year.

**14. Confidentiality**

If a party has provided information on a confidential basis during the negotiations, the other party shall not disclose such information and shall not use it for any purpose other than for which it has been disclosed, irrespective whether the parties subsequently enter into a contact or not.

**15. Foreign trade restrictions**

The customer/consignor agrees to comply with all foreign trade law regulations of the relevant countries and the European Union; in particular in connection with the importing and exporting of goods subject to approval including so called dual-use items (goods that can be used for peaceful as well as military purposes). The customer/consignor has to inform RCA in due time in writing about all regulations, prohibitions and restrictions regarding the goods to be dispatched. The customer/consignor shall indemnify RCA for any potential damages caused by the non-compliance with foreign trade law regulations. Furthermore, the customer/consignor is responsible to review and compare the names and addresses with those anti-terror watch lists issued by various institutions. In the case of (transportation) services in countries that are subject to sanctions/trade restrictions, the customer/consignor has to issue a statement regarding the foreign trade law provisions which will be provided by RCA.

**16. Data protection**

- 16.1. Personal information of the customer/consignor is used for the processing of the contractual relationship within the Rail Cargo Group and may be transmitted to sub-contractors for this purpose.
- 16.2. Furthermore, the customer/consignor gives its consent that the information disclosed by it may be used for marketing purposes by RCA as well as by companies affiliated with RCA.
- 16.3. The customer/consignor can revoke its consent to the use for marketing purposes at any time in writing by letter to Rail Cargo Austria AG, Legal Department, Data Protection Officer, Rail Cargo Group, Am Hauptbahnhof 2, 1100 Vienna.

**17. Place of jurisdiction, applicable law**

Austrian law shall apply without giving effect to conflict of law rules provide by private international law and the United Nations Convention on Contracts for the International Sale of Goods (CISG). The court having jurisdiction for commercial disputes in Vienna shall have exclusive jurisdiction for any dispute arising out or in connection with these GTC and/or the contractual relationship or its violation, termination or invalidity.