

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

Status: 1 February 2021

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 (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:
 - Austrian Goods Tariff (ÖGT)
 - Loading Tariffs of RCA
- 1.5. The customer/consignor agrees to comply with any applicable domestic and relevant European Union law (in particular, applicable administrative law) as well as the state of the art.

2. Consignment note, transport order, documents attached (accompanying documents)

- 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.
- 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.
- 2.3. The complete consignment note/wagon note issued by the customer/consignor is deemed the transport order. The customer/consignor is liable for the correctness and completeness of the information included in the transport order even if the customer/consignor is not using a consignment note/wagon note when issuing 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 (e.g., paper consignment note, fax) are permitted but subject to the applicable charges pursuant to the Austrian Goods Tariff (ÖGT).
- 2.5. The transport order must be transmitted in due time and is binding for the customer/consignor upon receipt by RCA. All relevant information required for the consignment must be received by the competent unit (*zuständige Stelle*) of RCA at the latest two hours prior to the scheduled collection of wagons. In case of non-compliance by the customer/consignor, RCA is entitled to refuse acceptance of the consignment and to request reimbursement of any costs incurred with such non-compliance from the customer/consignor.
- 2.6. Any documents attached to consignment note (accompanying documents) must be transmitted to RCA no later than at the time of handover of the goods for transportation. The customer/consignor has to ensure that any documents attached are provided to the handover points (*Übernahmestelle*) in due time and that the documents attached are correct and complete. Documents which must accompany the consignment pursuant to applicable law (e.g. documents required to comply with customs or dangerous goods regulations) are provided free of charge. The provision of any other documents attached to the consignment is subject to applicable fees specified in the Austrian Goods Tariff (ÖGT).
- 2.7. If the transport order 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. Therefore, the weighing result may deviate by plus/minus 1.5% from the actual mass (weight).

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) 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 or 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 (i.e. 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). 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. The customer/consignor accepts the determination of a possible exceedance of the total weight or load limit or an axle load exceedance by measurement results of dynamic measuring devices of the infrastructure operator.
- 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 timetables are notified to the customer/consignor, such timetables 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 losses, 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, i.e. all charges for, or related to, the transportation of goods between the place of acceptance and the place of delivery;
 - b) ancillary charges, i.e. charges for any additional services performed by RCA;
 - c) customs duties, i.e. 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. Subject to any other agreement with the customer/consignor the following provisions shall apply.
- 9.3. Invoices are due within 8 days from the invoice date without any deductions. In the event of payment default RCA is additionally entitled to statutory default interest.
- 9.4. Payments are made by means of SEPA direct debit mandate. The due amount will be debited according to point 9.3. until further notice from the account of the customer/consignor on the due date. If the due date is a Saturday, Sunday, or public holiday, the immediately following working day is deemed the due date. The customer/consignor must ensure that the relevant account has sufficient funds available and must notify RCA of any changes to its bank details in writing in good time.
- 9.5. RCA may request the customer/consignor to pay the charges in advance or to provide any other security.
- 9.6. 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 (e.g. 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 condition 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 any agents used for the performance of its contractual obligations (*Erfüllungsgehilfen*), 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. In the event of non-compliance with these provisions, in particular relevant customs and administrative provisions, or if the customer/consignor and/or any agents used for the performance of its obligations (*Erfüllungsgehilfen*) culpably cause(s) any damages, the customer/consignor shall indemnify and hold harmless RCA for any fines issued in connection with any warnings (*Verwarngelder*), administrative or financial penalties, or equivalent periodic penalties, as well as any corresponding fees and expenses. This applies in particular to any fines and/or penalties and/or other payment obligations imposed on RCA or its corporate bodies by any authority, or any criminal, or civil court. Subject to the sole discretion of RCA, the customer/consignor shall upon first demand provide RCA with the amount required to fully settle such fines and/or penalties and/or other payment obligations including any ancillary charges and costs no later than at their respective maturity date rather than indemnifying and holding RCA harmless.
- 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 any agents used by it to perform its contractual obligations (*Erfüllungsgehilfen*) 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. Restrictions under foreign trade law

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 confirm whether its contractual partners, consignees of the goods, or end users (to the extent the customer/consignor had or should have had knowledge of these end users), or any other party involved in the transportation are registered in relevant (US, UN, EU, etc.) sanctions or anti-terror watch lists. In the case of (transportation) services which have a connection to (a) country (countries) that is (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. RCA stores personal data relating to the customer/consignor and contact details in connection with the contractual relationship (business name, address, account details) and personal data relating to the function and responsibilities of the customer's/consignor's employees in its CRM system to the extent this is necessary for the performance of the respective contract (Art 6 para 1 lit b GDPR)

as well as to safeguard the legitimate interests of RCA (Art 6 para 1 lit f GDPR), i.e. the efficient central customer administration within the group. Such personal data will be used within the Rail Cargo Group (RCA and companies affiliated with it within the meaning of section 189a item 8 Business Code (UGB)) and, if required, may also be disclosed to subcontractors in connection with these purposes.

The contact details stored in the CRM system are also used for the distribution of newsletters of the Rail Cargo Group (RCA and companies affiliated to it within the meaning of section 189a item 8 Business Code (UGB)). The customer/consignor was able to choose not to subscribe to newsletters already at the time of the verification of its e-mail-address and has the option to unsubscribe from any newsletters at any time.

- 16.2. The customer/consignor is obliged to inform its employees about the disclosure of this information (contact details, function, and responsibilities) to RCA and Rail Cargo Group (RCA and companies affiliated to it within the meaning of section 189a item 8 Business Code (UGB)).
- 16.3. RCA undertakes to store and process personal data of the customer/consignor only as long as this is necessary for RCA to perform its contractual obligations or the exercise or defence of legal claims. RCA is in any event entitled to store and process personal data as long as this is required to comply with statutory retention provisions (e.g. Federal Fiscal Code (BAO) or the Business Code (UGB)).
- 16.4. The customer/consignor is entitled to the following rights in relation to personal data processed by RCA:
 1. the right of access in accordance with Art 15 GDPR in connection with the personal data processed by RCA.
 2. the right to rectification in accordance with Art 16 GDPR, the right to erasure in accordance with Art 17 GDPR, and the right to restriction of processing in accordance with Art 18 GDPR.
 3. the right to object in accordance with Art 21 GDPR.
 4. the right to data portability in accordance with Art 20 GDPR.
 5. the right to lodge a complaint with the competent data protection authority in accordance with Art 77 GDPR.

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.