

General Terms and Conditions for the Provision of Freight Wagons for the Transport of Mineral Oil, Chemicals, Liquefied Gas and Agricultural Products of the Rail Cargo Logistics GmbH

Status: 1 October 2019

1. Scope, for the Transport of Authorised Goods

- 1.1. These General Terms and Conditions of Business (hereinafter: GTC) apply to the provision of freight wagons and the associated organisation of the transport of mineral oil, chemical, liquefied gas and agricultural products by Rail Cargo Logistics GmbH (hereinafter: RCL-MAC) and shall form the basis for every order, every offer and every other agreement between RCL-MAC and the customer. In addition the General Austrian Forwarders' Conditions (hereinafter: AÖSp) are applicable.
- 1.2. It is recorded that the RCL-MAC General Terms and Conditions for the Leasing of Freight Wagons (Issue 07/2015) apply to the leasing of freight wagons from RCL-MAC.
- 1.3. By returning the order (which is based on the order form provided by RCL-MAC) or an acceptance of offer or by signing any other agreement with RCL-MAC the customer accepts the present GTC without reservation. RCL-MAC and the customer are hereinafter jointly referred to as the "Parties".
- 1.4. Unless expressly mentioned in the following the term, "wagon" refers to all mineral oil, chemical and agricultural product wagons.
- 1.5. The agricultural product wagons provided by RCL-MAC are designed solely for the mass transportation of unprocessed and semi-processed agricultural products (of plant origin) for foodstuffs for human or animal consumption and for industrial purposes. It is, however, expressly forbidden to use the agricultural product wagons for the transportation of goods, which are listed on the GMP+ Feed certification scheme negative list. The customer acknowledges that the agricultural product wagons must therefore not be loaded with such goods.

2. Ordering the wagons

- 2.1. All orders for agricultural product wagons must include the designated required information on the relevant proforma. In the case that this proforma is not filled out completely, RCL-MAC reserves the right to refuse to carry out the required order.
- 2.2. If orders received by RCL-MAC cannot be implemented by virtue of lack of availability of wagons, as a consequence of the late arrival of an order or any other reason, RCL-MAC shall notify the customer as early as possible.
- 2.3. If a disposition order is amended, RCL-MAC is entitled to demand a processing fee per wagon in accordance with Annex 2.
- 2.4. If the quantity of wagons ordered is reduced or annulled (cancellation), RCL-MAC is entitled to demand a cancellation fee in accordance with Annex 2.
- 2.5. If the customer orders specific preparatory work with respect to the degree of cleanliness, this shall be carried out by RCL-MAC subject to a charge. In this case RCL-MAC is entitled to charge the costs for the transport into the cleaning station in accordance with Annex 2 and furthermore, to invoice the cleaning work, irrespective of the preparation standard order, and the costs of the length of stay in the cleaning station (in accordance with accrued expenses).

3. Provision, condition of the wagons

- 3.1. The respective order deadlines apply to the provision of the wagons in accordance with Annex 1.
- 3.2. If the customer orders specific preparatory work on the wagons, the deadline for provision must be agreed separately.
- 3.3. The types of wagons in accordance with the information in the order or specified in the offer shall be provided to the customer on the date and at the place of provision (takeover site) specified therein.
- 3.4. The wagons provided by RCL-MAC shall be in a degree of cleanliness in accordance with that designated in the order or offer and in a maintenance and leak-proof condition, in accordance with the use, for which the wagons have been ordered.

- 3.5. The customer is obliged immediately on provision of the wagons at the takeover site to satisfy himself of their condition and suitability for the envisaged use in accordance with the order or offer. In the event of any defects the customer must immediately send written notification to RCL-MAC, in which all applicable defects are listed. Otherwise the wagon shall be deemed to have been taken over in faultless condition and as suitable for the envisaged transportation purpose. If the customer starts to load the wagon, this constitutes acceptance of the condition in every case and in particular acceptance of the degree of cleanliness of the wagon.

4. Loading the wagons

- 4.1. The customer is obliged to load the wagons solely with the goods specified in the order or offer. He must comply with all the statutory provisions, the loading regulations of the carrier concerned applicable to the wagon type, the UIC Loading Guidelines, all applicable manuals of the wagon keeper, notices concerning the wagon and the state of the art and must handle the wagons with the necessary care.
- 4.2. If the customer does not discover until time has elapsed after loading that the freight is not authorised goods in accordance with Point 1.5 of these GTC, that they pose a food-related risk (e.g. by reason of contamination) or that goods other than those specified in the order for the freight wagons have been loaded, he must notify RCL-MAC of this immediately. He must notify the numbers of the wagons concerned, together with the exact properties and condition of the freight. Furthermore, he is obliged to inform and to forward the relevant documents to all those involved in the transportation and to retain all the documents related to the case. The customer is not entitled to undertake measures (e.g. cleaning, handling, disinfection) without the written approval of RCL-MAC.
- 4.3. The customer must satisfy himself with the forwarder that all deposited product residues, in particular on the platforms of the wagons and in the area of the loading and unloading apertures, have been removed.
- 4.4. The customer must ensure that no resources are used in loading or unloading (in particular machines), which may damage the wagons, in any form whatsoever.
- 4.5. The customer must ensure that the closing and locking of the loading and unloading devices on the wagon prior to each carriage of goods is carried out with care both in the empty and in the loaded condition and that the wagons are not damaged thereby. This customer must ensure in particular that subsequent to loading fasteners are used, which are suitable in type and construction for identification for security as proof in the area of transport law and in the event of defective fasteners or where fasteners have not been used, must himself bear all the penalties.
- 4.6. The customer must ensure that the freight in the containers and also in the entire wagon is well distributed and the load limit for the line to be travelled (line category schedule of the respective infrastructure operator or of the forwarder involved in a transport operation) is not exceeded.
- 4.7. The customer is not entitled to undertake modifications to the wagon or parts thereof, or to remove or alter identification markings or addresses. Attaching advertising inscriptions is not permitted without the prior consent in writing of RCL-MAC.
- 4.8. RCL-MAC is entitled to arrange for its own staff or the staff of a third party authorised by RCL-MAC for this purpose to inspect the wagons at any time and in any location and to check that the customer is handling the wagons in accordance with the regulations.

5. Unloading wagons and return of wagons

- 5.1. The customer must ensure that during unloading and loading of the wagon
- 5.2. all product residues deposited on the unloading apertures are removed;
- 5.3. devices suitable for the various types of wagon (devices for the tightening and releasing of screws, automatic unloading equipment) are used, in order to guarantee that the unloading equipment is used without damaging the mechanisms.
- 5.4. The customer must ensure that at the end of the applicable unloading time the wagons are returned to the carrier or to RCL-MAC by means of the relevant notification completely emptied, sealed in accordance with the operating manual and complete (i.e. including loose wagon components). For this purpose the customer must also ensure that all documents required for the return of the empty wagons are handed over to the carrier designated in accordance with the order.
- 5.5. In the event that the customer returns the wagons in a condition, which makes internal and/or external cleaning necessary, RCL-MAC is entitled to carry out a subsequent wagon cleaning at the

costs of the customer.

- 5.6. In the event of disputes concerning the condition of a wagon, RCL-MAC reserves the right to have this assessed by an expert witness. If in this process it becomes apparent that the customer's information is incorrect, the customer must bear the costs of the expert assessment.
- 5.7. In the case where the wagons to be returned are rejected by the next customer (e.g. on the grounds of contamination, residues of freight or on the grounds of the loading of a type of freight other than specified in the order or in the offer), RCL-MAC is entitled to invoice to the customer both all the costs of conveying the wagon to a repair or cleaning facility and also a flat-rate compensation for the downtime and reconditioning of the wagons in accordance with Annex 2.
- 5.8. In the case where the wagons are returned late, RCL-MAC is entitled to charge the customer wagon demurrage charges for each additional calendar day in accordance with Annex 2.

6. Servicing, repairs

- 6.1. The customer is not entitled in the course of the loading and unloading of the wagons himself to undertake repair work of any kind or to have repair work of any kind carried out.
- 6.2. The customer must comply with the RCL-MAC instruction and if necessary, ensure that the prepared wagons are conveyed in good time to the workshop designated by RCL-MAC. If the customer, for any reason whatsoever, does not comply with this obligation RCL-MAC reserves the right themselves to access the wagon concerned.

7. Remuneration, costs and payment conditions

- 7.1. The remuneration for the wagons and other costs are specified in the order or in the offer and/or in the price list in accordance with Annex 2. All prices are in Euros exclusive of statutory Value Added Tax.
- 7.2. Unless otherwise specified in the order or in the offer, the agreed remuneration is due for payment within 14 (fourteen) days of date of invoice. All payments without deductions must be received by RCL-MAC within this deadline.
- 7.3. In the event of arrears of payment on the lapse of the agreed payment deadline RCL-MAC is entitled to demand default interest from the customer under the application of the statutory default interest rate in accordance with § 456 UGB and all further penalties, which have been incurred by virtue of this delay.

8. Liability

- 8.1. The customer is liable for the completeness and accuracy of the information communicated in accordance with the order or the offer, and similarly for the failure to communicate information and must accept responsibility for all penalties associated with this as regards RCL-MAC.
- 8.2. The customer is liable for all damage to the wagons, which is caused by the freight transported therein and shall indemnify and hold harmless RCL-MAC against all claims by third parties, asserted against RCL-MAC in this respect. The customer is further liable for all damage to the wagons, which has been caused in particular by improper loading or unloading performed contrary to the regulations by him or by a party authorised by him and shall indemnify and hold harmless RCL-MAC against all claims by third parties, asserted against RCL-MAC in this respect. The customer's obligation to compensate RCL-MAC for damage encompasses the costs of the complete reinstatement of the wagon, the transportation and the costs of idle time, the compensation for the depreciation in value and loss of effectivity (equivalent to the wagon demurrage charges in accordance with Annex 2) up to the time when the wagon has been fully reinstated.
- 8.3. The customer is liable to the full extent for damage as a consequence of delayed return of the wagons (downtime and any wagon demurrage charges or other fees invoiced by carriers), which have been caused by him or by a party authorised by him.
- 8.4. Claims for compensation in damages of any kind whatsoever against RCL-MAC, in particular in the case of damage, which is incurred by virtue of delayed preparation of the wagons or failure of the wagons, are excluded, unless mandatory statutory provisions conflict with this clause. RCL-MAC shall not on any account be liable for slight negligence or lost profit.
- 8.5. The customer confirms that he complies with the Minimum Wage Act (MiLoG) in Germany through his company or his subcontractors and indemnifies and holds harmless RCL-MAC against all claims and liabilities resulting from non-compliance with the Minimum Wage Act.

9. Non-disclosure

If information designated as confidential is communicated by one of the parties, the respective other parties shall be obliged to refrain from disclosing this information and from using it for purposes other than those for which it was communicated, irrespective of whether a contract comes into existence between the parties.

10. Court of jurisdiction, applicable law

- 10.1. Unless mandatory statutory provisions conflict with this clause, for adjudication on all disputes arising from the contractual relationship between RCL-MAC and the customer or these GTC the competent Court in Vienna shall have jurisdiction over the matter.
- 10.2. The applicable law is Austrian law to the exclusion of the rules of conflict of private international law.

11. Data Protection

- 11.1. RCL-MAC stores personal data relating to the customer and contact details as well as personal data relating to the function and responsibilities of the customer's employees in its CRM system to the extent this is necessary for the performance of the respective contract (Art. 6 Abs. 1 lit. b GDPR) as well as to safeguard the legitimate interests of the controller (Art. 6 Abs. 1 lit. f GDPR). Such personal data will also be used within the Rail Cargo Group (RCL-MAC and companies affiliated to it within the meaning of § 189a Z 8 UGB) and if required, may also be disclosed to any subcontractor used by RCL-MAC and/or the Rail Cargo Group in connection with these purposes.
- 11.2. The customer is obliged to inform its employees about the disclosure of this information (contact details, function and responsibilities) to RCL-MAC and Rail Cargo Group (RCA and companies affiliated to it within the meaning of § 189a Z 8 UGB).
- 11.3. RCL-MAC keeps personal data relating to the customer as long as this is required to achieve the respective purpose, or as long as there are any contractual or legal obligations or justified interests to retain such data (e.g. to perform the ordered services, to comply with legal obligations to retain certain personal data, or to establish any legal claims).
- 11.4. Subject to applicable law the customer is entitled to the following rights in relation to personal data:
 1. Right of access to personal data (Art. 15 GDPR)
 2. Right to rectification (Art. 16 GDPR)
 3. Right to erasure (Art. 17 GDPR)
 4. Right to restriction of processing or the right to object to the processing (Art. 18 GDPR)
 5. Right to data portability (Art. 20 GDPR)
 6. Right to lodge a complaint with a supervisory authority (Art. 77 GDPR).

12. General Terms and Conditions of Business

- 12.1. The customer undertakes to comply with all foreign trade regulations of the countries concerned and the European Union; this applies in particular to the authorised import and export of goods including what are known as dual use goods (commodities, which can be used for both civil and military purposes). The customer must notify RCL-MAC in writing in good time regarding all instructions, prohibitions and restrictions with respect to the goods to be despatched. The customer indemnifies and holds harmless RCL-MAC for any damages arising from disregard of the foreign trade regulations. Furthermore it is the responsibility of the customer to check names and addresses against the anti-terror lists issued by various institutions. In the case of (transportation) services in countries against which there exist sanctions or trade restrictions, the customer must issue a declaration provided by RCL-MAC in connection with foreign trade regulations.
- 12.2. The customer is entitled to offsetting only against undisputed or legally enforceable claims.
- 12.3. Unless they have obtained the consent of the respective other party, the parties are not entitled to assign the rights and duties arising from this contract to third parties. None of the companies affiliated with RCL-MAC within the Group are deemed to be third parties within the meaning of this provision.
- 12.4. Oral collateral agreements are deemed not to exist. Agreements to amend or add to these provisions shall be valid, only when they are incorporated in written form and signed by both parties.
- 12.5. In the event that one or more provisions of these GTC are or become invalid, ineffective, infeasible or unenforceable, such a defect shall not affect the remaining provisions of these GTC. Every defective

provision shall be deemed to have been replaced by a valid, effective, feasible and enforceable provision, which comes closest in law to the commercial and legal consequences, which the parties anticipated from the defective provisions.

- 12.6. The following Annexes constitute an integral component of these GTC. Where the Annexes conflict with the GTC, the GTC prevail:

Annex 1: Ordering deadlines

Annex 2: Price List