

General Terms and Conditions (GTC) of Rail Cargo Logistics - Austria GmbH (RCL-AT)

Status: 1 February 2021

1. Scope, deviating and supplementing provisions

- 1.1. These General Terms and Conditions ("GTC") apply to all activities of RCL-AT, in particular to the organisation of national and international transportation of goods and other transport related services (such as handling, (temporary) storage) provided by RCL-AT. 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 RCL-AT's express written consent.
- 1.3. The General Austrian Forwarders' Terms and Conditions (AÖSp) apply in their respective applicable version. In the case of a conflict of these GTC with the General Austrian Forwarders' Terms and Conditions (AÖSp), the GTC prevail.
- 1.4. Furthermore, the respective relevant legal provisions apply, in particular the Uniform Rules concerning the Contract of International Carriage of Goods by Rail – CIM, in their respective applicable version, unless agreed otherwise, respectively to the extent the following provisions do not provide for deviating provisions.
- 1.5. 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 Rail Cargo Austria AG
- 1.6. 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. Transportation documentation, customs clearance

- 2.1. To the extent not agreed otherwise, the customer/consignor must issue a corresponding consignment note. 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.
- 2.2. 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.
- 2.3. 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).
- 2.4. The transport order must be transmitted in due time and is binding for the customer/consignor upon receipt by RCL-AT. All relevant information required for the consignment must be received by the competent unit (*zuständige Stelle*) of RCL-AT at the latest two hours prior to the scheduled collection of wagons. In case of non-compliance by the customer/consignor, RCL-AT is entitled to refuse acceptance of the consignment and to request reimbursement of any costs incurred with such non-compliance from the customer/consignor.
- 2.5. Any documents attached to consignment note (accompanying documents) must be transmitted to RCL-AT 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).
- 2.6. If the order to RCL-AT does not refer to the mass (weight) of the goods to be transported, RCL-AT 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).

- 2.7. To the extent not agreed otherwise, respectively if mandatory law does not provide otherwise, the customer/consignor is responsible for the due customs clearance of the goods to be transported within the prescribed time limit.
- 2.8. To the extent RCL-AT is responsible for customs clearance pursuant to a specific agreement, RCL-AT acts as direct agent of the customer/consignor with respect to customs matters. RCL-AT is entitled to grant a power of attorney to third parties as its (sub-)agent in relation to the performance of the customs formalities.
- 2.9. The customer/consignor shall provide RCL-AT with all required information and documentation, in particular in relation to the issue of the consignment note and the customs clearance of the goods as well as, if required, any necessary accompanying documents in their entirety and in due time.
- 2.10. Provided that RCL-AT, or any party instructed by it, complies with customs and other administrative provisions, RCL-AT 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 RCL-AT.
- 2.11. RCL-AT 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.
- 2.12. The customer/consignor warrants that
 - 2.12.1. 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.
 - 2.12.2. that the personnel employed for the production, storage, treatment, or processing and taking over of such goods is reliable.
 - 2.12.3. business partners who act on its behalf are aware that they also must take measures to secure the above-mentioned supply chain.
- 2.13. If the customer/consignor does not comply with its obligations and such non-compliance (in particular with customs and other administrative provisions) results in any losses or damages of RCL-AT, the customer/consignor shall indemnify and hold harmless RCL-AT in particular for any damages and/or costs incurred.

3. Wagons, loading units and loading equipment of RCL-AT, loading deadlines

- 3.1. Following a written order (via e-mail or fax) using the provided order form (available under www.railcargo.com) RCL-AT will, in the case of transportation of food and animal feed or the respective packaging, and subject to availability, provide the customer/consignor with wagons, loading/transportation units and loading equipment. The provided equipment shall be in a technical condition and state of cleanliness to permit the intended use of which RCL-AT has been notified by the customer/consignor in advance.
- 3.2. The order shall be made no later than at 8 am on the second last working day prior to 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, specification of the goods in accordance with the Harmonised Commodity Code (*NHM-Güterbezeichnung*), furthermore, whether the goods are food, animal feed or the respective packaging and, if necessary, the required loading equipment and load securing systems.
- 3.4. If RCL-AT 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 or transportation 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 RCL-AT 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, RCL-AT must be compensated for any resulting damages or losses and RCL-AT 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 RCL-AT must thus park the wagons on the tracks, RCL-AT will charge demurrage fees pursuant to the

- Austrian Goods Tariff (ÖGT). Furthermore, RCL-AT must be compensated for any resulting damages or losses and indemnified for any claims of third parties.
- 3.8. The customer/consignor is liable for any damages and losses relating from any damage to the wagons, the loading or transportation units, and loading equipment caused by it or any third parties attributable to its sphere of influence (*zurechenbare Dritte*) including any subsequent costs in connection with any repair time in a workshop. Furthermore, the customer/consignor shall indemnify RCL-AT for any claims of third parties. The customer/consignor shall promptly report any damages or accidents to RCL-AT.
 - 3.9. The customer/consignor is responsible to return unloaded wagons and loading or transportation units at the agreed handover point or terminal by the specified date and time in a condition suitable for their re-use (i.e. in particular fully emptied, properly disinfected or cleaned and complete including any unattached parts). In the event of non-compliance RCL-AT will charge a fee for the costs incurred pursuant to the Austrian Goods Tariff (ÖGT). Furthermore, RCL-AT must be compensated for any resulting damages or losses and indemnified for any claims of third parties.
 - 3.10. The customer/consignor shall use the wagons, loading or transportation units, and loading equipment handed over RCL-AT only for the contractually intended purpose.
 - 3.11. In any event RCL-AT will charge the fee pursuant to the Austrian Goods Tariff (ÖGT) for ordered and already provided but unused wagons, or loading, or transportation units. Furthermore, RCL-AT must be compensated for any resulting damages or losses and indemnified for any claims of third parties.
 - 3.12. The customer/consignor must notify via e-mail or fax if empty or loaded wagons as well as loading, respectively transportation units are ready for collection.

4. Wagons, loading units, and loading equipment provided by the customer/consignor

- 4.1. The customer/consignor warrants to only hand over such wagons whose keeper is a signatory to the "General Contract of Use for Wagons" (GCU) or to place RCL-AT in the same position as if the respective holder is a signatory to the GCU.
- 4.2. The customer/consignor shall ensure that the handed over wagons are maintained by a certified entity (Entity in Charge of Maintenance, ECM) and are officially approved in accordance with applicable European and domestic law. RCL-AT or those employed by it to perform its contractual obligations (*Erfüllungsgehilfen*) are not obliged to review the relevant legal requirements for such approval by the competent authorities. Furthermore, RCL-AT is entitled to refuse acceptance of wagons which are not suitable for the proper use.
- 4.3. The customer/consignor ensures that the loading or transport units, and loading equipment provided by the customer/consignor are safe to operate and suitable for a safe transportation of the goods, suitable for the transportation, approved and codified as well as in a condition which complies with the relevant applicable standards. The customer/consignor is liable for any damages incurred by RCL-AT in connection with any loading or transportation units and loading equipment provided by the customer/consignor and the customer/consignor shall indemnify RCL-AT for any claims of third parties.
- 4.4. RCL-AT is not obliged to inspect the transportation units provided by the customer/consignor with respect to use and defects.

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 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 customer's/consignor's loading and unloading must comply with the Loading Tariffs of Rail Cargo Austria AG (available under www.railcargo.com and in the Journal for Traffics (*Anzeigenblatt für Verkehr*). RCL-AT or those employed by it to perform their contractual obligations (*Erfüllungsgehilfen*) are entitled to inspect the wagons, loading or transportation units to confirm whether they have been loaded in accordance with applicable safety requirements. However, RCL-AT is not obliged to review whether any wagons or equipment are safe to operate.
- 5.4. If the customer/consignor breaches its obligations 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, RCL-AT will request the customer/consignor to remedy the situation within a reasonable period of time. If this period has expired without any results, RCL-AT 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. RCL-AT does not guarantee any fixed dates.

7. Subsequent disposals and instructions

- 7.1. 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, e-mail and the like).
- 7.2. In the 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.
- 7.3. The customer/consignor is liable to RCL-AT for any losses and damages arising from subsequent disposals and instructions and has to indemnify RCL-AT for any claims of third parties.

8. Dangerous goods

- 8.1. The customer/consignor must comply with the regulations of the transportation of dangerous goods (ADR, RID or, if applicable, the IMDG-Code) as applicable from time to time. In particular, the customer/consignor has to notify RCL-AT 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 subject to an agreement with the customer/consignor relating to the assumptions of the safety obligations and the duty of care at the time of the provision/collection. 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 RCL-AT for any damages or losses, and releases RCL-AT 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. Remuneration and invoicing

- 9.1. In the absence of any other agreement with the customer/consignor the following provisions shall apply.
- 9.2. The remuneration is due for payment within 14 days upon issuing an invoice free and clear of any expenses and deductions. In the event of payment default RCL-AT is additionally entitled to statutory default interest.
- 9.3. Payments are made by means of SEPA direct debit mandate. The amount due will be debited according to point 9.2. 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 next following working day is deemed the due date. The customer/consignor must ensure that the relevant account

has sufficient funds available. Changes of bank details must be announced in writing in good time.

- 9.4. The customer/consignor is not entitled to set-off any claims based on whatever title against claims of RCL-AT or to withhold any of its services unless RCL-AT has acknowledged the customer's/consignor's claim or if such claim has been confirmed by a final court decision.

10. Liability

- 10.1. 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.
- 10.2. RCL-AT's liability is limited to direct damages. RCL-AT does in particular not accept any liability if
- 10.2. 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.
- 10.2. 2 the damage is caused by theft resulting from breaking and entering, robbery or any other criminal acts of third parties.
- 10.3. 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 RCL-AT 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 RCL-AT 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 of RCL-AT or its corporate bodies by any authority, or any criminal, or civil court. Subject to the sole discretion of RCL-AT, the customer/consignor shall upon first demand provide RCL-AT 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 RCL-AT harmless.
- 10.4. To the extent claims for damages have not been caused by intent or gross negligence in the meaning of Art 36 CIM or RCL-AT is not liable under mandatory law, any claims for compensation against RCL-AT or its employees or any agents used by it to perform its contractual obligations (*Erfüllungsgehilfen*) exceeding the claims subject to this contract of carriage are excluded.

11. Lapse of time

Subject to mandatory law and the GCU, all claims against RCL-AT lapse within six months.

12. 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 contract of carriage or not.

13. 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 RCL-AT in due time in writing about all regulations, prohibitions, and restrictions regarding the goods to be

dispatched. The customer/consignor shall indemnify RCL-AT for any damages resulting from any 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 RCL-AT.

14. Data protection

14.1. RCL-AT 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 RCL-AT (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 (RCL-AT 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.

14.2. The customer/consignor is obliged to inform its employees about the disclosure of this information (contact details, function, and responsibilities) to RCL-AT and Rail Cargo Group (RCL-AT and companies affiliated to it within the meaning of section 189a item 8 Business Code (UGB)).

14.3. RCL-AT undertakes to store and process personal data of the customer/consignor only as long as this is necessary for RCL-AT to perform its contractual obligations or the exercise or defence of legal claims. RCL-AT 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)).

14.4. The customer/consignor is entitled to the following rights in relation to personal data processed by RCL-AT:

1. the right of access in accordance with Art 15 GDPR in connection with the personal data processed by RCL-AT.
2. the right to rectification in accordance with Art 16 GDPR, right to erasure in accordance with Art 17 GDPR and the right to restrict 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.

15. 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.