

## General Terms and Conditions (GTC) of Rail Cargo Operator - Austria GmbH (RCO-AT)

Status: 1 March 2023

### 1. Scope, deviating and supplementing provisions

- 1.1. These General Terms and Conditions (“GTC”) apply to all activities of RCO-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 RCO-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 RCO-AT’s express written consent.
- 1.3. The General Austrian Forwarders’ Terms and Conditions (AÖSp) apply in their respective applicable version. In 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 explicitly agreed otherwise in written form and the following provisions do not include deviating provisions.
- 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. Transportation documentation, customs clearance

- 2.1. To the extent not agreed otherwise, RCO-AT or one of its agents issues a respective consignment note.
- 2.2. In order to ensure safe transportation, the customer/consignor must notify RCO-AT in writing if food or animal feed or the respective packaging shall be transported by RCO-AT.
- 2.3. The transport order must be transmitted in due time and is binding for the customer/consignor upon receipt by RCO-AT. All relevant information required for the consignment must be received by the competent unit (*zuständige Stelle*) of RCO-AT at the latest two hours prior to the scheduled collection of wagons. In case of non-compliance by the customer/consignor, RCO-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.
- 2.4. Any documents attached to a consignment note (accompanying documents) must be transmitted to RCO-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).
- 2.5. If the order to RCO-AT does not refer to the mass (weight) of the goods to be transported, RCO-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 2.5% from the actual mass (weight).
- 2.6. 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.
- 2.7. To the extent RCO-AT is responsible for customs clearance pursuant to a specific agreement, RCO-AT acts as direct agent of the customer/consignor with respect to customs matters. RCO-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.
- 2.8. The customer/consignor shall provide RCO-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.

- 2.9. Provided that RCO-AT, or any party instructed by it, complies with customs and other administrative provisions, RCO-AT charges additional fees 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 RCO-AT.
- 2.10. RCO-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.
- 2.11. The customer/consignor warrants that
  - 2.11.1. 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.
  - 2.11.2. that the personnel employed for the production, storage, treatment or processing and taking over of such goods is reliable.
  - 2.11.3. business partners who act on its behalf are aware that they also must take measures to secure the above-mentioned supply chain.
- 2.12. If the customer/consignor does not comply with its obligations and, as a result (in particular also due to the non-compliance with customs and other administrative provisions) suffers any losses or damages, the customer shall indemnify RCO-AT for any claims of third parties.

### **3. Transportation units**

- 3.1. The customer/consignor provides the transportation units (e.g. container, semi-trailers, swap body trailer, other containers used in connection with the intermodal transport). The customer/consignor must seal the transportation units. 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.
- 3.2. The customer/consignor ensures that the transportation units 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 damage caused by any transportation units provided by it to RCO-AT and shall indemnify RCO-AT from any claims of third parties.
- 3.3. RCO-AT is not obliged to inspect the provided transportation units regarding use and defects.
- 3.4. If required, RCO-AT provides the customer/consignor with suitable transportation units, which are subject to availability, following a systemic and electronic order and using the provided order form (available under [www.railcargo.com](http://www.railcargo.com)), in the case of transportation of food and animal feed or the respective packaging
- 3.5. The transportation unit 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.
- 3.6. The customer/consignor shall inspect the provided transportation units 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 RCO-AT of any complaints.
- 3.7. The customer/consignor is responsible to return unloaded 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. fully emptied, properly disinfected or cleaned and complete including any unattached parts).

### **4. Loading and unloading**

- 4.1. RCO-AT is responsible for the loading and unloading of the transportation units provided by the customer/consignor onto or from the wagon, to the extent this is agreed as an additional service.
- 4.2. If the loading and unloading is carried out by the customer/consignor and 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, RCO-AT will request the customer/consignor to remedy the situation within a reasonable period of time. If this period has expired without any results, RCO-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 or other suitable measurement methods on the wagon.

## **5. Deadline for provision**

- 5.1. The customer/consignor shall provide the loaded transportation units as the goods to be transported no later than at closing.
- 5.2. The customer/consignor is liable to RCO-AT for any losses or damages arising from a delayed provision of the goods to be transported and shall indemnify RCO-AT for any claims of third parties.

## **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. RCO-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 RCO-AT for any losses and damages arising from subsequent disposals and instructions and has to indemnify RCO-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 RCO-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 RCO-AT for any damages or losses, and releases RCO-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 RCO-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 RCO-AT or to withhold any of its services unless RCO-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. RCO-AT's liability is limited to direct damages. RCO-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, the consequences resulting from incorrect, inaccurate or missing information contained in the order to RCO-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 RCO-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 RCO-AT or its corporate bodies by any authority, or any criminal, or civil court. Subject to the sole discretion of RCO-AT, the Customer/Consignor shall upon first demand provide RCO-AT with the amount required to fully settle such debts including any ancillary charges and costs no later than at their respective maturity date rather than indemnifying and holding RCO-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 RCO-AT is not liable under mandatory law, any claims for compensation against RCO-AT or its employees or of those employed by it to perform its contractual obligations exceeding the claims subject to this contract of carriage are excluded.
- 10.5. The customer/consignor is obliged to indemnify and hold RCO-AT harmless for breaches of these GCU, in particular if claims are made against RCO-AT by third parties

## **11. Lapse of time**

Subject to mandatory law, all claims against RCO-AT lapse within six months.

## **12. Data protection, Data**

- 12.1. RCO-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 RCO-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.
- 12.2. The contact details stored in the CRM system are also used for the distribution of newsletters of the Rail Cargo Group (RCO-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.

- 12.3. The customer/consignor is obliged to inform its employees about the disclosure of this information (contact details, function, and responsibilities) to RCO-AT and Rail Cargo Group (RCO-AT and companies affiliated to it within the meaning of section 189a item 8 Business Code (UGB)).
- 12.4. RCO-AT undertakes to store and process personal data of the customer/consignor only as long as this is necessary for RCO-AT to perform its contractual obligations or the exercise or defence of legal claims. RCO-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)).
- 12.5. The customer/consignor is entitled to the following rights in relation to personal data processed by RCO-AT:
  1. the right of access in accordance with Art 15 GDPR in connection with the personal data processed by RCO-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.
- 12.6. The customer/consignor has no claims, in particular to use, provision etc. in connection with data, information etc. regarding any telematics, sensor technology or similar, unless explicitly agreed otherwise in written form.

### **13. 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.

### **14. 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 import, export, transit as well as transfer 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 RCO-AT in due time in writing about all regulations, prohibitions, and restrictions regarding the goods to be dispatched. The customer/consignor shall indemnify RCO-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 RCO-AT.

### **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 from or in connection with these GTC and/or this transportation contract or its violation, termination or invalidity.