

General Terms and Conditions of Rail Cargo Logistics – Germany GmbH (RCL-DE)

Last update: 21 January 2021

1. Scope, Deviating and Supplementary Provisions

1.1 These General Terms and Conditions are applicable for the national and international transport of goods as well as other related services (in particular transshipment, storage or interim storage), unless otherwise provided by mandatory law or deviating provisions have been agreed in writing in individual contracts. These General Terms and Conditions also cover transport services and related services in connection with construction works and special transports such as transports of special material, building material and cars.

1.2 These General Terms and Conditions apply only if the customer/principal is a merchant and the business takes place in the scope of such merchant's business operations or the customer/principal is a legal entity under public law or a special fund under public law. Any general terms of the customer/principal shall apply only upon express written confirmation by RCL-DE.

1.3 In addition to these General Terms and Conditions and the respectively relevant laws, the following regulations shall apply as amended and restated from time to time:

- UIC Loading Guidelines as amended and restated from time to time;

- notified operating regulations of the railway infrastructure operator.

- the additional provisions included in the Regulations concerning the International Carriage of Dangerous Goods by Rail (RID) to the extent they go beyond the German law on transportation of dangerous goods (GGBefG).

1.4 The customer/principal shall undertake to observe all applicable provisions of law as well state-of-the-art standards.

2. Service Level Agreement, Conclusion of Contract

2.1 The services to be performed by RCL-DE shall be based on a service level agreement separately concluded with the customer/principal, which is usually concluded by issuance of a written offer by RCL-DE and written acceptance of such offer by the customer/principal. The offer includes, inter alia, the essential data of the freight, wagon type, loading unit and price per unit. An offer that is expressly marked as "non-binding" by RCL-DE is not legally binding; a contract based on such non-binding offer is concluded only by placement of an order by the customer/principal and subsequent written confirmation by RCL-DE. In case of discrepancies between the provisions of the service level agreement and these General Terms and Conditions, the provisions of the service level agreement shall prevail.

3. Loading Deadlines, Wagons

3.1 If loading deadlines are exceeded, RCL-DE will raise demurrage charges in the range between EUR 25.00 and EUR 150.00, depending on the type of wagon. Deadlines for loading and/or unloading are fixed on an individual basis and will be included in the respective offer of RCL-DE. If wagons are rented by RCL-DE from a third-party railway company, RCL-DE will pass on the demurrage charges invoiced by such third-party company. Furthermore, RCL-DE will invoice to the customer/principal any further damage resulting from the non-observance of loading deadlines.

3.2 RCL-DE provides the customer/principal with wagons, loading units and loading tackle suitable for the transport as ordered and as available. The provided material shall be in a technical state and degree of cleanliness appropriate for the intended use. The customer/principal shall be responsible for indicating correctly the required number and type of wagons.

3.3 The customer/principal shall check the provided wagons and cargo for their suitability for the intended use as well as for visible defects and will inform RCL-DE on any complaints in writing without undue delay. The customer is obliged to properly check the wagons before loading and the freight after arrival to identify potential defects. Any complaints on defects must likewise be submitted in writing and without undue delay.

3.4 The customer/principal shall be liable for any loss, damage or other impairment of wagons, loading units and loading tackle that occur within the customer's/principal's custody unless the customer/principal provides evidence that the damage was not caused by fault of the customer/principal or any third party engaged by the customer/principal. Such liability also includes consequential costs, in particular costs for a necessary stay at the workshop. Damage and accidents shall be reported to RCL-DE without undue delay.

3.5 The customer/principal is responsible to hand back unloaded wagons and cargo in a usable condition, i.e. completely emptied, cleaned, properly decontaminated and with all moveable parts in a timely manner and at the agreed place of handover or terminal. In case of non-observance, all incurred expenditures will be invoiced to the customer/principal. Any further claims for damages shall remain unaffected hereof.

3.6 The customer/principal is obliged to use the wagons, loading units and loading tackle handed over by RCL-DE only for the contractually agreed purpose.

3.7 The customer/principal is obliged to notify RCL-DE by fax or email on empty and loaded wagons as well as loading units that are ready for pick-up.

3.8 Costs for wagons and loading units ordered and already assigned, but not used will in any case be passed on to the customer/principal.

4. Wagons Provided by the Customer/Principal

4.1 For the use of wagons as transport means by RCL-DE, the "General Contract of Use for Wagons" (GCU) shall apply. As far as the customer/principal has not entered into the International Rail Transport Committee (CIT) so that the GCU applies automatically, the applicability of the GCU shall be deemed as agreed between RCL-DE and the customer/principal.

4.2 The customer/principal warrants that RCL-DE will only be handed over wagons the keepers of which have entered the GCU and the customer/principal will otherwise put RCL-DE into a position as if the foregoing were the case.

4.3 The customer/principal will assure that the wagons handed over to RCL-DE have been subject to maintenance by an appropriately certified entity (Entity in Charge of Maintenance, ECM). Otherwise, RCL-DE shall have the right to refuse acceptance of such wagons.

5. Hindrance of Performance

5.1 If RCL-DE is prevented from performing its services for reasons beyond the scope of risk of RCL-DE, in particular due to force majeure, strike, track or road closures, riot, events of war or terrorism, official measures or other unforeseen, inevitable occurrences, e.g. delayed readiness of tracks or delayed handling of schedules by the rail network operator, the obligation to perform shall expire.

5.2 RCL-DE shall not be liable for

- network-related delays or hindrance of performance (i.e. in particular construction works in the infrastructure, delayed timetabling by the responsible entities, restricted accessibility of tracks, traffic disruption, malfunction of switches, lubricant film on rails, faulty dispatching by the responsible entities, damage to overhead wiring, hindrance by third parties),

- delayed return of technical equipment by third parties,

- contamination of applied technical material by a contracting party or

- delayed loading by the material supplier.

6. Loading Instructions/Provision of Goods

6.1 The customer/principal is responsible for the safe loading as well as unloading in accordance with the respectively applicable rules for railway operations as well as the competent Employers' Liability Insurance Association. If the customer/principal fails to observe this duty, if there is a substantial discrepancy between the agreed and actually provided cargo, if the admissible total weight is exceeded or transport is obstructed due to the type of good or way of loading, RCL-DE shall be entitled to assert rights in accordance with Sec. 415 (3) German Commercial Code (HGB).

6.2 The customer/principal is obliged to hand over the goods to RCL-DE at the agreed time for transport. Any additional costs resulting from delayed handover shall be borne by the customer/principal.

6.3 The customer/principal is obliged to remove any waste or residues produced in the loading and unloading process from the loading point including access ways without undue delay and at its own cost.

7. Delivery Periods

Schedules communicated to the customer/principal do not constitute agreements on delivery periods in the meaning of law or in the meaning of Article 16 § 1 CIM.

8. Obstructions

8.1 In the scope of Sec. 419 HGB, RCL-DE is authorized to park the loaded means of transport. For the duration of such parking, RCL-DE shall be liable with the diligence of a prudent businessperson.

8.2 For the occurrence of presumed loss in the meaning of Sec. 424 (1) HGB, the period shall be 30 days after the end of the delivery period, which shall be applicable for both domestic and cross-border transports.

9. Dangerous Goods

9.1 The transport of dangerous goods is subject to the relevant legal provisions on dangerous goods including national law as well as the Regulations concerning the International Carriage of Dangerous Goods by Rail (RID). The customer/principal is obliged to observe these provisions and laws.

9.2 Dangerous goods will be accepted/handed over by RCL-DE only the customer/principal agrees in writing to assume the safety and custody obligations until pick-up or, as the case may be, starting upon readiness for dispatch. In case of goods of class 1 or 2, the customer/principal shall furthermore agree in writing to perform the physical handover/acceptance of the goods.

9.3 The customer/principal shall indemnify and hold harmless RCL-DE against all liabilities towards third parties that may arise in connection with transport, storage and other handling or are based on the specific nature of the goods or non-observance of the duty of care incumbent on the customer/principal.

9.4 Dangerous goods are not stored by RCL-DE, not even by parking loaded means of transport along the respective transport route.

10. Fees, Invoicing, Exclusion of Set-off

10.1 Invoices are payable strictly net within 14 days upon receipt. After this deadline, RCL-DE is entitled to charge default interest of 9 percentage points above the base rate, expressly reserving the assertion of further damage claims. RCL-DE may request the customer/principal to make an advance payment or to provide a security.

10.2 Set-off against or retention of claims of RCL-DE because of counterclaims shall be excluded unless such counterclaims are undisputed, established as final and absolute or ready for judgement.

11. Foreign Trade Restrictions

The customer/principal undertakes to observe all provisions and regulations on foreign trade of the involved countries and the European Union, especially regarding the licensing requirement for import and export of goods including so-called dual-use items (goods that can be used for both civil and military purposes). The customer/principal shall timely notify RCL-DE in writing on any requirements, prohibitions and restrictions with respect to the goods to be transported. The customer/principal shall indemnify and hold harmless RCL-DE for any damage incurred due to non-observance of foreign trade regulations. Furthermore, the customer/principal shall be responsible for checking names and addresses against the anti-terror sanction lists issued by several institutions. In case of (transport) services into countries that are subject to sanctions/restrictions of trade, the customer/principal shall issue a declaration in connection with foreign trade regulations. The template for such declaration is provided by RCL-DE.

12. Regulations on Customs and Other Administrative Matters, Train Path Orders

RCL-DE is entitled to reject consignments as far as the seals applied by customs or other administrative authorities are damaged or faulty.

13. Liability

13.1 For national and international railway transport of goods, the liability rules of statutory law shall apply unless agreed otherwise below or in service level agreements.

13.2 For cross-border railway transport of goods, the Uniform Rules concerning the Contract for International Carriage of Goods by Rail (CIM) have stipulated compulsory liability provisions. Outside the scope of application of CIM and in the partial areas not covered by the treaty, the liability of RCL-DE shall be governed by the German Freight Forwarders' Standard Terms and Conditions 2017 (*Allgemeine Deutsche Spediteurbedingungen 2017 – ADSp 2017*).

13.3 For other transport-related services (such as transshipment, storage or interim storage), RCL-DE shall be liable for loss or damage only up to a maximum amount of 8.33 SDR per kilogram of gross weight of damaged or lost cargo unless RCL-DE has caused the damage by willful intent or gross negligence.

13.4 The customer/principal shall grant RCL-DE the opportunity to inspect the damage.

14. Data Protection

14.1 Personal data of the customer/principal in connection with the contract (company name, address, account information, [*]) as well as contact data and the area of responsibility of employees of the customer/principal are saved in our CRM system and processed within the Rail Cargo Group (RCL-DE and its affiliated companies) for the exercise of the contractual relationship (Art. 6 (1) lit. b GDPR) and for safeguarding legitimate interests (Art. 6 (1) lit. f GDPR) of RCL-DE, i.e. the efficient centralized customer management within the company group. In some cases, such data may also be forwarded to contractors for the afore-mentioned purposes.

14.2 The customer/principal is obliged to inform its employees on the forwarding of personal data (contact data and responsibilities) to RCL-DE and the Rail Cargo Group (RCL-DE and its affiliated companies).

14.3 RCL-DE stores and processes personal data of the customer/principal as long as this is necessary for exercising the contractual relationship and for the defense against legal claims. In any case, the data will be stored for the duration of legal storage periods, e.g. as set forth in the German Fiscal Code (AO) or the German Commercial Code (HGB).

14.4 The customer/principal has the following rights vis-à-vis RCL-DE:

- a) The right to obtain information pursuant to Article 15 GDPR with respect to personal data processed by us.
- b) The right to rectification pursuant to Article 16 GDPR, the right to erasure pursuant to Article 17 GDPR and the right to restriction of processing pursuant to Article 18 GDPR.
- c) The right to object pursuant to Article 21 GDPR.
- d) The right to data portability pursuant to Article 20 GDPR.
- e) The right to object at the competent data protection authority pursuant to Article 77 GDPR.

15. Court of Jurisdiction, Applicable Law

The applicable law shall be German law. The court of jurisdiction shall be in Frankfurt am Main, Germany.