



Take care of your share

ECL Intermodal 2016

General Terms and Conditions of ECL European Cargo Logistics GmbH
for Intermodal Transports national and international

valid as from 1st January 2016

(translated from German, the German version alone is legally binding)



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Preamble

This present ECL Intermodal 2016 replaces the previous version of the General Terms and Conditions as far as our, ECL European Cargo Logistics GmbH ("ECL"), Intermodal Transports carried out national and/or international on our own behalf and account are concerned. Intermodal Transport used in these ECL Intermodal 2016 is defined as transportation of goods in an identical loading unit or vehicle using multiple modes of transportation whereby the loading unit or vehicle is moved but not its contents and one leg of transportation is in any case by rail.

1. Scope, differing and supplementary terms and conditions

1.1. In standard cases we carry your loading units/vehicles by rail from Terminal to Terminal and perform the necessary crane operations at the Terminal. Our services (carriage of load units, transshipment, intermediate- / storage and other services related to the carriage at the Terminal) are rendered in accordance with the following ECL Intermodal 2016 and the conditions set out in subsection 1.3. For international transports the Uniform Rules concerning the Contract of International Carriage of Goods by Rail ("CIM") contained in Appendix B to the Convention concerning international Carriage by Rail (COTIF 1999) are applicable. In case the border crossing Intermodal Transport is carried out involving a vehicle or similar mode of transport (see Art. 1 (2) CMR) the CMR applies within its scope of application. These conditions as well as other conditions which cannot be amended by General Business Conditions take precedence over these ECL Intermodal 2016 to the extent they are compulsory applicable. The ECL Intermodal 2016 are not applicable to contracts with consumers within the meaning of Section 13 of the German Civil Code (BGB).

1.2. General Business Conditions of Clients/Shippers are explicitly excluded and not applicable.

1.3. Supplementary to these ECL Intermodal 2016 the respective latest versions of the following terms and conditions – as far as applicable – are relevant :

- Freight Agreement for the respective Intermodal Transport service;
- Regulations for the carriage of dangerous goods by rail (RID);
- Dangerous goods regulation on the transport on road ,rail and inland navigation(GGVSE)
- any further public law regulations and conventions for modes of transport utilized to carry out Intermodal Transport.

1.4. Freight forwarding, warehousing and other service customary in forwarding are rendered on the basis of the the ADSp 2016 (German General Forwarding Conditions 2016). The ADSp 2016 are applicable supplementary and lower ranking in case these ECL Intermodal 2016 do not or not comprehensively regulate certain circumstances. Compulsory applicable regulations, provisions and Conventions and alike remain unaffected.

2. Performance of the Carriage

In performing Intermodal Transport we carry empty and laden loading units and render supplementary services based on special agreement (such as completion of the necessary freight documents). Loading units within the meaning of the ECL Intermodal 2016 are: truck trailers, Containers standardized by the International Standards Organization (ISO) with respect to dimensions, corner fittings and strength and swap bodies, i.e. superstructures interchangeable in operations. Loading units must conform to the applicable legal requirements and technical provisions (e.g. DIN, EN, UIC Leaflets, valid CSC Safety Approval and German STVG and StVZO). They must be safe in every respect for the operation and transport and suitable for the goods being carried as well as for the loading by crane. Since we park the loading units in the open, they have to be equipped and suitable for unprotected storage and must be tight.

3. Duty of Disclosure and Information

We have to be informed before the unit has been loaded onto the rail car on substantial deviations between any pre-advised cargo and the actual cargo contained in the loading unit, or if the pre-advised or even the permissible gross weight is exceeded. If carriage is impeded as a result of the type of cargo or excess of gross weight of the cargo, we shall request the customer/shipper to provide remedy within a reasonable period of time. If no remedy is provided within the deadline set, we shall also be entitled to enforce our rights in analogous application of section 419 subsection 3 of the HGB. Should we decide to store the loading unit in enforcing our rights as per section 419 subsection 3 of the HGB our liability is restricted as diligencia quam suis rebus to gross negligence and willful misconduct.

4. Prices (Freight per leg of transport)

The prices quoted by ECL include the craning operations to and from rail cars and/or wagons. Any additional movements on the terminals which have to be carried out according to customers' requirements are not included and have to be ordered from the Terminals directly. Such additional services will be carried out by the terminals themselves and invoiced directly without creating a contractual relationship with us.

5. Dead freight (costs for "no show")

Should, in case of a firm booking without cancellation in good time, the loading unit not arrive at the terminal on schedule for the departure, ECL is entitled to charge the full freight to the customer/shipper without reduction.

6. Schedules

The transit periods stated in the published schedules are estimates only and no agreed delivery periods. The time tables contain the compulsory applicable closing times which have to be observed. These times may change due to special circumstances on short notice. Transit times are not guaranteed. If, due to operational factors, the loading unit may not be carried with the intended and booked train we are carrying the loading unit on the next available train.

7. Payment conditions

Freight shall be payable immediately on receipt of invoice without deduction. If payment has not been made within 21 days after receipt of invoice we are entitled to demand default- interest in the amount of 9 percentage point's p.a. above the prevailing basic interest rate of the Deutsche Bundesbank. No off-set or retention of payment must be made because of alleged counter claims unless the counter-claim is undisputed or has become finally adjudicated by the competent court.

8. Liability

8.1. Our liability in border crossing Intermodal Transport is governed by the CIM or CMR Convention according to their respective scope of application.

8.2. In exclusive national transit our liability for loss or damage is limited to an amount of 8.33 units of account per kilogram and for delay according to section 425 and section 431 HGB. Our liability for claims not connected with loss and/or damage to goods with the exclusion of personal injury claims and claims for loss and damage to third party goods is limited to three times the amount payable in case of loss of goods but not more than € 100,000 per incident. Sections 431 subsection 3 and section 433 HGB remain unaffected.

8.3. Unless intention or willful misconduct in the meaning of section 425,435 HGB or mandatory statutory provisions justify unlimited liability or if we are liable for bodily injury , no claims shall be admissible for damages beyond those set out in these General Terms and Conditions, of whatever kind, against us, our employees or vicarious agents. This shall not apply in the case of failure to meet obligations fundamental to performance of the contract. In such cases, claims for damages shall be limited to the foreseeable typical damage incurred.

8.4. Our liability is excluded for damage culpably caused by the customer, by instructions given by the customer or by a defect caused by or of the loading unit or goods. We are also not liable if the performance of our services is permanently or timely limited impossible due to cases of "force majeure", strike, civil commotion or orders by state authorities.

8.5. Additionally following incidents are deemed to be "force majeure": operational interruptions of the mode of transport or traction device, unforeseeable blockage of transit ways, statutory restrictions of working hours for the operational employees, as well as interruptions for the repair or regaining of fitness for use of wagons or loading units of third parties.

8.6. The liability for indirect or consequential damages is excluded unless section 425 and 435 HGB respectively Art. 36 CIM or Art. 29 CMR apply. This means we are not liable for demurrage, loss of use of the loading unit or of the trailer respectively the collecting truck, or for costs of alternate transportation, loss of profit, loss of use or protracted use of the goods carried, from delay in or standstill of production or from loss of reputation or market shares.

8.7. Our liability commences on the shipping day with taking over of the loading unit at the Terminal for the performance of the Intermodal Transport . The liability ceases when we offer the loading unit for collection. We take over the loading unit only. We do not control the contents of the loading unit and do not give a receipt for the contents. Any descriptions or references contained in accompanying papers or consignment notes which concern the contents of the load unit which we are not privy to and we do not check are without any factual or legal relevance to us. This provision applies also if a consignment note containing such descriptions has been signed by us or our employees without having carried out a physical check of the contents.

8.8. All claims are excluded unless we have received a detailed written complain letter within 7 (seven) days after collection of the loading unit. The obligation to apply for ascertainment according to Art. 42 CIM remains unaffected. If the CMR or CIM provides for different or shorter terms in International Intermodal Transport the terms stipulated in the CIM respectively of the CMR in its scope of application are exclusively applicable.

8.9. The Customer has to provide us with the opportunity to inspect the damage within reasonable time. Any infringement of this obligation leads to the factual assumption that the load unit as well as its contents has been collected from the Terminal in undamaged condition.

9. Booking

A final guarantee for a place on a certain departure requires an explicit statement by us (fixed place). In case of a split transport via ferry the booking for the south-going train must be made before arrival of the vessel at Lübeck. For the opposite direction the ferry booking must be made simultaneously with the booking for the train and must be available at the arrival of the train at Lübeck in order to avoid additional costs and expenses for the customer/shipper.

10. Dangerous Goods

10.1. The application for the transport of dangerous goods has to be made not later than 24 hours before scheduled departure with our agent on form "A". Dangerous goods units must be handed over at the Terminal on the day of departure only after the booking had been accepted by us or our agent. They have to be collected immediately after arrival. The loading units and the goods carried have to be marked with the officially required dangerous goods signs as well as duly labeled.

10.2. The customer shall comply with the relevant legal requirements governing the carriage of dangerous goods by rail as well as the requirements of the respective Terminals.

10.3. The customer shall indemnify us within the scope of his/her share in the liability against any obligation arising towards third parties from the transport movement, safekeeping or other handling of the goods, or arising from the nature of the goods or the failure of the customer to comply with his/her duty of care.

10.4. Dangerous goods will not be stored by us. This applies also to laden loading units on the respective Terminal for days following the day of arrival after the notification for the collection had been given. If the time for collection has been exceeded we are entitled to store the goods at a third party warehouse or parking lot and to charge the costs incurred together with a lump-sum amount for general expenses.

11. Loading unit

The weight for the load unit must not exceed 35t. The customer guarantees the suitability for the movement by crane as well as the general acceptance of the load unit for Intermodal Transportation. In case the load unit is not suitable for a movement by crane or the permission for Intermodal Transportation cannot be proved the customer has to indemnify us – even without being at fault – for all damages or claims by third parties without restriction. The cargo within the loading unit must be secured according to the requirements and demands of Combined and/or Intermodal Transport.

12. Place of Jurisdiction

Place of jurisdiction for any disputes arising from the contract of carriage hereunder is exclusively Lübeck, unless compulsory applicable legal provisions allow other jurisdictions. In this case Lübeck is an additional jurisdiction. The Law of Germany applies under exclusion of the rules of International Private Law and the CISG.