

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

Status: 1 October 2019

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), as applicable from time to time, apply. 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, as applicable from time to time, unless agreed otherwise, respectively to the extent the following provisions do not provide for deviating provisions.
- 1.5. The customer/consignor agrees to comply with all administrative law applicable on a national and EU level as well as to comply with 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 the 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. If the order to RCO-AT does not refer to the weight of the goods to be transported, RCO-AT is deemed instructed to provide for the weighing. Therefore, the weighing result may deviate by plus/minus 0.5% from the actual mass (weight).
- 2.4. To the extent not agreed otherwise, respectively mandatory law does not provide otherwise, the customer/consignor is responsible for the due customs clearance of the goods to be transported within the relevant time frame.
- 2.5. 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.
- 2.6. 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 accompanying documents, in their entirety and in due time.
- 2.7. Provided that RCO-AT, or any party instructed by it, complies with customs and other administrative provisions, RCO-AT charges additional remuneration for such services as well for any delay resulting from the performance of these services which is not attributable to RCO-AT.
- 2.8. 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 carriage.
- 2.9. The customer/consignor warrants that
 - 2.9.1. 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 carriage.
 - 2.9.2. that the personnel employed for the production, storage, treatment or processing and taking over of such goods is reliable.
 - 2.9.3. business partners who act on its behalf are aware that they also must take measures to secure the above-mentioned supply chain.

- 2.10. 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, safe for transport, approved for transport by rail and codified as well as in a conditions which complies with the relevant applicable standards. The customer/consignor is liable for any damages 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 with respect to use and defects.
- 3.4. Following a written order (via e-mail or fax) using the provided order form (available under www.railcargo.com) RCO-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 suitable transportation units. The provided transportation units shall be in a technical condition and state of cleanliness to permit its intended use.
- 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 (ie 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.

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 time tables are notified to the customer/consignor, such time tables are not deemed to constitute an agreement on the delivery period within the meaning of Art 16 section 1 CIM. RCO does not guarantee 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 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 applicable for the transportation of dangerous goods (ADR, RID or, if applicable, the IMDG-Code). 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 disadvantages, 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. Subject to any other agreement with the customer/consignor the following provisions shall apply.
- 9.2. The remuneration is payable in the specified currency within 14 days from the invoice date 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 due amount 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 immediately following working day is deemed the due date. The customer/consignor must ensure that the relevant account has sufficient funds available and must notify RCO-AT of any changes to its bank details 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.

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 those employed by it to perform its contractual obligations, 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 and shall indemnify RCO-AT for any claims of third parties.
- 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, its employees or of those employed by it to perform its contractual obligations, exceeding the entitlements under these GTC, are excluded.

11. Lapse of time

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

12. Data protection

- 12.1. RCO-AT stores personal data relating to the customer/consignor and contact details as well as 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 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 (RCO-AT 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 RCO-AT and/or the Rail Cargo Group in connection with these purposes.
- 12.2. 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 § 189a Z 8 UGB).
- 12.3. RCO-AT keeps personal data relating to the customer/consignor 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).
- 12.4. Subject to applicable law the customer/consignor 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).

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 transportation contract or not.

14. Foreign trade restrictions

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 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 potential damages caused by the non-compliance with foreign trade law regulations. Furthermore, the customer/consignor is responsible to review and compare the names and addresses with those anti-terror watch lists issued by various institutions. In the case of (transportation) services in countries that 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 out or in connection with these GTC and/or this transportation contract or its violation, termination or invalidity.