



# GENERAL TERMS AND CONDITIONS OF BUSINESS FOR INTERNATIONAL TRANSPORT OPERATIONS

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*More than just a transport.*

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## PREAMBLE

UIRR's General Terms and Conditions as set down in the present document shall regulate relations between a Combined Transport company that is a member of UIRR, hereinafter referred to as a "UIRR company", and a customer who carries out an international Combined Transport operation based on the combination of road and rail.

Only the german version of the general terms and conditions is legally binding.

## 1 DEFINITIONS

For the terms used in the present General Terms and Conditions, the following definitions shall apply:

- 1.1 A "UIRR contract" shall be a contract concluded between the customer and a UIRR company for the shipment of a freight carrying unit – or several freight carrying units simultaneously – by rail.
- 1.2 "Framework agreement" shall be understood as referring to a general agreement which the customer and the UIRR company have previously come to, containing stipulations that have application to all UIRR contracts that are concluded on the basis of this agreement.
- 1.3 The "customer" (also referred to as the principal or invoice recipient) is the party who places the order for the shipment of the freight carrying unit, either directly or through a representative previously appointed in a written communication or on the basis of a framework agreement, and who is therefore liable for the payment of the price of the job. Only the customer, and not any representative that may act for him, is to be seen as the contractual partner of the UIRR company.
- 1.4 The "representative of the customer" – besides the representative appointed for the conclusion of the UIRR contract as in article 1.3 above – is the party at the place of dispatch who is named as the "dispatcher" or the party at the destination who is named as the "collector" of the goods.
- 1.5 "UIRR company" shall be understood as referring to the company that has received the order from the customer, both the company and the customer acting either directly or through a representative, for the shipment of one or several freight carrying units, and which in consequence makes out the invoice.
- 1.6 "Combined Transport" (CT) is the conveyance of intermodal or non-intermodal freight carrying units by at least two means of transport, in the present case road and rail.
- 1.7 "Intermodal freight carrying unit" – also referred to as an ITU (Intermodal Transport Unit) – is to be understood as referring to a container or swap body or similar facility for carrying goods, or else to a semitrailer that is bimodal or can be lifted by crane. "Non-intermodal freight carrying unit" is to be understood as referring to a road vehicle for freight transport.
- 1.8 "Arrival" is to be understood as referring not to the arrival of the freight train, but rather to the time at which the freight carrying unit has been made available to the customer for collection at the agreed cargo handling terminal or any other location that has been stipulated.
- 1.9 The "handover" is the action through which the freight carrying unit is handed over on delivery by the customer to the operator of the cargo handling terminal or to a stipulated third party, and through which it is handed over on arrival to the customer. The handover must be carried out with the mutual consent of all parties involved in the given case. With intermodal freight carrying units, handover shall be considered to have been effected at a cargo handling terminal when the freight carrying unit has been separated from the road vehicle (in case of a delivery) or placed on the road vehicle (in case of a collection). With a non-intermodal freight carrying unit, i.e. in the case of a road vehicle that is driven by the customer himself onto or off the freight wagon, handover shall be considered to have been effected when the process of driving the vehicle onto the wagon and the placing of wedges in front of

the tyres has been concluded, or else when a start has been made with driving the vehicle off the wagon.

## 2 OBJECT OF THE CONTRACT – OBLIGATIONS OF THE PARTNERS TO THE CONTRACT

- 2.1 Based on the terms of the UIRR contract, the UIRR company hereby undertakes
- a) to dispatch the freight carrying units that have been handed over by the customer, either loaded or unloaded and either intermodal or non-intermodal (or several freight carrying units at the same time) by rail to the agreed destination point,
  - b) to load this freight carrying unit onto the freight wagon before dispatch, if necessary to transfer it between two wagons and to unload it from the wagon, except in cases where a siding without cargo handling facilities is used or in case of a non-intermodal freight carrying unit, and
  - c) to pass on to the customer or his representative the information it has received in case of an irregularity occurring between the time of the coming into force of the UIRR contract and the time of its coming to an end.
- 2.2 Based on the terms of the UIRR contract concluded with the UIRR company, the customer hereby undertakes
- a) to deliver the freight carrying unit on the day of dispatch that has been arranged at the agreed cargo handling terminal or to any other location that has been stipulated,

- b) to collect the freight carrying unit on the day of arrival from the agreed cargo handling terminal or take delivery at any other location that has been agreed to, and

- c) to pay the agreed price to the UIRR company.

The coupling and uncoupling of the intermodal freight carrying unit to and from the road vehicle, in particular the release and tightening of the fastenings, and its further preparation for travel by rail or road (e.g. modification of the supports and of the lateral and rear underride guards), and also (in the case of a non-intermodal freight carrying unit) the placing and removal of the wedges, are to be carried out by the customer on his own responsibility. If the customer does not deliver or collect the freight carrying unit in person, he must in each case appoint representatives – either in a framework agreement, in a separate document or in the contract form – who are to carry out these activities and are so specified as in article 1.4 above.

## 3 CONCLUSION AND COMING INTO EFFECT OF THE UIRR CONTRACT

- 3.1 The UIRR contract comes into effect between the customer and the UIRR company with which the customer places the order. The formal precondition for every UIRR contract is a properly filled in contract form.
- 3.2 If the dispatch of goods envisaged in a framework agreement is to be made from places of dispatch at which the UIRR company that is the partner of the framework agreement is not engaged in business, the customer shall confer on the company full authorisation, on the basis of these General Terms and Conditions, to have the UIRR contract in question

concluded by a different UIRR company as its representative. This UIRR company shall act as its representative even if it uses its own contract form for the purpose, without reference to the UIRR company it represents.

- 3.3 The UIRR contract shall come into effect on its being signed by the UIRR company or its representative and by the customer or the customer's representative. Manual signature on the part of the UIRR company may be replaced by a stamp, a mechanical booking indicator or any other suitable method. The customer's signature, on the other hand, may only be replaced by such methods if the customer has already supplied written acknowledgement of the present General Terms and Conditions as definitive for all future UIRR contracts and if the UIRR company is in agreement.
- 3.4 The signing of the contract form by the customer implies recognition on his part of these General Terms and Conditions.
- 3.5 Until proof to the contrary be given, the signing of the contract form by the UIRR company implies acknowledgement of the handover of the freight carrying unit to the operator of the cargo handling terminal.
- 3.6 The liability of the UIRR company for loss, damage or delayed delivery in keeping with the stipulations of article 8.2 section 3 below shall only start on the day of dispatch. Relations between the customer and the UIRR company which come about, in the case of delivery of the freight carrying unit before the day of dispatch, for the period in which the said freight carrying unit is stored up to the time at which the UIRR company becomes liable shall be regulated on the basis of separate conditions.

## 4 EXPIRY OF THE UIRR CONTRACT

- 4.1 The UIRR contract shall come to an end on the day of arrival, either with the handover of the freight carrying unit to the customer or his representative, or in case of non-collection with the closing of the cargo handling terminal or at 12.00 midnight at latest.
- 4.2 If the customer fails to fulfil his obligation to collect the freight carrying unit by the time at which the UIRR contract comes to an end, the freight carrying unit shall be stored at the cargo handling terminal at the customer's expense. Relations between the customer and the UIRR company for this period of storage shall be regulated on the basis of separate conditions.

## 5 PROPERTIES OF THE FREIGHT CARRYING UNIT AND GOODS – CUSTOMER'S LIABILITY

- 5.1 By signing the contract form the customer undertakes responsibility for ensuring
  - a) that the specifications he gives for the freight carrying unit and goods, especially as relating to the weight and nature of the goods, are correct and complete, irrespective of whether the customer himself or the UIRR company has entered these specifications or caused them to be entered in the contract form,
  - b) that all documents that accompany the freight carrying unit and are prescribed by the authorities for control purposes are correct and complete,
  - c) that any existing requirements of countries that are affected

by the conveyance of the freight carrying unit are likewise fulfilled.

- 5.2 With the handover of the freight carrying unit the customer hereby guarantees that it is suitable for Combined Transport and that both it and the goods it carries fulfil the safety requirements that are called for in connection with Combined Transport shipments. The term "suitable" is in particular to be understood, in the case of an intermodal freight carrying unit, in the sense that the latter shall have been subjected to technical inspection and authorised for Combined Transport purposes, i.e. that the codification indicator (or in the case of ISO containers the safety indicator or "Safety Approval Plate" prescribed by the Container Safety Convention) is present and that its status, on which the authorisation of the unit for Combined Transport depends, has not changed since that time. The term "safety" is to be understood in particular in the sense that the state of the freight carrying unit and the goods it carries shall be such as permit safe transport, in particular that the packaging, stowage and fastenings in the freight carrying unit are in conformity with the special features of CT, especially in connection with the dispatch of liquids or of goods with special temperature requirements.
- 5.3 In case of violation of the obligations detailed in articles 5.1 and 5.2 above and 6.3 below, the customer shall be responsible for any damage that may arise even if it cannot be attributed to his negligence. The UIRR company may make it a condition for the conclusion of the UIRR contract that the customer shows that he has taken out insurance coverage for all cases of liability that may result from section 1 above.
- 5.4 The UIRR company will not admit any liability for the suitability and safety of the freight carrying unit and freight that have been handed over by the customer.

- 5.5 The UIRR company shall not be obliged to check the freight carrying unit, the goods, the packaging, stowage and fastenings or the specifications made or documents supplied by the customer.
- 5.6 On handover of the freight carrying unit by the customer, the UIRR company may inspect the freight carrying unit externally and only from ground level, and enter its conclusions in the contract form on this basis. If there are no entries in the contract form relating to the presence of externally visible damage to the freight carrying unit at the time it was collected by the customer or relating to clearly missing parts, the absence of such an entry shall not be taken as a proof that the freight carrying unit was therefore undamaged and that nothing was missing at the time it was delivered.

## 6 HAZARDOUS AND NON-APPROVED GOODS

- 6.1 The dispatch of a freight carrying unit carrying hazardous goods must be preceded by a notification from the customer to be supplied at least 24 hours before closing for cargo, not counting Sundays and public holidays. The customer shall be obliged to deliver a freight carrying unit of this nature only on the day of dispatch.
- 6.2 A freight carrying unit that is loaded with approved hazardous goods must conform to the national and international standards that are laid down by statute and the relevant requirements of the authorities for conveyance by road and rail.
- 6.3 With the handover of a freight carrying unit of this nature the customer undertakes, in addition to the responsibilities detailed in article 5, the responsibilities

- a) of adherence to the requirements mentioned in article 6.2 above,
  - b) of correctly labelling the goods in the contract form, in keeping with the special requirements for hazardous goods,
  - c) of supplying the correct accident prevention instruction sheets and any other documents that may be required,
  - d) of giving notice of any precautionary measures that may have been prescribed by the authorities or that are required for other reasons.
- 6.4 After the arrival of a freight carrying unit of this nature, the customer must collect it promptly. In the case of an intermodal freight carrying unit, the operator of the cargo handling terminal shall not be obliged to unload it from the freight wagon until the customer's vehicle is ready and waiting to collect it.
- 6.5 The measures that may be taken in case a freight carrying unit carrying hazardous goods should fail to be collected on time, which may include storing the goods on the wagon or at another location, sending them back, unloading or destroying them (without this being necessarily a complete list), shall be at the customer's expense and at the customer's own risk.
- 6.6 In matters to do with the conveyance of non-authorized goods or goods the conveyance of which is authorized only under certain conditions, whether these are hazardous or not, the UIRR company will give information on request. In the case of goods authorized only conditionally a supplementary agreement is to be drawn up in advance, which may provide for the conclusion of a special UIRR contract.

## 7 PAYMENT MODALITIES

- 7.1 The price shall fall due for payment when the UIRR contract comes into effect, unless the partners to the contract have expressed an agreement to the contrary in writing.
- 7.2 A payment deadline may be agreed to if the customer offers a bank as guarantor or some other form of security that is accepted by the UIRR company. This shall establish the amount of the sum, especially as dependent on the payment deadline that has been granted and on the likely business turnover of the customer's company, and adapt it at a later stage as required. Any delay in payment shall result in the cancellation of the agreed due date, and so in all outstanding amounts becoming immediately due for payment together with interest on arrears at the standard rate set in the country in which the UIRR company entitled to make the claim has its main place of business.
- 7.3 With reference to the amounts owed by the customer, any offsetting or non-payment based on any suppositious counter-claims on the part of the customer is hereby excluded, except in the case of claims by the customer that have been definitely established at law and can therefore no longer be contested, or that have been expressly acknowledged by the UIRR company.
- 7.4 The exercise of a right of retention or right of lien by the UIRR company shall be based on the national law that applies to the given case in keeping with article 10.3 below.

## 8 LIABILITY OF THE UIRR COMPANY

- 8.1 The liability of the UIRR company shall be determined exclusively on the basis of the following stipulations of this article.
- 8.2 The UIRR company will admit liability only in relation to the customer for loss of or damage to the freight carrying unit and the goods it carries, as well as for damages that arise as a result of failure to adhere to the delivery deadline or through the loss of documents, except in a case where these have been occasioned by the negligence of the customer, instructions given by the customer, a defect already present in the freight carrying unit or the goods or by circumstances which it is impossible to prevent and the consequences of which thus could not have been averted. If, in a case of loss or damage that has come about, negligence on the part of the customer or a defect already present in the freight carrying unit or the goods has been a factor, the UIRR company's liability to indemnify shall be reduced in proportion to the extent to which these circumstances have contributed to the resulting damages. The UIRR company's liability shall start on the day of dispatch with the handover of the freight carrying unit; in a case where delivery is carried out by the customer before the day of dispatch, it shall start only with the opening of the cargo handling terminal on the day of dispatch. It shall end at the time when the contract comes to an end as specified in article 4.1 above.
- 8.3 If it is found that loss or damage has occurred between the acceptance and the delivery of the freight carrying unit by the rail companies involved, the UIRR company's liability and the restrictions on its liability shall be subject to the stipulations of the Convention on Uniform Rules Concerning Contracts for International Carriage of Goods by Rail (CIM), which constitutes Appendix B of the Convention on International Rail Transport (COTIF), in the version currently valid at the time when the UIRR contract becomes effective.<sup>1</sup>
- 8.4 Apart from carriage by rail as detailed in article 8.3 above, the liability of the UIRR company to indemnify for loss of or damage to the freight carrying unit and the goods it carries shall be limited to 8.33 Special Drawing Rights (SDRs), as these are defined by the International Currency Fund, for each missing or damaged kilo of gross weight. Furthermore the amount of indemnification shall be limited to 300,000 SDRs per freight carrying unit including the goods it carries, and also in a case where more than six freight carrying units are affected to a total of 2 million SDRs for each incident of damage. In a case of overall damage caused by the same incident of damage that exceeds the amount of 2 million SDRs, this amount shall be divided between the customers in proportion to the gross weight of each freight carrying unit and the cargo it contains.
- 8.5 In a case where a delivery deadline has not been adhered to, for whatever reason, or in case of a loss of documents or of a possibly culpable violation of other contractual obligations apart from cases of loss and damage, an indemnification liability shall arise only for precisely definable direct material damage incurred by the customer. In such cases the indemnification liability of the UIRR company shall be limited to twice the amount of the price of the dispatch of the freight carrying unit in question. The delivery deadlines of the rail companies shall be definitive; transport schedules made known by the UIRR company are in no case to be seen as deadlines. In a case of loss of documents, the UIRR company shall be obliged to indemnify only where documents have been culpably lost that are required by statute for the various purposes of control, such as for instance customs, veterinary, phytosanitary and hazardous goods documents, where these have been

<sup>1</sup> In addition there apply the policies stated in the paragraph 3 „Further supplementary conditions for transport operations by Kombiverkehr“.

handed over by the customer for this purpose and are carried along with the freight carrying unit.

- 8.6 If a liability exists for the UIRR company to indemnify for partial or total loss or in a case of material damage, the amount of the indemnification shall be calculated in accordance with the value of the freight carrying unit and the goods it carries or with the diminution of its value in relation to the value that it had at the time and place it was handed over by the customer.
- 8.7 Any liability for indirect or consequential damage is hereby excluded. This is to be understood as referring to the following circumstances in particular: the cost of idle time and loss of benefit in connection with the freight carrying unit and the delivering vehicle or collecting vehicle, the cost of substitute transport arrangements, and damages resulting from loss of profit or from non-use or delayed use of the goods carried, from production holdups or standstills, or from damage to the customer's image or loss of market share.
- 8.8 Only the customer, not his representatives, has any right to claim indemnification from the UIRR company that has concluded the UIRR contract and made out the invoice, and only the customer shall be entitled to take the appropriate legal steps.
- 8.9 In case where loss of or damage to the shipment, or legal damages generally, have occurred between the coming into effect and the end of the UIRR contract, and these should result in extra-contractual claims against the UIRR company, in such a case the liability exclusions and limited indemnification clauses of this article 8 shall likewise apply.

## 9 NECESSARY CONDITIONS FOR INDEMNIFICATION

- 9.1 Indemnification can only be made if on the one hand the company has been notified of the damages incurred in keeping with the deadlines and formal requirements detailed below, and if on the other the indemnification has been properly requested. Otherwise any claim on the UIRR company for indemnification shall lapse.
- 9.2 This notification, which must include a sufficiently precise specification of the damages, is to be submitted to the local representative of the UIRR company who is responsible for the cargo handling terminal or reception point where the goods are received, or in case he should be absent to the person who hands over the freight carrying unit. Indemnification, on the other hand, must be requested from the UIRR company defined by article 1.5 above.
- 9.3 In a case of loss or damage that can be detected by external inspection, including such as may occur to the customs seals or other closures of the freight carrying unit, the customer or his representative must immediately give notice of his reservations at the time when the freight carrying unit is handed over to him.
- 9.4 In a case of loss or damage that cannot be detected by external inspection and which is only found to have occurred after the handover of the freight carrying unit to the customer, the customer or his representative must
  - a) give notice of his reservations immediately after the discovery of the loss or damage, but in any case at latest five days after the arrival of the freight carrying unit,

- b) make it possible for the loss or damage to be inspected immediately,
  - c) confirm the prior notification by means of fax, telex, telegram, express letter or any other form of written communication, to arrive within the above-mentioned five-day deadline, and immediately following by registered letter with request of receipt, and
  - d) ensure that all necessary proof be provided that the loss or damage has occurred between the time at which the UIRR contract comes into effect and the time when it comes to an end.
- 9.5 If a freight carrying unit fails to arrive by the time scheduled, the customer must notify the company of this immediately, except in a case where the delay is already known, and thereafter apply in writing to have the matter looked into.
- 9.6 The customer must give notice of damages arising from failure to adhere to a delivery deadline, loss of documents or any other violation of the terms of the contract apart from loss or material damage at latest within five days from the arrival of the freight carrying unit.
- 9.7 If notice has been given of damages as described in this article, the local representative of the UIRR company will make a record or cause a record to be made, either in the contract form or in a separate written document, of the nature and the extent of the damage incurred, as well of the presumed cause. This should be signed by the customer as well, who will also be issued with a copy. In case of disagreement, either party may at his own expense subject these findings to investigation and checking, either out of court or on the basis of legal proceedings, by a professional expert acting under oath.
- 9.8 Any indemnification must be requested by the customer by registered letter with request of receipt; supporting documentary evidence must be enclosed. The request must be made within eight months, but in cases that fall under article 9.6 within 40 days, from the coming into effect of the UIRR contract. The representatives mentioned in article 1.4 shall not be entitled to any indemnification claims of their own.
- 9.9 If the customer collects the freight carrying unit only after the UIRR contract has come to an end as defined by article 4.1, not only must the notification of damage and the request for indemnification be in keeping with the deadline and formal requirements of the said article, but the customer shall also be obliged to supply proof that the damages have occurred between the time of the UIRR contract's coming into effect and its coming to an end.

## 10 CONCLUDING STIPULATIONS

- 10.1 All claims arising from the UIRR contract shall be subject to statutory limitation one year after the time of its becoming effective, provided that nothing to the contrary shall be bindingly prescribed by the national law applicable in the given case or by international conventions.
- 10.2 For all litigation between the customer and the UIRR company, irrespective of who shall be the plaintiff, the courts of law that have right of determination for the main place of business of the management offices of the UIRR company shall be exclusively responsible. Suit may however be brought against the customer at his own main place of business.
- 10.3 The law of the country in which the UIRR company has its main place of business shall apply, unless an agreement to the

contrary shall have been made in writing between the customer and the UIRR company.

10.4 The present General Terms and Conditions shall become effective in keeping with the national law that is applicable as based on article 10.3, and from this time on shall replace all earlier versions of the General Terms and Conditions of UIRR.

10.5 The UIRR company may lay down special supplementary conditions or agree on such conditions with the customer. These special conditions may not contradict the above General Terms and Conditions. The UIRR company may however, as an exception to section 2 of this article, lay down stipulations – relating to an extension of the contractual period or touching its liability for certain transport connections – that deviate from these General Terms and Conditions. Such deviating stipulations are to be recorded at UIRR's main place of business in Brussels, and should be published by the UIRR company in question, for example by giving an indication in the price catalogue for the transport connection affected by the change. The UIRR company shall further be entitled to assign to the customer any claims to indemnification that it may have against a third party.

10.6 If a UIRR company declines to assert its rights, either in court or out of court, in an individual case, this shall have no prejudicial effect on similar cases occurring subsequently.

10.7 If any article, sub-article or part thereof should be ineffective or should be null and void, all the other stipulations of the present General Terms and Conditions shall retain their validity notwithstanding.

10.8 For the content of the present General Terms and Conditions, the German and French versions shall be taken as definitive.

Further supplementary conditions for transport operations by Kombiverkehr

1. As special conditions in the sense of article 3.6 and article 4.2 of these Terms and Conditions of Business, the regulations touching the storage of freight carrying units in Kombiverkehr's General Terms and Conditions for Transport within Germany. These will be supplied by Kombiverkehr on request.
2. If in addition to dispatch by rail the conveyance of freight carrying units on a sea route has been organised by Kombiverkehr, the sea passage shall be subject to the General Terms and Conditions of Business of the ferry company charged with the conveyance by sea, on the basis of the maritime law applicable between Kombiverkehr and the ferry company.
3. The liability of Kombiverkehr for loss, damage or delayed delivery in the countries Russia, Belarus, the Ukraine, Kazakhstan, Uzbekistan, Turkmenistan, Kyrgyzstan, Mongolia and China differs from the concomitant stipulations of the convention for the international freight service (SMGS).



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*More than just a transport.*