

General Terms and Conditions of Rail Cargo Operator - Austria GmbH/ROLA valid from July 2018

Preamble

These General Terms and Conditions of Rail Cargo Operator - Austria GmbH/ROLA, hereinafter referred to as RCO-AT ROLA, regulate the relationship with customers regarding arrangements for dispatch of loaded or unloaded loading units within the context of national and international combined road and rail transport.

Article 1 Definitions

The terminology used in the context of these General Terms and Conditions is defined as follows:

- 1.1 The "contract" is the agreement concluded between the customer and RCO-AT ROLA regarding the dispatch of a loading unit in the context of combined road and rail transport.
- 1.2 The "customer", also referred to as the principal or the recipient of the invoice, is the person/organisation who/which issues the order to RCO-AT ROLA for dispatch of loading units and is therefore obliged to pay the invoice.
- 1.3 The "representative of the customer" for conclusion of the contract is the person/organisation nominated by the customer at the place of dispatch as the "deliverer" or at the destination as the "recipient". Only the customer is the contracting party of RCO-AT ROLA, not the representative.
- 1.4 The "representative of RCO-AT ROLA" is the agent working at the transhipment station which carries out administrative processing of the loading units on behalf of RCO-AT ROLA.
- 1.5 "Combined transport" is the conveyance of intermodal or non-intermodal loading units with at least two modes of transport, in this case, road and rail.
- 1.6 An "intermodal loading unit" - also known as a UTI (Unité de Transport Intermodal) - is a container, an interchangeable container or similar unit for the accommodation of goods and a craneloadable or a bimodal semitrailer truck. A "non-intermodal loading unit" is a road vehicle for transportation of goods.
- 1.7 "Arrival" does not refer to the arrival of the train, but indicates the point in time at which the loading unit is presented ready for collection by the customer at the agreed transhipment station or other agreed location.
- 1.8 "Transfer" is the action by which the loading unit is transferred at the time of delivery from the customer to the operator of the transhipment station or to an agreed third party and after the arrival of this third party to the customer.
In the case of an intermodal loading unit, transfer takes place at the transhipment station, either at the time of delivery, when the loading unit is disconnected from the road transport vehicle, or at the time of collection, when the unit is attached to the road transport vehicle. In the case of non-intermodal loading units, i.e. when a road vehicle is driven onto or off the railway wagon by the customer himself, transfer takes place at the time of driving the vehicle onto the wagon and as soon as wedges are placed under the tyres, or at the time of starting to drive the vehicle off the wagon.

Article 2 Subject matter of the contract - obligations of the contracting parties

- 21 On the basis of the contract concluded with the customer, RCO-AT ROLA hereby undertakes
 - to dispatch the loaded or unloaded intermodal or non-intermodal loading unit via rail to the agreed destination,
 - to load the loading unit onto the railway wagon, to transfer it between two wagons, if required, and to unload it from the wagon, except when a rail link without transhipment is used or in the case of a non-intermodal loading unit,
 - to pass on to the customer or his representative any information which may have been received in connection with any irregularity occurring between the effective date and expiry of the contract.
- 22 On the basis of the contract concluded with RCO-AT ROLA, the customer undertakes
 - to deliver the loading unit on the scheduled dispatch date to the agreed transhipment station or to any other agreed location,
 - to collect the loading unit on the arrival date at the agreed transhipment station or to accept the unit at any other agreed location,
 - to pay the remuneration to RCO-AT ROLA for provision of the contractual service.
 The customer shall take specific responsibility for coupling and uncoupling the intermodal loading unit to and from the road vehicle, especially for releasing and tightening fastening devices and their further preparation for the journey by rail or road (e.g. modifying steady legs or the underride guard) and, in the case of non-intermodal loading units, also for the placing and removal of wedges.
If the customer does not deliver or collect the loading unit in person, he must nominate representatives to carry out this work as defined in accordance with Article 1.3 above. Also, before conclusion of the individual contract, the customer shall be obliged to observe the instructions by the railway company, the transhipment station operator and the representative of RCO-AT ROLA on the railway premises and in the area of the transhipment station.
The customer shall be obliged to generally apply the provisions regarding long distance road transport to his consignments. The customer shall also retain the role of haulier for the goods conveyed by the loading unit throughout the rail transport stage.
- 23 The customer undertakes to comply with all national, EU and administrative regulations as well as the present state-of-the-art.

Article 3 Conclusion and effective date of the contract, storage of the container

- 31 The formal requirement for materialisation of any contract between the customer and RCO-AT ROLA is a correctly completed contract form issued by RCO-AT ROLA.
- 32 The contract shall enter into effect at the time of signing the contract form by RCO-AT ROLA or its representative and by the customer or his representative.
Signing by RCO-AT ROLA may be implemented by means of affixing a rubber stamp, a mechanical booking reference or in any other appropriate manner. Signing by the customer may be substituted in this manner only if he has first acknowledged in writing these General Terms and Conditions for all future contracts.
- 33 By signing the contract form, the customer acknowledges these General Terms and Conditions of RCO-AT ROLA.
- 34 Signing of the contract form by RCO-AT ROLA indicates an acknowledgement of transfer of the loading unit to the operator of the transhipment station until evidence of the contrary is produced.
- 35 In accordance with the provisions of Article 8.2 para. 3, RCO-AT ROLA's liability for loss, damage or delay does not commence until the date of dispatch.
- 36 If the loading unit is delivered before the agreed date of dispatch, it shall be stored at the transhipment station at the cost of the customer until commencement of RCO-AT ROLA's liability in accordance with Article 8.2 para. 3. RCO-AT ROLA shall be entitled to sign a contract with the respective operator of the transhipment station regarding the storage of loading units on the basis of the operator's prescribed conditions. If the loading unit has to be stored in another location for urgent reasons such as lack of space or other in-company requirements, RCO-AT ROLA shall inform the customer or the customer's representative accordingly. If the customer does not collect the loading unit promptly, he shall be liable to pay the costs for transporting the loading unit to the other location.

Article 4 Expiry of the contract, storage of the loading unit

- 41 The contract shall expire on the date of arrival either at the time of transfer of the loading unit to the customer or his representative or, if the container is not collected, at the time of closing of the transhipment station or at midnight at the latest.
- 42 If the customer fails to fulfil his obligation to collect the loading unit at the expiry of the contract, the loading unit shall be stored at the transhipment station at the customer's expense. Storage may be implemented without prior instructions by the customer. With reference to RCO-AT ROLA's entitlement to conclude a contract regarding storage of the loading unit and to transport the loading unit to another location, the ruling defined in Article 3.6 shall apply.

Article 5 Quality of the loading unit and goods - customer liability

- 5.1 On signing the contract form, the customer undertakes
 1. to ensure that the details regarding the loading unit and goods, especially regarding the weight and type of goods, are correct and complete, regardless of whether the customer himself or RCO-AT ROLA actually enters these details or has them entered on the contract form,
 2. to ensure that all documents accompanying the loading unit and officially prescribed for inspection purposes are correct and complete,
 3. to ensure that the existing provisions affected by the transportation of the loading unit are also complied with.
 4. to comply that the accompanied customs documents have to be valid for the entire transport time until collection at the agreed transhipment center.
 - 5.2 On transferring the loading unit, the customer guarantees that the loading unit and the goods it contains are suitable for combined transport and meet all the requirements demanded for safe combined transport.
The term "suitable" in the case of intermodal loading units indicates in particular that these units are technically approved for combined transport uses, i.e. that the codification marking is present, or, in the case of ISO containers, the Safety Approval Plate in accordance with the Container Safety Convention is present, and that the unit's state upon which approval for combined transport was based has not changed in the meantime.
The term "safe" indicates in particular that the state of the loading unit and the goods allows safe transportation, in particular that the packing, stowage and fastening inside the loading unit is adapted to the special circumstances of combined transport, especially with reference to the dispatch of liquids or goods with special temperature requirements.
 - 5.3 In the case of violation of the obligations in accordance with Articles 5.1, 5.2 and 6.3, the customer shall be liable for any damage incurred as a result, even in the absence of fault. RCO-AT ROLA may require, as a precondition for conclusion of a contract, that the customer provides evidence of insurance for all forms of liability arising from paragraph 1.
 - 5.4 RCO-AT ROLA assumes no liability for the suitability and safety of the loading unit or its contents.
The customer and his representatives must strictly observe the transportation guidelines issued by RCO-AT ROLA, such as the "Beförderungsbedingungen für die Benutzung der Rollenden Landstrasse" (translator's note: = Transportation Conditions for Use of the Rolling Road), the transportation, loading and safety conditions issued by railways and terminal operators, and any special conditions regarding the transportation of hazardous goods, in each case in the currently valid version.
 - 5.5 RCO-AT ROLA is not obliged to check the loading unit, the goods, their packing, stowage or fastening, nor the associated information provided or documents handed over by the customer.
 - 5.6 At the time of transfer by the customer, RCO-AT ROLA can only inspect the container from the outside from ground level, and enter observations in the contract form on this basis. If the contract form does not contain entries regarding any externally visible damage to the container observed by the customer on collection or regarding any obviously missing parts, the absence of such an entry does not prove that the loading unit was undamaged and/or that nothing was missing at the time of delivery.
 - 5.7 If a wagon ordered by the customer is not loaded because the customer has failed to deliver the loading unit to the agreed transhipment station on time or at all, RCO-AT ROLA may charge a special fee in this regard. This fee shall be based on the relevant booking and cancellation conditions included in the currently valid RCO-AT ROLA price catalogue.

Article 6 Hazardous goods or non-permissible goods

- 6.1 When dispatching a loading unit with hazardous goods, the customer must apply at least 24 hours before close of business - excluding Sundays and holidays. The customer must not deliver a loading unit within this classification until the date of dispatch.
- 6.2 A loading unit loaded with permitted hazardous goods must comply with national and international standards specified for transportation by rail and road in the relevant legal and administrative provisions.
- 6.3 In transferring a loading unit of this kind, the customer undertakes to observe the following additional obligations in accordance with Article 5:
 - to observe the provisions specified in Article 6.2,
 - to describe the goods correctly on the contract form in accordance with specifications for hazardous goods,
 - to present the correct accident data sheets and any other documents required,
 - to explain any precautionary measures which should be undertaken in accordance with official instructions or for any other reason.
- 6.4 After arrival of a loading unit of this kind, the customer has to collect the container without delay. In the case of an intermodal loading unit, the operator of the transhipment station is not obliged to unload this from the railway wagon before the customer's vehicle is ready for collection.
- 6.5 Measures which may be taken if a loading unit with hazardous goods is not collected immediately, such as storage on the wagon or in any other location, returning, unloading or destroying the goods, whereby this list is not exhaustive, will be carried out at the cost and risk of the customer, and RCO-AT ROLA will not accept responsibility to replace goods lost in this context.
- 6.6 With reference to goods which are either not permitted or are permitted only subject to certain conditions, whether these goods are hazardous or not, RCO-AT ROLA will provide information on request. Regarding goods permitted subject to certain conditions, a supplementary contract must be signed in advance which may provide for conclusion of a special contract.

Article 7 Terms of payment

- 7.1 Payment of the remuneration for the services to be provided by RCO-AT ROLA shall be due on the effective date of the contract. Settlement shall be made before departure in cash or by means of fuel card.
- 7.2 In case of an agreed SEPA B2B direct debit procedure, the invoicing shall take place in accordance with the invoicing terms agreed between RCO-AT ROLA and the customer. The invoicing period extends over half a month. For the first half of the month (1st till 15th of the month inclusively) the 22nd of the month is the due date and for the second half of the month (16th till ultimo of the month inclusively) the 7th of the following month is the due date. If the due date is a Saturday, Sunday or legal holiday, the next working day is deemed the due date. The customer must ensure that the relevant account has sufficient funds available and must notify RCO-AT ROLA of any changes to its bank details in writing in good time.
- 7.3 In the event of payment default RCO-AT ROLA is additionally entitled to statutory default interest.
The remuneration shall be published in the RCO-AT ROLA price catalogue. RCO-AT ROLA may alter prices and conditions at any time subject to four weeks' announcement, or may cancel prices and conditions in their entirety.
Moreover, RCO-AT ROLA can only guarantee maintenance of the prices and conditions named in the price catalogue for as long as the purchasing conditions serving as the basis for its calculations agreed with railways, wagon and terminal operators as well as other partners are upheld.
- 7.4 With reference to amounts owed by customers, any off-set or non-payment based on counter-claims asserted by the customer shall be excluded, with the exception of claims by the customer which have been judicially recognised as final and absolute, or which have been expressly acknowledged by RCO-AT ROLA.

- 75 The exercise of any right of retention or right of lien by RCO-AT ROLA shall be regulated in accordance with Austrian law.
- Article 8 Liability of RCO-AT ROLA**
- 81 The liability of RCO-AT ROLA is regulated exclusively on the basis of the following provisions of this Article.
- 82 RCO-AT ROLA shall accept liability only towards the customer for loss of or damage to the loading unit and the goods it contains and for other damage arising as a result of delayed delivery times or loss of documents, unless this has been caused by the fault of the customer, on instructions by the customer, by a defect in the loading unit or the goods, or through circumstances which could not be avoided and whose consequences could not be averted. If the origin of the loss or damage or any other damage is associated with the behaviour or fault of the customer or with a defect in the container or the goods, RCO-AT ROLA's obligation to compensate and the scope of compensation shall be reduced in proportion to the extent to which these circumstances contributed to the damage.
The liability of RCO-AT ROLA commences on the date of dispatch at the time of transfer of the loading unit. If the container is delivered before the dispatch date, the liability of RCO-AT ROLA shall not commence until the date of dispatch at the time of opening the transhipment station. Liability ends at the expiry of the contract in accordance with 4.1. If it is ascertained that the loss or damage occurred between acceptance and delivery of the loading unit by the railway companies involved, the provisions of the relevant national legal rules for railways and any other conditions of the railway organisations shall apply in respect of the liability of RCO-AT ROLA and its limitations; these provisions shall apply in the version valid on the effective date of the contract.
- 83 Apart from rail transportation in accordance with Article 8.3, RCO-AT ROLA's obligation to compensate for loss of or damage to the loading unit and its contents within the term of the contract according to Articles 3.1 and 3.2 as well as Article 4.1 shall be limited to 8.33 Special Drawing Rights (SDR) as defined by the International Monetary Fund for each missing or damaged kilogram of gross weight.
Furthermore, the amount of compensation shall be limited to SDR 300,000 per loading unit including the goods contained therein and, if more than 6 loading units are affected by the same incident of damage, compensation shall be limited to SDR 2 million per incident of damage. In the case of overall damage by the same incident of damage, which exceeds SDR 2 million, the amount shall be shared between customers in proportion to the gross weight of each loading unit and its contents.
However, if the loss or damage occurs during storage in accordance with Article 3.6 and Article 4.2, also in the case of separate storage outside the transhipment station, the liability of RCO-AT ROLA shall be limited to SDR 2 per kilogram of gross weight. The level of compensation in any case is limited to one quarter of the amounts defined in the paragraph above.
- 84 In cases in which the delivery time is exceeded for whatever reason, in the case of loss of documents or in the case of any culpable violation of contractual obligations and other agreements, an obligation shall exist to compensate only for the exactly quantifiable, direct material damage to the customer. In such cases, RCO-AT ROLA's obligation to compensate shall be limited to double the remuneration for dispatch of the loading unit involved.
The delivery times of the railway organisations shall apply; on no account shall the timetables issued by RCO-AT ROLA be considered as delivery times.
In the case of loss of documents, RCO-AT ROLA shall be obliged to compensate only in cases of culpable loss of documents which are required for various official inspections, such as documents relating to customs, veterinary safety, plant safety or hazardous goods, and which were expressly handed over by the customer for this purpose and were transported with the loading unit.
- 85 If RCO-AT ROLA is obliged to compensate for partial or total loss or for damage, the amount of compensation shall be calculated in accordance with the value of the loading unit and its contents or in accordance with the reduction of its value in proportion to the value existing at the time and place of transfer by the customer.
- 86 Liability for indirect or consequential damages shall be excluded; although the following list is not exhaustive, this includes in particular: costs for standing times and loss of use of the loading unit and the delivery or collection vehicle, costs for substitute transportation, damage arising from loss of profit, from lack of use or delay in use of the goods transported, from delay or standstill in production, from loss of reputation or market share.
- 87 Only the customer, not his representative, may claim against RCO-AT ROLA for compensation; accordingly, only the customer may take recourse to corresponding legal measures.
- 88 If loss, material damage or other damage which occurred between the effective date and expiry of the contract lead to claims against RCO-AT ROLA outside the framework of the contract, the exemptions from liability and limitations of compensation shall apply equally in accordance with Article 8 of these General Terms and Conditions.
- 89 RCO-AT ROLA shall not be liable for the provision of railway wagons unless the non-provision of wagons is attributable to gross negligence or intent. The customer hereby takes note of the fact that the dispatch of loading units can only take place in accordance with the availability of wagons; transport which has been previously booked will take precedence over orders which have not been booked in advance.
- 90 RCO-AT ROLA shall be entitled to transfer to the customer any claims for compensation it has against a third party which is liable for the damage.
- 91 Should RCO-AT ROLA waive assertion of its rights in an individual case, be this in or out of court, this shall have no prejudicial effect on similar cases.
- Article 9 Preconditions for compensation**
- 91 Compensation may only be claimed if the damage is reported and compensation is requested in accordance with the timing and formalities described below. Otherwise any claims against RCO-AT ROLA shall be null and void.
- 92 The report which must provide sufficiently accurate details of the damage must be presented to the local representative of RCO-AT ROLA who is responsible for the transhipment station, or, if the representative is unavailable, to the person who transfers the loading unit.
- However, compensation must be requested directly from RCO-AT ROLA.**
- 93 In the case of loss or damage which is identifiable externally, including damage to customs seals or other seals on the loading unit, the customer or his representative must report any complaints immediately when the loading unit is transferred to him.
- 94 In cases of loss or damage which is not identifiable externally and is not discovered until after transfer of the loading unit to the customer, the customer or his representative must proceed as follows:
- any reservations must be reported immediately after discovery of the loss or damage, but in any case not later than 5 days after arrival of the loading unit,
 - arrangements must be made for the loss or damage to be inspected immediately,
 - notification should be made by fax, telex, telegraph, express mail or any other written means to arrive within the above 5-day period, and this should be confirmed immediately afterwards by registered letter with return receipt,
 - all evidence that the loss or damage occurred between the effective date of the contract and its expiry must be put in safe custody.
- 95 If a loading unit fails to arrive at the appointed time, the customer must report this immediately unless the cause of the delay is already known. A written request for an investigation should then be sent.
- 96 The customer must report any damage based on missing the deadline for delivery, loss of documents or other violation of the contract other than loss or damage within 5 days of arrival of the loading unit.
- 97 When damage has been reported in accordance with this Article, the local representative of RCO-AT ROLA will use the contract form or a separate document to record or to have recorded the type and scope of damage and the supposed cause of the damage. This record will then be signed by the customer and a copy will be given to him. In cases of dispute, either party may at its own expense have the above record prepared by a sworn expert by way of extra-judicial or judicial preservation of evidence.
- 98 Any compensation must be requested by the customer by registered letter with return receipt; supporting evidence must be enclosed with this letter. This request must be made within 8 months of the effective date of the contract, but in the cases described in Article 9.6 within 40 days of the effective date. The representatives named in Article 1.3 shall not be entitled to individual claims for compensation.
- 99 If the customer delivers the loading unit before the scheduled dispatch date in accordance with Article 3.6, or does not collect the container until after expiry of the contract in accordance with Article 4.1, not only must the report of damages and the request for compensation be presented in the manner and within the time-scale defined in this Article, the customer must also provide evidence that the damage occurred between the effective date of the contract and expiry of the contract.
- Article 10 Data protection**
- 10.1 With reference to amounts owed by customers, any off-set or non-payment based on counter-claims asserted by the customer shall be excluded, with the exception of claims by the customer which have been judicially recognised as final and absolute, or which have been expressly acknowledged by RCO-AT ROLA.
- 10.2 The customer is obliged to inform its employees about the disclosure of this information (contact details, function and responsibilities) to RCO-AT ROLA.
- 10.3 The customer gives furthermore its consent that any personal data disclosed by it may be used by RCO-AT ROLA and its affiliated companies for marketing purposes.
- 10.4 The customer may withdraw its consent for the use of its personal data for marketing purposes at any time via e-mail to kommunikation@railcargo.com.
- Article 11 Concluding provisions**
- 11.1. All claims under the contract shall lapse within one year of its effective date unless Austrian law peremptorily prescribes otherwise.
- 11.2. For any disputes between the customer and RCO-AT ROLA, regardless of who the plaintiff is, the court responsible for the registered offices of the management of RCO-AT ROLA shall have exclusive jurisdiction. However, legal action may also be taken against the customer at his own registered offices.
- 11.3. By way of addition or deviation, RCO-AT ROLA may specify or agree in writing with the customer special conditions, such as e.g. provisions regarding liability which deviate from these General Terms and Conditions.
- 11.4. If any article or sub-article or part of these General Terms and Conditions of RCO-AT ROLA should be or become ineffective or null and void, all other provisions shall remain in force.
- 11.5. The customer commits himself to comply with all foreign trade regulations of the countries concerned and the European Union; this relates in particular to the import and export of items that require authorisation including so-called dual-use items (economic assets which can be used for both civil and military purposes). The customer must inform us in writing and in due time about any and all orders, prohibitions and restrictions with regard to the items to be sent. The customer will indemnify us and hold us harmless for any damages resulting from non-compliance with foreign trade regulations. Moreover, the customer is responsible for checking the names and addresses against the anti-terrorism lists issued by certain institutions. In case of (transportation) services into countries that are addressees of sanctions/ trade restrictions the customer must submit a declaration in connection with foreign trade regulations provided by us.
- From July 2018, these General Terms and Conditions of RCO-AT ROLA shall replace the previous Terms and Conditions dated January 2016.
Regarding the content of these General Terms and Conditions, the German version shall be binding.