

General Terms and Conditions of Railion Deutschland AG for the Performance of Services (ALB)

- As at July 1, 2006 -

Translated from German; the German text alone is legally binding.



1. Scope, Differing and supplementary terms and conditions

1.1 Our services (carriage of goods, transshipment, intermediate and final storage, and other services related to carriage) are rendered in accordance with the following General Terms and Conditions and the conditions set out in subsection 1.3. These General Terms and Conditions are also applicable to international transports, in as far as the "Provisions of Railion Deutschland AG for International Carriage by Rail" do not contain any divergent provisions. These General Terms and Conditions are not applicable to contracts with consumers within the meaning of Section 13 of the German Civil Code (BGB).

1.2 General terms and conditions of customers shall apply only when specifically confirmed by us.

1.3 Supplementary to these General Terms and Conditions, the respective, latest versions of the following terms and conditions are also applicable:

- Railion Deutschland AG Prices and Terms
- Railion Deutschland AG Loading Directives
- Regulations for the carriage of dangerous goods by rail
- General conditions governing the exchange of Europallets with Railion Deutschland AG (ATB)
- Terms and conditions of DeutscheVerkehrsBank AG governing the freight settlement procedure.

1.4 Freight forwarding, warehousing and other services customary in forwarding are rendered on the basis of the latest version of the ADSp German Forwarding Conditions, in as far as these are specifically so agreed.

1.5 The execution and binding nature of an electronic exchange of contract and performance data shall be regulated in a separate agreement.

2. Contract for the performance of services, Individual contracts

2.1 The basis of the services to be rendered by us shall be a written contract for the performance of services entered into with the customer in writing. Said contract shall run for a term of 12 months. Any extension or amendment of the contract or any new contract for the performance of services shall also be made in writing. Where the contract for the performance of services has not been signed by both parties, our letter of confirmation shall be binding, unless objection to said letter of confirmation is raised by the customer immediately upon receipt.

2.2 The contract for the performance of services sets out basic items of performance data which are required for the conclusion of individual contracts, in particular freight contracts (such as route, cargo, type of wagon, load unit, remuneration).

2.3 Individual contracts are created pursuant to orders from the customer and based on our acceptance thereof. Where customers are linked to our Customer Service Centre, orders shall be submitted to the Customer Service Centre only. Orders shall be considered accepted unless rejected by the Customer Service Centre within a reasonable period of time. A written confirmation of order shall be issued only if specifically agreed with the customer.

3. Consignment note, Freight transport order

3.1 Unless otherwise agreed, the customer shall make out a consignment note in accordance with the specimen printed in the "DB Cargo Prices and Terms". The consignment note shall not be signed by us; printed or stamped names or company details shall not be deemed as signatures.

3.2 Where a consignment note in accordance with Section 408 of the German Commercial Code (HGB) is used, it shall be deemed equivalent to a freight transport order. If the customer places the freight transport order without use of a consignment note, the customer shall be liable in accordance with Section 414 of the HGB for the correctness and completeness of all data contained in the freight transport order.

4. Railion Deutschland wagons and load units, loading deadlines

4.1 We shall provide wagons and load units suitable for the transport movement.

4.2 The customer shall be responsible for the proper indication of the required number and type of wagons and load units as well as of the destination. The provision of wagons and load units prior to signing of a freight contract is subject to the terms of Section 412 subsection 3 and of Sections 415 and 417 of the HGB accordingly.

4.3 If loading deadlines are exceeded, we shall charge demurrage as set out in the "Railion Deutschland AG Prices and Terms".

4.4 Prior to loading, the customer shall check the wagons and load units supplied with regard to their suitability for the intended purpose of use and for visible defects, and shall notify us immediately of any defects.

4.5 The customer shall be liable for damage to wagons and load units caused by him/her or by any third party entrusted by him/her. The customer shall not be liable if the damage results from a defect which was already existent on handover of the wagons and load units. Any damage or accident shall be notified immediately to our Customer Service Centre.

4.6 The customer shall be responsible for ensuring that unloaded wagons and load units are returned by the specified date and time to the agreed handover point or terminal in adequate condition for re-use - that is, fully emptied, properly disinfected or cleaned and complete with all unattached components. In the event of failure to comply with the above, we shall make a charge for the expense incurred by us as set out in the "Railion Deutschland AG Prices and Terms". Any further claims for damages shall remain thereby unaffected.

4.7 The customer shall use the wagons and load units supplied by us only for the purpose set out in the contract.

5. Loading regulations

5.1 The customers shall be responsible for loading and unloading, unless otherwise agreed. Loading and unloading practices shall conform to the Railion Deutschland AG Loading Directives. We shall be entitled to inspect wagons and load units to ensure that they have been safely loaded.

5.2 If the customer fails to fulfil his/her obligation as laid down in subsection 5.1, if there is a substantial deviation between the agreed cargo and the actual cargo loaded, if the permissible gross weight is exceeded, or if carriage is impeded as a result of the type of cargo or method of loading, we shall request the customer to provide remedy within a reasonable period of time. If no remedy is provided within the deadline set, we shall also be entitled to assert our rights in accordance with Section 415 subsection 3 article 1 of the HGB.

5.3 The customer shall remove any waste created during the loading and unloading process from the loading location, including all access ways to it, at his/her own expense and without delay.

6. Hindrance

Within the scope of Section 419 subsection 3 of the HGB, we are entitled to park the loaded wagons in sidings. For the duration of such side-tracking, we shall be liable for the safekeeping of the consignment by exercise of due care and diligence.

7. Presumed loss

In the event of presumed loss as specified in Section 424 subsection 1 of the HGB, a period of grace of 30 days after the delivery deadline shall be allowed for national and cross-border transport movements alike.

8. Dangerous goods

8.1 The customer shall comply with the relevant legal requirements governing the carriage of dangerous goods as well as our regulations for the carriage of dangerous goods by rail.

8.2 We shall accept and deliver dangerous goods only where assumption of the safety and custody obligations through to collection or from the point of delivery ready for collection, and in the case of goods of classification 1, 2 and 7 additionally physical handover/acceptance of the goods, is agreed in writing with the consignor and recipient.

8.3 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.

8.4 We shall not store dangerous goods, nor shall we side-track loaded wagons containing dangerous goods in transit. The parking of uncleaned empty tank wagons over a period of one month requires specific written agreement. We shall not side-track uncleaned empty or non-degassed pressure gas tank wagons for longer than one month.

9. Remuneration, Invoicing, Prohibition of offsetting

9.1 Freight payments shall be made by way of the freight settlement procedure. Other payment methods require specific agreement. In such cases subsections 9.2 and 9.3 shall apply.

9.2 Accounts shall be payable immediately on receipt of invoice, without deduction. If payment has not been made within 10 days of receipt of invoice, we may demand late-payment interest to the amount of five percentage points above the prevailing base interest rate of the Deutsche Bundesbank. We may require the customer to make a payment in advance or to provide security.

9.3 Our claims must not be offset or payment be withheld in respect of counter-claims, unless the counter-claim is undisputed or has become res judicata.

10. Customs and other administrative regulations

Compliance with customs and other administrative regulations applicable while the goods are in transit shall be ensured by us or our authorised representatives. For said services, and for delays for which we are not responsible arising from the performance of such services, we shall make charges as set out in the "Railion Deutschland AG Prices and Terms".

11. Special conditions for intermodal transport

11.1 In intermodal transport, we carry empty and laden load units and render supplementary services based on special agreement (such as completion of the necessary freight documents).

11.2 Load units within the meaning of these General Terms and Conditions are:

- Freight containers for overseas shipment, of which the dimensions, corner fittings and strength have been standardised by the International Standards Organization
- Inland freight containers for transport on the European mainland
- Swap-bodies, i.e. superstructures interchangeable in operations
- Semi-trailers
- Truck-trailer combinations and semi-trailer vehicles using the "Rolling Road".

11.3 Load units must conform to the applicable legal requirements and technical provisions (e.g. to DIN, EN, UIC Leaflets).

11.4 Load units delivered to us by the customer must be operationally safe and suitable for the goods being carried.

11.5 We park load units in the open.

12. Liability

12.1 Our liability for loss or damage is limited to an amount of 8.33 units of account per kilogramme gross weight of the consignment. In the event of partial loss or partial damage, Section 431 sub-section 2 of the HGB shall apply accordingly. The value of the units of account shall be determined pursuant to Section 431 subsection 4 of the HGB.

12.2 Our liability is in any case limited to an amount of one million EUR or two units of account per kilogramme per case of damage, whichever is the higher.

12.3 Furthermore, 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 our agents in performance, which do not arise from intent or gross negligence or for which we are not liable on the basis of compelling legal provisions. 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.

12.4 Subsection 12.3 also applies to the carriage/dispatch of letters.

12.5 The customer shall provide us with the opportunity to inspect the damage.

13. Place of jurisdiction, Applicable law

13.1 Sole place of jurisdiction for any disputes arising from the contract relationship (including counter-claims and procedures for deciding claims in respect of cheque and bill of exchange payments) lies with the courts of Mainz, Germany, or - according to our choice - at the domicile of the customer.

13.2 The definitive law of the Federal Republic of Germany governing the legal relationship between contract parties within Germany shall apply.