

**I. Scope of application, deviating and amendatory conditions**

- a) Captrain Deutschland CargoWest GmbH (hereinafter referred to as CCW) shall provide all services, including future services according to the following General Terms and Conditions of Services and the conditions as specified in item c). For international transport, the unified statutory provisions shall apply to both the Contract on International Rail Freight Transport (CIM) and the General Conditions of Carriage for International Rail Freight Transport (ABB CIM) as published by the International Committee of Rail Transport (CIT), according to the latest version. The General Terms and Conditions of Services shall also apply to international transport insofar as the CIM and the ABB CIM do not comprise any such arrangements. The General Terms and Conditions of Services shall not apply to consumers.
- b) For the contractual relationship between CCW and the customer, only the General Terms and Conditions of Services shall apply as long as there is no different agreement with the customer in existence. Contradictory, deviating or amendatory provisions of the customer shall not be a contract component even if CCW does not expressly object.
- c) In addition to the General Terms and Conditions of Services, the following conditions shall apply, according to the latest version:  
the additional terms contained in the "Regulations on the Rail Transport of Hazardous Freight", particularly
  - the regulations regarding the domestic and cross-border transport of hazardous goods by road, rail and inland waterway vessel (GGVSEB), and the provisions of the international rail freight transport of hazardous goods (RID)
  - the General Contract of Use of Wagons (GCU)
  - the UIC loading guidelines.

**II. Service agreement, individual contracts**

- a) The basis of the services to be rendered by CCW is a written service agreement with the customer. Renewal, amendment or completion of a new service agreement must also be in writing. If the agreement is not signed by both parties, the letter of confirmation by CCW is binding, unless immediately disputed by the customer.
- b) The service agreement comprises key performance data which is necessary for the completion of individual contracts, in particular freight contracts (e.g. relation, freight, wagon type, loading unit, price per unit).
- c) Individual contracts are completed by the customer placing an order and by CCW accepting the same. The order is considered accepted when CCW does not object within a reasonable time period or renders the services without contradiction.
- d) The usage of a consignment note as per HGB or CIM shall be considered an order.

**III. Consignment Note**

- a) Unless otherwise agreed, the customer issues a consignment note. The consignment note will not be signed by CCW; printed or stamped name and company information does not constitute a signature.
- b) If the customer places the transport order without using a consignment note, they shall be liable according to § 414 HGB or § 8 CIM for the accuracy and completeness of all information listed in the transport order.

**IV. Wagon and loading units (LUs) of RBB, loading deadlines, liability**

- a) Upon the customer's request, CCW will provide appropriate wagon and loading units (LUs).
- b) The customer is responsible for the correct specification of the required amount and type of wagons and LUs, as well as the destination; for the provision of wagons and LUs, prior to the conclusion of a freight agreement, § 412 paragraph 3, § 415 and § 417 HGB apply accordingly.
- c) The customer is obliged to use the wagons and LUs provided by CCW solely for the purposes as stipulated in the contract.
- d) If the customer provides the wagons and LUs, he is to examine them as to their suitability for the intended use, as well as for visible defects prior to the shipment, and to inform CCW immediately of any problems.
- e) The customer ensures that the wagons provided by him are safe to operate and technically approved as per the current national and international regulations and remain technically approved during their operating time.
- f) The customer is liable for damages to wagons and LUs for which they, or a commissioned third party, are responsible. The customer is not liable if the damage results from a fault which was present at the time of transfer. Damages and accidents are to be reported immediately to CCW.
- g) CCW shall transport exclusively wagons which are assigned to a certified ECM office. The customer shall inform CCW prior to the conclusion of the service agreement to which ECM office the wagons are assigned. The customer will inform CCW about any possible amendments in the ECM quality the customer immediately.
- h) Unless agreed separately, loading deadlines shall be communicated via customer information in writing or text form.
- i) The customer is responsible for ensuring that unloaded wagons and LUs are usable, i.e. emptied completely, disinfected or cleaned as is proper and returned in full with any separate components as well as at the agreed transfer point or terminal within the period stipulated. In the event of default, we shall charge a fee according to the price list of CCW for ex-

penses incurred by us. Any further claim for damages remains unaffected.

#### **V. Loading instructions**

- a) The customer is responsible for loading and unloading, unless otherwise agreed. Details are governed by the UIC loading guidelines. CCW is entitled to check wagons and LUs for safe loading.
- b) If the customer violates their obligation under item a); if there is a considerable deviation from the agreed to the actual freight; if the permissible total weight is exceeded; or if the nature of the freight or handling hinder the shipment, CCW shall require the client to find a remedy within a reasonable period of time. After the period has lapsed without any result, CCW is entitled to assert the rights as per to § 415 section 3 sentence 1 HGB or art. 13 § 2 CIM.
- c) The customer is obliged to clear loading and unloading detritus at their own expense directly at the loading site, including the access roads.

#### **VI. Obstacles**

In case of any obstacles regarding transport or delivery, the statutory provisions shall apply provided that CCW is entitled, within § 419 section 3 HGB or art. 20 § 2 CIM, to park the loaded vehicle. While it is parked, CCW shall be liable for the safekeeping of the consignment by exercising due care and diligence.

#### **VII. Presumption of loss**

For the occurrence of a presumed loss under § 424 par. 1 HGB or art. 29 CIM, an additional period of thirty days after expiry of the delivery date applies for domestic and cross-border traffic.

#### **VIII. Hazardous freight, shipping document**

- a) The customer must abide the relevant legal requirements on hazardous freight, especially the GGVSEB and RID according to their latest version.
- b) CCW shall accept/deliver hazardous freight only when the safety and custody obligations are transferred through to collection, or from the point of delivery ready for collection and, when handling freight of the 'Class 1 and 2', the physical transfer of the freight is agreed in writing with the sender/recipient.
- c) The customer shall indemnify CCW within the scope of their share of the liability from any obligation arising towards third parties from the shipment, storage or other handling of the freight, as well as arising from the nature of the freight or the failure of the customer to comply with their responsibilities.
- d) Hazardous freight shall not be stored by CCW, nor by the parking of loaded vehicles on their respective transport route. The parking of uncleaned empty tank wagons or tank containers for more than 24 hours – if the last freight was a substance of hazard potential in the sense of RID (see clause 1.10.3.1.2) – or more than 48 hours for all other hazardous substances requires a special written agreement. Used empty and non-degassed pressure gas tank wagons and pressure gas tank containers shall not remain parked by us for more than 24 hours.

#### **IX. Remuneration, invoicing, exclusion of set-off**

- a) Settlement takes place by rendering of account.
- b) All prices as given by CCW are given in EURO plus VAT, currently at the rate of 19 %.
- c) The invoices by CCW are payable within 14 days from the day of accounting. The customer shall pay the price for services rendered free of any deductions of any possible taxes, fees or any other costs.
- d) If the customer is in default of payment, all claims which CCW may have from the business relationship shall be due immediately, without the requirement of a note of default.
- e) A set-off or retention against claims by CCW is excluded, unless the counterclaim is undisputed or legally determined.

#### **X. Customs and other administrative regulations**

- a) The order to forward bonded goods or to deliver them CPT includes the authorisation for CCW to decide on the completion of the necessary customs forms and the interpretation of the customs excise duties and fees. For these services, and for delays arising from the performance of such services for which CCW cannot be held responsible, CCW shall invoice the expenses that are actually incurred and documented.
- b) The customer, on his own accord, informs CCW prior to every transport if the freight is EU freight or non-EU freight and if CCW needs to adhere to any customs provisions. Furthermore, the customer informs CCW if freight is transport under

the excise-duty suspension procedure.

#### **XI. Special conditions for combined transport**

- a) In combined transport, CCW transports empty and loaded LUs and provides additional services per special arrangements (e.g. filling in the required shipment documents). LUs in terms of these General Terms and Conditions of Services are
  - containers for overseas shipping, with size, corner fittings and stability standardised as per the International Organisation for Standardisation,
  - land containers for transport on the European mainland
  - swap bodies, i.e. superstructures interchangeable in operations.
- b) LUs must meet the relevant statutory and technical regulations (e.g. DIN, EN, UIC).
- c) LUs provided by the customer must be reliable and suitable for the load. The customer is liable for damages resulting from improper, defective or unsafe LUs.
- d) LUs are generally to be parked outdoors by CCW.
- e) CCW can take over the completion of the required shipping documents and related services for the customer, upon special agreement.

#### **XII. Liability**

- a) CCW shall be liable for delayed delivery or non-performance insofar as CCW is accountable for them. This is particularly not the case if delayed delivery or non-performance happen, verified by proof, because of
  - interference caused by the weather when loading, transporting and reloading, in particular the freezing of the freight and the vessels;
  - obstructions caused by the infrastructure operator (e.g. DB Netz AG), such as construction works on the rail infrastructure, delayed timetabling, restricted track availability, track failures, points problems, lubricating film on the rail, misguided action, catenary damages, obstruction caused by third parties (e.g. suicide, derailling of third train operator);
  - delays in transport procedure due to a delayed return or delayed unloading of the wagons provided that this is caused by the customer or its subcontractor;
  - contaminants and loading residues in the wagons used after the completion of reloading by the customer, the recipient or their subcontractors.
- b) Incidentally, liability for delayed delivery, damages on, or the loss of the transported freight complies with the regulations as per HGB or CIM according to their latest version as long as nothing different is laid out in the General Terms and Conditions of Services.
- c) Liability as per a) and b) for indirect secondary damage is excluded insofar as this is permitted as per the provisions in a) and b).
- d) If, incidentally, a damage by the customer is not caused by willful intent or gross negligence and no bodily injury is on hand, liability by CCW is ruled out. In case of a breach of material contractual obligations, liability by CCW shall be restricted to the typical foreseeable damage.

#### **XIII. Force Majeure**

- a) All events and circumstances which cannot be prevented through the power of the contract partners, such as natural upheavals, war, strikes, shortage of raw materials and energy, orders of higher authority, discharge the respective contract partner for the length of the disruption and the scope of their implications from their respective contractual obligations.
- b) The contract partner in question shall inform the others immediately about the probable duration and scope of the disruption and take all reasonable action for a swift remedy of the disruption. The contract partner in question shall endeavour to make up for any omitted services within the scope of its possibilities.
- c) Any liability by CCW for damage and delay which are caused by force majeure as outlined in this provision, is excluded.

#### **XIV. Place of jurisdiction, applicable law**

- a) For all disputes arising from the contractual relationship, the sole place of jurisdiction is Gütersloh. CCW may also sue the customer in their place of jurisdiction.
- b) For the legal relations between the contracting parties, the laws of the Federal Republic of Germany apply.



**General Terms and Conditions of Services of  
Captrain Deutschland CargoWest GmbH, Gütersloh.  
Effective from 1 April 2016**

**XV. Final Provisions**

- a) The conclusion, modification and amendment of agreements between the customer and CCW must be in writing. This also applies to the exclusion of the need for a written form requirement.
- b) Should one or more provisions of these General Terms and Conditions of Services, or the contract concluded on the grounds of these General Terms and Conditions of Services be or become invalid, the validity of the other clauses or the contractual conditions shall remain unaffected. The contract partner shall then replace such provision by an enforceable one which comes economically closest to the intention. The same shall apply in case of an omission.
- c) The customer is not authorised to use the business relationship with CCW for reference or marketing purposes without their prior consent.
- d) The customer is obliged to conceal all information, skills and documents, e.g. quotations, (operational) concepts, technical and any other data, personal data, company secrets, knowhow, drawings and any other documentation received or made known by CCW or in any other manner from within the sphere of CCW or one of its affiliated enterprises, to not make them available to third parties and to only use them for the purpose of performing the respective delivery/service.