

# General Terms and Conditions of DB Cargo Logistics GmbH (DB CL)

January 1st, 2023

## 1 Scope, Supplementary terms and conditions

- 1.1. DB Cargo Logistics GmbH (hereinafter "DB CL") renders services in accordance with the following Terms and Conditions and the conditions set out in subsections 1.3-1.6.
- 1.2. These General Terms and Conditions are not applicable to contracts with consumers within the meaning of Section 13 of the German Civil Code (BGB).
- 1.3. For cross-border services which fall within the scope of COTIF/CIM, the "General Terms and Conditions of Carriage for International Freight Traffic by Rail" (GTC-CIM) of the Comité international des transports ferroviaires ([www.cit-rail.org](http://www.cit-rail.org)) shall apply in addition.
- 1.4. In addition to these General Terms and Conditions the following terms and conditions shall also apply:
  - "Allgemeine Verladeinstruktionen für Auto-transportwagen der DB CL" (General Loading Instructions for car-carrying wagons of DB CL) in the respective latest version, along with the following terms and conditions, as amended, to be applied mutatis mutandis as if they were the terms and conditions of DB CL
  - DB Cargo AG Prices and Services;
  - DB Cargo AG Loading guidelines.
- 1.5. The general terms and conditions of DB CL's contractual partner shall apply only if explicitly confirmed in writing by DB CL.
- 1.6. Freight forwarding, storage and other usual forwarding services are rendered on the basis of the 2017 German Freight Forwarders' Standard Terms and Conditions (ADSp) available for download at the DSLV website at <https://www.dslv.org/de/adsp>, as amended, unless agreed otherwise.

## 2 Placement of orders

- 2.1. The contractual counterpart shall place orders in electronic form via EDI (Electronic Data Interchange), RSO (RailServiceOnline) or by entering data into a web interface or mask provided by DB CL or using another method as agreed with DB CL. The orders shall be considered as accepted if DB CL does not reject them within a reasonable period of time.
- 2.2. An order confirmation shall be issued only if agreed with the contractual partner. An intermediate message shall not be deemed as order confirmation.

## 3 Freight transport order, Consignment note

- 3.1. 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.
- 3.2. Even without use of a consignment note, DB CL's contractual partner shall provide the information required under Section 408 HGB in a freight transport order. Even without use of a consignment note, the contractual partner shall be liable pursuant to Section 414 HGB for the correctness and completeness of the information it provides.

## 4 Wagons and load units provided by DB CL, Loading deadlines

- 4.1. Unless otherwise agreed, DB CL shall provide wagons and load units (see subsection 13.2). Should the contractual partner provide the wagons it shall ensure that the wagons it provides are suitable in all respects for the ordered transport and that the wagons may be used for such transport.
- 4.2. DB CL is entitled to amend the type of wagons, load units and in particular the wagon type in line with the respective situation, even if they are specified in the transport order, and the interests of DB CL's contractual partner are taken into account.
- 4.3. Prior to loading, DB CL's contractual partner 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 DB CL immediately of any defects.

- 4.4. DB CL's contractual partner shall be liable for damage to wagons and load units caused by itself or by its agents. The contractual partner shall not be liable if the damage results from a defect which was already existent upon handover of the wagons and load units. Any damage or accident shall be reported immediately to DB CL.
- 4.5. DB CL's contractual partner shall be responsible for ensuring that unloaded wagons and load units are returned by the specified date and time to the agreed handover point in proper and adequate condition for re-use, clean swept, fully emptied and complete with all unattached components. In the event of failure to comply with the above, DB CL shall charge a fee in accordance with the "DB Cargo AG Standard Rates and other Provisions" for any resulting expenses. Any further claims for damages shall remain unaffected thereby.
- 4.6. Should loading deadlines not be met, DB CL shall charge a demurrage fee in accordance with the "DB Cargo AG Standard Rates and Provisions". Any further claims for damages shall remain unaffected thereby.
- 4.7. The provision of wagons and load units prior to signing of a freight contract is subject to the terms of Section 412 (3), Section 415 and Section 417 HGB accordingly. Any further claims for damages shall remain unaffected thereby.

## 5 Block trains

- 5.1. A block train is a permanently coupled train conveyed as a single consignment on the route from a point of departure and consignor to a destination and consignee.
- 5.2. Order procedures, changes to orders, transport ordering processes, stabling provisions and cancellations, etc. shall be agreed separately.

## 6 Third-party wagons

- 6.1. The contractual partner shall ensure that
  - a) the wagons it provides are subject to maintenance by a certified entity in charge of maintenance (ECM). Other-wise, DB CL is entitled to refuse acceptance of the wagons;
  - b) only wagons whose keepers are party to the General Contract of Use for Wagons (GCU) are used. Should this not be the case, it shall provide such wagons to DB CL under the same conditions as would apply if the keepers were party to the GCU. This shall not apply if it has been agreed that the wagon provided will be carried as an item of cargo on its own wheels;
  - c) the wagons handed over are safe to operate, suitable for the goods being carried, and have the appropriate approval;
  - d) DB CL or the commissioned railway company is entitled to transmit to the keeper the data which is absolutely necessary for the further use of the wagon by the keeper.
- 6.2. The contractual partner undertakes to hand over to DB CL or its subcontractors only wagons which
  - a) for transports in/through Germany, comply with the requirements of the Railway Noise Protection Act (Schienenlärmschutzgesetz, "SchlärmschG"), and
  - b) for transports in/through Switzerland, comply with the requirements of the Swiss Federal Law on Railway Noise Abatement (Bundesgesetz über die Lärmsanierung von Eisenbahnen, "BGLE"), and
  - c) for transports in/through the European Union from the 2024 timetable change, comply with the requirements of Regulation (EU) No 1304/2014 and, upon request, to provide DB CL with proof of compliance with the above legal requirements in due time.

If the contractual partner hands over a wagon which does not comply with the legal requirements, it shall pay DB CL a flat fee of EUR 1,500 per wagon. In addition, DB CL or its subcontractor shall be entitled to refuse to take over the wagon and/or to claim compensation. The flat fee shall be credited against any compensation claim. The

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contractual partner shall indemnify and hold harmless DB CL or its subcontractor against all third-party claims arising from the infringement.

12.3 DB CL may require the contractual counterpart to make a payment in advance or to provide security.

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## 7 Telematic and sensor data

If wagons are equipped with telematics and sensor devices, DB CL collects and uses wagon-related data. If the contractual partner has access to data of equipped wagons of third-party keepers, the contractual partner shall have this data made available to DB CL if possible. Such companies of which DB Cargo AG is the direct or indirect majority shareholder may also access the data in the course of providing their transport services.

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## 8 Loading regulations

- 8.1. DB CL's contractual partner shall be responsible for safe loading and unloading. Loading shall conform with the loading directives, as amended, applicable to the respective mode of transport.
- 8.2. DB CL shall be entitled to inspect wagons and load units to ensure that they have been safely loaded.
- 8.3. If DB CL's contractual partner fails to fulfil its obligation as set out in subsection 6, or if there is a substantial deviation between the agreed cargo and the actual cargo loaded, or if the permissible gross weight is exceeded, or if carriage is impeded or safe performance is threatened as a result of the type of cargo or method of loading, or if there has been a violation of legal provisions, DB CL shall, if such a situation becomes apparent, request that the contractual partner provide remedy within a reasonable period of time. If no remedy is provided by the deadline set, DB CL shall also be entitled to assert its rights in accordance with Section 415 (3) sentence 1 HGB.
- 8.4. The contractual counterpart shall, at its own expense and without delay, remove any waste created during the loading and unloading process from the loading point, including all access routes to it. Should DB CL carry out cleaning, DB CL shall charge a fee in accordance with the "DB Cargo AG Standard Rates and Provisions" for any resulting expenses.

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## 9 Hindrance

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

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## 10 Presumed loss

In accordance with Section 424 HGB, presumed loss shall take effect 30 days after the delivery deadline.

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## 11 Dangerous goods

- 11.1. DB CL's contractual partner shall comply with the applicable legal requirements governing the carriage of dangerous goods.
- 11.2. Dangerous goods shall only be accepted or delivered by DB CL or its agents where assumption of the safety and custody obligations through to collection or starting at provision, 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/consignee.
- 11.3. Dangerous goods shall not be stored by DB CL, nor shall loaded wagons containing dangerous goods in transit be side tracked.

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## 12 Accounting, Prohibition of offsetting

- 12.1. Invoices from DB CL shall be due and payable within 10 days of receipt.
- 12.2. Claims by DB CL must not be offset, or payment be withheld in respect of counterclaims, unless the counterclaim is undisputed or has become res judicata.

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## 13 Price adjustments

- 13.1. If the planned route is not passable at all or only to a limited extent for a period of more than 7 consecutive calendar days due to impairments that were not foreseeable at the time the contract was concluded, e.g. due to construction sites, accidents and natural events, the customer shall bear the additional costs for transport via the alternative route from the 1st day of the necessary detour, but not before expiry of an advance notice period of 7 days. The additional costs shall be calculated according to the following formula.  
$$\text{Agreed freight price} * \text{km total detour route} / \text{km planned routing} = \text{freight price period detour}.$$
This regulation only applies if there is a kilometre difference of >10% between the planned route and the necessary detour (additional operating kilometres according to DB CL's proof).
- 13.2. In the event of an increase in the prices of the subcontractors commissioned by DBCL by more than 5% within a period of 3 months, DBCL shall be entitled to adjust the agreed freight prices in the amount of the additional costs. If this results in an increase of more than 2% of the freight prices, the customer may terminate the affected relation(s) by giving one month's notice to the day on which the price adjustment takes effect. Until termination, the prices valid until then shall apply.

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## 14 Customs and other administrative regulations

Compliance with customs and other administrative regulations applicable while the goods are in transit shall be ensured by DB CL or its authorised representatives. For said services, and for delays for which DB CL is not responsible arising from the performance of such services, DB CL shall charge a fee as set out in the "DB Cargo AG Standard Rates and Provisions".

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## 15 Special conditions for intermodal transport

- 15.1. Intermodal transport within the meaning of these provisions is the carriage of loaded or empty load units (LUs) that conform to the applicable legal requirements and technical provisions (e.g. to DIN, EN, UIC Leaflets, valid CSC Safety Approval).
- 15.2. LUs are defined here as:
  - Large containers (inland freight containers for transport on the European mainland and containers for overseas shipment that have been standardised by the International Organization for Standardization (ISO)),
  - Swap-bodies (i.e. superstructures interchangeable in operations) standardised by the European Committee for Standardization (CEN)),
  - Semi-trailers,
  - Truck-trailer combinations and semi-trailer vehicles (the latter two using the "Rolling Road") within the meaning of the German Road Traffic Licensing Regulations (StVZO).
- 15.3. Swap bodies, semi-trailers, truck-trailer combinations and semi-trailer vehicles (loaded or empty) will only be accepted for forwarding if they are codified.
- 15.4. The customer is responsible for adding closures to loaded, covered, closed wagons unless DB CL and the customer have come to alternative arrangements. For the adding of closures through DB CL costs will be charged to the customer according to the Service Catalogue of DB Cargo AG.
- 15.5. Unless otherwise agreed, the customer shall make out a container consignment note in accordance with the template available at [www.dbcargo.com/gtc](http://www.dbcargo.com/gtc).
- 15.6. A consignment is understood to mean the LUs dispatched under a single container consignment note.
- 15.7. Large containers with a height of more than 2,603 mm (8', 6") for rail transport, or more than 4 m for road transport (according to StVZO), can only be transported subject to the agreement of special conditions of carriage with DB Cargo.

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- 15.8. The NHM position/code will depend on the type of goods loaded in the LUs or, for empty LUs, on the NHM position/code of the empty LUs.
- 15.9. LUs must conform to the applicable legal requirements and technical provisions (e.g. valid Safety Approval).
- 15.10. LUs delivered to DB CL by the contractual counterpart must be operationally safe and suitable for the goods being carried.
- 15.11. DB CL parks LUs in the open.

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### 16 Liability

- 16.1. Unless otherwise agreed in the following terms, DB CL shall be liable pursuant to legal provisions.
- 16.2. **Notwithstanding the legally prescribed amount, DB CL's liability per instance of damage is limited to an amount of EUR 1 million or two units of account per kilogramme, whichever is the greater. This shall not apply to cases described in Section 435 HGB.**
- 16.3. **As far as the ADSp are applicable, we point out the following: By way of derogation from legal provisions, clause 23 of the 2017 ADSp limits the legal liability for damage to goods in accordance with Section 431 of the German Commercial Code (HGB) to 8.33 SDR/kg, EUR 1,25 million per instance of damage or to EUR 2,5 million per event or 2 SDR/kg, whichever is greater per instance of damage or event, and in the case of multimodal transports including sea transport generally to 2 SDR/kg.**
- 16.4. Where stabling or storage has been requested, DB CL's maximum liability shall be as follows:
  - for damage to goods in accordance with Section 431 (1), (2) and (4) of the German Commercial Code (HGB), to 8.33 special drawing rights per kilogramme, but not to exceed EUR 25,000 per instance of damage;
  - for damage based upon the difference between the nominal and actual inventory, liability is limited to EUR 50,000 per year;
  - for damage to goods and other damage excluding persons and third-party goods, liability shall be limited to EUR 25,000 per instance of damage.

Subsection 14.2 shall otherwise apply.

- 16.5. To the extent that claims for damages are not otherwise based on compelling legal provisions, intent or gross negligence, liability on the part of DB CL shall be excluded. In the case of failure to meet obligations fundamental to performance of the Agreement, DB CL shall be liable pursuant to legal provisions, however liability shall be limited to foreseeable typical damage.
- 16.6. The contractual partner shall provide DB CL with the opportunity to inspect the damage.
- 16.7. The contractual partner shall exempt and hold DB CL harmless, within the scope of its share in the liability, from 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 contractual partner to comply with its duty of care.
- 16.8. Timetables and transport plans provided to the contractual partner shall not be deemed as an agreement on the transit period.
- 16.9. Should DB CL be contractually obligated to provide insurance coverage to third-party equipment or goods in transit, it shall be granted the right to self-insurance.

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### 17 Transfer of rights and obligations

DB CL shall be entitled to transfer its contractual rights and obligations to Group companies within the meaning of Section 15 et seq. of the German Stock Corporation Act (AktG) without the need for special approval from the customer.

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### 18 Place of jurisdiction, Applicable law

- 18.1. German law shall apply to the exclusion of German private international law.
- 18.2. The place of jurisdiction for disputes shall be Darmstadt, or, at the request of DB CL, the domicile of the contractual partner.