

General Terms and Conditions of CargoBeamer intermodal operations GmbH

I. General provisions / Scope of application

(1)

CargoBeamer intermodal operations GmbH (hereinafter referred to as "CargoBeamer" or "we") transports load units by railway in unaccompanied intermodal transport throughout Europe on the routes offered, and in some cases provides ancillary services. Any orders (including prospective ones) of such transport services, including any ancillary services offered by CargoBeamer, which are placed with CargoBeamer by the principal (hereinafter referred to as "the customer" or "you"), shall be governed exclusively by these General Terms and Conditions, unless otherwise agreed in writing. Any general terms and conditions of the customer, which conflict with or supplement these GTC shall not apply.

(2)

These General Terms and Conditions apply to the customer as well as any and all companies associated with CargoBeamer within the meaning of Art. 15 of the German Stock Corporation Act (AktG), in particular CargoBeamer AG (not conclusively), unless otherwise agreed with them. For any reason, this shall apply to the CargoBeamer affiliates involved in the contract with the customer, whether through a standalone contract with the customer or subcontracting by CargoBeamer, an assignment of claims against the customer as per Section IV of these GTC, etc.

II. Terms and definitions

(1)

Cargo unit as defined in these GTC refers to the goods in their entirety, which are handed over to CargoBeamer for further transportation, in particular, sealed semi-trailer, container, swap body, etc., in each case including stowed and secured goods transported by the principal.

(2)

Portal refers to the web-based online platform ("my CargoBeamer") made available by CargoBeamer to its registered customers, which they can use, among other things, to submit transport inquiries, track shipping progress (if any), manage orders, etc.

(3)

SZR refers a Special Drawing Right as defined by the International Monetary Fund.

(4)

RID is a set of regulations for international rail transport of dangerous goods in Europe (Regulations Concerning International Carriage of Dangerous Goods by Rail).

(5)

Platform refers to a freight car attachment, on which CargoBeamer or an authorised subcontractor loads the cargo unit delivered by the customer at check-in point and which is used to load the cargo unit onto the freight car.

(6)

Check-In is the process of handing over load units to CargoBeamer by the customer at the point of departure/terminal.

(7)

Check-out is the pick-up of the cargo unit by the customer at the receipt point/terminal.

(8)

In addition, the definitions given in sections 1.1 to 1.19 of the German Freight Forwarders' Standard Terms and Conditions 2017 (Allgemeine Deutsche Spediteurbedingungen 2017 – ADSp 2017) apply accordingly.

III. Conclusion of contract

(1)

Contracts of carriage are concluded through the respective offer of the customer to CargoBeamer for carrying out specific transportation and its acceptance. The customer's request / order to carry out a shipment, e.g. through appropriate booking in the portal, is the offer to CargoBeamer as defined in Section 145 of the German Civil Code (BGB). This offer is accepted by CargoBeamer either by a written order confirmation or by the execution of the booked service by CargoBeamer.

Accordingly, the price and performance details and offers by CargoBeamer on the homepage, in the portal, on advertising brochures or otherwise constitute solely a request to submit an offer to the customer.

(2)

Price and service offers by CargoBeamer are non-binding unless expressly stated otherwise. The same applies to all data provided by CargoBeamer, information materials and advertising statements of any kind, product descriptions, advertisements and other procurement details,

quality, composition, performance and usability of CargoBeamer products and services, unless they are expressly designated as binding.

(3)

Where the acceptance of an offer by CargoBeamer slightly deviates from the price and performance details, these shall be deemed as approved by the customer unless they are unacceptable for it.

IV. 4 Transferability

CargoBeamer is entitled to transfer all or part of contracts concluded with customers, including all reciprocal rights and obligations, to the companies that are legally affiliated within the meaning of Art.15 of the German Stock Corporation Act (Aktiengesetz -AktG) in relation to CargoBeamer. Insofar as the customer's consent is required, this shall be deemed as already granted. If, after such a transfer, such companies exercise rights under the contract, they will be entitled to assert their own legal claims. In that regard, that agreement shall constitute a genuine contract in favour of third parties, namely the companies affiliated with CargoBeamer.

V. Remuneration, prices and terms of payment

(1)

All prices quoted are exclusive of the applicable statutory VAT.

(2)

If no price agreement is expressly concluded between CargoBeamer and the customer, the prices published by CargoBeamer on the homepage or otherwise shall apply to CargoBeamer's services in the version applicable at the time the contract is concluded.

(3)

In addition, Section 632 (1), (2) of the German Civil Code (BGB) apply accordingly.

(4)

Claims of CargoBeamer are to be settled by the customer without deduction within 14 days after invoicing. On request, CargoBeamer will send the invoice to the customer in advance by e-mail as soon as it has been raised. In the absence of a deviating explicit individual agreement, the due date for the remuneration of CargoBeamer does not require the submission of proof of delivery in the event of indisputably rendered transportation service.

(5)

Should, after concluding a contract of carriage, CargoBeamer become aware of circumstances indicating a material deterioration in the customer's assets position that was not readily recognizable by CargoBeamer prior to the conclusion of the contract, CargoBeamer is entitled to continue the performance of the contract from an advance payment to the anticipated remuneration claim or, at the customer's discretion, to render it contingent on the provision of adequate surety (e.g. deposit of the amount at the depository of the competent district court, provision of a bank guarantee of a German banking institution).

VI. Customer's duty to provide information / Types of goods

(1)

The customer undertakes to inform CargoBeamer, fully and truthfully, in good time prior to check-in / handover of the cargo unit, of all the factors known to the customer, which affect the execution of the order, in particular:

- (a) the type and characteristics of the cargo unit, including its total weight;
- (b) particular characteristics of the goods, if any, loaded by the customer in the semi-trailer, including the quantity, labelling, numbers, number and type of packages, deterioration of the goods, particular risk of breakage, value of goods, etc.;
- (c) all public and statutory duties and safety regulations, such as duties relating to customs, foreign trade regulations (particularly those relating to goods and people as well as specific country embargos) and legal safety obligations.
- (d) the eventual requirements of the States to be met by the customer, which are affected by the carriage of the cargo unit;
- (e) any dangerous goods, in which case the Customer shall notify CargoBeamer in good time in writing of the specific nature of the dangerous goods, the specific nature of the risk involved and, if necessary, the precautionary measures to be taken by the Customer or CargoBeamer,
- (f) other transported and stored goods that fall into scope of other pertinent dangerous goods or waste-disposal regulations, in particular the classification according to the relevant Dangerous Goods laws, and the handover of the requisite carriage-related documentation.
- (g) valuable or theft-sensitive goods, the type, quantity and value of the goods (itemized list) and the current risks involved

(2)

In the case of transporting a cargo unit with dangerous goods, 'in good time' within the meaning of the above provision is at least 24 hours before check-in, exclusive of Sundays and holidays. The customer will not have such a cargo unit checked in until the day of shipment.

(3)

CargoBeamer is entitled to refuse the carriage of the cargo unit – after fulfilling the aforementioned duties by the customer – if the proper carriage cannot be ruled out, to the exclusion of all dangers for public safety and order, as well as the legitimate interests of all those involved in the transport, by implementing any further measures, if necessary, requiring remuneration, when the risk of damage is particularly high or the carriage of goods would be unacceptable both for CargoBeamer or its vicarious agents.

(4)

In addition to the information to be provided, the customer shall provide CargoBeamer with all necessary documentation, in particular accompanying transport documents, customs documents, etc. in good time prior to handover of the cargo unit.

(5)

The customer shall notify CargoBeamer in good time before check-in of the specific type of semi-trailer and provide additional information on request, in particular type, dimensions, weight, etc.

VII. Other obligations and liability of the customer

(1)

The customer is aware that the safety of rail transport must be guaranteed. Accordingly, the customer is obligated vis-a-vis CargoBeamer to ensure stowage and safeguarding of the goods in the cargo unit. The customer guarantees that the cargo unit handed over for transportation is suitable for secure intermodal transport, in particular by railway. In particular, the customer shall guarantee that

- the customer alone, independently and without being requested to do so, ensures that any goods loaded in a semi-trailer are properly secured in accordance with the applicable rules and the state of the art as per VDI 2700;
- the cargo unit handed over for transportation does not exceed a total weight of 37 tons (37,000 kg);
- the state of the transferred for transport cargo unit allows safe, smooth rail transport including loading and unloading of the cargo unit.

The list is not exhaustive.

(2)

At the request of CargoBeamer or third parties commissioned by the latter for the fulfilment of its own obligations, the customer shall provide proof of the guarantees listed in paragraph 1, in particular the weight of the cargo unit. If the customer fails to fulfil this requirement in good time, CargoBeamer is entitled to refuse the transport of the cargo unit.

(3)

In the case of dangerous goods, the customer shall ensure and guarantee that it has fully complied with all obligations incumbent on the customer under RID and, in particular, that the cargo unit and the dangerous goods contained therein are duly and completely labelled.

(4)

The customer is liable vis-a-vis CargoBeamer, in particular according to Section 414 of the German Commercial Code (HGB), which also applies accordingly in international intermodal transport. No further legal or contractual liability of the customer shall be affected.

(5)

In addition, the customer is liable to CargoBeamer for breach of the obligations under VI and VII para. 1 to 3 for any resulting damage, whereby the culpable breach of duty is refutably presumed. No further legal or contractual liability of the customer shall be affected.

VII. Transport workflow / Check-in, check-out

(1) Check-in

Check-in is carried out as follows: The customer reports its vehicle ready for handover at the terminal on the agreed date. The customer is assigned a parking space, to which it has to deliver the cargo unit. The customer itself is obligated to deliver the cargo unit to and park it securely at the point assigned by the terminal, in particular to detach the semi-trailer. The customer must ensure that the cargo unit, in particular the detached semi-trailer is properly and safely secured and all the specific safety measures that safeguard the parked cargo unit in particular from tipping over, overturning, etc. have been properly implemented.

The customer is not entitled, even at the request of employees of the terminal, to transport the cargo unit on its own to the platform. The customer assures that it has informed the delivering driver and instructed him to refrain from transporting the cargo unit to the platform. If the customer or its driver fail to comply with the above provisions, for whatever reason, the customer shall be held liable for any damage to the cargo unit and/or the platform.

(2)

The customer can usually see the expected arrival time in the portal during the transport following appropriate registration. If, in individual cases, there are delays and deviations from the non-binding timetable, which are not attributable to CargoBeamer, CargoBeamer will inform the customer accordingly.

(3)

At check-out, the customer or a third party commissioned by it has to register at the terminal at the agreed pick-up time and to receive the cargo unit at the designated parking space. Only in the latter case can the cargo unit be picked up by the customer at the parking place of the terminal area.

Should the cargo unit still be on the platform, the customer is not entitled to lower it on its own, even though requested by the terminal staff. The customer assures that it has informed the picking driver and has instructed him to refrain from removing the cargo unit of the platform. If the customer or its driver fail to comply with the above provisions, for whatever reason, the customer shall be held liable for any damage to the cargo unit and/or the platform.

(4)

The customer is obligated to pick up the cargo unit on the day of receipt within the operating time of the specific terminal, which can be clarified immediately on request of CargoBeamer. If a cargo unit is not picked up by the customer on the day of receipt, CargoBeamer shall be entitled to charge the customer an appropriate fee for each day of delayed pick-up.

After expiry of two working days following the pick-up day, CargoBeamer is entitled to take further measures in accordance with Section 419 (3) of the German Commercial Code (HGB), without having to receive any prior instructions from the customer.

IX. Custody liability period

(1)

CargoBeamer's liability for custody commences after the cargo unit has been taken over, properly checked in and parked.

(2)

CargoBeamer's liability for the cargo unit custody ends at the moment in which the person entitled to pick up the cargo unit starts to attach the semi-trailer to the truck, i.e. the moment the truck and semi-trailer (cargo unit) contact one another.

(3)

The customer is obligated to check the cargo unit at check-out before taking over, i.e. before the semi-trailer (cargo unit) is attached to the pick-up person's truck, for visible damage and report any damage detected to the terminal staff or CargoBeamer before the semi-trailer (cargo unit) is attached to the truck.

(4)

Delivery of the cargo unit is deemed completed upon successful attachment of the semi-trailer.

(5)

Damage or loss that cannot be detected through visual inspection shall be reported by CargoBeamer in writing to the customer within seven days of delivery.

X. Obligations of CargoBeamer

CargoBeamer is obligated to load the cargo unit handed over by the customer onto the train, to transport it by railway to the agreed place of receipt and to unload it from the train. Where a platform is required for transport (for example, if a semi-trailer is not suitable for crane loading), CargoBeamer is also obligated and authorised to load and unload the platform on its own.

XI. Liability for loss or damage of the transported cargo unit / Exceeding the transit period

(1)

CargoBeamer is liable for loss or damage of the goods delivered for transport (cargo unit) as well as for exceeding the transit period in accordance with the pertinent statutory provisions, for international transport within the scope of CIM and/or otherwise in accordance with the German Commercial Code (HGB).

(2)

In the event of purely domestic transportation, i.e. with the check-in and check-out taking place respectively in the territory of the Federal Republic of Germany, CargoBeamer is liable for the loss or damage of the transported cargo unit, notwithstanding Section 431 (1) of the German Commercial Code (HGB), to an amount of 2 SDR per kilogramme of the gross weight of the consignment/cargo unit.

(3)

CargoBeamer is not obligated to inspect the goods in semi-trailers, including packaging, stowage and fastening/securing, as well as any information provided by the customer CargoBeamer. CargoBeamer is not liable for the damage of the semi-trailer or for the goods stored and secured therein by the customer resulting from inadequately or incorrectly secured cargo in the semitrailer.

(4)

Should CargoBeamer be held liable for the loss or damage of the consignment through the fault of its own, e.g. in accordance with Art. 280 et seq. of the German Civil Code (BGB),

CargoBeamer shall reimburse the value and costs in accordance with Section 429, 430, 432 of the German Commercial Code (HGB) instead of damages payable in accordance with Section 249 et seq. of the German Civil Code (BGB). This provision does not apply to qualified fault as defined in Section 435 of the German Commercial Code (HGB) or default committed by the agents or servants of the carrier or by any other persons whose services it commissions for the performance of the carriage.

(5)

In addition, the liability of CargoBeamer under paragraphs 1, 2 and 4 shall be limited per claim to an amount of € 1,000,000.00 or 2 SDR per kilogramme of the gross weight of the consignment, whichever is greater, if the amount exceeds € 1,000,000.00.

XII. Liability for other damages

(1)

In the case of intentional or grossly negligent damage, CargoBeamer is liable for damage other than damage to goods or for exceeding the transit period in accordance with the pertinent statutory provisions.

(2)

The same applies to any culpable injury to life, limb or health or in the event of liability under the Federal Product Liability Act (Produkthaftungsgesetz). CargoBeamer shall be held liable if found in breach with a material contractual obligation. A material contractual obligation refers to a duty, on the fulfilment of which the customer typically relies or may rely. In that case, the liability is limited to the typical, foreseeable damage.

(3)

Any further liability on the part of CargoBeamer for damage other than that caused to goods or that resulting from exceeding the transit period shall be excluded. Insofar as the liability of CargoBeamer is excluded or limited, this also applies in favour of the personal liability of its legal representatives, executives and simple vicarious agents.

XIII. Confidentiality / Non-disclosure obligation

(1)

The parties undertake to maintain mutual confidentiality and non-disclosure with regard to the confidential information disclosed in the course of the contract and shall refrain from disclosing or making it available to third parties. This provision shall only apply if the third party is a vicarious agent deployed for the fulfilment of the obligations arising from the contract between the parties.

Confidential information includes the content of the contractual arrangements, including the agreed remuneration, as well as all files, data, databases, media, documentation, paperwork, plans, correspondence, business and trade secrets, as well as personal, commercial, organisational and technical circumstances of a party as well as other information marked as confidential that may be disclosed or otherwise made available to the receiving party verbally, electronically or in writing by the disclosing party, including its affiliates, or otherwise obtained by the receiving party on the occasion of initial contact or cooperation.

Confidential information within the meaning of this Agreement does not apply to the information which is already known to the general public.

(2)

For each case of violation of the above confidentiality and non-disclosure obligation in accordance with paragraph 1, the party found in breach of the obligation shall pay the other contracting party a contractual penalty of € 1,000.00 net. This shall not affect the right to assert all other claims to damages.

XIV. Offsetting, retention

In the face of claims arising from the contract of carriage and associated non-contractual claims, set-off or retention is only permitted when the claim is due, uncontested, ready for decision or legally established.

XV. Lien and retention rights

(1)

For domestic transportation, CargoBeamer is entitled to a lien as per Section 440 of the German Commercial Code (HGB) as well as a right of retention as per Section 273 of the German Civil Code (BGB).

(2)

In the event of cross-border transportation, the customer shall grant, to the extent legally permissible, CargoBeamer a contractual right of lien to the CargoBeamer for carrying the goods of the customer (cargo unit) or of a third party who has approved the carriage of the goods, for all claims of CargoBeamer from the contract of carriage. CargoBeamer shall also have a lien on all the undisputed claims from other contracts of carriage concluded with the customer.

The lien also extends to all transport accompanying documents handed over to CargoBeamer.

In addition, the provisions of Section 440 para. 2 to 4 of the German Commercial Code (HGB) apply accordingly.

(3)

Where, notwithstanding Section V (4), CargoBeamer becomes aware of circumstances indicating a material deterioration in the customer's assets position that was not readily recognizable by CargoBeamer prior to the conclusion of the contract, CargoBeamer's claim against the customer with the service provided by CargoBeamer is due and CargoBeamer can refuse the exercise the above rights pursuant to subsections (1) and (2) until the claims of CargoBeamer have been settled or adequate security has been provided (e.g. deposit of the amount with the depository of the competent district court, provision of a bank guarantee of a German banking institution).

XIV. Applicable law / Place of performance / Place of jurisdiction

(1)

The legal relationship between CargoBeamer and the customer shall be governed by the laws of the Federal Republic of Germany.

(2)

The place of performance for all parties involved shall be the location of the registered office of CargoBeamer, Leipzig.

(3)

The place of jurisdiction for all legal disputes between the parties involved, except private persons, which arise out of or in connection with the contract between CargoBeamer and the customer, or its initiation, shall be Leipzig. The aforementioned place of jurisdiction shall be deemed as an additional, rather than exclusive place of jurisdiction pursuant to Art. 46 (1) CIM.