

## **GENERAL TERMS AND CONDITIONS FOR FORWARDING BY RAIL**

### **of VTG Rail Logistics Deutschland GmbH**

**(Version of: January 2018)**

With respect to the forwarding services to be performed by VTG Rail Logistics Deutschland GmbH ("VTG RL") as well as for the other services directly related to forwarding (hereinafter referred to in the aggregate as the "Forwarding Services"), the following General Terms and Conditions shall apply:

#### **1. Scope / Application of ADSp 2017**

- 1.1 These General Terms and Conditions shall apply to all agreements relating to Forwarding Services. If the Client avails itself of other services of VTG RL, any terms and conditions which otherwise apply shall remain unaffected thereby.
- 1.2 Additional terms and conditions of the Client, or terms and conditions departing herefrom, shall only apply if VTG RL has consented in writing to their application.
- 1.3 With respect to all future transactions or offers in this regard to the Client, where the services in question are Forwarding Services, the version of these General Terms and Conditions of VTG RL, as in effect at the time of contracting shall apply, even if this is not again separately agreed.
- 1.4 By way of supplementation to these General Terms and Conditions of Forwarding, and in line with the rules set forth above, the provisions of the German Freight Forwarders Standard General Terms and Conditions ([German acronym:] ADSp 2017) shall apply.

#### **2. Offers**

Unless otherwise expressly agreed, the binding effect of our offer, in particular in respect of freight prices, shall

- be contingent on the availability of free routes of transport and on open and unimpeded traffic;
- apply only in respect of products referred to in the offer;
- apply only where our waybill specifications as well as all other loading and shipping instructions which we may give are adhered to;
- require that the Freight Cars are processed without exceeding the load limits or loading gauge specifications.

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### **3. Additional costs**

Unless expressly otherwise agreed in the individual case, the Client shall bear any and all additional costs relating to the Forwarding Services, except where the costs have arisen due to the fault of VTG RL.

### **4. Invoicing, Payment, Default by a Client**

- 4.1 Unless otherwise provided, our invoices are payable immediately upon receipt, on a strictly net basis.
- 4.2 Our prices are quoted net of the VAT thereon.
- 4.3 Unless otherwise provided for purposes of freight invoicing, the net weight shown in the waybill shall be deemed controlling. In the event that the effective weight or the number of transport contracts falls below any minimum volume which the Parties have agreed, such minimum volume agreement shall be taken as the basis for the freight invoice.
- 4.4 Where the Client is in arrears of payment for more than 10 days, or where VTG RL's credit insurer downgrades the Client's credit rating or where VTG RL's credit insurer imposes limitations on coverage or refuses coverage, all of VTG RL's existing claims against the Client shall immediately be due and payable. In such case, the Client shall forfeit its right to claim any price reductions and/or cash discounts granted to it. VTG RL shall no longer be bound by the terms of payment set forth in this Agreement, but rather shall be entitled, at its discretion, to premise its performance of future contractual services upon prior settlement of all out-standing receivables due up to such time as well as upon the furnishing of advance payment.
- 4.5 Notwithstanding the provision in sec. 4.4, in the event of default of payment, the Client shall owe default interest at a rate of 9 percentage points over the base interest rate. Dunning fees of EUR 3.00 for each notification shall be charged for dunning notices.
- 4.6 Fax orders: We reserve the right to charge a processing fee of EUR 9.80 per job for every transport order which is not placed by EDI or RSO.

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## 5. Cancellation

- 5.1 Unless otherwise agreed, in the event of a cancellation of booked forwarding (when DB Schenker is not the railway undertaking company), the following cancellation fees shall apply, depending on the time of cancellation (VTG RL's receipt of the cancellation being determinative as to the timing thereof):

Cancellation more than 48 h before planned departure - 25% of price of Freight Car circulation

Cancellation up to 48 h before planned departure - 50% of price of Freight Car circulation

Cancellation up to 24 h before planned departure - 75% of price of Freight Car circulation

Cancellation up to 12 h before planned departure - 100% of price of Freight Car circulation

- 5.2 The Client shall, in addition, be responsible for any special costs arising as a result of a cancellation or re-booking.

- 5.3 When DB Schenker is the supplier, the DB Schenker conditions are guilty.

## 6. Standard Delivery Times

Notices to the Client with respect to standard delivery times for shipments shall not be construed as a delivery period within the meaning of Sec. 423 of the German Commercial Code [German acronym: HGB].

## 7. Freight Cars

- 7.1 VTG RL shall, depending on the agreement in question, perform the transports either by Freight Cars it hires and provides for the Client in consultation with the Client ("VTG RL Freight Cars") or which the Client provides ("Client Freight Cars").

- 7.2 VTG RL Freight Cars may only be used for transporting the contractually agreed cargo. Repairs, modifications to and/or retrofitting of VTG RL Freight Cars may only be made with VTG RL's written consent, except where, under the General Contract of Use for Wagons (GCU) as from time to time amended, no consent of the keeper is required.

- 7.3 VTG RL shall ensure that the VTG RL Freight Cars have valid approvals and are subjected to the regular required inspections. In particular, VTG RL shall ensure that the VTG RL Freight Cars have the necessary approvals for the cargo to be transported.

- 7.4 The Client warrants to VTG RL that it shall only furnish Client Freight Cars from keepers who have acceded to the GCU as from time to time amended.

- 7.5 The Client shall ensure that the Client Freight Cars have the proper approvals and are subjected to the regular required inspections. In particular, the Client shall ensure that the Client Freight Cars have the necessary approvals for the cargo to be transported.

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- 7.6 The Client shall bear an obligation to verify, prior to loading, the proper and contractually compliant condition of the Freight Cars, in particular the tanks and their equipment and fittings and their fitness for their intended use. The Client is advised to note the exclusion of liability in sec. 10.3. In the event of complaints of any type, VTG RL must be immediately notified before the filling process may be commenced.
- 7.7 The Client undertakes to return all VTG RL Freight Cars and tank containers provided by VTG RL to VTG RL in the same VPI state of cleanliness as when they were provided and to bear the costs of cleaning them. The Client shall furnish evidence thereof in the form of a cleaning certificate.
- 7.8 The Parties hereby undertake that they shall only make use of such Freight Cars as are allocated to a certified Entity in Charge of Maintenance (ECM) holding a certification pursuant to the terms of the Commission Regulation (EU) No 445/2011. In particular, this includes the ECM (Entity in Charge of Maintenance) Approval. The Client hereby undertakes that it shall indemnify and hold VTG RL harmless against any and all liability for payment and in damages to third parties, including obligations to pay fines, in connection with any unsuitability, lack of a permit or insufficient labelling of Freight Cars. VTG RL is entitled, but not obliged, to reject Client Freight Cars which do not meet these requirements. Any costs arising therefrom shall be for the account of the Client.

## **8. Loading Regulations**

The Party undertaking loading / the Client shall ensure compliance with the loading regulations of the dispatching yard, in accordance with the UIC leaflet. The foregoing applies both to loaded Freight Cars and to empty Freight Cars in national and in international rail transport.

## **9. Damage Report**

- 9.1 Any partial loss and any externally visible damage to cargo must be reported to the carrier delivering the goods no later than at the time they are delivered.
- 9.2 Damage which is not externally visible must be reported to VTG RL and to the carrier delivering the goods immediately upon discovery, but no later than 7 days from the date the goods are accepted.
- 9.3 In the case of cross-border transports, a determination of the damage must be demanded from the carrier delivering the goods in the form of a report. The Client may only sign the report after consultation with VTG RL.

## **10. Liability of VTG RL**

- 10.1 Unless prevented by mandatory provisions of liability law (in particular CIM in the case of cross-border transports), and unless otherwise provided in these General Terms and Conditions, VTG RL shall bear liability to the Client pursuant to the liability provisions of ADSp 2017.

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- 10.2 VTG RL shall not be charged with liability for disruptions to the infrastructure and/or of actions by the infrastructure operator.
- 10.3 VTG RL shall bear no liability of any kind whatsoever for damages on the basis of loss or diminution in value of the cargo arising due to the fact that the Freight Car (notwithstanding its proper technical condition, where a VTG RL Freight Car is used) is revealed to have been unfit for the acceptance and/or transport of the cargo, except where VTG RL has warranted its fitness to the Client in advance and in writing.
- 10.4 VTG RL shall bear no liability whatsoever for damages on the basis of loss / damage to Client Freight Cars except where the damage was culpably caused by VTG RL or its own staff. VTG RL shall assign such claims as it may have against third parties on the basis of such loss or damage to the Client upon request.

## **11. Passage of the Duty to Ensure Safety**

The Client must at all times ensure that the statutory regulations on duties to ensure safety are adhered to.

In addition, the Client hereby warrants that the assumption and the passing of responsibility for safety is documented and signed.

## **12. Liability of Client**

- 12.1 The Client undertakes to compensate VTG RL for all losses or damage, including damage based on loss or damage to VTG RL Freight Cars and VTG RL's reasonable costs for pursuing its legal rights, and shall indemnify and hold VTG RL harmless against any and all liability and against any and all claims of third parties where the losses, liability or claims arise out of or in connection with
- incorrect loading or unloading or other handling of Freight Cars giving rise to loss or damage in some other way, where such are in the custodial sphere of the Client, the filling agent or the recipient,
  - the cargo,
  - incorrect or incomplete directions of the Client or its vicarious agents or
  - Client Freight Cars.
- 12.2 The Parties hereby agree that Sec. 29.1 ADSp 2017 shall not apply.

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### **13. Hazardous Goods**

- 13.1 Where VTG RL is deemed the consignor and/or recipient in connection with the works and services to be performed for the Client pursuant to the laws and regulations governing hazardous goods under applicable freight law, the provisions of the German Hazardous Goods Regulation for Road, Rail and Inland Waterways Transport (German acronym: "GGVSEB"), the provisions on the application of the Hazardous Goods Regulation for Road, Rail and Inland Waterways Transport Directive ([German acronym: "RSEB") and further hazardous goods directives and/or the rules of Parts 1 to 7 of the Annex to the Regulation concerning the International Carriage of Dangerous Goods by Rail ("RID") or under the applicable hazardous materials laws and regulations of foreign law (such laws and regulations governing hazardous goods under freight law, the GGVSEB, the RSEB and the RID referred to hereinafter collectively as "Dangerous Goods Regulations"), the following agreements of the Parties shall apply:
- 13.2 The Client shall furnish VTG RL with all documents and information in writing required (in particular: the Safety Data Sheet (MSDS) details as to whether the goods are environmentally hazardous under sec. 2.2.9.1.10 RID, and the temperature of the goods during filling and loading) to perform the duties of the consignor under the Dangerous Goods Regulations no later than at the time of placing the order. The Client's obligations under RID 1.4.2.1.3 and Sec 17 GGVSEB shall remain unaffected hereby.
- 13.3 To the extent the Client's Freight Cars are to be used in performing the transport assignment, the Client hereby warrants to VTG RL that they are approved and suitable for transporting the dangerous goods in question. Sec. 7.5 remains unaffected hereby.
- 13.4 The Client hereby warrants to VTG RL that the loaded and empty, uncleaned non-degassed Freight Cars shall be handled in compliance with the Dangerous Goods Regulations (in particular: Chapter 4.3 RID) and labelled as required pursuant to the Dangerous Goods Regulations.
- 13.5 The Client hereby warrants to VTG RL that itself as well as third parties acting within its sphere of obligation (e.g. loaders, fillers and/or recipients) shall comply with the relevant Dangerous Goods Regulations as applicable in each case.
- 13.6 In the event that, in its capacity as consignor and/or recipient within the meaning of the Dangerous Goods Regulations, VTG RL is held liable or subject to sanctions under regulatory law (fines, penalties) by a third-party in respect of a breach of such Dangerous Goods Regulations, the Client hereby undertakes to indemnify and hold VTG RL harmless with respect thereto and to compensate VTG RL for any and all losses arising therefrom, including such legal costs as it incurs in connection therewith, to the extent that the breach is due to a breach of the obligations as set out in these secs. 13.2 to 13.5 which is attributable to the Client.
- 13.7 Until such time as we have confirmed/given notice of the hazardous materials details, our offers shall be deemed non-binding.

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#### **14. Emergency Management**

- 14.1 VTG RL hereby undertakes and is authorised to take all necessary measures in cases of accidents to avert or minimise losses, and in so doing to collaborate with the competent authorities and companies.
- 14.2 The Client hereby undertakes that it shall furnish VTG RL with all information necessary for this purpose and shall, in addition, provide support to VTG RL. VTG RL hereby undertakes that it shall coordinate the measures to be undertaken with the Client to the extent possible.
- 14.3 VTG RL shall be liable to the Client in line with these General Terms and Conditions. The Client shall indemnify and hold VTG RL harmless against all claims of third parties for losses and/or costs except where the losses and/or costs are due to the fault of VTG RL.
- 14.4 VTG RL's 24h emergency number is: **+49 40 236004-38**

#### **15. Withholding tax**

- 15.1 Where the Client bears a statutory duty to withhold tax, it shall be entitled to deduct such tax from the amount of the invoice and remit it to the competent tax authority. The Client furthermore undertakes that it shall forward the original of a relevant tax certificate from the foreign tax office to VTG RL with respect to the tax withheld, within 6 months from the date such tax is paid. In the event that this certification is not produced within the above-referenced period, the Client undertakes that it shall subsequently pay a sum to VTG RL equal to the withheld tax within 15 days' time from the date the 6-month period expires.
- 15.2 In the alternative, VTG RL shall be entitled to apply a surcharge to the contractual invoice amount, which is intended to ensure that following the withholding of such tax, the contractual invoice amount is disbursed to VTG RL strictly net, without deductions.
- 15.3 The Client undertakes that in the event that it is obliged to withhold tax, it shall notify VTG RL in a timely manner of such obligation and of the scope thereof prior to invoicing.

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