

## **General Terms and Condition of ERC Europe GmbH as principal**

### **1. Validity**

These terms and conditions, which can be viewed under <http://www.erc.or.at/agb> at any time, apply exclusively when ERC Europe GmbH ("ERC" or "Principal") issues freight forwarding and transport orders to the Logistics Services Provider "LSP".

### **2. Applicable provisions**

The validity of the CMR is expressly agreed for all transports, even if the scope of application of Art. 1 CMR or § 439a UGB was not fulfilled. For domestic, national German transports, the provisions of the German Commercial Code (HGB) apply. For domestic, national German transports, the increased liability of 40 special drawing rights per kilogram of damaged or lost goods shall be deemed agreed. The LSP can under no circumstances rely on its own terms and conditions, even if these were included in order confirmations. There are no conditions of the LSP that contradict these conditions. In particular, the LSP can not rely on the validity of the AÖSp or other terms and conditions. The AÖSp or other terms and conditions are therefore not applicable. The LSP agrees that these terms and conditions apply to all future transactions, regardless of a repeated explicit reference, particularly in verbal orders and orders via e-mail or telephone.

### **3. Cancellation, non-acceptance of freight**

The transport order and the terms and conditions are binding, if no protest within one hour from the time of transmission to the LSP is made. If the LSP does not accept the transport order and these terms and conditions, they are to be rejected free of charge within 1 hour, by writing the note "STORNO" across all pages and forwarding this rejection-document to the e-mail address / fax number of the responsible contact person at ERC Europe GmbH. In the event of cancellation after the expiry of 1 hour, failure to receive the goods or to execute the transport order by the LSP, the principal is entitled to hire a replacement vehicle and to charge a contractual penalty in the amount of the freight to be paid for the replacement vehicle, to the LSP. Any further claim for damages remains unaffected.

In any case, 25% of the freight price will be charged in case of order cancellation.

### **4. Prohibition of transshipment, additional load, passing-on**

Transshipment or additional loads are invariably inadmissible for complete loads.

Furthermore, a ban on additional loading applies without exception, unless the principal orders this in writing. The commissioning of a subcontractor is only permitted with the express written consent of the responsible dispatcher of the principal. If the use of subcontractors is exceptionally permitted by the principal, they must first be strictly checked

by the LSP and must have already carried out several orders (at least 5) properly for the LSP. The assignment of cargoes to subcontractors who have not previously had business relations with the LSP, in particular via freight exchanges, is prohibited without exception. A stacking of the goods (eg to create additional cargo space, etc.) is also expressly prohibited! For the violation of one of these provisions, a contractual penalty of € 5,000.00, regardless of the actual amount of damage, shall be agreed regardless of fault, excluded from the judge's mitigation right. Any further claim for damages shall not be affected thereby. Cargoes may under no circumstances be transshipped into a warehouse / temporary warehouse without the express permission of the principal. In the event of a violation, a contractual penalty of 95% of the freight will be charged.

### **5. Load securing means**

The LSP must carry a sufficient number of cargo securing aids (underlay woods, etc.) and cargo securing means (lashing chains and lashing straps, clamping bars, etc.), otherwise a deficiency of the vehicle is given. For the requirement of load securing, it is imperative that the vehicle is fully equipped with side wall boards for curtainsider trailers and locking and clamping rods in box trailers according to DIN. Furthermore, at least underlay wood, all side boards, 2 clamping beams, 2 locking beams, 20 lashing straps with long-lever ratchets, 12 lashing points on the floor, 24 edge protectors and sufficient anti-slip mats are required for a safe transport. In case of non-compliance of the above agreements / instructions, the principal reserves the right to have the vehicle equipped with the appropriate cargo securing means at the expense of the LSP. If this is not possible, the principal reserves the right to use a replacement vehicle and to charge the LSP a no-fault penalty in the amount of the freight payable for the replacement vehicle. Any further compensation remains unaffected. For all subsequent costs incurred by the LSP, the LSP is fully liable! In any case, a processing fee of € 35,- will be charged for these administrative expenses. Ensuring the proper stowage of cargo as well as load securing is without exception the responsibility of the LSP; This applies even if the sender has actually carried out the loading himself.

### **6. License plate**

if the loading order contains "DUMMY" license plates or no license plates at all, they are not correct or change, the LSP is obliged to inform the principal of the correct license plate immediately. This way the LSP avoids delays in loading and processing the freight bill.

### **7. Loading equipment exchange**

The carrier (as a LSP) is obliged to immediately exchange the loading equipment (pallets, lattice boxes, meat hooks, plastic boxes, etc.) both at the sender and at the consignee without exception; he also carries the so-called exchange risk. The carrier must therefore carry a sufficient number of proper and exchangeable loading equipment. The fee for this exchange risk is already included in the freight price. For each exchange of loading equipment, a corresponding loading equipment note with the freight invoice must be sent to the principal. In the case of missing loading documents, the principal is forced to assume that the LSP has not fulfilled his obligation. In the event that the LSP has not received any loading equipment at a place of unloading, the principal must be informed immediately so

that he can clarify the situation while the vehicle is still at the place of unloading. If this notice is not made, or not made in a timely manner, the LSP is responsible for the procurement of the non-exchanged loading equipment. In the event of an improper performance of the loading equipment exchange, the carrier as the LSP shall pay € 18 for each non-exchanged or returned pallet, € 100 for each lattice box, and the usual retail price for other loading devices. In addition, a handling fee of € 30, - per transport and repatriation costs for the non-exchanged loading equipment in the amount of € 1, - per kilometer up to the return or pick-up place, at which the exchange was omitted, are to be paid. The return of the packaging equipment by the LSP within 4 weeks is part of the contract and is included in the freight. In any case, the principal is entitled to these claims even without the fault of the carrier. Furthermore, the LSP is obligated to keep traceable records of the pallet exchange for each individual transport. These records or documentation / evidence must be sent immediately after the transport, at the latest together with the freight invoice. Attention: only original pallet documents are accepted! The freight is not due before the transmission of these documents. In the case of refrigerated transport, the due date of the freight bill additionally requires the transmission of a readable temperature record. In the case of missing documents or loading material records, a contractual penalty regardless of fault, excluded from the judicial mitigation right, shall be due in the amount of the freight per transport order. This means the LSP is then no longer entitled to freight pay. Any additional claims for damages remain unaffected in all cases.

In general Düsseldorf pallets are not to be exchanged, however, the LSP must document the pallet movements as he does with the Euro pallets and send the corresponding loading equipment documents to the principal. If, contrary to the instructions of the principal, the LSP should receive Düsseldorf pallets at the unloading place, the LSP shall return them to the sender within 4 weeks. For non-timely returned Düsseldorf pallets, the principal will charge Euro 8, - per pallet to the LSP.

#### **8. Freight invoices, term of payment, proof of delivery**

Freight invoices of the LSP are only due when the invoice together with the original transport documents (CMR bill, delivery notes, pallet documents, etc.) has been demonstrably transmitted to the principal. The risk for the transmission of these documents is borne by the LSP. The LSP is aware that billing with customers of the principal can only take place if proof of delivery is sent complete and in a timely manner. The LSP is therefore obligated to send all documents of the transport, such as delivery notes, CMR bills, pallet documents, etc., not later than 7 days by fax, by e-mail, or the original to the principal. In case of failure to meet this deadline, without prejudice to other rights, a processing fee of € 30, - is due. The term of payment is 60 days, whereby the course of this 60-day period begins only when the principal completely receives the invoice together with the transport documents mentioned above.

#### **9. Demurrage**

The assertion of demurrage is excluded in case of a waiting time or standing time at the sender or consignee etc. up to 24 hours. Saturdays, Sundays and public holidays are not taken into account. These are always free of charge. Demurrage can never be claimed for these days. Furthermore, the assertion of a compensation or a claim for damages or other costs in case of a cancellation of the order by the principal within 10 hours from placing the

order is excluded. After the agreed 24-hour demurrage free period, a maximum amount of € 150, - demurrage per day / per truck may be charged if the principal is indeed at fault, with the LSP carrying the burden of proof. The demurrage is, however, limited in terms of duration to a maximum of 3 days.

#### **10. Permissions and transport obstacles**

The LSP has to ensure on his own, that the transport can be carried out without any obstacles and must first check whether approvals or customs measures (of whatever kind) etc. are to be taken (execution of transit procedures, etc.). The LSP must obtain all relevant customs information from the principal and is liable for the proper customs clearance and all related obligations. The costs incurred by the LSP through customs clearance are already included in the freight price. He therefore has no claim for compensation for costs incurred in customs clearance (tariffs, fees, etc.). Furthermore, the principal is not liable for damages caused by false information in the customs documents. It is assumed that the LSP has the necessary permissions and authorizations for the transport. This also applies to all countries and their provisions, which are part of the transport. In the event of unforeseen delays in transport, transport damage or loss of transport goods, the principal must be notified immediately by telephone and in writing. The LSP indemnifies and holds the principal harmless from any resulting damages. In the event of obstacles or difficulties at the loading or unloading place or in case of receiving or loading delay, the LSP must immediately contact the principal for obtaining instructions. In case of delays and / or obstacles of any kind, the principal must be informed immediately.

#### **11. Offsetting, exclusion of liens and retention rights**

The principal is entitled to freight cuts in case of poor performance and to set off against counterclaims (for whatever legal reason). Therefore, any offsetting or retention ban (especially § 32 AÖSp) is expressly rejected. The LSP shall not be entitled to a right of lien or retention in connection to any of the goods handed over to him in the course of the performance of the contract. Any rights of lien and retention are therefore expressly excluded. The LSP is obliged to make corresponding provisions in the contracts with the subcontractors that he contracts (if the principal has allowed the use of subcontractors in writing). The LSP can not offset any claims against claims of the principal.

#### **12. Obligation to report damage**

The LSP is obligated to report any damage to the principal and the transport liability insurance of the LSP immediately. For damages exceeding the amount of € 2,000, the LSP must immediately commission an expert or surveyor to assess the damage. The LSP must immediately contact the principal for obtaining instructions, otherwise he is liable for the resulting damages. Furthermore, the LSP is obliged to immediately provide all information that could be required for further claims processing by the principal or the principal's insurer.

#### **13. Dangerous goods**

The LSP undertakes, in the case of dangerous goods transports, only to use drivers who are

trained according to ADR and carry a valid ADR certificate with them. The vehicles must be equipped for the transport of dangerous goods. In particular, all conceivable equipment requirements must be met (sewerage cover, shovel, broom, fire extinguisher, binding agent, collection container, respiratory protection, etc ...). In the case of transport of dangerous goods (ADR), the LSP is also liable for the proper declaration in the freight documents, correct labeling of the cargo as well as the legally compliant labelling of the vehicle. The LSP is also responsible for the carriage of the necessary transport documents. The LSP is obliged to ensure compliance with all regulations on dangerous goods, in particular ADR, as well as all national regulations in the countries affected by the transport. The LSP confirms the existence of a dangerous goods officer in his company.

#### **14. Vicarious agents**

The LSP is obliged to inform his employees and other vicarious agents, in particular subcontractors, of the obligation to comply with the provisions of these terms and conditions and to ensure with the diligence of a proper carrier that these safety measures are actually complied with. The LSP must also ensure that the employed truck drivers have all permits and / or authorizations for foreign employees and are employed in accordance with the laws of the country in which the vehicle is registered. The driver has to carry the evidence and documents required by applicable law (in particular work and residence permits) with him. The LSP undertakes to only provide drivers who have at least such knowledge and skill of the language at the loading and unloading place, that they are able to communicate sufficiently with the consignor and the consignee as well as the authorities. The LSP confirms that the drivers have a valid international driving license and a certificate in accordance with Directive 2003/59 / EC (EU initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers). The driver must be specially trained for all conditions of transport and must carry the necessary certificates with him. In particular, the requirements in the field of ADR and StVO, load securing and in the field of safety regulations / safety clothing must be particularly fulfilled. For safety reasons, the driver must always wear safety shoes, a helmet, long outer clothing and a safety vest for all loading and unloading activities (unless safety regulations at the loading or unloading place make higher demands). In the case of ADR transports, the driver must carry with him / put on the necessary safety equipment. In case of non-compliance with the above Agreements / instructions the principal reserves the right to have the vehicle / driver equipped by the sender at the LSP`s expense. If this is not possible, the principal is entitled to hire a replacement vehicle and to charge the costs of this hiring, to the LSP. For all resulting consequential costs, the principal holds the LSP fully liable! In any case, a processing fee of € 35, - will be charged for these expenses.

#### **15. Refrigerated transport**

In the case of temperature-controlled transports, it must be ensured that the temperatures specified by the principal are to be adhered to and permanently determined and recorded by suitable measuring and monitoring equipment. The vehicle must be equipped with a functioning temperature recorder. Before accepting the goods, the LSP must check whether the goods to be received have been sufficiently pre-cooled (the LSP carries the burden of proof). For this he has to carry appropriate measuring devices. Refrigerated transports may only be carried out with a technically flawless and regularly maintained refrigerated vehicle.

The LSP is obliged to keep temperature records for a period of 3 years from the date of delivery of the goods and hand them over to the principal upon request. In addition, copies of the corresponding recording protocols must be sent to the principal in the course of invoicing, in addition to the documents mentioned in these terms and conditions. All measuring instruments must be checked in specified intervals and according to defined recognized standards / methods and, if necessary, adjusted or calibrated. The results of the inspection, adjustment and calibration are to be transmitted to the principal upon request. Refrigerated vehicles and box vehicles must be equipped with sufficient fixing rods and other securing equipment. For refrigerated transports, sufficient air circulation must be ensured. If there are no temperature records, the freight claim is lapsed in the full amount. If the transport temperature can not be derived from the loading order, the LSP must contact the principal to obtain instructions regarding the transport temperature and the correct operating setting of the cooling unit.

#### **16. Guard duty / security measures**

When accepting the order and taking over the cargo, the LSP undertakes to properly and continuously guard the loaded vehicles, trailers and / or semitrailers during any parking or stop, during the time between the acceptance of the cargo for carriage and its delivery. The LSP is obligated to ensure that the loaded vehicles or transport units are properly locked at every (even short-term) parking or stop. The used vehicles or transport units must further be equipped with 2 independent - the state of the art and functioning - anti-theft safety devices, which must be demonstrably activated at every, even if only short-term parking or stop. The rear doors of the trailers / containers must always be demonstrably locked (at least with a massive lock), so that external access by third parties is prevented in any case. After each break or stop, the intactness of the lock or the outer walls of the cargo space must be checked. The LSP must ensure that loaded vehicles (trailers, semitrailers, swap bodies, containers, etc.) are always properly guarded during parking and stops and are parked exclusively in a lighted and secured parking space or secured (fenced and adequately guarded) premise, at night, on weekends and public holidays. In general, only guarded parking spaces may be used. For example, a list of guarded parking spaces is available at [www.iru.org](http://www.iru.org), [www.ania.it](http://www.ania.it). Route planning must be carried out in such a way that no breaks, overnight stays or other stopping procedures (except short-term refueling operations) in unguarded and unsecured parking spaces are required, provided the prescribed driving and rest periods are observed. If necessary, the LSP is obliged to reserve guarded parking spaces in advance and to assign/organize the driver accordingly. The isolated parking of loaded trailers / semitrailers / swap bodies (without a motor vehicle) as well as the parking of the transport vehicle in a non-secured area is prohibited without exception (even in a guarded parking lot) and there is usually no insurance coverage for this with conventional insurance (!!).

For all transports to the United Kingdom, the driver has to seal the cargo due to the current risk in connection to migration and lock the truck with a lock in order to avoid the entry of persons. Due to the current situation, parking within a radius of 100 km of Calais is expressly prohibited. The last 100 km to the port must be driven without stopping. It is also the duty of the driver to make sure that no persons have entered the vehicle. The LSP is obliged to adhere to the requirements of the British home office and to carry out the necessary "vehicle security checks". The safety checklist for the vehicle can be found at [www.gov.uk/government/publications/vehicle-security-checklist](http://www.gov.uk/government/publications/vehicle-security-checklist).

## **17. Traffic liability insurance**

The LSP undertakes - before accepting a transport- to present the insurance policy to the principal as a confirmation of sufficient (minimum sum insured: € 600,000, - per claim) and in Austria customary insurance unsolicited. This insurance must also cover a liability according to Art. 29 CMR and damages that occur during loading and unloading operations. Should the principal not be in possession of the insurance policy of the traffic liability insurance prior to the transport, the principal is entitled to obtain insurance coverage for this transport in favor of the LSP; in this case the principal is entitled to deduct 4% (at least however € 40) from the agreed freight price. The reimbursement of the insurance premium is no longer possible in retrospect. The LSP is solely responsible, that the above mentioned insurance policy is available to the principal. For cabotage transports, the minimum insurance sum must correspond with the respective national legal requirements. The principal must be informed immediately of any changes.

## **18. Due diligence**

The LSP is obliged to select, supervise and monitor employees and other vicarious agents with the care of a proper carrier. When carrying out the order, the consumption of alcohol and / or drugs is strictly prohibited. The LSP must ensure the clean appearance, personal hygiene and daily care of the driver. Before handling unpackaged products, hands must be washed and clean gloves have to be worn. The LSP must also ensure that the used vehicle is in perfect technical condition and in accordance with the state of the art. In particular, the vehicle used must be preventively maintained and regularly inspected. Only flawless vehicles, trailers, semi-trailers, tanks, swap bodies / containers, cranes, technical equipment and other equipment suitable for the respective order may be used. Unless otherwise agreed in the transport order, the vehicle used for the commissioned transport must meet the requirements of a covered vehicle according to CMR. Damage to tarpaulins and structures, condensation water in the cargo space, not cleaned trailer platforms and if the cargo area is not odorless, can lead to vehicle rejections at the loading place and offsetting costs and damages. The cargo area must be cleaned so that it is ensured that there is no impairment of the cargo. For tank trucks, a cleaning certificate must be obtained from a certified cleaning company prior to loading. The provisions of the ADR, the StVO as well as the KFG must be fully complied with. The vehicle must be swept clean, clean and odorless, and the tarpaulin must be absolutely tight. The minimum height of the inside of the trailer must be 2.70 meters. The legally permitted maximum gross weight of the truck must not be exceeded. The LSP must ensure that the maximum permissible weights per axle are not exceeded and the cargo is properly distributed on the cargo platform. In case of non-compliance with the above Agreements / instructions the principal reserves the right to have the vehicle equipped properly by the loader at the LSP's expense. If this is not possible, the principal is entitled to hire a replacement vehicle and to charge a contractual penalty in the amount of the freight to be paid for the replacement vehicle, to the LSP. This contractual penalty is excluded from the judge's mitigation right and is due regardless of fault. Any further claim for damages remains unaffected. In any case, a processing fee of € 35, - will be charged for these expenses.

## **19. Driving times, wages**

The LSP is solely responsible for complying with all legal requirements regarding driving times and rest periods as well as statutory compensation of the driving staff. This applies in particular to all the provisions of the Wage- and Social Dumping Control Act (LSD-BG), provisions of the German Minimum Wage Law (MiLoG), which provides for a minimum wage of currently € 8.50 gross per hour for transports from, to and through Germany, as well as if applicable, other applicable regulations on minimum wages. The LSP is obliged to inform his employees and other vicarious agents, in particular subcontractors, demonstrably (in writing) of the obligation to comply with the provisions of the MiLoG and to ensure with the diligence of a proper entrepreneur that these provisions are actually followed. Upon request, the LSP must immediately provide the principal with proof of compliance with these legal provisions. The LSP undertakes to indemnify the principal of all expenses / costs / claims / claims (regardless of the legal grounds) that arise in connection with the breach of this agreement or the non-compliance with the provisions of the MiLoG (including the regulations issued by the German Ministry of Finance in this matter), in the full amount. This applies particularly to the emergence of administrative costs as well as representation and consulting fees. The LSP is obliged to inform his employees and other vicarious agents, especially subcontractors, demonstrably (in writing) of the obligation to comply with all provisions to combat illegal employment in road haulage.

## **20. Waiver of objection based on "Lohnfuhrvertrag"**

The LSP expressly waives the objection on the basis of the "Lohnfuhrvertrag"; should the contractual relationship actually be classified as a "Lohnfuhrvertrag", the LSP expressly agrees to subject this contractual relationship to the liability provisions of the CMR Convention.

## **21. Customer protection**

Customer protection is agreed; upon acceptance or passing on of orders or other contact with customers of the principal as well as all companies that are involved in the transport order in any way, all claims of the LSP against the principal lapse. In addition, a penalty of € 35,000 regardless of the actual amount of damage and fault and excluded from the judge's mitigation right, is agreed for the breach of this competition or customer protection clause. Any further claim for damages shall not be affected thereby.

## **22. Confidentiality**

For all transports, there is a confidentiality obligation that strictly prohibits the LSP from disclosing any information that becomes known to him in the course of the order execution, to third parties. In Connection to this, the LSP is also liable for all vicarious agents. In the event of unauthorized disclosure of information to third parties, a contractual penalty regardless of fault in the amount of € 10,000, - which is excluded from the judge's mitigation right - becomes due. The principal expressly reserves the right to assert further damage.



### **23. Fixed prices**

The prices quoted in the offer or order of the principal are fixed prices. Surcharges or expenses, costs (of any kind) are not accepted.

### **24. Unloading according to waybill / transport order**

The goods may only be unloaded at the recipient address or delivery address specified in the transport order / waybill. Changes may only be made with the explicit approval of the principal. If the details in the waybill deviate from the transport order, this must be coordinated with the principal prior to execution.

### **25. Loading dates, delivery times**

The transport order is binding, unless an objection occurs within one hour from receipt by the LSP. The LSP has to arrive at the loading place with his vehicle at the agreed loading date and time. If the vehicle is not provided, a contractual penalty of 80% of the freight (regardless of fault), which is excluded from the judge's mitigation right and is independent of the actual damage, is due. For the late arrival at the place of loading a strict penalty of € 100, - per hour of delay is due. Any further claims remain unaffected in both cases.

Unloading dates are deemed to be delivery times according to Art. 19 CMR. The loading and unloading dates are absolute fixed dates. The LSP acknowledges that adherence of the delivery dates is particularly important to the principal and he therefore has a particularly important interest in meeting the delivery deadlines. In case of delays of any kind, the principal must be informed immediately. If the LSP does not comply with this obligation, the principal is entitled to deduct 30% of the freight.

For a delay in delivery, a contractual penalty in the amount of € 100, - per hour is due, regardless of fault.

Any further claims remain unaffected. Furthermore, in the event of a delay in delivery, a processing fee of € 75, - will be due. Before accepting the transport order, the LSP must check whether the delivery deadline can be met.

### **26. Loading and unloading, load securing**

The LSP is obliged to carry out the loading and unloading. Damage due to circumstances during loading or unloading falls under the liability of the LSP. The LSP must ensure that the cargo is properly secured and complies with the legal requirements. In particular, the LSP must meet the requirement for traffic safety as well as operational safety of the transport and load securing. The duty to secure loads is the sole responsibility of the LSP, even if the sender has loaded the goods. The LSP must determine all sources of damage before carrying out the transport and, in particular, check the suitability for transport of the loading / stowage and the packaging of the goods. If necessary, sources of damage must be eliminated or the principal is to be contacted for obtaining instructions. When taking over the goods, the LSP must check the number of pieces, the condition and the weight of the transported goods. In the event of deviations in quantity, quality and temperature at takeover, from those specified by the principal, as well as in the event of defective packaging, stowage and in the event of impossibility to inspect, the loading must be stopped immediately and further carried out only after consultation and explicit instructions of the principal. In the event of any discrepancies, the principal must be informed immediately and

corresponding reservations must be made in the waybill. The takeover receipt is the essential proof of the number of packages taken over by the driver at the respective loading place.

When loading products of different kinds in one transport unit, these products are to be clearly separated and it is particularly important to ensure that there is no cross-contamination caused by incompatible products.

### **27. Statute of limitations**

All claims against the principal, regardless of the legal grounds and regardless of the degree of culpability, become statute-barred within 6 months. The run of the limitation period, in all cases, begins with the time of the issue of the respective transport order.

### **28. Contractual language**

The contract language is both German and English. There are German and English versions of these terms and conditions. In the event of interpretation difficulties, ambiguities and contradictions, the wording of the German version is binding.

### **29. Jurisdiction**

This agreement is governed by Austrian law, excluding the provisions of the international private law (IPR).

Any disputes between the parties arising out of or in connection with this agreement including, without limitation, disputes on the existence of this agreement or on separate contracts entered into by the parties in execution of this agreement, shall be decided exclusively by the court in A-6330 Kufstein, that is competent as regards the subject matter of the dispute.

This agreement is valid without confirmation!