



# GENERAL TERMS AND CONDITIONS OF BUSINESS

STATUS AS AT 1 JANUARY 2017

*More than just a transport.*

## 1 SUBJECT MATTER OF CONTRACT

- 1.1 Kombiverkehr Deutsche Gesellschaft für kombinierten Güterverkehr mbH & Co. KG, referred to hereinafter as Kombiverkehr, arranges the rail carriage of laden and unladen transport units in road-rail Combined Transport including the associated complementary legs of carriage by sea and road.
- 1.2 With the exception of clause 1.5, these General Terms and Conditions of Business apply to all freight forwarding contracts concluded by Kombiverkehr insofar as not stipulated otherwise by binding requirements or legal provisions overriding these GTC.
- 1.3 Transport units are deemed to be all freight containers and vehicles that are capable of carriage by rail, such as

- freight containers with or without upper fittings for toplift handling (ISO containers, non-ISO containers, swap bodies);
- semitrailers with or without grappler pockets for handling with grapplers or other handling methods;
- articulated trucks, tractor units, semitrailers, trucks and trailers.

The transport units must meet the requirements for lifting and rail operations set out in the corresponding ISO and EN standards and UIC leaflets. If respectively applicable, transport units must be labelled in accordance with the ISO 6346 and EN 13044 standards.

- 1.4 These General Terms and Conditions of Business do not apply for contracts with consumers within the meaning of section 13 of the German Civil Code (BGB).

- 1.5 The application of customer's general terms and conditions is excluded.

## 2 DUTIES OF THE PARTIES

- 2.1 Under the terms of the freight forwarding contract, Kombiverkehr undertakes to arrange the rail carriage of transport units to the agreed place of reception and the necessary transshipments.
- 2.1.1 Rail carriage is the carriage of transport units by a railway company. It begins with the depositing of the transport unit on the wagon and detachment from the handling device and ends with the allocation of the wagons for unloading. All transport units are carried on open wagons.
- 2.1.2 Transshipment is the reloading of transport units between the participating modes of road-rail transport, where appropriate with the interposition of storage in the ordinary course of transit. Transshipment begins as soon as the handling device is lowered onto the transport unit and ends as soon as the deposited transport unit has been detached from the handling device.
- 2.2 If agreed in the freight forwarding contract, Kombiverkehr will also arrange the seaborne leg of the carriage of transport units. Carriage by road will always be performed on the basis of a separate freight forwarding contract.
- 2.3 The customer is both the sender and the recipient of the transport unit. The customer either itself or through a duly authorised representative (consignor) shall deliver the transport unit on the day of transport to the transshipment site provided for shipment and either itself or through a duly authorised representative (collector) will collect it on the day of receipt (day at which pick-up is first

possible) from the transshipment site of the agreed place of reception.

- 2.4 The customer must transmit to Kombiverkehr in good time full and correct details relating to carriage that are of relevance for execution of the contract. This includes the transmission of certificates, other documents or information for the due performance of cross-border carriage in accordance with customs regulations.

### **3 ACCEPTANCE OF THE TRANSPORT UNIT**

- 3.1 The transport unit shall be delivered on the date of transport either by the customer or by a duly authorised representative.
- 3.2 Shipping order forms signed by Kombiverkehr or its local representatives or any other transfer receipts issued upon consignment only establish a presumption that the customer has delivered a transport unit without any safety defects – that are visible from the ground – for subsequent rail carriage. No further presumption of conformity in respect of the external condition of the transport unit or the goods contained in it shall exist.
- 3.3 Subject to available and unreserved capacity, transport units consigned before the agreed date of transport may be stored at the transshipment site for an extra charge. Storage may be based on a separate warehousing agreement. In this case the customer expressly permits storage on the premises of the respective operator of the transshipment site or of a third party. Storage shall end upon transshipment of the loading unit onto the wagon.

- 3.4 Transport units will be stored or warehoused outdoors.

### **4 DELIVERY OF THE TRANSPORT UNIT**

- 4.1 Delivery is effected by transfer of the transport unit to the customer or a duly authorised representative (collector) at the place of reception.
- 4.2 Transport units not collected on the day of receipt will be stored in the transshipment site for an additional charge.<sup>1</sup> However, Kombiverkehr may also have the transport units placed into storage in accordance with section 419 (3) sentence 2 HGB without being obliged to obtain instructions beforehand. In the case of warehousing, the customer expressly permits placement into storage on the premises of the operator of the transshipment site or of a third party.
- 4.3 If a transport unit stored pursuant to clause 4.2 sentence 1 is not collected within ten work days (Monday through Saturday) from the day of receipt, Kombiverkehr will have the right to take further measures pursuant to section 419 (3) HGB without being obliged to obtain instructions beforehand. Clause 4.2 sentence 3 shall apply accordingly.
- 4.4 Transport units will be stored or warehoused outdoors.

<sup>1</sup> Details of the local storage charges respectively applicable are published on our website [www.kombiverkehr.de](http://www.kombiverkehr.de) > Transport > Terminals & Agencies.

## 5 CHARACTERISTICS OF THE TRANSPORT UNIT AND GOODS, CUSTOMER LIABILITY

- 5.1 In handing over the transport unit, the customer is liable for ensuring that such unit and the goods it contains are capable of combined transport, secured for transport and operationally safe, whether or not the customer is at fault.<sup>2</sup>
- 5.2 When taking delivery, Kombiverkehr may inspect the transport unit from the ground while it is still on the delivery vehicle. Kombiverkehr shall not be obliged to inspect the goods loaded in the transport unit, their packing, stowage and fastenings or the information provided by the customer in that regard or to inspect the documents delivered.
- 5.3 When preparing receiving reports (check-in), only those external damages visible from the respective inspection position will be recorded which extend beyond normal wear and tear.
- 5.4 The customer will be liable for the correctness and completeness of the details transmitted for execution of the order, whether or not it is at fault.

## 6 DANGEROUS GOODS

- 6.1 Prior notification of transport units with dangerous goods must be made if this has been indicated in the schedules or in any other way.

- 6.2 Transport units loaded with permissible dangerous goods or empty uncleaned dangerous goods transport units must comply with all dangerous goods regulations governing carriage by rail, road and, where appropriate, sea.
- 6.3 Insofar as not stipulated otherwise by binding requirements or provisions overriding these GTC, the customer, in delivering the transport unit and whether or not it is at fault, is liable for
  - compliance with the provisions set out in clause 6.2;
  - providing full and complete details concerning the dangerous goods and the correct details in the order data pursuant to the regulations governing the carriage of dangerous goods;
  - the transmission of any other documents that may be necessary;
  - the communication of precautionary measures insofar as these are prescribed by law or are otherwise necessary;
  - the attachment of the corresponding dangerous goods labels on the transport unit in a manner appropriate for transport and resistant to weathering.
- 6.4 The customer is under obligation not to consign the transport unit before the day of transport and to collect it on the day of receipt. If this is not the case, Kombiverkehr may in accordance with section 410 (2) HGB unload, place into storage, return or, to the extent necessary, destroy or render harmless the dangerous goods without becoming liable for damages therefor.

<sup>2</sup> For detailed information on securing cargo in Combined Transport, please refer to VDI Guideline 2700 sheet 7 and the shipping guidelines of the railway companies as well as the notifications issued by Kombiverkehr in context with commencement of traffic services.

## 7 PAYMENT, SET-OFF

- 7.1 Payment of the remuneration for the services arranged/provided by Kombiverkehr will be based on the terms and conditions published separately by Kombiverkehr.<sup>3</sup>
- 7.2 Any set-off or retention of payment against claims arising from the freight forwarding contract and non-contractual claims associated with it is excluded with the exception of counterclaims that have either been determined without further legal recourse or are not contested by Kombiverkehr.

## 8 LIABILITY

- 8.1 Kombiverkehr's liability derives from the statutory provisions and the conditions set out below. If fixed costs are agreed, Kombiverkehr will be liable in respect of the carriage as a freight carrier in accordance with the following provisions, whereby general German law shall apply in addition:
  - 8.1.1 In the case of inland carriage by rail and for all transshipment activities and storage in the ordinary course of transit, Kombiverkehr's liability shall be governed in accordance with sections 407 et seq. HGB. This shall apply also if these activities are performed outside the Federal Republic of Germany. The same shall apply for inland carriage by road.
  - 8.1.2 In the case of losses or damage occurring during a cross-border carriage by rail, liability shall be governed in accordance with the ER/CIM in derogation of clause 8.1.1. If a case of damage occurs within the scope of application of the SMGS, its regulations shall apply in place of the ER/CIM.

Transshipment activities or storage do not fall under carriage by rail.

- 8.1.3 In the case of losses or damage occurring during a seaborne leg of carriage, liability shall be governed in accordance with sections 498 et seq. HGB in derogation of clause 8.1.1.
- 8.1.4 If the location of the loss or damage is unknown, liability shall be governed in accordance with sections 407 et seq. HGB.
- 8.2 In accordance with section 431 (1), (2) and (4) HGB, Kombiverkehr's liability under freight contracts for the loss of or damage to goods shall be limited to 8.33 special drawing rights (SDR) for each kilogram of the gross weight of the goods.

If the ER/CIM applies, liability for damage to goods shall be limited to 17 SDR for each kilogram of the gross weight of the goods in accordance with articles 30 and 32 ER/CIM.

If sections 498 et seq. HGB apply, the liability for damage to goods pursuant to section 504 HGB shall be limited to 666.67 SDR for the item or unit or 2 SDR for each kilogram of the gross weight of the goods.

- 8.3 The liability under freight legislation for exceeding delivery periods derives from the statutory provisions. The published timetables are not delivery schedules/deadlines.
- 8.4 Insofar as not stipulated otherwise by binding requirements or provisions overriding these GTC, the liability for damages other than to goods, in particular pursuant to section 461 (2) HGB but with the exception of personal injury and damage to

<sup>3</sup> These can be retrieved from our website [www.kombiverkehr.de](http://www.kombiverkehr.de) > Services > Downloads.

property belonging to third parties, shall be limited in amount to three times the sum that would be payable in a case of loss or damage, but not exceeding a maximum ceiling of EUR 100,000 per case of damage. This shall be without prejudice to sections 431 (3), 433 HGB.

**8.5 Insofar as not stipulated otherwise by binding requirements or provisions overriding these GTC, the liability for damage to goods shall be limited to EUR 1 million per case of damage and EUR 2 million per damaging event or to 2 SDR for each kilogram of lost or damaged goods, whichever is the higher amount. If there is more than one claimant per damaging event, Kombiverkehr's liability shall be proportionate to individual claims.**

8.6 These limitations shall also apply to any non-contractual liability.

8.7 In the case of liability pursuant to sections 498 et seq. HGB, it is agreed in accordance with section 512 (2) no. 1 HGB that Kombiverkehr is not responsible for any fault or neglect on the part of its servants or agents or of the ship's crew under the conditions set out therein.

8.8 Insofar as Kombiverkehr in accordance with section 419 (3) HGB is liable not only for the selection of the warehouse operator, the statutory provisions of sections 467 et seq. HGB shall apply for ordered warehousing.

8.8.1 Liability for ordered warehousing shall be limited to:

- 8.33 special drawing rights (SDR) for each kilogram of the gross weight of the goods in analogous application

of section 431 (1), (2) and (4) HGB in the case of damage to goods;

- not more than EUR 25,000 per case of damage in the case of damage to goods;
- EUR 25,000 per case of damage for damage other than to goods, with the exception of personal injury and damage to property belonging to third parties;
- EUR 2,000,000.00 per damaging event for damage other than to goods, with the exception of personal injury and damage to property belonging to third parties, whereby if there is more than one claimant Kombiverkehr will be liable in proportion to their claims.

8.8.2 Upon payment of an agreed supplement and prior to the warehousing of the goods, the customer may specify a value in text form (section 126 BGB) for an increased liability that differs from the maximum amounts stipulated. In this case, the specified value replaces the relevant maximum amount.

8.9 The liability limitations set out in clauses 8.8.1 and 8.4 shall not apply if the loss or damage was caused by the intent or gross negligence of the institutions of Kombiverkehr or its vicarious agents. These liability limitations shall further not apply if the loss or damage in the case of ordered warehousing was brought about through the grossly negligent or intentional infringement of material contractual obligations and otherwise through the negligent or intentional infringement of material contractual obligations, whereby such claims are limited to predictable and typical damages.

- 8.10 Liability limitations for damage to goods shall not apply insofar as determined in the respectively applicable statutory provisions under section 435 HGB, article 36 CIM or section 507 HGB.

## **9 NOTIFICATION OF CLAIMS IN THE EVENT OF DAMAGE TO GOODS**

- 9.1 It is the responsibility of the customer when collecting the transport unit to notify either the local representative of Kombiverkehr or the party delivering the transport unit of any loss or damage in accordance with the statutory provisions respectively applicable.
- 9.2 Notification of losses or damage not externally visible must be made within five days.
- 9.3 The notification must identify the loss or damage with sufficient clarity.

## **10 FINAL CLAUSES**

- 10.1 Insofar as not stipulated otherwise by binding requirements or provisions overriding these GTC, the place of jurisdiction for all parties for any disputes arising from or in context with the freight forwarding contract shall be Frankfurt am Main.
- 10.2 The laws of the Federal Republic of Germany shall apply.

Please note: The German version shall be exclusively authoritative for construction and interpretation of these Terms and Conditions; the English version is for information only.



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