

# General terms and conditions of DB Cargo BTT GmbH

January 1st, 2023

## 1 Scope; different and supplementary conditions

- 1.1. DB Cargo BTT GmbH ("DB Cargo BTT") provides its services in accordance with the latest version of the ADSp (German Freight Forwarders' Standard Terms and Conditions) 2017, insofar as the following General Terms and Conditions of DB Cargo BTT GmbH (hereinafter referred to as "DB Cargo BTT") do not contain any special deviating provisions.
- 1.2. DB Cargo BTT shall handle customs clearance, rental of means of transportation, and other logistics services only if specifically commissioned to do so.
- 1.3. The customer's general terms and conditions shall apply only if specially confirmed by us.
- 1.4. The customer shall place orders with us in writing or by fax.

## 2 Means of transportation

- 2.1. Means of transportation shall be freight wagons for use by a rail company, and standardized load units for intermodal transportation (LUs) such as
  - Containers for ocean transport whose dimensions, corner casings and sturdiness are standardized by the International Organization for Standardization
  - Inland containers for continental European traffic
  - Swap bodies, i.e. containers that are interchangeable for the purpose of operations
  - Semi-trailer
  - Heavy-goods vehicles and semi-trailer trucks used in truck-on-train traffic
- 2.2. The customer shall bear responsibility for ensuring that the means of transportation it provides comply with the applicable legal regulations and technical provisions, and that they are safe.
- 2.3. DB Cargo BTT's means of transportation
  - a) DB Cargo BTT shall supply means of transportation ordered by the customer if adequate resources are available. Verbal understandings regarding the provision of means of transportation must be confirmed in writing by DB Cargo BTT.
  - b) The customer shall ascertain that the provided means of transportation are suitable for the intended purpose and shall check for visible faults. The customer shall notify DB Cargo BTT of any complaints without undue delay.
  - c) The customer shall bear liability for any damage to means of transportation (wagons and/or load units (LUs)) caused by the customer itself or by a third party working on its behalf. The customer shall also bear liability for damage to wagons and/or LUs between the time at which the wagons and/or LUs are supplied to the customer, a third party working on the customer's behalf, or the consignee, and the time at which Cargo BTT accepts the wagons and/or LUs for transport ("supply period") regardless of whether the customer played a role in causing such damage.

If a wagon and/or LU is supplied to DB Cargo BTT for transport in a damaged condition by the customer, a third party working on the customer's behalf, or the consignee, it shall be presumed that the damage occurred during the supply period. This principle shall not apply if the customer can prove that the damage was present when the wagon or LU was supplied to it. Any damage, loss or accidents shall be reported to DB Cargo BTT without undue delay.
  - d) The customer shall be responsible for ensuring that unloaded means of transportation are ready for reuse, i.e. that they are completely empty and that they are returned together with any separable components at the agreed time and at the agreed handover location or terminal. Unless otherwise agreed, DB Cargo BTT shall organize cleaning, and disinfection and sterilization as per legal regulations, and charge the customer accordingly.

- 2.4. If the Customer uses freight wagons whose keeper is not DB Cargo BTT, the Customer shall ensure that
  - a) they are subject to maintenance by a certified entity in charge of maintenance (ECM). Otherwise, DB Cargo BTT 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, the Customer shall provide such wagons to DB Cargo BTT 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 and suitable for the goods being carried, and have the appropriate approval;
  - d) DB Cargo BTT 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.

- 2.5. The customer undertakes to hand over to DB Cargo BTT or its subcontractors only wagons which
  - a) for transports in/through Germany, comply with the requirements of the German 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 Lärm-sanierung von Eisenbahnen, "BGLÉ"), 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 Cargo BTT with proof of compliance with the above legal requirements in due time.

If the customer hands over a wagon which does not comply with the legal requirements, the customer shall pay a flat fee of EUR 1,500 per wagon to DB Cargo BTT. In addition, DB Cargo BTT or its subcontractor shall be entitled to refuse to take over the wagon and/or to claim damages. The flat fee shall be credited against any damage claim. The customer shall indemnify and hold harmless DB Cargo BTT or its subcontractor against all third-party claims arising from the infringement.

## 3 Packing/loading freight/hazardous materials

- 3.1. Unless otherwise agreed, the customer shall be responsible for loading and unloading. Loading and unloading shall be conducted in compliance with the applicable guidelines for the relevant mode of transportation and in compliance with the applicable regulations on hazardous materials.
- 3.2. The customer shall bear liability for any consequences arising from flawed freight packing and/or loading.
- 3.3. If the customer undertakes the loading or unloading of the load units onto or off of the truck chassis/flat wagon, the customer shall comply with the conditions and instructions of the freight forwarder transporting the consignment.
- 3.4. LUs with hazardous materials and empty, non-cleaned LUs which contained hazardous materials shall not be brought to the transshipment terminal before the day of dispatch. The customer shall accept them on the day of arrival or shall make arrangements for them to be transported further on the day of arrival. If the LUs are not accepted on time or their further carriage is not arranged for on time, Section 410(2) of the German Commercial Code (Handelsgesetzbuch, "HGB") shall apply.
- 3.5. The temporary parking of empty uncleaned tank wagons within the framework of a transport contract requires prior verification by DB Cargo BTT in consideration of the general safety obligations and a special written agreement.
- 3.6. The customer is responsible for fitting seals to loaded covered, closed wagons, unless otherwise agreed between DB Cargo BTT and the customer. The customer will be charged for the fitting of seals by DB Cargo BTT in accordance with the DB Cargo AG service catalog.

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## 4 Price adjustments

- 4.1. 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 Cargo BTT's proof).

- 4.2. In the event of an increase in the prices of the subcontractors commissioned by DB Cargo BTT by more than 5% within a period of 3 months, DB Cargo BTT 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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## 5 Telematic and sensor data

If wagons are equipped with telematics and sensor devices, we collect and use wagon-related data. If the customer has access to data of equipped wagons of third-party keepers, the customer shall have this data made available to DB Cargo BTT 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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## 6 Billing/default

- 6.1. DB Cargo BTT bills shall be paid without undue delay.  
6.2. Default of payment shall occur (without the need for a reminder or for anything else to occur) ten days at the latest after the receipt of a bill, unless legal regulations deem default to occur at an earlier date.  
6.3. DB Cargo BTT may require the customer to make a payment in advance or to provide security.

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## 7 Place of jurisdiction, applicable law

- 7.1. Mainz shall be the place of jurisdiction for any dispute arising from or in connection with this contractual relationship.  
7.2. German law shall apply to the exclusion of German private international law.