

## GENERAL CONDITIONS FOR SHIPPING CONTRACT (G.C.)

Effective as of 1 April 2019

### 1. PERTINENT DEFINITIONS

**contract** = shipping contract entered into through written acceptance of the offer or joint signature of the contractual text

**principal** = the party who enters into the shipping contract governed by these G.C. with the freight operator

**agent** = the freight operator who enters into the shipping contract governed by these G.C. with the principal

**dangerous goods** = materials or objects whose transfer from one place to another involves a considerable risk of accidents, and the transport of which is authorized solely under the conditions set out in the RID (Regulation Concerning the International Carriage of Dangerous Goods by Rail) and its annex, according to which transport must use solely vehicles which conform to the rules of the CUV or the CUU

**consignee** = the consignee according to the transport contract. If the consignee designates a third party in compliance with the provisions applicable to the transport contract, that party will be considered the consignee according to the RID.

**carrier/shipper** = the railway undertaking that handles the transport

**transport** = changing the location of the goods by means of railway, including stopovers, from delivery of the vehicles to the carrier/shipper until they are made available to the consignee

**COTIF** = Convention Concerning International Carriage by Rail with the wording determined in Vilnius on June 3, 1999

**CIM** = Uniform Rules Concerning the Contract for International Carriage of Goods by Rail – Appendix B to COTIF

**RID** = Regulation Concerning the International Carriage of Dangerous Goods by Rail – Appendix C to COTIF

**CUV** = Uniform Rules Concerning Contracts of Use of Vehicles in International Rail Traffic – Appendix D to COTIF

**CUU** = Uniform Contract on Use of Wagons

- 1.1 For all other definitions, the parties refer to those set out by Chapter 1.2.1 of the RID and Art. 2 of the CUV.

### 2. PURPOSE

By entering into the contract, the principal assigns the agent the task of concluding the transport contract with the carrier/shipper, in its own name and on behalf of the principal.

### 3. AUTOMATIC SUBSTITUTION OF CLAUSES

When they are obligatory, any changes in the RID rules and/or provisions set out in Italian and/or foreign and/or Community legislation regarding international carriage of dangerous goods will automatically replace any contractual covenants between the principal and the agent that are no longer in compliance.

### 4. THE PRINCIPAL'S DUTIES

- 4.1 Before the agent makes the vehicles available, the principal must provide the agent with all necessary and useful information regarding the type of dangerous goods and the specific danger, as well as provide it with all documents and all information necessary to fulfill its obligations (Chapter 1.4.2.1.3. RID).

The agent is not obligated to control the type and characteristics of products, or to ensure that the products

involve the specific dangers that the principal has indicated, as it may rely on the information and data which the principal has provided.

- 4.2 The principal/consignor must deliver the bill of lading to the carrier/shipper, either directly or through third parties, at the time the train is picked up and delivered at the station/stop; the bill of lading must conform to the information provided by the agent with the content prescribed by Art. 7 CIM as well as Chapter 5.4 and Table A of Chapter 3.2 of the RID.
- 4.3 If required by Italian, foreign and international legislation, upon delivery of the goods, the principal must deliver all other required transport and accompanying documents (authorizations, approvals, notices, certificates, etc.) to the carrier/shipper, either directly or through third parties, with particular regard to the provisions of Chapter 5.4 and Table A of Chapter 3.2 of the RID.
- 4.4 The principal must strictly follow the exact time for completion of loading-filling and delivering the tank wagons to the carrier/shipper (HLR RID), which F.R. will indicate for each transport along with the exact time the tank wagons are delivered to the consignee by the carrier/shipper (MAD RID) at the pick-up and delivery point for unloading the goods.
- 4.5 The principal shall be fully responsible, either directly or through third parties it appoints, for loading, after verifying the suitability of the tank wagons and unloading the tank wagons and then returning them to F.R., unloaded and with all closures (including valves and inspection openings) in the locked position, guaranteeing the same seal as when they were full, and equipped with orange panels, labels, plates and all other required exterior notices.
- 4.6 The principal shall be responsible for all expenses and damages incurred by the carrier/shipper, freight operator and third parties in the cases provided by Art. 8 of the CIM and upon any other violation which involves non-delivery or irregular and/or incomplete and/or inaccurate completion of transport and obligatory accompanying documents in accordance with national and international regulations.
- 4.7 The principal must provide the freight operator with data through electronic data processing (EDP) techniques or electronic data interchange (EDI) and must be able to provide the following paper documents: a) all transport and obligatory accompanying documents including the bill of lading; b) the checklists produced by the filler/loader and unloader according to the guidelines published by CEFIC and the provisions in MIT circular prot. 0030048 of April 6, 2010, for the procedures to verify proper functioning of the closures on a tank wagon's tanks and to guarantee that the seal for the closure devices holds before and after filling; c) the checklist compiled by the carrier/shipper's examiner; d) the consignee's approval upon acceptance of the goods in the place provided by the transport contract and at the exact time that the principal indicated that the tank wagons would be made available to such. The principal hereby authorizes the agent to directly obtain the above documents from the obligated parties upon issuance, if it considers this appropriate.

## GENERAL CONDITIONS FOR SHIPPING CONTRACT (G.C.)

Effective as of 1 April 2019

- 4.8 The shipments that the principal/consignor presents for transport must comply with the provisions of the RID, ensuring that the goods are classified and authorized in compliance with the RID, and even if it uses the services of other operators (loaders, fillers, etc.), it must verify and guarantee that full tanks and empty ones which are not cleaned or degassed are marked and plated as required and that even the empty uncleaned tanks are locked and have the same seal guarantees as when they were full.
- 4.9 The principal shall be liable for all damages as a result of but not limited to cost of lease, cost of layovers resulting in penalties, stopovers, initial or intermediate transport stoppages, failure to meet exact schedules for delivering tank wagons to the carrier/shipper due to violations of RID provisions and/or failure to provide or failure to follow the exact schedule for the consignee's acceptance of the goods and for the unloader and/or consignee's return of the tank wagons.
- 4.10 The principal is a consignor pursuant to Chapter 1.4.2.1 of the RID, as the agent assumes the role of sender in the bill of lading on behalf of the principal solely in order to simplify administrative procedures.
- 4.11 The principal must indemnify the agent for any damages due to liability which arise from and/or are based on failure to meet the obligations set out in Chapters 1.4.2.1.1 letter e, 1.4.3.1 and 1.4.3.3 of the RID.

### 5. THE AGENT'S DUTIES

- 5.1 The agent must enter into the transport contract with the carrier or carriers/shipper or shippers it considers most appropriate, in accordance with the elements set out in the shipping contract of which these G.C. are an integral part.
- 5.2 The agent must give the principal instructions for completing the bill of lading that the principal will deliver to the carrier/shipper as set out in clause 4.2.
- 5.3 The agent must monitor the transfer of the goods from the pick-up point after filling to the delivery point for unloading and must give the principal the relative information by email or telephone.
- 5.4 The agent must give the principal operating instructions in case of breakdowns, stops or delays.
- 5.5 If the agent makes tank wagons available to the principal, they will be approved and adapted for shipping the materials to be transported (Chapter 1.4.2.1.1 letter C of the RID), in a number that the principal indicates as adequate for the quantities to be transported, plus, if requested, up to a total of 3 extra tank wagons in the event one or more of those ordinarily made available proves to be inadequate. The agent must lease the tank wagons from a keeper who a) is a signatory of the CUU; b) complies with CUV regulations; c) ensures compliance with the obligations set out in Chapter 1.4.3.5 of the RID and national regulations; d) has access to an entity in charge of maintenance (SRM or ECM), in compliance with the provisions of Art. 14 bis of EC Directive 2004/49 of April 29, 2004 as amended by EC Directive 2008/110 of December 16, 2008 and implemented by Legislative Decree no. 43 of March 24, 2011; e) guarantees that every tank wagon leased is certified exclusively by an outside body pursuant to the 445/2011 commission; f) guarantees compliance with the obligations that the RID

imposes on operators of tank wagons, and in particular; g) guarantees compliance with provisions on construction, equipment, tests and marking; h) ensures that the tanks meet the requirements of the RID when subject to normal operating conditions; i) performs periodic controls as well as the and exceptional controls when the safety of the tanks or their equipment might be jeopardized by accidents, repairs, and/or modifications; l) ensures that the tank wagons indicate the keeper/supplier and the station of residence according to the uniform rules of the CUV Appendix D to the 1999 COTIF. The agent shall provide solely tank wagons that have the keeper's declaration that all certifications issued or to be issued by the competent national and international authorities have been obtained; with particular regard to the Italian authorities (A.N.S.F. - Italian agency for railway safety), this includes documents pertaining to A.N.S.F. note 3556/09 and the provisions issued and/or to be issued by ANSF and RFI.

- 5.6 If wagons are made available, the agent must place the technical specifications for the tank wagons on its website, so that the principal can verify whether the wagons and the tanks structurally conform to current regulations and determine whether they are suitable for the specific goods to be transported.

### 6. ADDITIONAL OPERATIONS

If the contract expressly so provides in writing, it may include additional operations to be performed directly by the agent or through third parties. In the latter situation, by entering into the contract, the principal gives the agent authority to enter into a contract with third parties on behalf of the principal in order to perform the additional operations, discharging the agent from liability pursuant to Art. 1715 of the Italian Civil Code, in order to fulfill the obligations assumed by the third parties with whom it has contracted.

### 7. TRANSPORT CONTRACT

When entering into the transport contract the agent shall have the power: a) to select the carrier it considers most suitable; and b) to agree to the conditions that it considers most appropriate within the limits set by the assignment. In all cases it is agreed that, unless otherwise provided in written agreements between the principal and the agent, the transport contract shall be performed from station to station with a full train according to a normal or special schedule.

### 8. CONSIDERATION

As consideration for the contractual services, as well as provisions for paying the consideration owed to the carrier/shipper, the keeper of the vehicles, and/or the third parties responsible for complementary operations, the principal shall pay the agent the sums indicated in said contract. These sums do not include:

- extraordinary costs and/or expenses charged by the railway undertakings for any reason
- taxes at the departure station
- costs of loading/filling and unloading and any operation within the loading and unloading areas

## GENERAL CONDITIONS FOR SHIPPING CONTRACT (G.C.)

Effective as of 1 April 2019

- costs due to the absence of a bill of lading or a bill of lading which contains information that is incomplete, inaccurate, irregular or placed in spaces other than those reserved for each item, or a bill of lading which does not follow the agent's instructions
- costs due to stopovers caused by the actions of the principal and/or the consignee
- any other cost and/or service not expressly mentioned in the contract

### 9. INSURANCE

The principal must provide insurance for the goods, civil liability insurance for any damages the goods may cause to persons or things during loading/filling, transport and unloading, and liability insurance for damage to the tank wagons during loading/filling, unloading and handling in the loading and unloading areas.

### 10. LIABILITY

- 10.1 The agent/freight operator is not responsible for losses/damage of any kind (such as but not limited to damage caused by delays or stopovers, damage caused by the materials transported or by incompetent or negligent execution of filling or unloading operations) due to failure to comply with the transport contract and/or the contract on loading and unloading and additional operations. The relative liability shall be borne, respectively, by the carrier/shipper, the filler/loader and unloader and the third parties responsible for complementary and additional operations. In order to pursue an action to obtain compensation for such damages, if the agent has entered into the contract with other parties on its own name and on behalf of the principal, it shall assign the principal any rights it has as a result of such.
- 10.2 In no case may the agent be considered responsible for custody of the dangerous goods, and the contracting parties formally acknowledge that it will never be the custodian of such.
- 10.3 The principal shall be responsible for additional costs and damages, including lost earnings as a result of its failure to meet its contractual obligations and to comply with these general conditions.
- 10.4 If tank wagons are made available to the principal, and one or more of them is not utilized due to technical defects, the agent shall deduct the cost of such, but shall not be responsible for damages due to non-transport or delayed transport of a quantity of products less than 10% of that to be transported per individual train if extra tank wagons were not requested that would have prevented said damages.
- 10.5 The principal must also indemnify the company for any actions which third parties file against it for any injury to persons and/or things as a result of its failure to fulfill any of the preceding obligations.

### 11. SEVERABILITY CLAUSE

If any clause in these general conditions is determined to be invalid or ineffective as a result of legal or regulatory provisions, including those which may take effect in the future, this shall have no effect on the validity of the other clauses.

### 12. CONTRACT MAY NOT BE ASSIGNED

No portion of the shipping contract governed by these general conditions may be assigned to third parties for any reason, upon penalty of the ipso jure termination of said contract.

### 13. NO DELEGATION OR SET-OFF PERMITTED

The principal's rights arising from the shipping contract may not be subject to a delegation of payment or promise to pay without the written consent of the agent.

Pursuant to and for purposes of Art. 1246 no. 4 of the Italian Civil Code, the principal waives any set-off of debts to the agent with anything said agent may owe it.

### 14. PRINCIPAL'S RIGHT TO WITHDRAW

If rates are changed by one or more railway undertakings, thus creating an imbalance in the contractual consideration compared to the rates previously offered, the principal shall have the right to withdraw from the shipping contract for any transport contracts included in the plan but not yet concluded with the agent. Notice must be 30 days in advance via registered letter with advice of receipt or by certified email, or else compensation must be paid for damages.

### 15. JURISDICTION

As they have been given this power by Art. 4 of Law no. 215 of May 31, 1995 and Art. 23 of EC Regulation no. 44/2001 of December 22, 2000, the parties agree that any disputes that arise from this shipping contract governed by these General Conditions shall be subject to Italian jurisdiction.

### 16. EXCLUSIVE VENUE

The parties agree that any dispute regarding the validity and effectiveness, interpretation, execution and termination of this shipping contract governed by these General Conditions shall be subject to the exclusive territorial competence of the Courts of Udine, as the contracting parties expressly desire to derogate from ordinary territorial competence and as they desire to prevent competition between the designated venue and those which the law provides as alternatives.

### 17. GOVERNING LAW

As they have the power through Art. 1 of EC Regulation no. 593/2008, the parties agree that the shipping contract subject to these G.C. shall be governed by Italian law, in particular the provisions of the Italian Civil Code, Legislative Decree 35/2010, and the international regulations in COTIF, appendices CIM, RID, CUV as specified in the definitions set out in these general conditions and any subsequent amendments.

(Place) \_\_\_\_\_, (date) \_\_\_\_\_

(The Principal) \_\_\_\_\_

(The Agent) \_\_\_\_\_

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**GENERAL CONDITIONS FOR SHIPPING CONTRACT (G.C.)**

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Pursuant to and for purposes of Art. 1341 – 1342 Italian Civil Code, the following clauses are specifically approved:

- 10) 10.1) 10.2) agent discharged from liability
- 10.4) limitation of agent's liability
- 12) ipso jure termination if shipping contract is assigned
- 13) delegation and set-off prohibited
- 14) principal's right to withdraw
- 15) agreed jurisdiction
- 16) election of exclusive territorial competence

(Place) \_\_\_\_\_, (date) \_\_\_\_\_

(The Principal) \_\_\_\_\_

(The agent) \_\_\_\_\_