



Gewerbepark Süd 6  
A - 6330 Kufstein

T. +43 5372 215 55 - 0  
F. +43 5372 215 55 - 880

E. info@erc-cargo.at  
W. www.erc-cargo.at

## **General terms and conditions of ERC Cargo GmbH as a Logistics Services Provider**

### **1. Validity**

These General Terms and Conditions (GTC) apply to all services provided by ERC Cargo GmbH as a contracted Logistics Services Provider or carrier (hereinafter referred to as "Logistic Services Provider" or "LSP") for its contractual partner (hereinafter referred to as "Principal"). The principal agrees that these terms and conditions, which can be viewed on <http://www.erc.or.at/agb> at any time, apply to all future transactions, regardless of a repeated explicit reference, particularly in verbal orders and orders via e-mail or telephone. Differing conditions of the principal, which are not explicitly recognized by the LSP (in writing), are ineffective, even if the LSP does not explicitly protest against or reject them. The principal can under no circumstances refer to its own terms and conditions, even if they were included in orders. No terms and condition of the Principal, that contradict these "ERC Terms and Conditions" and the AÖSp can be applicable or gain validity. 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.

### **2. Offer**

The offer of the LSP is non-binding and is based on the consignment data specified by the principal, current prices, tariffs, exchange rates and other charges of all parties involved in the transport performance. The prices cited are subject to available shipping space, cargo space and empty containers. All mentioned surcharges are valid until further notice and subject to the introduction of further surcharges. All mentioned freight rates are only valid for shipping with partners of the LSP. The selection of the shipping companies and carriers is at the discretion of the LSP. Multimodal transports and shipments are generally carried out by signing a multimodal bill of lading of ERC Cargo GmbH or a bill of lading of the companies represented by them.

### **3. Validity of conventions**

The agreement of these terms and conditions does not affect the validity of conventions in the currently valid version as far as their provisions mandate a deviating regulation, such as the CMR.

### **4. Validity of the AÖSp**

In addition, the General Austrian Forwarders Terms and Conditions (AÖSp), in the currently valid version, published in the Amtsblatt zur Wiener Zeitung 1947/184, as last amended by Amtsblatt zur Wiener Zeitung 1993/68 (available on the Internet in English and German at <https://www.wko.at/branchen/transport-verkehr/spedition->

[logistik/Allgemeine\\_Oesterreichische\\_Spediteurbedingungen\\_\(AOeSp\).html](#)). The Principal declares himself as a prohibitory customer acc. to §§ 39 ff AÖSp. The AÖSp also apply in relation to foreign principals.

### **5. Lien and retention rights**

Regarding all due and not due claims which the LSP is entitled to from the contract, the LSP has the right of lien and the right of retention of the goods or other things in his power of disposition. If the principal does not explicitly disclose the owner of the goods in the bill of lading/waybill when placing the order, the LSP can assume that the freight is the property of the principal. The principal is entitled to prohibit the exercise of the lien if he grants the LSP an equivalent security (eg bank guarantee).

### **6. Delivery times**

Specified loading and unloading dates are not delivery time limits acc. to Art. 19 CMR, but only approximate guide values / standard times and therefore cannot be guaranteed by the LSP. Claims for exceeding of delivery times (of whatever kind), as well as any costs for any consequential damages in case of delays or fines for late transmission of documents, are therefore not accepted by the LSP. A liability of the LSP for exceeding of loading dates / not complying with "loading slots" is generally excluded, unless the LSP has missed these deadlines "grossly negligent".

### **7. Value declaration, special delivery interest**

An increase in value of the maximum amounts acc. Art. 24 CMR or a special delivery interest acc. Art. 26 CMR cannot be agreed upon.

An agreement of a value or interest declaration can not be agreed upon. The LSP expressly objects to any kind of declaration of value or interest, in particular those which may increase the maximum limits of liability provided for in international conventions. It is expressly pointed out that by any kind of announcement of an order value, value of goods (etc.) - in whatever way (in invoices, orders, delivery notes, offers, etc.) – under no circumstances lead to an agreement of a value or interest declaration even if no explicit rejection of the LSP takes place. It is not possible to agree, to increase, or waive any limits of liability set out in contractual terms or in international conventions.

### **8. Demurrage**

The LSP is entitled to charge demurrage in the amount of € 450 per day (in case of a demurrage of less than 24 hours at least € 80 per hour) to the principal; the demurrage is also due if the principal has no fault. A demurrage claim arises if a waiting / standing time of 1.5 hours in total is exceeded.

### **9. Cancellation**

The transport order and these terms and conditions are binding, if no protest within one hour from the time of transmission to the principal is made. If the principal 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 Cargo GmbH. If the transport order is not cancelled within one hour, the LSP is entitled to a contractual fine amounting to 80% of the freight price regardless of fault. Further claims for damages remain unaffected.

#### **10. Delegation, subcontractors**

The LSP reserves the right to pass on and delegate the forwarding or transport order to third parties - even without the prior consent of the principal. He is therefore entitled to use subcontractors. However, the LSP will exercise the care of a proper freight forwarder or carrier in selecting the subcontractor.

#### **11. Loading and unloading**

The principal takes sole responsibility for ensuring that the loading and unloading of the freight is carried out. Damage caused by circumstances during loading or unloading is attributed exclusively into the liability sphere of the principal. Is in an individual case the loading and unloading is carried out by a vicarious agent of the LSP, this person is to be regarded as a vicarious agent of the principal. The responsibility for loading and unloading always lies with solely the principal. The principal must ensure that the cargo is properly secured, complies with the statutory regulations and, in addition, is secured and stowed safe to operate and roadworthy. The duty to secure loads is the sole responsibility of the principal, even if the goods have been loaded by the truck driver. The principal assures that the packaging is suitable for transport. Also for such services (packaging services, stowage services, container stuffing, load securing), the provisions of the AÖSp are explicitly applicable.

#### **12. Special goods**

The principal is obligated to warn the LSP about special characteristics of the freight. The principal therefore has to separately inform the LSP, among other things, if the value of the goods exceeds € 10, - per kilogram, the goods are dangerous and/or waste, a special theft risk is associated with the cargo. In addition, the principal must inform the LSP about a particular sensitivity of the goods and the correct handling (eg transport temperature, etc.). The principal confirms to have a dangerous goods officer in his company and to hand over all relevant data regarding the dangerous goods according to ADR. Goods that are or may become dangerous goods may only be offered to the LSP for carriage, if the LSP is notified in writing and the LSP have given a written consent, regardless of whether the dangerous goods appear in official or unofficial international or national codes or agreements, or whether previously their nature, type, name, labeling and classification have been announced to the LSP in written form. In addition, the packaging in which the goods are to be transported, as well as the goods themselves, must be clearly labelled on the outside, indicating the type and quality of the goods. The principal insures to comply with all legal requirements of the law for dangerous goods.

### **13. Compliance with all regulations**

The principal is obliged to comply with all applicable laws, regulations and provisions as well as regulations of custom, port and other authorities and to bear and pay all customs duties, taxes, fees, etc., as well as compensate the LSP for any accrued or suffered fine, duties, expenses and damages.

### **14. Transport insurance**

As the liability of the LSP is limited, it is recommended to cover a transport insurance. However, transport insurance is only covered if explicitly ordered in written form.

### **15. Loading equipment exchange**

A loading equipment exchange is made only as far as possible and reasonable and only with explicit written order, with payment of a surcharge of 10% of the freight. The LSP assumes no obligation to return with regard to pallets, loading equipment and empty containers and in no way assumes the so-called exchange risk. In the event that - for whatever reason - a pallet exchange with the sender or recipient is not possible, the principal shall not be entitled to any claims against the LSP, except in the case of intentional acts / omissions of the LSP. The liability of the LSP for "possible differences in loading equipment" is therefore completely excluded. If a pallet exchange has been agreed upon, the principal is responsible for obtaining sufficient pallet stock at the recipient. Costs for non-exchanged pallets or additional costs for later collection will be charged to the principal. Non-exchanged loading equipment due to sender's fault is also not exchanged and returned at the recipient.

### **16. Truck staffing, vehicle, routes**

The vehicles used by the LSP are always scheduled/staffed with one truck driver. In case of written agreement for a 2-person-staffing and payment of a freight surcharge, the LSP will provide two drivers, which can lead to a reduction of theft risk. The legally prescribed breaks can usually only be consumed on "conventional parking lots". Should the principal wish, that the prescribed rest periods shall be consumed on guarded parking lots, this must be announced in writing to the LSP in advance and can be agreed by paying an additional charge.

Generally, the vehicles used are ordinary curtain semitrailers. However, in order to minimize possible risks, in particular the risk of theft, it is recommended that the principal expressly instructs the LSP in writing upon payment of an additional charge with the use of a so-called hardbox semi-trailer, since it provides increased safety.

The routes selected by the LSP are the fastest and least expensive routes. Should the principal require a special route in order to minimize any possible dangers, this must also be communicated to the LSP in advance in writing and then a different route can be arranged upon the payment of an additional charge.

### **17. Damage**

If loss or damage to the goods are not visible from the outside, it is the responsibility of the sender or principal to prove that the loss or damage occurred during the liability or transport period. Damages visible from the outside are to be asserted in writing immediately upon

delivery, damages not visible from the outside immediately upon discovery, but no later than within seven days.

### **18. Payment claim**

The claim for payment of the freight arises with delivery of the freight. The LSP grants the principal a payment deadline of 30 days net from the billing date. Discount deductions are not accepted by the LSP. In the case of default of payment, the LSP is entitled to interest at the rate of 1.5% per month in accordance with § 29 AÖSp. In addition, the principal has to bear all accumulated reminder fees as well as the costs associated with the execution of the outstanding claim.

### **19. Offsetting**

The principal is in no case entitled to make freight reductions or set off counterclaims against claims of the LSP. Without exception, a set-off and retention ban applies in favor of the LSP.

### **20. 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.

### **21. 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!