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General Terms and Conditions of Eurasian carriage by rail (GTC EurAsia)

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Contents

1	Validity	4
2	Contract of carriage.....	4
3	Consignment note	4
4	Completion of administrative formalities	4
5	Payment of charges	4
6	Packing, loading and unloading of the goods	5
7	Delivery.....	5
8	Right to dispose of the goods.....	5
9	Circumstances preventing carriage.....	5
10	Circumstances preventing delivery	5
11	Carrying out instructions	6
12	Collective liability of carriers	6
13	Extent of liability	6
14	Compensation for total or partial loss of the goods.....	6
15	Compensation for damage to the goods	7
16	Compensation for exceeding the transit period	7
17	Compensation in the case of declaration of value of the goods	7
18	Carrier's liability for auxiliaries.....	7
19	Other actions	7
20	Ascertainment of partial loss or damage of the goods.....	7
21	Claims	8
22	Assertion of rights.....	8
23	Applicable law and forum	8
24	Arbitration	8
	Appendix (only for carriers).....	9

General Terms and Conditions of Eurasian carriage by rail (GTC EurAsia)

1 Validity

These General Terms and Conditions of Eurasian carriage of goods by rail (GTC EurAsia) govern through contracts for the international carriage of goods between Europe and Asia by rail, including rail – sea traffic. They shall be applicable if the parties to the contract so agree.

Unless otherwise provided by the GTC EurAsia, the appropriate national law shall apply. “National law” means the law of the state in which the person entitled asserts his rights, including the rules relating to conflict of laws.

Mandatory rules of the law applicable shall not be affected and shall take precedence over the GTC EurAsia.

The total or partial nullity or inapplicability of one or more of the provisions of GTC EurAsia shall not affect the validity of the other provisions. In place of the null or inapplicable provisions, the parties to the contract shall agree on provisions the meaning and purpose of which are as close as possible to those of the null or inapplicable provisions.

2 Contract of carriage

The contract of carriage shall be confirmed by the making out of a consignment note which according to Appendix ... The carrier must certify the taking over of the goods on the duplicate of the consignment note in an appropriate manner and return the duplicate to the consignor.

3 Consignment note

The content of the consignment note is detailed in Appendix ... The consignment note including its duplicate may be made out in the form of electronic records.

The consignor shall be responsible for all costs, loss or damage sustained by the carrier by reason of the entries made by the consignor in the consignment note being irregular, incorrect, incomplete or made elsewhere than in the allotted space.

If, at the request of the consignor, the carrier makes entries on the consignment note, he shall be deemed, unless the contrary is proved, to have done so on behalf of the consignor.

4 Completion of administrative formalities

With a view to the completion of the formalities required by customs and other administrative authorities, to be completed before delivery of the goods, the consignor must attach the necessary documents to the consignment note and furnish him with the requisite information. The accompanying documents may be made out in the form of electronic records.

The carrier shall not be obliged to check whether these documents and this information are correct and sufficient. The consignor shall be liable to the carrier for any loss or damage resulting from the absence or insufficiency of, or any irregularity in, such documents, save in the case of fault by the carrier.

The carrier shall be liable for any consequences arising from the loss or misuse of the documents referred to in the consignment note and accompanying it, unless the loss of the documents or the loss or damage caused by the misuse of the documents has been caused by circumstances which the carrier could not avoid and the consequences of which he was unable to prevent. Nevertheless any compensation payable shall not exceed that provided for in the event of loss of the goods.

5 Payment of charges

Unless otherwise agreed between the consignor and the carrier, the charges shall be paid by the consignor.

6 Packing, loading and unloading of the goods

The consignor shall be liable to the carrier for any loss or damage and costs due to the absence of, or defects in, the packing of goods.

Unless otherwise agreed between the consignor and the carrier, loading shall be the responsibility of the consignor and unloading, after delivery, the responsibility of the consignee.

If the consignor loads the goods he shall be liable for all the consequences of defective loading and must in particular compensate the carrier for the loss or damage which the carrier sustains in consequence.

7 Delivery

The carrier must hand over the consignment note and deliver the goods to the consignee at the place designated for delivery against receipt and payment of the amounts due according to the contract of carriage.

8 Right to dispose of the goods

Upon presentation of the duplicate of the consignment note, the consignor shall be entitled to dispose of the goods and to amend the contract of carriage.

The consignor's right to amend the contract of carriage shall, notwithstanding that he is in possession of the duplicate of the consignment note, be extinguished in cases where the consignee:

- has taken possession of the consignment note;
- has accepted the goods;
- is authorised to dispose, in accordance with paragraph 3; from that time onwards, the carrier shall comply with the orders and instructions of the consignee.

Once the consignment arrives in the territory of the destination state, the consignee shall have the right to amend the contract of carriage, unless the consignor indicates to the contrary on the consignment note.

The consignee's right to modify the contract of carriage shall be extinguished in cases where he has taken possession of the consignment note or accepted the goods.

9 Circumstances preventing carriage

When circumstances prevent the carriage of goods, the carrier shall decide whether it is appropriate to carry the goods by modifying the route of carriage or whether it is in the interests of the person entitled, for the carrier to ask him for instructions while giving him all relevant information which the carrier possesses.

If it is impossible to continue carrying the goods, the carrier shall ask for instructions from the person who has the right to dispose of the goods. If the carrier is unable to obtain instructions within a reasonable time he must take such steps as seem to him to be in the best interests of the person entitled to dispose of the goods.

10 Circumstances preventing delivery

When circumstances prevent delivery, the carrier must without delay inform the consignor and ask him for instructions, unless the consignor has requested, by an entry in the consignment note, that the goods be returned to him in the event of circumstances preventing delivery.

When the circumstances preventing delivery cease to exist before arrival of instructions from the consignor to the carrier the goods shall be delivered to the consignee. The consignor must be notified without delay.

When the circumstances preventing delivery arise after the consignee has amended the contract of carriage, the carrier must notify the consignee.

11 Carrying out instructions

In the case of fault of the carrier he shall be liable for the consequences of failure to carry out a subsequent order in accordance with **point 8** or instruction in accordance with **points 9** or **10** or failure to carry it out properly. Nevertheless, any compensation payable shall not exceed that provided for in case of loss of the goods.

12 Collective liability of carriers

The carrier who took over the goods with the consignment note for carriage by rail shall be liable for fulfilling the contract of carriage over the entire route up to delivery.

Each successive carrier, by the very act of taking over the goods with the consignment note, becomes a party to the contract of carriage in accordance with the terms of that consignment note and shall assume the obligations arising therefrom. In such a case each carrier shall be responsible in respect of carriage over the entire route up to delivery.

13 Extent of liability

The carrier shall be liable for loss or damage resulting from the loss of, or damage to the goods between the time of acceptance for carriage and the time of delivery and for the loss or damage resulting from the transit period being exceeded.

The carrier shall be relieved of this liability to the extent that the loss or damage or the exceeding of the transit period is caused by the fault of the person entitled, by instructions given by the person entitled other than as a result of a fault of the carrier, by an inherent defect in the goods or by circumstances which the carrier could not avoid and the consequences of which he was unable to prevent. The burden of proof shall lie on the carrier.

Furthermore, the carrier shall be relieved of this liability to the extent that the loss or damage arises from the special risks inherent in one or more of the following circumstances: agreed or normal carriage in open wagons, absence or inadequacy of packaging, loading of the goods by the consignor or unloading by the consignee, or the nature of certain goods. If the carrier establishes that, having regard to the circumstances of a particular case, the loss or damage could have arisen from one or more of the special risks, it shall be presumed that it did so arise. The person entitled shall, however, have the right to prove that the loss or damage was not attributable either wholly or in part to one of those risks.

14 Compensation for total or partial loss of the goods

In the event of total or partial loss of the goods, the carrier shall pay, to the exclusion of all other damages, compensation calculated according to the value of the goods lost or damaged on the day and at the place where the goods were taken over as established by supporting documents provided by the entitled person.

In the event that the value cannot be proven by documentation, the compensation shall be calculated according to the commodity exchange quotation or the market price of the goods, or if there is neither such quotation nor such price, according to the usual value of goods of the same kind and quality at the time and place where the goods were taken over.

Compensation shall not exceed 35 CHF per each lost devalued kilogramme of gross mass.

The carrier must, in addition, refund the carriage charge, customs duties already paid and other sums paid in relation to the carriage of the goods lost. Excluded are excise duties for goods carried under a procedure suspending those duties.

15 Compensation for damage to the goods

In the event of damage to the goods, the carrier must pay compensation equivalent to the loss in value of the goods, to the exclusion of all other damages.

The loss in value shall be calculated in accordance with **point 14, paragraph 1** and **2**.

However, the compensation shall not exceed the amount which would have been payable in the event of the loss of the goods damaged.

The carrier shall also refund, the charges and out-payments provided for in **point 14, paragraph 4** in the proportion set out in paragraph 1.

16 Compensation for exceeding the transit period

If loss or damage, including damage to the goods, results from the transit period being exceeded, the carrier shall pay compensation not exceeding the carriage charges unless otherwise agreed by the consignor and the carrier.

The transit period is considered as being exceeded when the goods are not delivered at the place of destination provided for in the contract of carriage within the time agreed.

17 Compensation in the case of declaration of value of the goods

The consignor and the carrier may agree that the consignor shall declare in the consignment note a value for the goods exceeding the limit provided for in **point 14, paragraph 3**.

In such a case the amount declared shall be substituted for that limit.

18 Carrier's liability for auxiliaries

The carrier shall be liable for his servants and other persons whose services he makes use of for the performance of the carriage when they are acting within the scope of their functions.

19 Other actions

In all cases where these GTC EurAsia apply, any claim for compensation, on whatever grounds, may be brought against the carrier only subject to the conditions and limitations laid down in these GTC EurAsia.

The same shall apply to any claims brought against the servants or other persons for whom the carrier is liable pursuant to **point 18**.

20 Ascertainment of partial loss or damage of the goods

When partial loss or damage is discovered or presumed by the carrier or alleged by the entitled person, the carrier must without delay, and if possible in the presence of the person entitled, draw up a report in accordance with Appendix ... stating, according to the nature of the loss or damage, the condition of the goods, their mass and, as far as possible, the extent of the loss or damage, its cause and the time of its occurrence.

The report shall be drawn up in at least two copies. One copy shall be attached to the consignment note. A copy of the report must be supplied to the person entitled free of charge.

The report may be issued in form of electronic records.

21 Claims

Claims for damages resulting from a total or partial loss of goods, damage to the goods or exceeding the transit period shall be made in writing to the competent carrier. The competent carrier is the first carrier, the last carrier or the carrier having performed the part of the carriage on which the event giving rise to the proceedings occurred.

The entitled person right to choose among the carriers shall be extinguished when he brings a claim against a competent carrier.

Claims may be brought by the following persons:

- the consignor, until as the point in time when the consignee has taken possession of the consignment note or accepted the goods;
- the consignee, from the point of time when he has taken possession of the consignment note or accepted the goods.

22 Assertion of rights

The persons who may take action in the courts and the carriers against whom they make take action in the courts are those defined in **point 21**.

23 Applicable law and forum

Unless otherwise agreed by the parties, the forum shall be the courts and tribunals of the state of the domicile of the contractual party against which action is being taken.

The law applicable, including the rules relating to conflict of laws, shall be that of the place of the court or tribunal.

24 Arbitration

All disputes arising from or in connection with the contract of carriage shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules.

Insofar as the arbitration clause requires particular content or a particular form, the parties shall cooperate to draft it.



Appendix (only for carriers)

Relations between carriers

Any carrier who has collected or ought to have collected charges or other costs arising out of the contract of carriage must pay to the carriers concerned their respective shares. The methods of payment shall be fixed in the agreement between the carriers.

A carrier who has paid compensation for loss or damage to the goods or for exceeding the transit period shall have a right of recourse against the carriers who have taken part in the carriage in accordance with the following provisions:

- the carrier who has caused the loss or damage shall be solely liable for it;
- when the loss or damage has been caused by several carriers, each shall be liable for the loss or damage he has caused; if such distinction is impossible, the compensation shall be apportioned between them in accordance with the next indent below;
- if it cannot be proved which of the carriers has caused the loss or damage, the compensation shall be apportioned between all the carriers who have taken part in the carriage, except those who prove that the loss or damage was not caused by them; such apportionment shall be in proportion to their respective shares of the carriage charge.

In the case of insolvency of any one of these carriers, his unpaid due share from him shall be apportioned among all the other carriers who have taken part in the carriage, in proportion to their respective shares of the carriage charge.

The carriers may conclude agreements which derogate from these provisions.