

RAIL CARGO TERMINAL - BILK LTD.

# GENERAL TERMS AND CONDITIONS

In effect: 01.12.2022.



# GENERAL TERMS AND CONDITIONS

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## 1. General data of the Service Provider

Company name: Rail Cargo Terminal - BILK Development and Operations Private Limited Company

Abridged company name: Rail Cargo Terminal - BILK Zrt.

Registered seat: 1239 Budapest, Európa utca 4.

Company registration number: 01-10-044722

Tax number: 12782419-2-43

Main phone number: 06-1-289-6000

Container administration: 06-1-289-6051

Depo administration: 06-1-289-6081

Main fax number: 06-1-289-6060

Main e-mail address: info.rct.bilk@railcargo.com

GPS: É 47.3752429, K 19.1147081

Website of the Service Provider: <http://www.railcargobilk.hu/hu>

## 2. Scope of the General Terms and Conditions

The present General Terms and Conditions (hereinafter referred to as „GTC“) cover the following Services of the Service Provider:

- Consignment collection and delivery
- Consignment storage
- Handling of Consignment containing dangerous goods (not including the storage of such Consignments)
- 90 days temporary storage
- Presentation for customs inspection
- Container repair and cleaning
- Refrigerated container services
- Empty container depot services
- Transhipment of goods
- Hazard barge services
- Weighing

The present GTC and its annexes govern the rights and obligations of the Parties in relation to the above-mentioned Services.

Present provisions contained in these GTC do not cover the services set out in the current version of the Service Facility Statement on Terms and Conditions of the use of the Service Facility of Rail Cargo Terminal-Bilk Zrt., to be founded on the Service Provider's website.

The departure and loading of trains and the reception and unloading of trains are subject to a valid operator's contract between the train operator and the Service Provider.

### 3. Definitions

Definitions of certain terms used in the GTC and its annexes, in the Service Contract and its related amendment(s) and other declarations:

**Cashier's Office:** the cashier's office at the registered seat of the Service Provider that handles payments and certification.

**Civil Code:** Act V of 2013 on the Civil Code.

**Consignment:** container, semi-trailer, swap body.

**Complaint:** a notification made by the Customer in connection with the provision of the Service, aimed at remedying an individual breach of rights or interests of the Customer, including a complaint about the Tariffs.

**Customer:** the person who uses one of the Service Provider's Services and thus a Service Contract has been concluded between the Service Provider and the person.

**Force Majeure:** An external cause beyond the control of the Service Provider, unforeseeable at the time of the conclusion of the contract, in relation to which the Service Provider could not reasonably have been expected to avoid the circumstance preventing the proper performance of the contract or to avert the consequences thereof, which shall include, but not be limited to, acts of war, sabotage, riot, bomb attacks, revolution, other state of emergency, natural disaster, natural catastrophe, earthquake, fire, epidemic, flood, windstorm, lightning, strike, and measures taken by the authorities empowered under the Defence Act, serious breakdown, embargo, boycott, import-export ban, mass epidemic of human disease, etc.

**Offer:** the offer made by the Service Provider in response to the Customer's Request for Offer.

**Parties:** the Service Provider and the Customer.

**Payment Agreement:** the written agreement to be concluded between the Customer and the Service Provider, on the method of the payment of the Service, in which the Parties may deviate from the terms and conditions of the present GTC and its annexes, in whole or in part.

**Request:** a service order submitted by the Customer via the Service Provider's website.

**Request for Offer:** the Customer's request to the Service Provider for the provision of an Offer for a Service.

**SDR:** Special drawing right as defined by the International Monetary Fund.

**Service:** the services provided by the Service Provider to the Customer as defined in Clause 2 of the GTC, both together and separately.

**Service Contract:** the contract between the Service Provider and the Customer for the provision of the Service, consisting of in any case these General Terms and Conditions and its Annexes, and if applicable, a Payment Agreement, the Offer accepted by the Customer or the order confirmed by the Service Provider.

**Tariff:** a document **unilaterally established** and published by the Service Provider, which is an annex to the present GTC, containing the tariffs for the Services, which the Service Provider shall review each year and publish it for the following year on its website by 1 December at the latest.

**Tariff Complaint:** Complaint made by the Customer to the Service Provider regarding a dispute about the amount of the Tariffs charged by the Service Provider.

**UCC:** Regulation (EU) No. 952/2013 of the European Parliament and of the Council of the European Union laying down the Union Customs Code.

**VAT Act:** Act CXXVII of 2007 on Value Added Tax.

## 4. Service Contract

### 4.1. The formation of the Service Contract

- 4.1.1. The Service Contract shall be concluded by a Payment Agreement duly signed by the Parties, by an individual agreement or by the Service Provider's confirmation of the order sent in writing by the Customer.
- 4.1.2. For Customers who do not have a written agreement to the contrary, the Service Contract is concluded upon the Customer's use of the Service.
- 4.1.3. The Parties may agree on tariffs different from the applicable Tariff by the Customer's acceptance of the Offer issued by the Service Provider. In the absence of an express acceptance, the Customer's use of the Service shall also constitute acceptance of the Offer.
- 4.1.4. Unless otherwise agreed, the provisions of these GTC and its annexes shall apply to the Service Contracts covered by this subsection no. 4.1.

### 4.2. Common rules for Service Contracts

- 4.2.1. Unless otherwise agreed, the tariff of the Service shall be governed by the Tariff.
- 4.2.2. The Service Provider may make the use of certain Services by the Customer subject to an individual agreement or to a Payment Agreement in force.
- 4.2.3. The specific rules relating to the ordering, modification and performance of certain Services are set out in the Technical Information attached as Annex 1 to the present GTC.

- 4.2.4. The Customer shall place all orders in such time that the Service Provider is able to fulfil them on time, considering the general lead time expected from it.
- 4.2.5. **The Customer's General Terms and Conditions do not form part of the Service Contract.**
- 4.2.6. An amendment by mutual agreement shall be deemed to have been made if the Service Provider reaches out to the Customer with a proposal to amend the Service Contract by mutual agreement and the Customer accepts the proposal or does not expressly reject it within 8 days of receipt. In the absence of a refusal, the Customer shall be deemed to have accepted the amendment of the contract with the content of the proposed amendment.
- 4.2.7. **The Service Provider is entitled to unilaterally amend the Service Contract in the following cases:**
- a) due to a change in legislation or a decision by a public authority;**
  - b) if the Service Contract or the conditions of use of the Service are changed in a way that is only advantageous to the Customer;**
  - c) where the Service Provider is replaced by another service provider as a result of the transformation of the Service Provider or the termination of the provision of the Service or of a contract, excluding the case where the Service Provider is replaced by an affiliate of the Service Provider or by another legal entity belonging to the same group of companies;**
  - d) in the event of termination of services, options or additional services in the future;**
- 4.2.8. Unilateral amendments to the Service Contract shall not result in a material modification of the terms and conditions of the Service Contract. In particular, a change to the terms and conditions of use of the Service (including, in particular, the Tariff for the Service, the duration of the Service Contract and the legal consequences of termination, and the quality of the Service) shall be deemed to be a material modification.
- 4.2.9. In the event of a unilateral modification of the Service Contract, the Service Provider shall send the Customer notice of the modification at least 8 days before it enters into force, together with information on the conditions of termination and the legal consequences of termination to which the Customer is entitled. The notification shall include: a reference to the amended provision of the Service Contract, the date on which the amendments enter into force, the contact details of the published GTC and, if the Service Provider modifies the tariff of the Services or reduces the volume of the Services included in the tariff, the modified tariff, volume, and amount of the change.
- 4.2.10. The Service Provider shall not be obliged to apply the notification periods under the previous point when the amendment of the Service Contract becomes necessary due to the introduction of a new service and the amendment does not affect the Service Contract already in force, or if the amendment only reduces the tariff for a Service; or the amendment is required by a change in legislation or a decision of a public authority.

- 4.2.11. If the substantial modification involves a change that is detrimental to the Customer, the Customer shall be entitled to terminate the fixed-term Service Contract with immediate effect within 8 days of receipt of the notification, without further legal consequences. If the Customer does not exercise this right of immediate termination within 8 days, the material modification shall be deemed to have been accepted.

#### **4.3. Termination or automatic termination of the Service Contract**

- 4.3.1. The Service Provider shall give notice of termination of the Service Contract in writing or, if the Customer has consented in the Service Contract, by electronic document or electronic mail, the delivery of which can be credibly proven.
- 4.3.2. The Service Provider may terminate the Service Contract with immediate effect if the Customer obstructs or endangers the proper functioning of the Service Provider's equipment and the Customer does not immediately remedy this breach of contract after having been warned of the consequences; nor does the Customer, after having been warned of the consequences, allow the Service Provider to carry out the checks necessary to investigate or remedy the reported fault or the fault discovered by the Service Provider; the Customer is in delay with the payment of the tariff for more than 15 days; the Customer uses the Service in a manner or for purposes that are contrary to the law; on the basis of the available data and information, it is likely that the Customer has misled the Service Provider with regard to a material fact, in particular but not limited to personal data, for the purpose of concluding the Service contract or using the Service.
- 4.3.3. The Customer shall pay for the service used after the notice of termination on the basis of a request for payment by advance transfer, or, in the absence of advance transfer, pay the tariff due to the Service Provider in cash at the Service Provider's registered seat prior to the release of the Consignment.
- 4.3.4. If the Customer does not use the Service for two years, the Service Contract of indefinite duration shall automatically expire on the last day of the second year following the date of the last performance by the Service Provider.

## **5. Payment terms, Tariff complaint**

### **5.1. Terms of payment**

- 5.1.1. Unless otherwise indicated, the tariffs quoted by the Service Provider are net tariffs and do not include VAT. In the absence of a valid Payment Agreement, the Customer shall pay the consideration for the Service in advance, in Hungarian forints and in cash, as set out in the Tariff or, in the case of an individual Offer other than the Tariff, in the Offer. In case of a Customer who is obliged to open a domestic account, no cash payments exceeding a total gross amount of HUF 1.500.000,- per calendar month are possible. The Customer is only entitled to make payments by bank transfer during the opening hours of the Cashier's Office. The Service Provider is only able to check the bank transfer and confirm the payment of the Service during the opening hours of the Cashier's Office. Information on the Cashier's Office is available on the Service Provider's website.

- 5.1.2. Other conditions may only be applied if a Payment Agreement is in force.
- 5.1.3. Unless otherwise agreed in writing, the Service Provider shall calculate and invoice the tariff of the Service in the manner based on the Tariff. The Service Provider shall issue an invoice of the tariff of the Service provided by it, which shall include the one-off tariffs and/or other tariffs for the Service and the consideration for the Services provided. The Service Provider shall deliver the invoice to the Customer personally or send it electronically, depending on the possibility. The Customer acknowledges that the invoice sent by e-mail does not constitute an electronic invoice issued pursuant to the VAT Act, it is only an unofficial copy of the paper invoice.
- 5.1.4. **If the currency of the invoice differs from the currency of the tariffs set out in the Tariff or the Offer, the amount of the invoice shall be converted at the exchange rate published by the National Bank of Hungary on the last working day of the month preceding the month in which the invoice is issued.**
- 5.1.5. The Customer shall pay the invoice issued by the Service Provider in the manner specified therein.
- 5.1.6. The Service Provider shall have the right, at its sole discretion, to make the provision of the Service conditional upon the payment of an advance.
- 5.1.7. The Service Provider shall be entitled to a lien on any property of the Customer which has come into its possession during the performance of the Service or otherwise, up to the amount of the invoice or invoices and up to the amount of any claim for default interest, collection tariffs, debt collection tariffs or any other claim of any nature whatsoever. The Service Provider may seek satisfaction from the pledged property before anyone else. The Service Provider's right of satisfaction from the pledged property shall be opened on the 15th day after the due date of the overdue and unpaid invoices without any further action, after which the Service Provider shall be entitled, at its option, to claim the pledged property in accordance with the provisions of Section XXVII of the Civil Code. If the Pledged Property contains perishable goods, as notified by the Customer, the Service Provider shall be entitled to open the Pledged Property and immediately sell the Pledged Property and the goods contained therein. If the perishable goods are not sold immediately, the Customer shall be liable for any resulting damage. The Service Provider shall be entitled to charge for the storage of the Pledged Item the tariff set out in the Tariff applicable to Service Contracts.

## **5.2. Tariff complaint**

- 5.2.1. If the Customer disputes the amount of the tariff charged by the Service Provider, the Service Provider shall register the complaint without delay and examine it within a maximum of 30 days. If the Customer disputes the amount of the Tariffs claimed by the Service Provider, the Customer shall have the burden of proving that the Service was not provided or was not provided to the extent stated in the issued invoice. Neither a Tariff Claim submitted for an invoice that is not yet due nor for an invoice with an expired payment deadline shall have a suspensory effect on payment.
- 5.2.2. If the Tariff Complaint is justified, the Service Provider shall correct the invoice originally issued.

- 5.2.3. If the Service Provider accepts the Tariff Complaint only partially, the Service Provider shall send the Customer a corrective invoice for the part of the disputed amount for which the Tariff Complaint was accepted. The Customer shall pay the tariff contained in the corrective invoice within the time limit specified in the invoice.

## **6. Complaints**

- 6.1. The Customer shall have the right to make a complaint to the Service Provider regarding the Service only in writing.
- 6.2. The Service Provider shall examine the Complaint within 15 days of its receipt at the latest and inform the Client of the result of the examination within a further 15 days.

## **7. Dangerous goods**

- 7.1. The Customer shall comply with the Hungarian and international regulations on the transport, marking and temporary storage of dangerous goods. The Customer shall notify the Service Provider in writing of the specific type of the dangerous goods in advance, in the order or in the Request for Offer and shall provide the Service Provider with all information and documentation necessary to fulfil the Service.
- 7.2. All consignments must comply with the regulations on the transport of dangerous goods, in particular the provisions of Government Decree No. 387/2021 (30.VI.) and Government Decree No. 388/2021 (30.VI.), before acceptance.
- 7.3. The Customer is obliged to ensure that in the case of a Consignment containing dangerous goods, the transport vehicle is marked in accordance with the law.
- 7.4. The Customer shall be liable to the Service Provider for any damage and shall indemnify the Service Provider against any liability arising on the Customer's side in connection with the transport, safe custody and handling or other measures taken against third parties, the quality and packaging of the goods and the failure to comply with its duty of care.
- 7.5. If the Customer fails to comply with any of the provisions of this clause, the Service Provider shall be entitled, at the Customer's expense, to take all necessary measures.

## 8. Compensation, liability

- 8.1. **Defective performance by the Service Provider is deemed to be: failure of the Service Provider to meet the quality requirements specified in the Service Contract at the time of performance of the Service for reasons attributable to the Service Provider.**
- 8.2. **The Service Provider shall not be deemed to have failed to perform its obligations if**
- a) the fault is caused by the Customer or by Force Majeure, or the defect has not been notified, or if the Customer expects a service or service conditions other than the quality of the service provided or the service conditions;**
  - b) the fault has been remedied within reasonable time;**
  - c) the fault could not be rectified because the Customer did not provide access to the container causing the fault in order to rectify the fault;**
  - d) the fault was caused by the carrier's improper loading of the container on the carrier's equipment or by the carrier's failure to act in accordance with the information or instructions given by the Service Provider.**
- 8.3. In the event of defective performance of the Service Contract, the Service Provider shall compensate for the proven damage caused to the object of the Service. **In case of delay or defective performance, no other damage to the Customer's property may be claimed from the Service Provider.**
- 8.4. **The Service Provider shall only be liable for damages in the event of fault, i.e. the Service Provider shall be exempt from liability for damages if it proves that it proceeded with the care that is generally expected under the given situation in order to ensure faultless performance. The Service Provider's liability for damage to the goods contained in the Consignment is limited to SDR 8.33 per gross kilogram of goods missing or damaged due to loss or damage. The Customer expressly acknowledges and accepts the present limitation of liability.** The provisions limiting or excluding liability set out in the present and the preceding clause shall not apply to any breach of contract caused intentionally by the Service Provider or causing damage to human life, physical integrity or health.
- 8.5. The Service Provider shall not be liable for any damage caused by the Customer's failure to comply with the obligation to exhibit a suitable means of transport on the part of the carrier engaged by or on behalf of the Customer or by the Service Provider's failure to comply with the weight limit specified by the carrier for the means of transport but exceeding the actual load capacity of the means of transport. The Customer expressly acknowledges this limitation of liability.
- 8.6. By accepting the Consignment, the Customer or the carrier acting on the Customer's behalf expressly acknowledges that the Customer has received all necessary information from the Service Provider about the Consignment (including the gross weight of the Consignments marked with the ILU code). The Customer's full responsibility to comply with and to have the carrier acting on its behalf comply with the provisions of Decree No. 36/2017 (IX.18) of the Ministry of National Development and, if necessary due to the technical characteristics of the vehicle combination, to have the authorisations issued by the competent authority. In the event of a breach of the provisions of this clause, the Customer shall be liable in full for the Service Provider in the event of any payment obligation of the Service Provider in this respect.

- 8.7. The Customer shall load the Products in the Consignment in such a way that the Service Provider can perform the Services on the Consignments safely and without damaging the products.
- 8.8. If the Service Provider detects obvious defects or damage to the Consignment upon arrival, the Service Provider may refuse to accept and further handle the Consignment. If the defect or damage is discovered by the Service Provider after receipt of the Consignment, the Service Provider will attempt to contact the Customer and will agree with the Customer on the next steps to be taken. If the Service Provider fails to reach the Customer or the Customer does not give instructions, the Service Provider shall take the measures it deems necessary. The Customer shall bear the costs incurred in this way.
- 8.9. The Customer, or the carrier acting on its behalf, must check before taking delivery of the Consignments that the seals indicated in the exit documents are undamaged and that all documents required for road transport are available. In the event that the Customer or the carrier acting on its behalf takes over the Consignment from the Service Provider, the Customer expressly acknowledges that the seals are undamaged and that it has received the necessary documents from the Service Provider. If the Customer or the carrier acting on behalf of the Customer does not immediately notify the Service Provider of the absence of any of the conditions set out in this clause prior to receipt, the Service Provider fully excludes its liability in this respect.
- 8.10. In the event of delivery of an empty container, the Customer or the carrier (driver) acting on its behalf shall check the condition of the container prior to acceptance to ensure that it is suitable for road transport.
- 8.11. The Customer acknowledges that if, in the opinion of the Service Provider, the provision of the Service would endanger human life, physical safety or health or the property of the Customer or others due to extreme weather conditions or other extraordinary circumstances at the terminal, the Service Provider is entitled to suspend the provision of the Service until the extreme weather conditions or extraordinary circumstances have ceased or have been remedied. The Service Provider shall not be liable for any damages suffered by the Customer due to the suspension of the Service for such reasons.

## **9. Trade compliance**

The Customer undertakes to comply with all foreign economic legislation of the countries concerned and of the European Union, in particular as regards the import, export and transit of goods subject to authorisation, including so-called dual-use goods (economic goods that can be used for both civil and military purposes). The Customer shall notify the Service Provider in writing and in good time of all regulations, prohibitions, and restrictions applicable to the goods to be shipped. The Customer shall indemnify the Service Provider in full for any damage resulting from any failure to comply with foreign trade regulations. In addition, the Customer is obliged to check the names and addresses on the sanction lists issued by the various institutions.

## 10. Data protection

- 10.1. The Service Provider shall store personal data and contact details (company name, address, invoice details) relating to the Customer in connection with the contractual relationship, as well as personal data relating to the duties and responsibilities of the Customer's employees in its CRM system, insofar as this is necessary for the performance of the contract (Article 6 (1) (b) GDPR), the protection of the Service Provider's legitimate interests (Article 6 (1) (f) GDPR), i.e. for the efficient central Customer administration within the group. The use of such personal data remains within the Rail Cargo Group (the Service Provider and its affiliated companies) and may be transferred to subcontractors for these purposes, if necessary.
- 10.2. Contact data stored in the CRM system will also be used by Rail Cargo Group for the distribution of newsletters. The Customer may have already decided at the time of checking his e-mail address whether it wishes to subscribe to the newsletter and has the possibility to unsubscribe from any newsletter at any time.
- 10.3. The Customer is obliged to inform its employees about the transmission of this information (contact details, position and responsibilities) to the Service Provider and Rail Cargo Group.
- 10.4. The Service Provider undertakes to store and process the Customer's personal data only for as long as it is necessary for the Service Provider to fulfil its contractual obligations or to enforce or defend its legal claims. In any case, the Service Provider is entitled to store and process personal data for as long as necessary to comply with legal provisions.
- 10.5. The Service Provider shall have the following rights in relation to the personal data processed by the Customer:
  - a) the right of access to the personal data processed by the Service Provider in accordance with Article 15 of the GDPR;
  - b) the right to rectification and, in accordance with Article 16 of the GDPR, the right to erasure in accordance with Article 17 of the GDPR, and, in accordance with Article 18 of the GDPR, the right to restriction of processing;
  - c) the right to object in accordance with Article 21 of the GDPR;
  - d) the right to data portability in accordance with Article 20 of the GDPR;
  - e) the right to issue a complaint with the competent data protection authority in accordance with Article 77 of the GDPR.

## 11. Contact

- 11.1. The Parties may communicate with each other in accordance with the provisions of these GTC by electronic means (e-mail) or by post. Any declaration made by any means other than the above is not capable of producing legal effects. If either Party sends a registered letter with advice of delivery to the other Party and delivery fails for any reason (because the addressee refused to ac-

cept delivery, or “not sought”, “addressee unknown”, “moved”, etc.), the consignment shall be deemed to have been delivered on the 3rd day after dispatch. A declaration sent by e-mail shall be deemed to have been delivered on the working day following the day on which it was sent.

- 11.2. The Parties shall communicate in connection with the Service and the Service Contract only in Hungarian or English. The Service Provider shall not be obliged to reply to requests in any other language.

## 12. Applicable law, jurisdiction

- 12.1. The legal relationship between the Parties shall be governed by Hungarian law. In the event of any dispute, the Parties stipulate the exclusive jurisdiction of the Budapest District Court for the II and III Districts and the Tatabánya Regional Court, depending on their respective jurisdiction.

## 13. Confidentiality

- 13.1. The Parties undertake to treat as trade secrets all facts, information, solutions or data that come to their knowledge in the course of or in connection with the performance of the Service Contract, which relate to each other’s data, assets, business activities, management, ownership, business relations or contracts, regardless of whether they have been classified as trade secrets by the Party concerned or whether the Party has taken the necessary measures to keep them confidential. The Parties shall maintain the trade secret without time limitation after the termination of the Service Contract and shall act in such a way that the trade secret is not disclosed to third parties.

## 14. Miscellaneous

- 14.1. The Parties shall cooperate with each other in all respects in the performance of the Service Contract. If one Party causes damage to the other Party, the Party that suffers the damage shall be liable to pay compensation in accordance with the applicable legislation.
- 14.2. The Customer shall inform the Service Provider of any changes in its personal data, the person of its representative and legal status without delay, but no later than 8 days after the change occurs, by e-mail or registered mail to the main e-mail address indicated at the Service Provider’s website. The Customer shall inform the Service Provider in writing of any involuntary bankruptcy proceeding, liquidation or bankruptcy proceedings initiated against it without undue delay after the proceedings have been initiated.

- 14.3. **The Parties agree that in addition of the provisions of the Payment Agreement, only the Offer accepted by the Customer, the order or Request confirmed by the Service Provider and the present GTC and its annexes shall form part of the Service Contract. The Parties agree that any prior agreement not incorporated in these documents or any agreement, custom or practice of the Parties during their prior business relationship of a similar nature shall not become the content of the Service Contract. Likewise, any custom or practice widely known and regularly used by the parties to a similar contract in the relevant business sector shall not become the content of the Service Contract if it differs from the terms of the Service Contract or the present GTC and the Annexes thereto.**
- 14.4. The Parties agree that if any provision of the present GTC is found to be invalid, the validity of the other provisions of the present GTC shall not be affected. In such case, the Parties shall replace the invalid provision(s) with valid provisions that best reflect the original intentions of the Parties.
- 14.5. The provisions in bold and underlined in the present GTC and its annexes are materially different from the law, normal business practice or previous terms and conditions applied by the Service Provider.
- 14.6. The present GTC have been prepared in separate English and Hungarian versions. In case of any discrepancy or question of interpretation between the two versions, the Hungarian version shall prevail.
- 14.7. All the annexes to the present GTC, as published on the Service Provider's website and in force from time to time, form an integral part of the present GTC.

**Annexes:**

1. Technical information
2. Tariff