

GENERAL TERMS AND CONDITIONS OF BUSINESS

INTERNATIONAL CARRIAGE OF GOODS BY RAIL

FLOYD ZRT.

(hereinafter: Floyd)

H-1138 Budapest, Madarász Viktor u. 47-49.

Company Registration Number: 01-10-045299

(effective from 25.06.2015)

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Article 1 Constituents of the contract

- (1) Contracts concerning the carriage of goods to be concluded with Floyd for cross-border international carriage of goods by rail shall be governed by the prevailing provisions of the “*Uniform Rules Concerning the Contract for International Carriage of Goods by Rail*” (CIM-COTIF) and the “*General Conditions of Carriage for International Rail Freight Transport*” (ABB-CIM), unless the provisions laid out hereunder contain different rules or there are contrary statutory regulations that are applicable on a mandatory basis.
- (2) The components of the contractual relationship between the principal and Floyd:
 - the master agreement in place at any point in time and/or the one-off assignment (hereinafter collectively: **Contract of Carriage**) (including the rules on the management of accidents in the course of the carriage of dangerous goods as set out in the RID);
 - these “General Terms and Conditions of Business” (“**GTCB**”), as a mandatory constituent of the Contract of Carriage.
- (3) The principal's general terms and conditions of business are not comprised in and are expressly excluded from this contractual relationship.
- (4) The prevailing text of this GTCB can be downloaded from www.floyd.eu/gtc.html.
- (5) This GTCB and the Contract of Carriage together shall constitute the entire agreement concluded between the parties in regard to their contractual relationship. The planned schedules and transport plans communicated to the principal shall not result in any agreement in regard to the delivery deadlines. In case of any contradiction between the contents of the Contract of Carriage and those of the GTCB the provisions laid down in the Contract of Carriage shall prevail. Issues not regulated in the Contract of Carriage shall be governed by the provisions laid down in this GTCB.
- (6) The principal declares that before the conclusion of the Contract of Carriage it was enabled by Floyd to familiarise itself with contents of this GTCB and that it expressly accepts the GTCB. At the same time, the principal declares that it does not consider the GTCB to be unfair, because it sets out the principal's rights and obligations stemming from the contract without jeopardising the requirements of doing business fairly and in good faith and does not create a unilaterally and/or unjustifiably disadvantageous position for the principal.
- (7) The principal declares that its standpoint is that this GTCB contains no provisions materially deviating from the relevant statutory regulations or the customary contractual practices. At the same time, the principal declares that in case any provision of the GTCB differs from any condition contained in any of the contracts concluded earlier between the parties, it has been specifically advised and informed of such difference and that it expressly accepts such stipulation.
- (8) In the case of a long term business relationship this GTCB shall apply to all Contracts of Carriage to be concluded with the principal in the future in regard to the subject matter of this GTCB as long as no different provisions are expressly agreed between the parties in writing.

Article 2 Subject matter and scope of the contractual relationship

- (1) Floyd carries out its carriage assignments within Europe on the basis of the Contract of Carriage to be concluded with the principal. The various individual carriage assignments to be performed by Floyd shall be set out in the given Contract of Carriage. Floyd shall only provide such auxiliary services that are directly required for the performance of the carriage assignments according to the relevant applicable statutory regulations. Any other service shall be performed on the basis of an agreement between the parties, stipulating a fee for such service specifically.
- (2) The Contracts of Carriage shall be based on the provisions set out in this GTCB, provided the Contract of Carriage contains no contrary stipulations. As a general rule, any offer transmitted by Floyd to the principal shall have no binding force. If the principal accepts an offer of no binding force and confirms this fact to Floyd in writing, Floyd shall be entitled to decide whether it concludes the Contract of Carriage on the basis of the terms and conditions confirmed by the principal. If Floyd decides to conclude the proposed Contract of Carriage, it signs and thereby executes that particular Contract of Carriage.
- (3) If Floyd has transmitted its offer as one of binding force, the principal's legal declaration expressing agreement with Floyd's offer shall not qualify as acceptance of the same (and the conclusion of the Contract of Carriage) by the principal even if it only contains any supplementary or different condition not qualifying as a material issue or one that does not affect the offer.
- (4) The principal commissions Floyd to carry out tasks of the carriage of goods in accordance with a weekly schedule agreed between the parties. The weekly schedule may only be deviated from after a prior mutual consultation and written agreement between the parties.

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- (5) If the rail carriages required for the carriage of goods are supplied by the principal, the principal shall guarantee that the suitability of the freight carriages for the carrying of goods, as well as their ECM conformity. The principal ensures that only such freight carriages are used whose owner has signed the "*General Contract of Use for Freight Wagons*" (GCU)
- (6) The parties shall inform each other of a new contact person in writing, within a sufficiently short period of time, in case the contact person specified in the Contract of Carriage has been transferred to another position or has left the company during the term of the contractual relationship.

Article 3 Legal compliance

- (1) The parties and their fulfilment partners shall commit to observe and comply with all effective statutory regulations as may be amended from time to time, applying to the carriage assignment set out in the Contract of Carriage.
- (2) Moreover, Floyd shall make sure that the tractors and carriages used by Floyd (in case the latter are also supplied by Floyd) are in conformity to the effective statutory regulations on the safety of rail carriage, as may be amended from time to time. In performing the carriage assignment laid down in the Contract of Carriage Floyd shall employ adequately trained personnel in line with the effective applicable statutory regulations.
- (3) On its own part the principal shall ensure that the freight carriages supplied by itself are in conformity to the effective statutory regulations on the safety of rail carriage, as may be amended from time to time.

Article 4 Loading, unloading, carrying

- (1) Pursuant to the provisions of the CIM-COTIF as may be amended from time to time, Floyd shall qualify as carrier, while the principal shall qualify as the sender.
- (2) The carriages shall be loaded and unloaded by the principal and the principal shall ensure that the carriages are loaded in a safe way and shall make sure that the carriages are adequately checked at the points of hand-over concerned. A point of hand-over is where the principal hands over the carriages to Floyd or where Floyd hands them over to the addressee. The principal shall guarantee that the relevant labour regulations and occupational safety rules are observed and complied with at every point of hand-over.
- (3) If the carriages are not supplied by Floyd, it shall be the principal's responsibility to provide for the corrective maintenance of the carriages. Floyd shall only inspect and maintain the carriages only for prevention, as set out in the GCU. Any damage shall be notified to the owner of the carriages and to Floyd immediately, as specified in Annex 9 to the GCU.

Article 5 Transport documents

- (1) The principal itself shall fill out the rail consignment note.
- (2) Should the principal require additional documents for the carrying of its consignment, such documents shall also be made out and handed over to Floyd by the principal before the commencement of the carriage consignment concerned.

Article 6 Term and termination

- (1) The term of the contract shall be specified in the Contract of Carriage that has to be duly signed by the parties.
- (2) Floyd shall, in particular, be entitled to terminate the contract with immediate effect if the principal fails to fulfil its payment obligations in accordance with the terms and conditions of the contract, i.e. if it fails to make payment on the due date specified in Article 8 and if it fails to make payment even after receipt of a written reminder, by a reasonable extended deadline, or if extra costs are incurred as a consequence of changes in the operating conditions and the parties cannot come to a agreement on the new prices within 30 days.
- (3) The principal shall, in particular, be entitled to terminate the contract with immediate effect if Floyd fails to fulfil its contractual obligations despite a written call to that effect, by a reasonable extended deadline.
- (4) Such termination shall be effective upon its certified communication.

Article 7 Prices / Conditions

- (1) The fee shall be set out in the relevant Contract of Carriage and shall be paid in an amount that includes the value added tax at the rate in place at the time of payment.
- (2) The price agreement shall be based on delivery at the agreed station of destination. If any station or stations other than those specified in the Contract of Carriage needs or need to be included in the route concerned, Floyd will make a new offer concerning carriage to such station(s) and hand it over to the principal.

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- (3) Services not covered by the Contract of Carriage shall be certified and settled separately; Floyd shall be entitled to charge an EUR 50 administrative fee to cover the administrative tasks relating to such additional services.

Article 8 Payment

- (1) Floyd shall issue its invoice after the completion of the service and deliver it to the principal on-line (to the e-mail address specified in the Contract of Carriage). The invoice shall be payable within 14 days of the invoice date.
- (2) The invoice shall be settled by transfer to the following bank accounts:

Floyd Zrt
HypoVereinsbank
IBAN: DE71 20030000 0010835587 EURO
SWIFT CODE (BIC): HYVEDEMM300

Floyd Zrt
UniCredit Bank Hungary Zrt.
IBAN: HU42 1091 8001 0000 0005 8460 0007 HUF
SWIFT CODE (BIC): BACXHUH

- (3) The invoice shall be issued and transmitted on the basis of the data specified by the principal in writing, in the Contract of Carriage. Any complaint in relation to the invoice may be filed in writing, within 8 days of receipt of the invoice.
- (4) In the case of any delay in payment a default interest specified in the Hungarian Civil Code (Act V of 2013, **Civil Code**) shall be charged. The default interest shall be due from the first day of the delay regardless of the communication of Floyd's call for payment and its date. Floyd shall be entitled to enforce its damage/loss exceeding the default interest and any other claims as well, including a flat rate enforcement charge as specified in the Civil Code.
- (5) The principal shall only have a right to offsetting or withholding against Floyd's claims with Floyd's prior consent to such offsetting or withholding.
- (6) Payments to be made by the principal shall qualify as payments made when they have been credited to the bank account number specified in Floyd's invoice. Payments shall be made directly to the bank account number specified in Floyd's invoice, in the currency prescribed in the Contract of Carriage. In the case of the transfer of a wrong amount or to a wrong bank account (e.g. transfer to a HUF account instead of an EUR account or the other way round) the principal shall immediately reimburse any and all extra costs proven to have been incurred by Floyd (e.g. exchange rate loss, bank charges).

Article 9 Cancellation of a carriage assignment

- (1) Any loss occurring for reasons within the principal's control and any cost incurred as a consequence of such losses shall be covered by the following contractual provisions:
 - In the case of cancellation less than 24 hours before the scheduled departure time the entire fee for the complete round trip shall be payable;
 - In the case of cancellation between 24 and 48 hours before the scheduled time of departure 60 % of the fee of the round trip shall be payable;
 - Cancellation more than 48 hours before the scheduled time of departure shall be free of charge if
 - no subcontractor of Floyd shall charge cancellation fees. These fees shall be payable.

Article 10 Instructions and information

- (1) Floyd undertakes to observe and adhere to all instructions of the principal pertaining to the carrying of goods as necessary for the concrete specification of the given assignment, except when and where this is not possible on account of some urgent operational circumstances. Floyd shall, in particular, observe and comply with the information and instructions received from the principal in relation to loading and unloading dates and times.
- (2) Floyd shall inform the principal of any and all material circumstances relating to the fulfilment of carriage assignments, particularly those relating to any obstacles to carriage and/or loading, operational disruptions or accidents, and/or any delay occurring on the transport route. In the case of such obstacles to the carriage assignment Floyd shall – provided it is actually possible – notify the principal in advance and request the principal's instructions, where appropriate. Such information shall include a description of the reason for or cause of the delay in the carriage assignment and any action taken by Floyd, as well as the expected new date/time of the commencement of the execution of the carriage assignment.
- (3) In the case of an accident or other loss occurrence Floyd shall report to the principal the recognised transport damage or loss of goods. The following pieces of information (if relevant) shall be transmitted to the principal within a reasonable time frame in a written record:
 - the site, time and cause of the accident or loss occurrence

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- the name(s) and address(es) of injured persons / fatalities
 - the extent of loss of goods
 - the dispatch data
 - the actions taken by Floyd
 - call back phone numbers
- (4) Moreover, the accident shall also be notified to the principal at the emergency telephone number specified in advance in the Contract of Carriage.
- (5) Furthermore, Floyd shall notify the principle of any objections or complaints on the part recipient concerning the quality and/or quantity of the goods and call on the recipient to set out its complaints in writing upon certifying the take-over of the consignment.
- (6) If the consignment is affected by the transport damage, Floyd shall immediately notify the principal and request its instructions.
- (7) In the case of a loss occurrence the parties shall mutually permit each other to inspect the damage.
- (8) Data relating to Floyd according to the Contract of Carriage and the sender's notes in the CIM consignment note, ex-post instructions and provisions as well as any other communication and complaint shall be communicated in German or Hungarian or their German or Hungarian translation shall be attached.

Article 11 Liability

- (1) Unless otherwise stipulated in the Contract of Carriage and unless any provision is contained to the contrary in any statutory regulation that is applicable on a mandatory basis, the parties shall bear liability for any breach of any of their contractual or other obligations in accordance with the provisions of the CIM-COTIF and the Civil Code.
- (2) Unless otherwise provided by any unconditionally applicable provisions of the CIM-COTIF or any other statutory regulation that is applicable on a mandatory basis, the provisions set out in Section 6:174 of the Civil Code [Compensation in the case of deficient performance], Section 6:142 of the Civil Code [Liability for damage caused by breach of contract] and Section 6:518 of the Civil Code [Liability for damage caused outside the scope of contract] shall apply. In regard to Section 6:143 of the Civil Code [Extent of compensation] and Section 6:522 of the Civil Code [Extent of liability for compensation for damage] the provisions set out in Article 11 hereof shall apply.
- (3) In regard to any damage or loss caused by breach of contract or deficient performance or to any loss or damage caused to the principal outside the scope of the contract Floyd shall be obliged to compensate exclusively for the actual decrease in the value of the assets or property of the principal (the so-called: consequential damage) providing that Floyd's liability to pay compensation for damage shall be limited to the net transport fee of the carriage consignment affected by the damage, providing that Floyd's liability cannot be ruled out and shall not be limited in regard to damage caused by deliberate act or damage affecting human life, bodily impairment or health, with regard to Section 6:152 of the Civil Code [Restriction and exclusion of the legal consequences of breach of contract] and Section 6:526 of the Civil Code [Restriction and exclusion of liability for the causing of damage]. No further claims may be enforced against Floyd in the way of compensation for damage.
- (4) Floyd's liability to pay compensation shall be ruled out in regard to damage or loss caused by strike, force majeure events, energy shortage, uprising, war or terrorism, provided the statutory regulations that are applicable on a mandatory basis do not prescribe objective liability to pay compensation for damage. The same shall apply to any damage or loss occurring as a consequence of actions on the part of the operator of the infrastructure (e.g. refusal to make rail track available), as long as Floyd itself is not responsible for them.
- (5) In case Floyd is held responsible for damage relating to or caused by the goods / carriages / engines or if a claim is laid by a third person against Floyd on account of inadequate packaging of the consignment or inadequate fixing of the consignment or inadequacies in loading or unloading, the principal shall fully and immediately hold Floyd harmless from such claims.
- (6) The principal and its fulfilment partners as well as Floyd shall (e.g. upon the technical inspection of the carriages, upon the inspection of the train, or, in exceptional cases, upon the involvement of the personnel and/or assets of Floyd) use the assets mutually made available for the carriage with due care and immediately inform each other of any damage caused. Any damage shall be so documented that will always make it possible for both parties to enforce any regress claim and/or claim stemming from insurance contracts at any time.
- (7) The period during which Floyd bears responsibility shall start at the time of the take-over of the train at the hand-over / take-over station as specified in the Contract of Carriage and shall end upon handing over at such locations. The parties agree that only the prevailing operators of the railway network infrastructure involved in the routes of the various carriage assignments can make sure that during the term of the contractual relationship the infrastructure – under normal operational conditions – meet the requirements of use as specified in the Contract of Carriage. Both parties are aware of

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the fact that the operators of the railway network infrastructure are, under their own general business terms and conditions, entitled to partly or fully modify the quality of the infrastructure and to adjust technical and operational standards accordingly.

Article 12 Custody

Unless otherwise provided by statutory provisions applicable on a mandatory basis, the starting and ending data and time of Floyd's custody of the railway carriages handed over by the principal and the goods contained in or on them shall be specified in the performance description laid down in the Contract of Carriage.

Article 13 Insurance

- (1) Floyd, as a railway company, shall have third party liability insurance coverage as prescribed in the relevant applicable statutory regulations.

Article 14 Loading, unloading, fixing of consignment, inspection obligations

- (1) In the framework of loading the principal shall take all of the necessary safety measure and action concerning loading and carriage. This shall include all actions and measures necessitated by the prevailing applicable national and international statutory regulations.
- (2) The fixing of the consignment as well as loading and unloading shall be parts of the principal's responsibilities. If Floyd undertakes any active participation in the course of such activities, it shall proceed as the principal's fulfilment partner and shall charge its fees to the principal separately for such activities.
- (3) Floyd shall carry out an external inspection of the fixing of the consignment – any more thorough inspection shall be part of the principal's responsibilities.
- (4) The principal shall be responsible for the inspection and checking of the consignments on the carriages and for the observance of and compliance with the marking regulations set out in Article 15.

Article 15 Marking obligation

The principal shall provide for the marking of the goods to be carried in accordance with the prevailing effective national and international regulations as may be amended from time to time, paying particular attention to the effective environmental regulations and the provisions concerning dangerous goods. In the case of failing to do so the principal shall hold Floyd harmless from any and all claim and liability and/or fully indemnify it.

Article 16 Date of performance

The services to be performed by Floyd shall be fully discharged – releasing Floyd of any further obligation – upon the hand-over of the trains and the documents accompanying the trains, at the agreed stations of hand-over, to the addressee, the principal or a third person authorised by the principal.

Article 17 Retaining of third persons

- (1) Floyd shall be entitled to fulfil the assignments received from the principal with the involvement of subcontractors.
- (2) Floyd shall make sure that subcontractors fully observe and comply with the contractual terms and conditions agreed between the parties.
- (3) In the context of its responsibility and liability under the contract Floyd shall be just as responsible and liable in regard to the performance of the agreed services and contractual collateral obligations in the course of the activities of the subcontractors retained by Floyd as though it performed those activities itself, unless otherwise provided in the Contract of Carriage.

Article 18 Changes in the applicable statutory regulations

In case the performance of the agreed services is proven to be restricted and/or – partly or fully – prevented by any applicable national or international statutory regulation, both parties shall be entitled to cancel the relevant Contract of Carriage by an extraordinary notice of termination. At the same time, in such cases the parties mutually rule out the enforcement of any claim for compensation for damage.

Article 19 Confidentiality and secrecy

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- (1) Both parties commit to treat any and all pieces of information obtained in relation to the other party's business operations and/or services provided by the other party with due care and as strictly confidential, and to use such information exclusively for business purposes relating to the contractual relationship between the parties and the Contract of Carriage to be concluded at any point in time. Both parties undertake to impose adequate confidentiality and secrecy obligation on all of their employees accessing confidential information in the context of their cooperation.
- (2) The obligations set out in paragraph (1) shall remain in force, without limitation in time, even after the discontinuation of the Contract of Carriage.
- (3) The contents of any public appearance for the purposes of advertising or image building shall be consulted by the parties in advance and the parties shall be entitled to mutually approve such appearances in writing.

Article 20 Governing law and jurisdiction

- (1) The parties agree that the Contract of Carriage shall be governed by the Hungarian law, unless any international statutory regulations (particularly, the CIM-COTIF) are applicable on a mandatory basis. Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) shall not be applied. If it can be validly ruled out, the enforcement of receivables from Floyd by way of European payment orders shall be ruled out.
- (2) The parties shall use their best efforts to resolve any dispute that may arise between them as a result of or in relation to the Contract of Carriage by agreement. Should such efforts fail to resolve a dispute, the parties shall, in order to resolve any dispute between them that may result from or in relation to the Contract of Carriage concerning its violation, termination, validity or interpretation, submit to the exclusive award of the Permanent Arbitration Court (Budapest) organised and operating alongside the Hungarian Chamber of Commerce and Industry, providing that the Arbitration Court shall proceed in accordance with its own procedural rules. The language of the proceedings shall be Hungarian and the number of the proceeding arbitrators shall be three.

Article 21 Severability

In case any of the above provisions turns out to be or become invalid, or if they contain any gap in regulation, this shall not affect the validity of the remaining provisions. The parties shall agree and adopt such valid provision in place of the invalid provision that is in line with the meaning and purpose of the provision that has become invalid. In the case of any gap in regulation the parties shall agree on provisions of such meaning and purpose that they would have adopted if they had taken the issues concerned into account even in advance, at the time of the conclusion of the Contract of Carriage.

Article 22 Closing provisions

- (1) A contract may only be terminated, modified or supplemented and its annexes may only be modified or supplemented in writing. This shall also apply to waiving the requirement to lay down such in writing.
- (2) Any declaration with legal effect made in regard to a Contract of Carriage shall be laid down in writing and shall deliver to the other party's registered office directly to the contact person specified in the Contract of Carriage by direct delivery proven by certificate of receipt, in the form of a registered mail consignment with return receipt requested, or by fax.
- (3) If the Contract of Carriage is to be duly signed on the part of the principal by a person who does not understand Hungarian, another prerequisite for the validity of the written legal declaration is that the Contract of Carriage itself expresses that the witness to be presented by the principal in the Contract of Carriage has explained its contents to the principal's representative signing the contract. The principal shall be responsible for ensuring compliance with this format requirement.
- (4) No auxiliary agreements have been concluded in regard to the Contract of Carriage.