

General Terms and Conditions of Rail Freight Transport

Ostravská dopravní společnost - Cargo a.s.

Effective as of January 2021

Article 1 - General Provisions

1. These “General Transport Terms and Conditions” (hereinafter referred to as the “GTTC”) are issued by the transport operator Ostravská dopravní společnost - Cargo a.s. (hereinafter referred to as the “ODC” or the “Transport Operator”) for the performance of rail transport and apply to every transport carried out under a contract for the carriage of goods (hereinafter referred to as the “Transport Agreement”) by rail, entered into by and between the Transport Operator and the Consignor (hereinafter also referred to as the “Transport Client”). After the conclusion of the Transport Agreement, these GTTC shall become an integral part thereof, in the version valid and effective as of the date of such Agreement (or an amendment thereto).
2. The Transport Operator is authorised to operate non-public rail freight transport on its own behalf within the territory of the Czech Republic and the Slovak Republic.
3. The Transport Operator shall respect the basic legal regulation for transport of wagon loads in public railway transport - Government Regulation on the Transport Rules for Public Rail Freight Transport No. 1/2000 Coll., as amended, provisions of multilateral contracts, e.g. VSP (AVV).
4. The Transport Operator shall carry out the international transport in line with the Uniform Regulations for the Contract for the International Carriage of Goods by Rail (CIM – Appendix B to the Convention, CUV – Appendix D to the Convention, RID – Appendix C to the Convention) and generally applicable legal regulations.

Article 2 - Type and Scope of Services Provided

1. The Transport Operator transports the wagon load and railway vehicles on the basis of a transport agreement concluded with the Transport Client.
2. The Transport Operator transports the wagon load using its own or leased railway vehicles or using the Client’s or a third party’s vehicles.
3. If the holder of a vehicle that is to be used for transport according to the Client’s instructions is not a party to the the VSP (AVV) contract, a separate agreement for the use of the vehicles between the Transport Operator and this Vehicle Holder shall be concluded prior to the start of the transport.

Article 3 - Rights and Obligations of the Transport Operator and the Client

1. Based on the concluded transport agreement, the Transport Operator agrees to transport the wagon load or the railway vehicle according to the agreed terms and conditions.
2. Performance of transports is subject to ordering of the transport by the Client within the offer validity period, whereas the transport shall be ordered by the Client for performance at least 14 days before the date of the planned performance of the transport. However, the actual performance shall be subject to confirmation of the purchase order by the Transport Operator, which shall depend on the capacities as of the date of performance of the transport.

3. The Transport Operator shall accept the consignment for transport with completed transport documents and confirm its receipt to the Consignor.
4. The Transport Operator is responsible for the activities performed during the validity of the Transport Agreement by its employees.
5. The Transport Operator is entitled to order a part of the transport from a third party. However, the Transport Operator shall be solely responsible for the transport performance towards the Transport Client.
6. Before accepting a shipment for transport, the Transport Operator is entitled to review its condition, weight and content, the technical condition of the railway vehicle, the completeness and correct completion of transport documents and compliance of the consignment with the provisions of the Transport Agreement, however, the responsibility remains with the Transport Client according to CIM/COTIF.
7. If the Transport Operator identifies deficiencies according to the previous paragraph of this Article, it shall request the Client to remedy the situation. After eliminating any and all deficiencies, the Transport Operator shall accept the consignment for transport.
8. The Transport Operator shall be liable for damage caused to the consignment as from the moment of its acceptance from the Consignor or a third party until it is issued to the Consignee, or to a third party, unless the Transport Operator is relieved from liability as per the binding regulations of Article 22 of the CIM (in particular Section 2 and Section 3).
9. The Transport Operator is not responsible for the quality characteristics of the transported goods.
10. The Transport Client is fully responsible for the correctness of the data contained in the transport documents.
11. The maximum loading limits of the railway vehicles (gauge loading) and the agreed maximum weight of the wagon load shall be respected.
12. During the transport, the Transport Client shall cooperate with the Transport Operator, if requested to do so, e.g. to issue binding instructions for handling the transported consignment, updating the transport instructions, etc.
13. Sealing of the railway vehicles shall be carried out by the Consignor or the loading company designated by the Consignor.
14. The Transport Client shall arrange for and hand over to the Transport Operator during transportation of the selected products the documents required by Act No. 353/2003 Coll., as amended. The documents required by this Act shall be available at the time of inspection by the customs service which administers consumer taxes in the territory of the Czech Republic and cannot be submitted for inspection additionally. The tax administrator shall seize certain products and, where appropriate, the transport vehicle, should it find out that they are being transported without documents.
15. In the case of the transport of selected products under tax exemption arrangements, the consignment shall contain:
 - a) a paper copy of the electronic transport document; or
 - b) a commercial document showing the reference code (ARC).
16. The Transport Client (consignor) shall submit an electronic transport document or a commercial document stating the reference code (ARC) to the person who transports the selected products. This ARC may also be entered in the CIM consignment note. However, if

the record is incorrect or illegible, the customs service shall regard this as a transport without documents.

17. In the case of the transport of selected products released for free circulation in another EU Member State and transported through the tax territory of the Czech Republic, the consignment shall be accompanied by a simplified accompanying document.

18. If the consignment is not a selected product transported on a conditional basis without consumer tax, the Consignor shall state in the NL CIM, in the goods description section, that the consignment does not have to be accompanied by the documents required by the Consumer Tax Act.

Article 4 - Rights of Contractual Partners during and after the Transport

1. The Transport Client shall have the right to request a modification of the transport agreement on the provision that the transport has not yet been completed and the consignment has not yet been issued to the consignee indicated on the consignment note and if this is not prohibited by law.

2. The following cases may be the subject of the Transport Client's request for an amendment of the transport agreement:

- the end of the transport on the journey,
- return to the place that the consignment was dispatched from,
- the issue of a consignment to a consignee other than indicated in the consignment note,
- the issue of a consignment in a place other than indicated in the consignment note.

3. The Transport Operator agrees to comply with the Client's request if the change of the transport agreement is feasible and if the change does not disrupt the Transport Operator's business.

4. The Client agrees to reimburse the Transport Operator for the costs incurred as a result of the transport agreement amendment.

Annex 5 - Other Transport Documents

1. For the purposes of performance of the transport agreement by the Transport Operator, other transport documents shall mean any and all documents necessary for the performance of the actions of the customs service or other state administration bodies.

2. The Transport Client is responsible for submitting any and all documents necessary for carrying out the transport.

3. The Client shall compensate the Transport Operator for damage incurred due to incomplete or incorrect details contained in the submitted documents or data in the submitted documents.

4. Until the required documentation is provided by the Client, the Transport Operator has the right to refuse the transport.

5. The Client is entitled to have the consignment insured and shall notify the Transport Operator accordingly and provide them with a document confirming this fact. This document thus becomes another transport document.

6. In the case of the transport of particularly valuable goods, the Transport Operator reserves the right to demand insurance of such a consignment, and be ready to provide the Client with the necessary assistance or to arrange for the insurance on the Transport Client's behalf.

Article 6 - Goods Transported under Special Conditions and Goods Excluded from Transport

1. Consignments, the properties of which may, during transport or storage, cause explosion, fire, damage to vehicles, railway infrastructure or other items, as well as injury, poisoning, burns or illness of persons, shall be regarded as hazardous. The conditions for the transport thereof are stipulated:

- for international transport in the COTIF Convention in RID,

2. The Transport Operator excludes radioactive substances and explosives from transport.

3. The Transport Operator transports waste according to the applicable legal regulations.

Article 7 - Acceptance of Wagon Load or Empty Vehicles by the Transport Operator from the Consignor and its Issuance to the Consignee

1. After loading the wagon load or preparing an empty vehicle, the Consignor shall hand over the completed transport documents to the Transport Operator.

2. The Transport Operator is entitled to check the content of the consignment or the condition of the transported vehicle, unless the Parties have directly agreed to this act in the Transport Agreement.

3. The Transport Operator shall confirm acceptance of the wagon load or empty vehicle for transport by an entry in the consignment note or in the vehicle certificate and issuance of a duplicate to the Consignor.

4. The Transport Operator shall issue the wagon load or empty vehicle to the Consignee in the place specified in the consignment note.

5. The Consignee shall confirm the acceptance of the wagon load in the specified section of the transport document.

Article 8 - Procedure for Loading, Packaging, Identifying of Consignments, Procedure in the Case of Damage to Consignment

1. The Transport Client shall load the wagon load itself, unless otherwise agreed in the transport agreement.

2. In the transport agreement, the Parties shall specify the time limit for loading.

3. The Client is obliged to notify the Transport Operator of the completion of the loading procedure.

4. The Transport Client shall take measures to ensure that the wagon load is secured against theft and damage and that it does not cause damage to another consignment or railway vehicle.

5. The Client shall load the wagon load in accordance with the UIC loading guidelines, generally binding standards, or other agreed rules, if applicable.

6. If required by the nature of the consignment, the Client shall identify the consignment in such a way that it is clear how the consignment is to be handled and how it is to be stored, if necessary.

7. If the transported consignment is damaged during transport, the Transport Operator shall demonstrably inform the Transport Client accordingly. The Transport Operator's representative shall draw up a report on the damage identified (commercial report). The Transport Client shall decide how the Transport Operator is to handle the damaged consignment further.

8. If the Transport Client fails to submit a report on how to handle the consignment to the Transport Operator within 24 hours as of the notification of damage, the Transport Operator shall take such measures itself to prevent further damage to the consignment and shall demonstrably inform the Client of the measures taken.

Article 9 - Procedure in the Case of Damage to Railway Vehicle

1. The Transport Client is responsible for ensuring that handling during loading and unloading is carried out in such a way as to avoid damage to the railway vehicle.

2. However, according to point 1 of this Article, the Client shall not be liable for damage to the railway vehicle if the damage is caused by the Transport Operator during the loading or unloading procedure.

3. If the vehicle is damaged during the cargo handling, the Transport Operator's representative shall draw up a "Report on damage to freight railway vehicle" which is specified in Annex 4 to VSP.

4. If the vehicle is damaged during the transport, the Transport Operator shall decide on whether the consignment will be transported on the damaged vehicle according to the concluded transport agreement. If the transport cannot be completed in the damaged vehicle according to the concluded transport agreement, the Transport Operator shall notify the Client of the interruption of the performance of the transport agreement and request them to decide on how to proceed with the consignment.

5. If the Transport Client fails to submit a report on how to handle the consignment to the Transport Operator within 24 hours as of the notification of damage, the Transport Operator shall take such measures itself to prevent further damage to the consignment and shall demonstrably inform the Client of the measures taken.

Article 10 - Transport Operator's Procedure in the Case of Traffic Accidents, Fire, Damage to Cargo or Other Extraordinary Incidents

1. If an incident causes damage to the transported consignment or railway vehicle transported as a consignment, the Transport Operator shall immediately inform the Transport Client accordingly.

2. If an incident occurs during the transport that the Transport Operator could not have avoided, the failure to perform the transport agreement shall be considered force majeure.

Article 11 - Transport Claims, Procedure in Case of Consignment Damage or Loss

1. The Transport Operator shall be liable for damage caused to the consignment or loss of the consignment for the period from its receipt until handover to the Consignee, unless the Transport Operator proves that it was caused by:

- the Client, the Consignor or the Recipient;
- special defects in the goods (e.g. internal destruction, wastage);

- failure to comply with the loading regulations - circumstances that could not be avoided by the Transport Operator and the consequences of which could not be avoided.

2. In addition, the Transport Operator shall be relieved from liability in the cases specified in the CIM for transports within the scope of the COTIF Convention.

3. If the consignment is damaged or lost, the entitled Transport Client or its authorised representative shall exercise the claims against the Transport Operator.

4. The Transport Operator shall draw up a commercial record of damage to or loss of the consignment and proceed in accordance with the regulations specified incl. Article 1(4) hereof.

Article 12 - Price and Payment Terms

1. The Client agrees to pay the Transport Operator for transport of the freight (the "Price") in the amount specified in the quotation, including eventual demonstrable extra costs related to the transport performance.

2. The prices are stated exclusive of VAT.

3. Should the CZK/EUR exchange rate change by more than 5% compared to the rate set by the Czech National Bank (the "CNB") on the day of issue of the quotation, the Transport Operator reserves the right to unilaterally adjust the price. The Transport Operator is entitled to carry out such Price adjustment repeatedly.

4. In order to determine the price, the Transport Operator shall use the actual weight of the consignment rounded mathematically to a whole tonne, unless otherwise agreed between the Transport Operator and the Client. In the case of different prices for different weight levels of the same consignment parameter, the weight level of the vehicle is determined as an average of the weight on one vehicle of the consignment.

5. The Price does not include siding charges or any other surcharges related to the sidings of the Consignor or Consignee, unless otherwise explicitly stated in the quotation.

6. The price shall always be paid by the Client on the basis of a tax document – invoice issued by the Transport Operator in accordance with Act No. 235/2004 Coll. on value added tax, as amended, Act No. 563/1991 Coll. on accounting, as amended, and Section 435 of Act No. 89/2012 Coll., the Civil Code, as amended (the "Civil Code").

7. The tax documents - invoices shall be sent by the Transport Operator in paper form to the Client's address. In the case of an agreement between the Transport Operator and the Client, the tax documents/invoices may be sent electronically in "pdf" format, whereas this delivery method completely substitutes the delivery thereof in paper form.

8. The Client shall settle the tax document by the due date specified on the relevant tax document/invoice by transferring the respective amount to the Transport Operator's bank account specified in the respective tax document/invoice. Unless otherwise agreed between the Transport Operator and the Customer, the payment term of the invoices shall be 30 calendar days as of the issue date, whereas only within this period shall the Client be entitled to submit eventual objections to the formal correctness of the relevant tax document (to the e-mail address finance@odos-cargo.cz).

9. The relevant invoice shall be deemed duly paid on the day when the due amount is credited to the Transport Operator's bank account. When paying the Price, the Client shall state the number of the relevant tax document as the variable symbol. Tax documents may also be paid by a summary payment by sending an advice note to the e-mail address finance@odos-cargo.cz.

10. Any and all costs resulting from the bank transfers during performance of the Client's payables to the Transport Operator shall be borne by the Client.

11. Should the Client be in default in paying the due amount, the Transport Operator shall be entitled to charge post-maturity interest, including the costs associated with claiming the receivable in the amount stipulated by Government Regulation No. 351/2013 Coll., as amended.

12. The Client is not entitled to set off any of its payables to the Transport Operator with the Client's receivables from the Transport Operator, or to pledge any of its receivables to the Transport Operator and/or assign them to third parties without the Transport Operator's prior written consent.

Section 13 - Warranty Claims

1. The rights arising from the transport of wagon loads shall be exercised by an authorised person, i.e. the Transport Client or the Consignee, or their authorised representatives, with the Transport Operator.

2. Warranty claims shall be filed without undue delay, either in writing, postal address Ostravská dopravní společnost – Cargo, U Tiskárny 616/9, 702 00 Ostrava, or by e-mail to: obchod@odos-cargo.cz.

3. When lodging a warranty claim, the authorised person shall submit the original transport documents, or a certified copy thereof, and documents proving the occurrence of the damage, including the determination of the amount thereof.

4. The Transport Operator shall settle claims within 30 business days as of the date of claim delivery. In the event that the Transport Operator has invited the authorized person to submit missing documents, the time limit for handling the warranty claim shall be calculated as from the date on which the missing documents are delivered to the Transport Operator. The contact address for warranty claim handling is obchod@odos-cargo.cz.

Article 14 - Final Provisions

1. The terms and conditions agreed to by the Parties in the transport agreement are binding for both contractual partners, respectively, the Consignee.

2. If certain cases are dealt with in the transport agreement differently from these GTTC, the respective provisions of the agreement shall apply to both Parties.

3. These GTTC are published on the Transport Operator's website.

4. The Transport Operator reserves the right to amend and supplement these GTTC.

5. If these GTTC are amended during the performance of the transport agreement, they shall apply to this agreement only if an amendment containing the subject revision is made.

6. The Parties to the Transport Agreement agree to treat any and all data, documents and information provided to them in connection with the conclusion of the Transport Agreement as confidential and not to disclose them to third parties.

7. Any agreements of the Transport Operator and the Transport Client that should limit or exclude liability arising from the transport agreement, determined by binding regulations, e.g. by law, international agreements, etc., and proposed by these GTTC, shall be null and void.