

# **Hupac Intermodal AG**

## **Terminal Aarau**

### **General Conditions of Contract (GCC)**

## 1. Object and application scope

1.1. These General Conditions of Contract (GCC) rule the relationships between customers and Hupac Intermodal AG, regarding the set of services provided by Hupac Intermodal AG in the terminal that it runs.

1.2. In the event of any conflict between the provisions contained in these GCC and those of a Contract, the conditions stated in the Contract will exclusively prevail.

## 2. Definitions

For the purposes of this document, Hupac Intermodal AG states as follows:

**Customer/Customers:** any legal or natural person to whom Hupac Intermodal AG provides services.

**Contract:** any agreement or written document that rules the supply of services provided by Hupac Intermodal AG to its customers.

**Consideration, rate and/or price:** any amount applied to each service offered by Hupac Intermodal AG.

**Handling:** all the terminal operations related to the handling of the ITUs.

**Client representative:** the person charged by the customer to deliver or to collect an ITU in the terminal.

**Performed services:** any service or other activity provided by Hupac Intermodal AG in its terminal to a third party.

**Terminal:** all the areas and facilities where Hupac Intermodal AG performs its activity.

**ITU:** Intermodal Transport Unit, such as swap bodies, semi-trailers, containers, tanks, etc. licensed for railway transportation equipped with hooking systems for their handling with gantry or mobile cranes.

## 3. Entitlement to services

The use of the service entails the direct and automatic acceptance of the following General Conditions of Contract that have unlimited validity and that can be modified by Hupac Intermodal AG in any moment.

## 4. Services

4.1. Where required, as stated by the article 2 of this contract, terminal services include, in an exemplifying way, but not really complete:

- handling for loading and unloading of the trains
- handling for loading and unloading of ITUs from the wagon to the lorry and viceversa
- technical stop for the incoming ITUs to the terminal (not under ADR/RID state), ruled by the fees system
- administrative management of trains including, for instance, the issue of consignment notes, train documents, etc.

- it is up to the customer, in order to benefit of the services, to follow the terminal users' rules of behaviour drawn up by Hupac Intermodal AG whose the customer declares having read and completely approved
- additional services.

The Parties may set on the provision of additional services as per a former written agreement.

## **5. Modalities to provide terminal services: ITUs acceptance at the terminal**

5.1. Before introducing the ITU into the terminal, the customer has to inform Hupac Intermodal AG, with defined modalities, about the kind and the weight of goods contained in the ITU. Before the provision of the services, Hupac Intermodal AG saves the right to reject ITUs that are not in compliance with the safety rules. Then, Hupac Intermodal AG will issue a delivery order that, once signed by the customer or by its appointee, is valid as for the acceptance of the ITUs. Hupac Intermodal AG is not liable for any damages, tamperings and other effects that are not detectable on the ITU upon its introduction into the terminal and during the check performed as per the provisions in the first part of this item.

5.2. Upon acceptance of the ITU, the customer relieves Hupac Intermodal AG from any liability pertaining goods contained therein and from any damages possibly occurred during the transportation.

5.3. The customer guarantees the appropriate stowage, fastening (or anchoring) of loads inside the ITUs and their compliance with railway regulations and, in general, with the combined (road/railway) transportation. Therefore, the customer relieves Hupac Intermodal AG from any liability on the same though Hupac Intermodal AG accepts the ITU without raising any objection.

## **6. Modalities to provide terminal services: Delivery of ITUs**

6.1. Hupac Intermodal AG will deliver ITUs to the customer or to the representative of the customer, duly authorised in writing by the customer to pick up the ITU/ITUs and who, anyway, is required not to be defaulting with any obligation deriving from these General Conditions of Contract or from any other contracts stipulated separately.

6.2. Upon the delivery of an ITU, Hupac Intermodal AG will issue a collection notice that the customer or its representative signs and receives a copy. The description of the ITU contained in the collection notice is in compliance with the ITU conditions upon the redelivery to the customer or to the representative of the customer.

## **7. Modalities to provide terminal services: Handling ITUs – loading and unloading trains**

7.1. If stated in the contract and within limitations and conditions properly defined, just after the arrival of the ITU at the terminal and before the redelivery to the customer, Hupac Intermodal AG loads and unloads ITUs on and off the railway wagons providing handling services.

7.2. Hupac Intermodal AG will charge the handling costs as detailed in the price sheet currently in force, unless otherwise agreed in writing by the Parties.

## **8. ITUs containing dangerous goods/wastes**

8.1. Regarding ITUs that contain dangerous goods/wastes, the customer guarantees the compliance with the national and international safety regulations and that the statements made upon the stipulation of the contract, and in any other documents delivered to Hupac Intermodal AG, are true.

8.2. If the statements or the information provided by the customer, as per what stated in the previous paragraph 8.1, are not complete or correct for any reasons, Hupac Intermodal AG will be entitled to reject the ITU upon its delivery or, if it has already occurred, to give the ITU immediately back to the customer. In this case, Hupac Intermodal AG will owe nothing to the customer as a compensation and/or indemnity in case of the failed forwarding of the ITU. At the same time, the customer will be obliged to pay the total amount of the services provided by Hupac Intermodal AG until the ITU is back to the customer.

8.3. The customer relieves and commits to relieve Hupac Intermodal AG and any possible third parties from any damages, complaints or claims that could arise, directly or indirectly, from the non-compliance of any ITUs containing dangerous goods and/or wastes and/or from the failed respect of the provisions in both national and international regulations applicable to such special shipments.

8.4. It is not allowed to stock any ITUs containing dangerous goods at the terminal, but only a technical stop to ensure the continuation of the transportation.

The customer shall therefore be obliged to collect quickly the ITUs arrived and made available to the same customer at the terminal.

In case of missed respect of what stated above, Hupac Intermodal AG saves the right to find solutions, in line with the dispositions in force that will be paid by the customer.

8.5. The customer is obliged to deliver ITUs, containing dangerous goods, only on the same day that the related train is planned to leave.

8.6. Hupac Intermodal AG, in accordance with studies carried out on the risk analysis of the transportation in the intermodal railway system, reserves the right not to accept certain types of goods, including some classified as dangerous.

The list of these types of goods, periodically updated, is published and downloadable on the website [www.hupac.com](http://www.hupac.com).

## **9. Performance of the services**

9.1. Unless written agreements, signed by the Parties, stating the contrary, Hupac Intermodal AG will not take up any obligations related to the timing required to perform the services. Therefore, it will be not liable for any damages that are originated, directly or indirectly, from Hupac Intermodal AG processing time.

9.2. When performing services, Hupac Intermodal AG will be also allowed to avail of third parties services.

9.3. Hupac Intermodal AG is committed to respect the scheduled opening hours.

## **10. Economic considerations and payment modalities**

10.1. It being understood that the rates detailed in the price sheet currently in force, published on the web site, payments due to Hupac Intermodal AG for the fulfilment of the services described in the previous items, as well as guarantees and formalities of payment, can be ruled by specific trade agreements. The payments due must be paid by the deadline as showed in the invoice sent by Hupac Intermodal AG.

10.2. A missed respect of the terms of payment will involve the application of the overdue interests, equal to 5%.

10.3. Rates and prices applied by Hupac Intermodal AG can be modified in any moment by Hupac Intermodal AG. The updating are visible on the web site.

10.4. In case of, during the whole duration of the contract, the ITUs introduced by the customer inside the terminal would suffer limitation in their relative use and/or circulation in accordance with the provision of every civil, penalty and administrative nature (for example: requisitions, administrative suspension, etc.) issued by the Authorities, the customer commits to pay the occupation lease of the spaces inside the terminal, as stated in the price sheet published on the web site, until the moment when the limitative provisions of the circulation of ITUs are cancelled or lose their effectiveness.

## **11. Liability - Refund of damages**

11.1. In order to define the possible liability of Hupac Intermodal AG, no presumptions of any nature will be applicable. Thus, the responsibility of Hupac Intermodal AG for damages and losses can be attributed to Hupac Intermodal AG, only if the customer provides the undisputable evidence of a contractual non-fulfilment by Hupac Intermodal AG and of the origin of damages and losses in the non-fulfilment or in other causes depending directly on the responsibility of Hupac Intermodal AG.

11.2. Hupac Intermodal AG will be excluded from any liability for any damages, losses or failures on the ITUs and for any other responsibility that can be attributed, in full or in part, to a third-party fault, extraordinary events or force majeure. As a mere example, however not limited to, force majeure includes atmospheric phenomena, natural disasters, war conflicts, riots or rallies, etc., and/or negligence, and/or malpractice, and/or imprudence of the customer, and/or circumstances that could not be avoided, and/or consequences without remedy.

11.3. Hupac Intermodal AG will be not responsible in case of impossibility in the carrying out of the different functions due neither to the activities of the railway companies or the intermodal operators on the circulation of trains or their shunting nor to the railway network manager's ordinary or extraordinary activities.

11.4. Hupac Intermodal AG will not be responsible in case of impossibility in the carrying out of the different functions due to possible emergencies caused by unforeseeable events, natural and/or weather events of any special entity. Thus, Hupac Intermodal AG will be not responsible for any damages deriving, directly or indirectly, from such evidence.

11.5. The refund due by Hupac Intermodal AG for any damage originating from losses or failures of the ITUs cannot be higher than two SDRs (Special Drawing Rights) per kilo gross weight of lost or damaged goods.

## **12. Confidentiality**

Whatever relates to the contracts with the customer – e.g. documents, agreed provisions, rates, know-how, plans, procedures, data and information on shipments, plants and equipment – is strictly confidential and will not be spread or reported to third parties, even after the termination of these GCC, without the written consent by the customer and Hupac Intermodal AG.

## **13. Terms of payment**

The terms of payment for Services are 30 days net from the date of invoice.

#### **14. Jurisdiction and applicable law**

14.1. For any controversy, directly or indirectly connected with the execution and/or the interpretation of this contract, the Parties agree upon the competence of the Court of Mendrisio, Pretura of Mendrisio South. The Swiss law will be applied.