

ECL ALB INTERMODAL 2024

General Terms and Conditions of ECL – European Cargo Logistic GmbH –
for national and international intermodal transports
valid from 01.01.2024

Preamble

These ECL ALB INTERMODAL 2024 replace the previously valid GTC, insofar as they concern the national and international intermodal transports carried out by ECL European Cargo Logistics GmbH ("ECL") on its own behalf. They are valid from 01.01.2024 and apply exclusively to all contracts concluded by ECL in intermodal transport, including the associated supplementary partial transports by road and sea

1. Description of services, scope of application, deviating and supplementary conditions

1.1 As a rule, we transport your loading units by rail from terminal to terminal and carry out the necessary crane operations (lifts) at the terminal. We provide our services (transportation of the loading units, handling, intermediate-/storage and other transportation-related services at the terminals) in accordance with the following ALB and the conditions stated in Section 1.3. For international transportation, the uniform legal provisions for the contract for international carriage of goods by rail ("CIM") contained in Appendix B to the Convention concerning International Carriage by Rail (COTIF 1999) shall apply insofar as they are applicable. If an intermodal transport ("piggyback transport") is carried out cross-border by motor vehicle or a vehicle equivalent to a motor vehicle (Art. 1.(2) CMR) without reloading the goods, the CMR shall apply within its scope of application. These provisions, as well as other provisions fixed in the GTC, shall take precedence over these ECL ALB INTERMODAL insofar as they are mandatory. In this respect, the ECL ALB INTERMODAL shall apply subordinately. In the absence of mandatory provisions, the ECL ALB INTERMODAL shall also apply to international transportation. The ECL ALB INTERMODAL shall not apply to contracts with consumers within the meaning of Section 13 BGB.

1.2 The customer's general terms and conditions are excluded.

1.3 In addition to the ECL ALB INTERMODAL, the following terms and conditions apply in their currently valid version:

- Price offer for the respective intermodal transportation
- Operational Guidelines
- Regulations for the carriage of dangerous goods by rail (RID)
- Dangerous Goods Ordinance for Road, Rail and Inland Navigation (GGVSEB)
- Other public law regulations and conventions for modes of transport used for intermodal transport.

1.4 We provide forwarding, warehousing and other customary forwarding services on the basis of the ADSp 2016 version. These apply subordinate to mandatory regulations and conventions.

2. Object of transportation

The object of transportation are loading units. Loading units within the meaning of these ECL ALB INTERMODAL are semi-trailers & containers whose dimensions, corner fittings and strength are standardized by the international standardization organization as well as swap bodies, i.e. interchangeable truck bodies. The loading units must comply with the applicable statutory regulations and technical provisions (e.g. DIN, EN; UIC leaflets, StVZO, STVG) and be marked in accordance with the ISO 6346 and EN 13044 standards. They must be safe to operate and suitable in every respect for the goods and the crane operation (lifting). As we park them outdoors, they must be equipped for outdoor storage and, in particular, be leak-proof.

3. Acceptance of the loading unit

3.1 Delivery of the loading unit on the day of dispatch shall be made by the customer or his authorized representative.

3.2 Shipping order forms signed by us or our local representatives or other acceptance receipts issued upon delivery shall only establish a presumption that the customer has delivered a loading unit without any safety defects - recognizable from the ground - for subsequent rail transport. There is no further presumption with regard to the external condition of the loading unit and the goods contained in the loading unit. We are not obliged to inspect the goods loaded in the loading unit, their packaging, stowage and fastening or the information provided by the customer or the documents handed over.

3.3 When preparing incoming goods reports (check-in), only externally visible damage that goes beyond normal signs of wear and tear shall be recorded from the respective inspection location

3.4 Loading units delivered before the agreed shipping date can be stored in the transshipment facility for a fee, subject to available and free capacities. We will arrange storage facilities in this respect. Storage shall be unguarded and unsecured. The customer expressly permits storage with the respective operator of the transshipment facility or a third party. The storage ends with the transshipment of the loading unit onto the wagon.

3.5 Stabling or storage of loading units shall take place in the open.

4. Delivery of the loading unit

4.1 Delivery shall be effected by handing over the loading unit to the customer or his authorized representative (collector) at the place of receipt.

4.2 Loading units not collected on the day of receipt shall be deposited in the transshipment facility at the customer's expense. Storage is unguarded and unsecured. We may also have the loading unit stored in accordance with Section 419 (3) sentence 2 HGB without being obliged to obtain prior instructions. In the event of storage, the customer expressly authorizes storage with the operator of the transshipment facility or a third party.

4.3 If a loading unit deposited in accordance with Section 4.2 sentence 1 is not collected within ten working days of the date of receipt, ECL is entitled to take further measures in accordance with Section 419 (3) HGB without being obliged to obtain prior instructions. Section 4.2 sentence 3 applies accordingly.

4.4 Stabling or storage of loading units shall take place outdoors.

5. Notification obligation in the event of deviating booking parameters

We must be informed in good time before the start of the loading process of any significant deviation between the agreed and actual load or if the announced or even permissible total weight is exceeded. If transportation is hindered by the type of goods or the excess weight, we shall request the customer to remedy the situation within a reasonable period of time. If the deadline expires without result or if the customer cannot be reached, we shall also be entitled to assert the rights pursuant to Section 419 (3) HGB. If, within the scope of the measures according to § 419 para. 3 HGB, the loading unit is parked, we shall be liable for the duration of the parking as in our own affairs exclusively for gross negligence and intent.

6. Prices (freight per leg)

The prices quoted by ECL include - if so offered - the craning from/to wagon(s). Not included are additional movements at the terminals which are necessary due to customer requirements and which must be ordered separately by the customer. Such services are provided by the terminals themselves and invoiced directly by them without a contractual relationship with us.

7. Costs for „No Show“

In the event of rebookings and cancellations of firmly booked slots, freight charges will be incurred on the basis of the agreed freight costs.

- 25% > 96 hours before booked departure
- 50% > 72 hours before booked departure
- 75% > 24 hours before booked departure
- 100 % < 24 hours before booked departure

The customer is entitled to offset any expenses we save or otherwise earn or maliciously fail to earn as a result of the cancellation of the contract.

8. Timetable

The times stated in the timetable are approximate and not agreed delivery times. The timetables contain the planned loading and provision times. Changes are possible. Delivery times are not guaranteed. If a unit cannot be loaded as planned for operational reasons, transportation will be by the next available train.

9. Terms of payment

Invoices are due upon delivery and payable without deduction immediately upon receipt of the invoice. If payment is not made net and without deduction within 21 days of receipt of the invoice, we may charge interest on arrears at a rate of 9% p.a. above the prime rate of the Deutsche Bundesbank.

Offsetting or retention against our claims is excluded unless the counterclaim is undisputed or has been legally established.

10. Liability

10.1. Our liability in cross-border intermodal transportation is governed by the CIM or the CMR, depending on the area of application.

10.2. In purely national traffic, we are liable for loss or damage at 8.33 SDR/kg and for delay in accordance with §§ 425, 431 HGB. Liability for damage other than damage to goods, with the exception of personal injury and material damage to third-party goods, is limited to three times the amount that would be payable in the event of loss of the goods, up to a maximum of € 100,000 per claim. Sections 431 (3), 433 HGB remain unaffected. The exclusion of liability according to § 83 EVO remains unaffected.

10.3. Unless there is unlimited liability due to intent or recklessness within the meaning of §§ 425, 435 HGB, or we are liable due to mandatory legal provisions or for personal injury, claims for compensation of any kind against us, our employees and vicarious agents beyond the claims regulated in the ECL ALB INTERMODAL are excluded in the event of negligent behavior. This shall not apply in the event of a breach of material contractual obligations. In such cases, claims for compensation shall be limited to the foreseeable, typical damage.

10.4. Liability is excluded in the event of culpable causation by the customer, by an instruction of the customer, by a defect inherent in the loading unit or the goods.

We shall also not be liable if the fulfillment of the contractual services becomes permanently or temporarily impossible in cases of "force majeure", strike, riot or order of "higher authority".

10.5. Liability for indirect or consequential damages is excluded with the exception of the cases of §§ 425; 435 HGB, Art. 29 CMR or Art. 36 CIM; this includes in particular costs for downtimes and loss of use of the loading unit and the delivery or collection vehicle, costs for replacement transportation, damages from loss of profit, from non-use or delayed use of the transported goods, from delay or standstill of production, from loss of reputation or market share.

10.6. Liability shall commence on the day of dispatch when we take charge of the loading unit for the purpose of intermodal transportation. It ends with the timely provision of the loading unit for collection by the recipient. We only accept loading units. We do not check or confirm the contents of the loading units. Information in freight documents and consignment notes concerning the contents of the loading units, which we do not know and do not check, are of no legal or factual significance to us. This shall also apply if a consignment note or other acceptance receipt containing such information is signed by us or our employees without checking the contents.

10.7. Our liability for storage as ordered is limited. Storage at our disposal shall commence upon delivery before the day of departure or upon collection after the time of arrival for the period before the day of departure and after the day of arrival. The limitation of liability is:

- to 8.33 special drawing rights (SDR) for each kilogram of the gross weight of the goods in corresponding application of Section 431 (1), (2) and (4) HGB in the case of damage to goods;
- to a maximum of EUR 25,000 per claim for damage to goods;
- for damage other than to goods, with the exception of personal injury and property damage to third party goods, to EUR 25,000 per claim;
- for damage other than to goods, with the exception of personal injury and damage to third-party property, to EUR 2,000,000.00 per loss event, whereby we shall be liable in the event of several injured parties in proportion to their claims.

Against payment of a surcharge to be agreed prior to storage, the customer may specify in writing (§ 126 BGB) a value to increase the liability which exceeds the aforementioned maximum liability amounts. In this case, the value specified in each case shall replace the maximum liability amount in question

10.8. Unless otherwise stipulated by mandatory regulations, we shall be released from all claims if a detailed written complaint is not made within 7 days of acceptance of the loading unit in the event of damage. The obligation to apply for a statement of facts remains unaffected. If the CMR or CIM provides for a different or shorter deadline, the deadlines of the CMR or CIM shall apply exclusively in the case of international combined rail transportation within the scope of the CMR or CIM.

10.9. We must be given the opportunity to have the alleged damage inspected within a reasonable period of time. A breach of this obligation leads to the factual assumption that the loading unit and its contents were accepted by the terminal undamaged.

11. Force majeure

11.1. Impediments to performance which are not attributable to the area of risk of a contracting party shall release the contracting parties from their obligations to perform or cooperate to the extent specified in 9.2 for the duration of the disruption and its effect on the respective area of responsibility. Such impediments to performance include force majeure, civil unrest, acts of war or terrorism, natural disasters, pandemics (e.g. COVID-19), epidemics, industrial action (strike, lockout, etc.), failures or restrictions of electronic data exchange caused by third parties, cybercrime by third parties, blockage of transport routes and other unforeseeable, unavoidable and serious events. This also includes disruptions to the operation of the traction or means of transport, unforeseen blockage of transport routes and personnel restrictions imposed by law, as well as interruptions to restore the transport capability of wagons or third-party loading units. The parties agree that legislative, regulatory, administrative and other measures carried out or ordered by state authorities in connection with the aforementioned impediments to performance, as well as other impairments in this context (e.g. lack of personnel, closure of national borders, areas and transshipment points, changed access regulations of the consignees) are also impediments to performance within the meaning of Clause 9.1. (Lieferanten- und Warenempfänger) Leistungshindernisse im Sinne von Ziff. 9.1. sind.

11.2. In the event of an impediment to performance within the meaning of clause 9.1, the contracting party prevented from providing its service is obliged to inform the other party immediately; we are also obliged to obtain instructions from the customer. If instructions from the customer cannot be obtained in good time, cannot be carried out or cannot be carried out in a reasonable manner, we shall be entitled to act at our discretion, taking into account the interests of the customer, and to inform the customer of this as far as possible.

In particular, we reserve the right to reject orders or instructions from the customer, to change our services in whole or in part after informing the customer, to modify our work processes or to take other necessary measures in order to adapt business operations to the current situation.

If, in the event of an impediment to performance within the meaning of clause 9.1 contractual services are being performed even in modified way in accordance with clause 9.2. and incur additional costs as a result, we shall be entitled to demand compensation from the customer.

This includes, in particular, additional or increased fees, remuneration of carriers and other service providers, handling facilities, terminals and competent authorities, e.g. costs for security measures, expenses for transport-related interim storage ("additional costs") on proof.

11.3. We are exempt from any liability arising from or in connection with the contract if and to the extent that the damage was caused by an impediment to performance within the meaning of clause 9.1.

12. Booking

A final guarantee of a slot (slot guarantee) on a specific train requires an express declaration by us. The transmission of the TIN without an additional guaranteed space confirms the execution of the transportation without a guarantee of a space on a specific train. In the case of broken traffic via ferry, the southbound train booking must be received before the ship arrives in Lübeck. In the opposite direction, the ferry booking must be made at the same time as the train booking or at the latest upon arrival of the train in Lübeck in order to avoid additional costs for the customer.

13. Dangerous goods

13.1. Dangerous goods units must be registered at least 24 hours before rail transportation using the "Annex A" form. Dangerous goods units may only be delivered on the day of dispatch after the booking has been accepted by us or by our booking agency. They must be collected immediately upon arrival. The loading units themselves and the transported goods must be marked with the officially prescribed dangerous goods plates and dangerous goods labels.

13.2. The customer must comply with the relevant dangerous goods regulations as well as the special regulations for the transportation of dangerous goods by rail and the regulations of the respective terminals.

13.3. The customer shall indemnify us within the scope of its share of liability from all obligations which arise during transportation, storage or other handling vis-à-vis third parties and which are attributable to the nature of the goods and the failure to comply with the duties of care incumbent on the customer.

13.4. Dangerous goods will not be stored by us, not even by parking loaded means of transportation at the respective terminal beyond the day of provision. If these deadlines are exceeded, we shall be entitled to store the goods at external companies or external parking lots and to charge the costs incurred by us plus a lump sum for general costs.

14. Loading unit

The loading unit may weigh a maximum of 35 tons gross. The customer guarantees the craneability of the loading unit as well as the approval of the loading unit for intermodal transportation. Should it not be possible to crane the loading unit or should it not be possible to prove that it is approved for intermodal transport, the customer shall compensate ECL for all damages incurred - even if it is not at fault - and shall indemnify us in full against claims by third parties. The load in the loading unit must be secured in accordance with the requirements for transportation in combined and/or intermodal transport.

15. Place of jurisdiction

The exclusive place of jurisdiction for all disputes arising from the transport orders is Lübeck, unless other places of jurisdiction are provided for by mandatory statutory provisions. In this case, Lübeck shall be an additional place of jurisdiction. German law shall apply to the exclusion of the rules of German international private law and the CISG.