

## General Terms and Conditions (GTC) of Rail Force One B.V., Rotterdam, version of November 2018

The contractual relations between Rail Force One BV and its clients are governed by the following General Terms and Conditions (GTC) of Rail Force One B.V., Waalhaven Oostzijde, NL-3087 BM Rotterdam:

### Article 1 Definitions

For the purpose of these General Terms and Conditions the following terms have the meanings given:

- 1.1 **ADSp:** Allgemeine Deutsche Spediteur-Bedingungen;
- 1.2 **AVV/GCU:** The *Allgemeine Vertrag für die Verwendung von Güterwagen (AVV)* / *General Contract of Use for Wagons (GCU)* as a multilateral contract based on the international convention COTIF 1999 Appendix D, CUV. These can be downloaded from <http://www.gcubureau.org>
- 1.3 **Carrier:** Contractual carrier with which the Sender has concluded a contract of carriage, or a successive or subcarrier.
- 1.4 **CIM:** COTIF, Appendix B, The Uniform Rules concerning the Contract of International Carriage of Goods by Rail;
- 1.5 **Client:** the contractual other party which has instructed Rail Force One to provide Services. Depending on the assignment, the Client may (also) be: Sender, and Rail Force One Carrier (or Subcarrier).
- 1.6 **Consignee:** the party entitled to take delivery of the goods under the contract of carriage;
- 1.7 **Combined Transport:** (inter)national transport of Intermodal Transport Units whereby a predominant part of the transport takes place by rail and possibly by sea and/or inland waterways and pre- or post-transport takes place by different means;
- 1.8 **COTIF:** Convention concerning International Carriage by Rail (COTIF) of 9 May 1980 in the version of the Protocol of Amendment of 3 June 1999
- 1.9 **CUV:** COTIF, Appendix D, The Uniform Rules concerning Contracts of Use in International Rail Traffic;
- 1.10 **DCC:** Dutch Civil Code
- 1.11 **GTC:** These General Terms and Conditions. In the event of transport under the COTIF-CIM, the General Terms and Conditions referred to in article 3 sub c CIM shall apply. For transport under Title 8.18 of the Dutch Civil Code, the General Terms and Conditions are as referred to in that title.
- 1.12 **Intermodal Transport Unit:** containers, swap bodies, semi-trailers or similar loading units used in Combined Transport or otherwise;
- 1.13 **Master Agreement:** the agreement concluded by the Client and Rail Force One which arranges one or more transports and/or other Services governed by these General Terms and Conditions;

- 1.14 **Rail Force One:** the private limited liability company Rail Force One with offices at Seattleweg 7 3195 ND in Rotterdam (NL) and listed with the Chamber of Commerce under number 66001145 acting as the counterparty of the Client;
- 1.15 **Receiver:** the party who actually takes delivery of the goods from the Carrier or the Subcarrier. Insofar as the Receiver is not the Consignee, he shall be regarded as a person whose services are used by the Consignee for the performance of the contract of carriage;
- 1.16 **Sender:** the contractual other party with which the Carrier has concluded a transport agreement;
- 1.17 **Services:** Transport of goods by rail, (temporary) storage and other related services provided by Rail Force One to the Client under an agreement;
- 1.18 **Shipper:** the party stated on the consignment note as the sender; insofar as the Shipper is not also the Sender, he shall be regarded as a person whose services are used by the Sender for the performance of the contract of carriage.
- 1.19 **Subcarrier:** a carrier which has not concluded the contract of carriage with the Sender, but to which the Carrier has entrusted the performance of the carriage by rail fully or in part;
- 1.20 **Title 8.18 DCC:** The regulations regarding Contracts for the carriage of goods by rail regulations as laid down in Title 8.18 of the Dutch Civil Code;

The singular includes the plural and vice versa.

### 2. Scope, deviating and additional conditions

- 2.1 Unless explicitly agreed otherwise with the Client in writing, Rail Force One provides its Services under these GTC. The GTC apply to all Services provided by Rail Force One. General Terms and Conditions of the Client are not accepted by Rail Force One. They are therefore not applicable, except if and insofar as Rail Force One has explicitly accepted such general terms and conditions in writing.
- 2.2 Services provided by Rail Force One exclusively within the territory of the Federal Republic of Germany are, in addition to the GTC governed by the provisions of the ADSp in the version of 01-01-2017. Title 8:18 of the Dutch Civil Code applies to Services provided by Rail Force One exclusively in the Netherlands. In the event of any conflict between these GTC and the relevant provisions of Title 8:18 of the Dutch Civil Code, these GTC shall prevail, if and to the extent permitted by the Dutch Civil Code.

- 2.3 International transport performed by Rail Force One is governed by the CIM and, in addition these GTC.
- 2.4 At the request of the Client, Rail Force One will make available the additional conditions referred to in these GTC (ADSp, AVV/GCU, COTIF CIM, COTIF CUV, FENEX and Title 8:18 DCC) to the Client in printed or digital form. The GTC and the other applicable conditions referred to in this article can also be viewed on the Rail Force One website ([www.railforce.one](http://www.railforce.one)).
- 2.5 In the event of any conflict between the provisions of these GTC, non-mandatory legal provisions and/or ADSp, AVV/GCU, CIM, CUV and/or FENEX and the provisions contained in these GTC, the provisions contained in these GTC shall prevail, unless mandatory law dictates otherwise.

### 3. Assignments and scope of the services

- 3.1 Rail Force One provides Services under a Master Agreement to be concluded with the Client (in writing, by e-mail or fax), usually on the basis of a quotation issued by Rail Force One. Only in exceptional cases, for example if this is prompted by great haste, does Rail Force One accept Instructions given orally. In this case too, Rail Force One always only accepts and performs these instructions under the conditions laid down in these GTC. Such verbal instructions must be confirmed in writing as soon as possible and recorded in a Master Agreement.
- 3.2 Quotations of Rail Force One are without obligation. Assignments for the provision of specific Services on the basis of quotations are laid down in a Master Agreement. Master Agreements enter into force when they are signed by the Client and Rail Force One or when the Client confirms the effectiveness thereof in writing or by email to Rail Force One, or because Rail Force One has commenced the performance of the Services agreed in the Master Agreement and this is known to the Client.
- 3.3 Rail Force One has the right to use subcontractors, including Subcarriers, for the provision of the Services.

### 4 Cancellation and overtime arrangement

- 4.1 If the Client cancels Services of Rail Force One, Rail Force One may charge cancellation costs to the Client in accordance with the following scale:
  - cancellation  $\leq$  24 hours before scheduled departure: 90% of the agreed transport price (freight)
  - cancellation  $>$  24 hours and  $\leq$  48 hours: 85% of the transport price (freight)
  - cancellation  $>$  48 hours and  $\leq$  72 hours: 60% of the transport price (freight)
  - cancellation  $>$  72 hours: 35% of the transport price (freight).
- 4.2 If the Client changes the transport dates, does not load or unload the goods within the agreed loading or unloading time, does not make available Intermodal Transport Units or equipment (including railway vehicles as the case may be) or does not make these available in good time, Rail Force One may refuse to carry out the transport without being liable to pay any compensation. In addition, Rail Force One may charge the costs to the Client in accordance with the scale set out in the first paragraph of this article. If a delay occurs as a consequence of which the transport can still be carried out within 2 (two) hours after the agreed departure time, Rail Force One may charge costs amounting to 10% of

the agreed transport price or, at Rail Force One's discretion, demonstrable additional costs.

- 4.3 Cancellation or 'overtime' costs charged to the Client as referred to in paragraphs 1 and 2 of this article shall not affect the fulfilment obligations of the Client. In addition to these costs, Rail Force One may claim compensation under the law.
- 4.4 In the event of cancellation, the Client shall not owe any compensation if the cause of the cancellation can demonstrably be attributed to Rail Force One.
- 4.5 Notifications and statements regarding the cancellation or delay of an agreed transport shall be made in writing. For the purpose of this paragraph, the term 'in writing' also includes by email, provided that receipt thereof has been confirmed by Rail Force One.

### 5 Consignment note, transport order

- 5.1 Unless agreed otherwise in the Master Agreement, the Client must complete the consignment note fully and correctly, whereby the consignment note shall in any case contain the information referred to in Article 8:1555 of the Dutch Civil Code. For cross-border transport, a CIM consignment note is used. The Client shall ensure that the CIM consignment note shall in any case contain the data referred to in article 7 CIM and furthermore all the data required for the timely and proper performance of the Services.
- 5.2 If there is a difference between what is stated in the Master Agreement as agreed on the one hand and what is stated in the consignment note on the other hand, what is stated in the Master Agreement shall prevail. The Client is liable for discrepancies and any additional costs this may entail.
- 5.3 If the Client issues the transport order without using a consignment note, the Client shall be liable for the accuracy and completeness of all the data stated in the transport order.

### 6 Railway vehicles and Intermodal transport units, AVV

- 6.1 If the Client (irrespective of whether he is the Sender, Consignee, Receiver or Shipper) requires Rail Force One to make available railway vehicles and/or Intermodal Transport Units, the Client guarantees the correctness, accuracy, and completeness of its statement regarding the required railway vehicles and/or Intermodal Transport Units, in particular with regard to the suitability of the Client's order for the intended transport and the required quantity. The obligation to make available railway vehicles and Intermodal transport units is governed by the Master Agreement. The Client may only use the traction and/or railway vehicles and Intermodal transport units provided by Rail Force One for the purpose laid down in the Master Agreement.
- 6.2 Before loading commences, the Client shall inspect the railway vehicles or freight wagons and/or Intermodal transport units for the aspects referred to in Appendix 9 AVV / GCU, for other suitability for the intended purpose, further technical adequacy and cleanliness as well as for other possible shortcomings in regard to their use. The Client shall not use any railway vehicles that prove to be unsuitable on the grounds of the inspection referred to above. The Client shall immediately notify Rail Force One of any objections and/or defects.
- 6.3 If the Client (possibly in the capacity of Sender, Consignee, Receiver or Shipper) uses railway vehicles or Intermodal transport units provided by Rail Force One, it

shall only do so in the context of the transport referred to in the Master Agreement. The Client is liable for any and all damage (loss, damage, consequential damage, indirect damage) to or with the railway vehicles and/or Intermodal transport units caused by the Client or by a third party acting on the Client's instructions, whether or not an auxiliary person. Damage and accidents shall be reported immediately to Rail Force One's vehicle management.

- 6.4 The Client is responsible for ensuring that railway vehicles and Intermodal transport units from which the goods were unloaded are returned to the agreed transfer location or terminal, ready for use, i.e. completely empty/unloaded, disinfected or cleaned in accordance with the regulations and complete with separate parts, and within the agreed period. If the Client fails to fulfil this obligation, Rail Force One will charge the ensuing costs and work incurred by Rail Force One to the Client. This shall not affect the right of Rail Force One to claim further compensation.
- 6.5 If Rail Force One transports railway vehicles (whether or not as its own wheeled rolling stock, i.e. as cargo) provided by the Client, the GCC/GCU shall apply between Rail Force One and the Client, always in the current version thereof.
- 6.6 If and insofar as these GTC differ from the regime of the GTC / GCU, the provisions of these GTC shall prevail, unless the GTC / GCU does not allow a deviation in this respect.

## **7 Loading instructions, demurrage charges, sealing**

- 7.1 The Client is responsible for the transport-safe loading and unloading of the goods. When loading and unloading, the Client shall at least comply with the UIC's generally used loading guidelines for international rail freight transport. Rail Force One will only inspect the freight train, railway vehicles and cargo in order to determine whether it can correctly perform its obligations arising from the Agreement. Therefore, Rail Force One is not required in any way to inspect the load, including determining the number of units, the dimensions of the load, the external condition of the load, the condition of the load and the mass of the load during and after the performance of the Agreement.
- 7.2 Rail Force One is authorised to inspect railway vehicles and loading units for operational safety. This authority to inspect does not affect the Client's liability for the correct loading and unloading.
- 7.3 The Client shall immediately take appropriate corrective measures at Rail Force One's request:
- If the Client fails to meet its obligations under article 7.1;
  - If there is a material difference between the goods agreed and those actually loaded;
  - If the profiles allowed for the planned route are exceeded;
  - If the total permissible weight is exceeded, or
  - If the type of goods or the way in which they have been loaded impedes the transport.
- If the Client has not complied with this request within a reasonable period, Rail Force One is authorised not to carry out the transport and also to exercise its rights as referred to in article 4, paragraph 2 (cancellation and overtime arrangement).
- 7.4 After use, the Client shall leave the loading and unloading areas and the access roads behind in a clean

condition. The Client shall immediately and for its own account clean up any remnants, waste, pollution and suchlike the loading location and on the access roads caused during the loading and unloading.

- 7.5 If the loading periods are exceeded, Rail Force One may charge demurrage charges for the railway vehicles provided by Rail Force One, as well as other costs and damage.
- 7.6 The Client (whether or not in the capacity of Sender) shall seal closed railway vehicles to the extent that this is legally required or required under treaty-law, or if this has been agreed between Rail Force One and the Client or Consignee. The Client must seal closed Intermodal Transport Units or loaded Intermodal Transport Units provided for transport which are as yet to be closed. To the extent permitted by law, this obligation may be deviated from for certain transport operations by means of a written agreement between Rail Force One and the Client. Missing, broken or incorrect seals are for the risk and account of the Client.
- 7.7 If mandatory seals to be applied by the Client are missing, Rail Force One may refuse transport. In such a case, article 3, paragraphs 1 and 2 of these GTC (cancellation and overtime arrangement) shall come into effect.

## **8 Packaging**

- 8.1 The Client (whether or not in the capacity of Sender) shall pack the goods to be transported insofar as the nature of the goods requires this, in such a way that they are protected against full or partial loss and against damage during transport and in such a way that they cannot damage persons, means of production or other goods. The packaging must also comply with any special packaging regulations of Rail Force One or the (Sub)Carrier.

## **9. Delivery times, probable loss**

- 9.1 All transport is in principle subject to the delivery times stated in article 16 CIM; deviations from this are only possible insofar as explicitly agreed. Timetables do not constitute agreed delivery times; they are merely an indication of the duration of the transport. The Client cannot derive any rights from this.
- 9.2 In accordance with article 29 paragraph 1 CIM, a loss is presumed to have occurred both during domestic and cross-border transport, if the load has not been delivered or made available to the Consignee within 30 (thirty) days after the expiry of the delivery period.

## **10. Transport of hazardous substances**

- 10.1 The Client shall observe the applicable legal regulations concerning the transport of hazardous substances. Hazardous substances and objects are transported under the terms and conditions specified in RID or VSG. If any additional costs arise from the transport of hazardous substances and objects, for example - but not exclusively - the costs of accompaniment on the grounds of RID or VSG, the related costs shall be borne by the Client.
- 10.2 Hazardous substances are only accepted and delivered by Rail Force One insofar as it has been agreed with the Sender and the Receiver that the obligations regarding safety and supervision will be taken over

until the time of collection or until the time they are made available, as applicable.

10.3 The Client indemnifies Rail Force One in respect of Its share of liability from any and all obligations towards third parties relating to the transport and storage as well as any other handling of the hazardous substances and from the obligations and risks relating to the specific characteristics of the hazardous substances and the failure to comply with the Client's obligations of due care. This indemnification obligation also includes any penalties that may be imposed on Rail Force One by supervisory and enforcement bodies.

10.4 Hazardous substances are not stored by Rail Force One, not even by placing loaded Intermodal transport units or special railway vehicles on the route concerned. If, in deviation from this, the Client nevertheless wishes to have railway vehicles containing high-risk hazardous substances as referred to in paragraph 1.10 RID placed by Rail Force One, this is only possible if the Client and Rail Force One have explicitly agreed this. Rail Force One has the right to charge a fee per transport combination of at least € 750.00 (seven hundred and fifty Euros) for each inspection of the legally required 8-hour inspections of the hazardous substances.

## 11 Refusal or discontinuation of the performance of Services

11.1 In addition to the provisions concerning refusal, suspension or discontinuation of Services (including the performance of transport) elsewhere in these GTC, Rail Force One may refuse, suspend or discontinue the provision of Services, if requested stating reasons, if:

a. the Client is in default in the fulfilment of its payment obligations under the relevant agreement or another agreement with Rail Force One;

b. the Client fails to meet the conditions set by Rail Force One for acceptance to provide the Services (with regard to, for example: payment, place where the goods are offered for transport, the supply or stating of data, use of a consignment note, packaging, content, weight and dimensions);

c. the provision of the Services may pose a risk for persons or property beyond the normal risks associated with rail transport, and without this being provided for in the Master Agreement; notwithstanding the provisions in Article 10, Transport of hazardous substances in this regard, this shall in any case apply to transport of goods, to which the national or international laws and regulations concerning transport of hazardous substances apply, unless specific agreements have been made in the Agreement in this regard;

d. the provision of Services (including transport services) is concerned that are prohibited by law or government regulations, or if Rail Force One has indications that the Services, including transport, may be in contrary to the law or government regulations;

e. Rail Force One has another sound reason for refusing, suspending or discontinuing the Services, including but not limited to natural disasters, wars or armed conflicts, (work) strikes, etc.

11.2 In the event of refusal or discontinuance of the Services including the provision of transport, Rail Force One shall, at Rail Force One's discretion, insofar as far as possible enable the Client or the Sender to

regain possession of the goods offered for transport as well as any documents submitted in connection therewith, thereby terminating the Agreement. In such a situation, Rail Force One will not in any way be liable to pay compensation to the Client. In such a case, Rail Force One may claim payment of the fee due for the Services, if applicable in accordance with the scale set out in Article 4.1. GTC (cancellation and overtime arrangement) without prejudice to the right of Rail Force One to reimbursement of any (additional) costs incurred.

## 12 Fees

12.1 The costs to be paid to Rail Force One by the Client (whether or not in its capacity as Sender or Consignee) include:

a. the transport price, namely all the costs due for the carrying out of the transport or a performance related to the carrying out of the transport between the place of receipt and the place of delivery as laid down in the Agreement;

b. additional costs. These are the costs of additional services performed by Rail Force One (whether or not in its capacity of Carrier or Subcarrier);

c. any and all amounts levied by customs or other governmental organisations or governments;

d. costs paid by the Carrier with appropriate evidence, such as, but not limited to, demurrage charges incurred before departure or after arrival.

e. any penalties incurred in connection with the Client's failure to comply with its statutory obligations, including but not limited to its loading obligations, certification and licensing obligations as well as customs or other tax obligations.

12.2 Any costs incurred in connection with the use of the infrastructure including the use thereof at the station of departure or arrival, port charges and other additional charges, taxes and/or customs charges shall be invoiced separately. The same applies to additional services and activities, ordered by the Client and promised by Rail Force One, such as loading and unloading, temporary storage, handling of the goods, etc.

12.3 If, after the conclusion of the Master Agreement costs arise at the expense of Rail Force One that are related to the Services agreed in the Agreement, for which Rail Force One is not responsible and that fall outside the scope of influence of Rail Force One, Rail Force One will be entitled to charge these costs additionally and specifically to the Client, whereby additional handling costs of 10% will be invoiced.

## 13 INVOICING AND PAYMENT

13.1 Rail Force One sends its invoices to the Client by email (in 'digital' form). The Client shall pay the Invoices of Rail Force One within 14 (fourteen) days of the invoice date. Failing this, the debtor shall be in default by operation of law. If and as soon as default occurs, Rail Force One may increase the amount due and payable by the current statutory commercial interest rate, or - if this is lower than 10% - by at least 10% default interest until the business day on which the full amount has been paid.

13.2 If the Client is in default, or has failed in the fulfilment of one or more of its obligations, all the

reasonable costs incurred to obtain payment out of court or in court (also insofar as these costs exceed the costs to be settled), including enforcement costs shall be borne by the Client. If the Client fails to pay these costs in a timely manner for more than thirty days, the Client shall forfeit an immediately payable penalty of 12% (twelve percent) of the amount due, with a minimum of € 100.00 (one hundred Euros). This penalty applies without prejudice to the Client's obligations to Rail Force One. In addition to these costs, Rail Force One may claim compensation under the law.

13.3 Objections to the amount of the invoice do not suspend the payment obligation. The Client shall notify Rail Force One in writing of any objections to the amount of the invoice within 14 (fourteen) days of the invoice date. After the expiry of this period, the possibility to submit any objections to the amount of the invoice shall lapse. This means that the amount of Rail Force One's invoice is established by law.

13.4 Unless agreed otherwise, payment to Rail Force One shall be made in Euros. In cases where currency conversion is required for the calculation of the transport price, the following conversion rate shall apply:

- the conversion rate on the day of receipt of the goods for costs to be borne by the Client - Sender;
- the conversion rate on the day of delivery of the goods by for costs to be borne by the Client - Consignee.

## 14 Advance payment, set-off, retention

14.1 Rail Force One may require the Client to make an advance payment or provide other forms of security, such as a bank guarantee or a pledge.

14.2 The Client shall pay the invoices without any discount, deduction or set-off for any reason whatsoever. The Client is not entitled to suspend its payment obligations. To the extent permitted by law, any retention rights of the Client in respect of Rail Force One are excluded.

14.3 Rail Force One may exercise its right of retention in respect of goods or documents in its possession in connection with the Master Agreement / transport agreement for that which is or will become payable to Rail Force One under the Master Agreement / transport agreement. The right of retention may also be exercised by subcontractors of Rail Force One, such as its (Sub)Carrier.

14.4 Rail Force One may also exercise the right of retention vis-à-vis the Sender for that which the Sender still owes to Rail Force One in connection with previous transport agreements. Rail Force One may also exercise the right of retention in respect of the Consignee, who became a party to previous transport agreements in that capacity, for that which is still owed to Rail Force One in connection with those agreements. This right of retention may also be exercised by subcontractors of Rail Force One, such as its (Sub)Carrier. The Client hereby waives its right of retention, unless this is contrary to mandatory law.

## 15 Customs and other administrative regulations

15.1 The customs documents that must accompany the shipment during transport are drawn up by the Client or Sender. If any transport is offered with (customs) documents that do not meet the period of validity or other legal requirements, Rail Force One may refuse or suspend such transport. In that case, any costs, damage, risks and suchlike shall be for the account of the Client. When goods are offered for transport, these documents must be legally valid. If a period of validity applies, it shall include at least the duration of rail transport, including arrival and departure operations.

15.2 In the event of an inspection by customs or other government authorities prior to, during or after termination of the Services or rail transport, Rail Force One will charge the costs incurred to facilitate the inspection by customs or other government authorities to the Client, Sender or Consignee, at Rail Force One's discretion. If an inspection is to take place at a specific inspection location other than the rail freight locations agreed between Rail Force One and the Client, the Client or, where appropriate the Sender or Consignee, shall arrange and pay for the transfer to and from this location and the facilitation of the inspection under its own management.

15.3 Transport of goods subject to customs control under the simplified customs procedure for international rail transport and/or transport of intra-Community goods within the European Union, but via the Swiss Confederation under the simplified customs procedure T2-Swiss Corridor may only take place if this has been agreed with Rail Force One in writing in advance.

15.4 The Client shall reimburse Rail Force One for any amounts to be claimed by any government body, such as import duties, excise duties, VAT/turnover tax, agricultural refunds, costs of official activities and fees, relating to rail transport and the related customs operations and declarations.

15.5 Rail Force One shall in no event be liable for any damage resulting from failure to comply with or properly comply with the formalities or for any costs or claims for compensation arising from customs clearance and other customs obligations.

## 16 Special conditions for combined transport

16.1 Where Combined Transport is concerned, empty and loaded Intermodal Transport Units are transported by Rail Force One and additional services are provided by Rail Force One (such as filling in the required transport documents) if and insofar as this has been explicitly agreed in writing in advance.

The Client is responsible for ensuring that the locking devices of loading units with cargo are secured with safety devices (e.g. seals).

For full loading units, the so-called *Nomenclature harmonisée des marchandises* positions/codes are determined by the goods loaded, and for empty loading units they are determined by the NHM position/code of the empty loading unit.

16.2 Intermodal transport units shall comply with the current legal and technical regulations (e.g. in accordance with DIN, EN; UIC data sheets).

16.3 Intermodal transport units provided by the Client to Rail Force One shall be operationally safe and suitable for the goods concerned. The Client is liable for any damage caused by unsuitable, damaged or operationally unsafe Intermodal transport units. Rail

- Force One is not obliged to check seals; missing or broken seals are for the risk and account of the Client.
- 16.4 Railway vehicles and/or Intermodal transport units are placed outside by Rail Force One, including on unguarded railway infrastructure, as and when necessary.
- 17 Liability**
- 17.1 Insofar as this is not deviated from in the Master Agreement or in these GTC, Rail Force One is liable in accordance with the provisions of CIM or Title 8:18. To the extent permitted by law, Rail Force One's liability is limited to the amount paid to Rail Force One under the liability insurance policy for the situation concerned, possibly increased by the amount of the excess applicable under the insurance policy. If, for whatever reason, Rail Force One's insurer fails to pay insurance payments or if the relevant liability insurance does not provide cover, Rail Force One's liability shall at all times be limited to the amount of the net price agreed by the Parties of the order concerned in the relevant Master Agreement.
- 17.2 Rail Force One is not liable for any immaterial damage and consequential damage in any form and caused in any way whatsoever. The term consequential loss shall in any case but not exclusively be taken to mean loss of profit, the costs of possible interruption in the use of equipment (such as standstill of railway vehicles and Intermodal loading units) and the costs of possible replacement equipment (such as that of railway vehicles and Intermodal loading units) as well as business interruption.
- 17.3 Rail Force One is not liable for any damage resulting from the full or partial loss of or damage to railway vehicles, train units, Intermodal Transport Units, materials and suchlike provided by the Client to Rail Force One or which it has had provided in the context of the performance of the Master Agreement. Rail Force One is not liable for any damage caused to railway infrastructure during the performance of the Master Contract by such railway vehicles, train units and/or Intermodal Transport Units. The Client indemnifies Rail Force One from these damages and from such claimants.
- 17.4 Rail Force One is not liable for any loss of or damage to cargo, except on the grounds of mandatory law.
- 17.5 Rail Force One is not liable for any damage whatsoever suffered by the Client or a third party as a consequence of exceeding execution times, delivery times or time schedules, unless explicitly agreed otherwise with Rail Force One in writing. Exceeding indicative execution times, delivery times or time schedules shall not entitle the Client to terminate the Agreement.
- 17.6 In the event that Rail Force One can be held liable for damage arising during the performance of the Master Agreement, such liability will only arise if the Client immediately reports the damage to Rail Force One by telephone or e-mail and confirms this report not later than within seven days of its occurrence or of the time at which it could reasonably have been discovered. Rail Force One is not liable if the Client has not immediately given Rail Force One the opportunity to investigate the cause, nature and extent of the damage (or to have this investigated). Insofar as mandatory law does not prevent this, any (legal) claims in respect of damage due to the mere expiry of twenty-four (24) months after the end of the relevant order shall lapse.
- 17.7 The limitations of Rail Force One's liability referred to in paragraphs @ 3 to 6@ of this article shall not apply if the damage is the obvious consequence of intention or gross recklessness on the part of Rail Force One's management with regard to the performance of the Master Agreement.
- 17.8 If the Agreement is performed in parts, Rail Force One will not be liable for any damage of any nature whatsoever, which has arisen during the period that Rail Force One has not provided any Services ('interruption'). Such an interruption includes, but is not limited to the period from the time when Rail Force One notifies the Client in writing, by fax or by e-mail that the freight train, the railway vehicles and/or Intermodal Loading Units have arrived at the terminal until the time when they leave the terminal again.
- 17.9 The Client indemnifies Rail Force One, its employees and third parties engaged by Rail Force One or otherwise involved in the Master Agreement against any and all claims by third parties, including but not limited to senders and consignees as referred to in Title 8:18 of the Dutch Civil Code, which are in any way connected with the (performance of the) Master Agreement. The Client shall compensate Rail Force One for any and all damage and costs suffered by Rail Force One or third parties engaged by it.
- 17.10 The Client is liable for damage as a result of the full or partial loss of, or damage to equipment used by or on behalf of Rail Force One in the context of the performance of the Master Agreement, caused by the Client, its employees, third parties engaged by the Client or caused by railway vehicles, Intermodal loading units, cargo or other material made available by the Client.
- 17.11 The Client is liable to Rail Force One for damage and costs, even if the Client is not at fault, that were caused:
- by faulty packaging or marking;
  - by incorrect or incomplete information on the consignment note or other transport documents;
  - because Rail Force One was not informed in good time and precisely that hazardous substances were involved and, where applicable, in which part of the train or Intermodal Loading Units these were located;
  - because the customs documents or other documents, certificates, papers and/or information required for the official handling of the goods were missing, incomplete or incorrect.
- 17.12 The Client shall always maintain adequate insurance for the risks arising from and related to liability as referred to in this article 17, in particular with regard to paragraphs 9 to 11 inclusive, as well as for those arising from articles 6 (for railway vehicles and intermodal transport units), article 8 and article 10 (transport of hazardous goods). At the request of Rail Force One, the Client shall immediately give Rail Force One access to and a copy of the insurance policy and any other documents relating to the insurance that Rail Force One deems desirable.
- 18 Liability for railway vehicles made available by the Client**

- 18.1 The Client is liable for any and all damage and for the associated additional costs and work for Rail Force One caused by a defect in a railway vehicle made available by the Client for the Services, whether or not via third parties. The Client indemnifies Rail Force One from any and all claims of third parties. In addition, the provisions of the GTC/GCU © shall apply, always in the version in force at the time the damage occurs.
- 18.2 Rail Force One participates in the AVV/GCU. Insofar as the railway vehicles made available by the Client are in the Client's name and insofar as the Client also participates in the AVV/GCU, the AVV/GCU shall apply between Rail Force One and the Client by virtue of their mutual participation in this agreement.
- 18.3 Insofar as the Client is the holder of the railway vehicles made available by the Client, but the Client does not participate in the AVV/GCU, application of the AVV/GCU is deemed to have been agreed between Rail Force One and the Client subject to the simultaneous validity of these GTC. The same applies if the Client makes railway vehicles available, which are held by a third party who does not participate in the AVV/GCU.
- 18.4 Insofar as the Client itself is not the holder of the railway vehicles made available by the Client to Rail Force One, but they are held by a third party who participates in the AVV/GCU, the Client is jointly and severally liable to Rail Force One for the fulfilment of the obligations arising from the AVV/GCU, in addition to the holder concerned. Rail Force One will endeavour to make an arrangement with the third party holding the railway vehicles for the items to which the AVV/GCU applies within a maximum period of 6 (six) months. The Client shall support Rail Force One in this matter as required by Rail Force One for the Client's own account and always to the best of its ability, if desired also with legal assistance or financial means.

## 19 Entity in Charge of Maintenance (ECM)

- 19.1 The Client guarantees that the railway vehicles provided by it are assigned to an ECM.
- 19.2 If the Client provides Rail Force One with a railway vehicle that has not been assigned to an ECM, Rail Force One may exclude this railway vehicle from the Services, including in particular an intended transport. Rail Force One will charge all costs incurred in connection with this to the Client, who shall reimburse these costs. Should Rail Force One nevertheless deploy such a railway vehicle, such deployment shall be for the risk and account of the Client, including for example penalty clauses stipulated by safety authorities.

## 20 Limitation

Insofar as this is not contrary to mandatory legal provisions, any and all claims on Rail Force One shall lapse one year after the commencement of the day following that on which the claim became due and payable. Six months after the start of the day on which the goods have been delivered, or, in the event of the loss of the goods, six months after the day on which the delivery should have taken place contractually, the Client's right to claim any further fulfilment and/or compensation in this respect shall lapse.

## 21 Transfer

Rail Force One is entitled to transfer all or part of the rights and obligations under the Master Agreement(s) concluded with the Client to those companies which are affiliated with Rail Force One in a group as referred to in Dutch company law, in which Rail Force One holds a participation of at least 50% or which hold a participation in Rail Force One of at least 50%.

## 22 Jurisdiction, applicable law

- 22.1 The legal relationship subject to these GTC is governed by Dutch law unless the CIM mandatory declares another legal system applicable.
- 22.2 The parties shall attempt to settle any disputes arising from or in connection with the Master Agreement amicably, possibly by means of mediation. If the parties do not succeed, the dispute shall be settled by the competent court in Rotterdam (the Netherlands), unless another court has been appointed under mandatory law.

Rail Force One  
Rotterdam, 1 November 2018