

Certified Translation from German



GENERAL TERMS AND CONDITIONS JCL

(JCL TRANSPORT UND LOGISTIK GMBH; JCL OVERLAND GMBH; JCL FASHION LOGISTICS GMBH; JCL LOGISTICS AUSTRIA GMBH)

Translation from German

I. Applicability of the General Terms and Conditions; General

All services rendered by JCL shall be exclusively rendered subject to these General Terms and Conditions. Stipulations of the contractor which differ herefrom, even if only regarding individual points, shall apply only upon express written agreement and only on a case-by-case basis.

In the case of recurring rendering of services (regular business contacts) to businesspersons an agreement concluded upon commencement of the business relationship shall be sufficient for further applicability of our General Terms and Conditions.

In our activity as forwarding agent and/or warehouse keeper the rendering of our services shall be subject to the General Austrian Forwarders' Terms and Conditions [AÖSp] and the Forwarders' Prices for Commercial Goods [Speditionstarif für Kaufmannsgüter], each as amended, which are available for inspection on our premises. In the case of conflicts with the present General Terms and Conditions the latter shall prevail over the AÖSp.

II. Offer and Order; Confidentiality

All offers made by JCL will be based on wages, rates and prices applicable at the time of conclusion of the contract and on JCL's free choice of means and routes of transport, shipping companies and airlines. In addition and even if a certain means of transport is stated, JCL shall be entitled to select a different means of transport without any effect on the agreed price, provided that due processing of the order is warranted. The offers are based on the prerequisite that the routes of transport chosen by us may be used freely and without impediment.

Offers of JCL shall be subject to change until binding conclusion and shall apply only in the case of immediate acceptance and reference to the same at the time the order is placed and may be revoked by JCL at any time. Offers shall become ineffective by a new offer. Without exception different agreements shall require written form in order to be legally effective.

Modifications of the scope of the order which were not expressly notified when the order was placed and result in additional expenses on the part of JCL shall be paid for separately. The same shall apply to subsequent orders.

Offers are subject to secrecy vis-à-vis third parties and must be treated as strictly confidential. They may not be passed on to third parties in any form without our written consent.

Offers made by JCL generally apply to commercial goods with normal dimensions and weights that are safely packed for transport and stackable and suited for transportation by sea, air or road as well as in CCS (consolidated cargo services).

Shipments which exceed such dimensions and weights shall be agreed on as to dimension and weight on a case-by-case basis.

III. Loading, transport and dangerous goods

JCL shall neither be obliged to load nor to unload or handle, store, etc. the transported goods without exception. However, JCL shall carry out such tasks for the customer under separate order and against separate invoice. Loading and unloading procedures and clearance on exportation and/or importation in road traffic must be carried out immediately.

In the case of self-loading (self-locking, self-sealing) by the contractor the customer obviously shall not be liable for securing the load nor for damage caused by incorrect or poor securing of the load.

All ULDs, which also includes containers, must be returned in a clean and undamaged condition. Repairs resulting from damage to the container or to ULDs are, in principle, not covered by transport insurance.

The weights of ULDs are subject to freight. For ULDs that are not returned to us or damaged their reinstatement value shall be paid. Transports which become necessary because of the Austrian Packaging Regulation (VerpackVO) of the Austrian Ministry of Environment Affairs (BMU), i.e. taking back of transport packaging, repackaging and display/sales packaging can only be carried out upon a separate shipment order and with a separate invoice according to the price list.

Information about duration of transport, customs duties, prices and other details and communications shall be non-binding. Book entries and account information as well as statements on admission of liability and payment commitments shall only be binding if confirmed by JCL in writing. Furthermore, JCL guarantees no fixed delivery times and promises no fixed dates. In general, payments in cases of damage or loss are made subject to recovery and constitute no acceptance.

Delivery of dangerous goods requires an express prior understanding and delivery of the certificates required by law. Dangerous goods shall be appropriately packed, labelled and equipped with the

necessary papers by the sender for transportation, transhipment and storage.

In the case of carriage of dangerous goods (ADR goods) the customer is also the sender as defined by the ADR-GGBG [Austrian Statute on Carriage of Dangerous Goods]. Upon in the case of acceptance of dangerous goods in accordance with ADR/RID/IMCO a separate order subject to acceptance is required.

IV. Prices, other costs, customs duties

The prices underlying the offers are based on the details furnished by the customer regarding processing of the order. In addition, JCL shall be entitled to carry out on-site inspections before processing the order if this is deemed necessary for checking the circumstances relevant to the order or for verifying the details furnished by the customer, which inspections shall be paid for separately.

Only the costs incurred in the case of a normal course of transport are included in the prices. Unless stated separately in the offer or expressly agreed in writing, the costs for insurance premiums, customs clearance in the country of dispatch and the country of destination, customs duties and official charges, costs of bill of lading and consular charges, warehouse charges, commissions on advances, demurrage and other unforeseen expenses, fuel surcharges, tolls (road pricing) and any costs which have not been caused by JCL are not included.

JCL shall be entitled to invoice surcharges for additional expenses incurred, provided that the actual weights and dimensions of the items and other properties of the items to be moved differ from the details furnished by the customer. JCL is also entitled to ask for separate remuneration in the case of differences in the scope of performance and/or in the case of additional orders given after or during the rendering of the service.

If no special agreement has been made, foreign exchange rates shall be applied according to the following criteria: The Schiffskurs [exchange rate by which the freight is converted into local currency] will be fixed by the shipping company on the basis of the last ten (10) days before arrival / departure of the vessel: by the local selling rates with the mean of those ten (10) days. Regarding air cargo amounts are converted by the current middle selling rate on the day of arrival at the airport of destination.

Any increases or decreases in the prices of sea cargo, road cargo and air cargo rates which are made publicly known to the forwarder shall be passed on by JCL Transport und Logistik GmbH to the customer at the relevant time.

Any road pricing charges will be invoiced separately as from the date of introduction.

V. Insurance

As a forwarding agent JCL is obliged to take out a forwarder's risk insurance policy [SVS] and cartage (haulage) insurance policy [RVS] for the customer. The customer is free to declare itself a Verbotskunde [customer waiving insurance protection]. This must be done in writing to JCL. In the case of orders where the value of the goods (sum insured) is not notified, JCL shall estimate the value and obtain insurance coverage accordingly. Transport insurances will be taken out by JCL when the relevant order is placed.

As regards warehouse insurance reference is made to applicability of the AÖSp.

VI. Consequences of default

If processing of an order is delayed for reasons within the control of the customer JCL shall be entitled to invoice the resulting (additional) costs in any case.

If, however, performance of JCL is delayed for reasons within its control, the customer shall grant a reasonable grace period and shall at first request JCL to render performance.

Claims for damages, if any, based on consequences of default, in particular contractual penalties of the customer, may be transferred to JCL only if JCL was provably notified of such consequences of default, including as to the amount, at the time the order was placed. Otherwise such consequences of default are excluded unless JCL is responsible for intent or gross negligence.

Customer claims based on default may in any case be raised only after expiration of a reasonable grace period. Damages based on non-performance or damage other than personal injury are expressly excluded; for the rest such damages are expressly limited to the actual amount of liability insurance.

In the case of default JCL shall be entitled to claim compound default interest in accordance with the provisions of the ZinsRAG [Austrian Statute amending Interest Law] 2002 in the amount of 8 % above the base interest rate, at least 10% p.a., and to invoice the costs incurred in connection with out-of-court reminders and assertion of claims as well as pre-procedural expenses.

VII. Rescission of Contract

The customer may rescind the contract in the case of an important reason agreed in writing and if JCL, despite having been granted a reasonable grace period, does not fulfil its performance obligation and does not remedy such default by employing third parties.

If in the course of order processing circumstances arise which lead to considerable problems in the rendering of performance or to a situation where it must be feared that JCL's activities will probably result in damage to third-party property and/or assets, then JCL shall be entitled, with claims for damages of whatsoever nature being excluded, to either cancel the order or to discontinue work until the said problems or fears have been removed by the customer, and this shall result in a suspension of any agreed periods and/or to postponement of the agreed completion date.

In such a case JCL shall be entitled to invoice to the customer the services rendered so far, irrespective of the selected type of contract. Costs of standstill times will be invoiced to the customer also in the case of lump-sum agreements. In addition, JCL shall be entitled to discontinue work and/or to rescind the contract in the case that the customer fails to pay outstanding accounts payable and/or if insolvency proceedings are opened over the customer's assets.

If the contract is rescinded, the payment for the services rendered by then shall become due pro rata, notwithstanding any other claims.

VIII. Liability of the contracting parties

JCL shall be liable for all direct damage resulting from the rendering of performance to the extent that it has occurred due to grossly negligent or willful behaviour on the part of JCL or its agents. Liability for ordinary negligence shall be excluded.

Moreover, JCL shall neither be liable for accident or force majeure nor for consequential damage, for compensation for lost profit, lost interest or for damage resulting from claims of third parties. There shall be no liability for damage occurring in the course of recoveries.

Banks men, signalmen, coordinators and other staff provided by the customer shall not be deemed agents of the contractor. Staff employed by the customer and/or actually by the foreman, the construction site manager or the group leader shall not be deemed agents of JCL.

JCL shall not be liable for advice or information provided by it for which it did not receive a separate written order.

In any case the customer waives the right to plead price reduction or no maturity of compensation for work on grounds of notified defects or rescission of contract under warranty. The customer shall grant the contractor a reasonable grace period to repair the defect or to subsequently add that which is missing. To the extent permitted by the law and in any case in the event of ordinary negligence claims under product liability and claims for damages shall be excluded. The same shall apply to consequential damage due to defects and to contracts with a protective effect for the benefit of third parties.

The customer undertakes to impose this agreed exemption from liability on his contractors. For the rest, liability on the part of JCL shall be limited to the sum of the business liability insurance contract concluded, the amount of which JCL will be pleased to advise upon request. The scope of liability agreed by these General Terms and Conditions shall also apply to non-contractual claims. Subcontractors commissioned and all staff involved in the processing of the order may make reference to these limitations of liability.

The customer shall be obliged to immediately notify in writing any damage caused by JCL's performance. A full description of the facts shall be submitted by the customer within three working days after the damage has occurred. Damage which is not obvious must be notified to us in writing immediately after it has been discovered and not later than seven days after delivery and/or conclusion of our performance. Later complaints and/or notices of defect cannot be accepted.

Liability with regard to carriage by road shall, in addition, be subject to the CMR provisions. Those include a liability for short weight at 8.33 special drawing rights (SDRs) per kg. The current conversion rate can be obtained from the Austrian central bank [Österreichische Nationalbank].

The terms and conditions printed on the reverse side of the airway bill shall apply to air cargo.

The terms and conditions printed on the reverse side of the bill of lading shall apply to sea cargo.

IX. Payment, place of performance and place of jurisdiction

Unless agreed otherwise in writing, invoices of JCL shall be due for payment upon receipt without deduction. Settling off and counter-claims of any kind shall not be permitted, unless they have already been ascertained by a court at the time such claims are set off.

Graz shall be the place of payment and place of performance as well as the place of jurisdiction. Austrian law shall apply exclusively.

In any case of doubt, the German AGB are applicable exclusively.