

Special Terms and Conditions of Felbermayr Transport- und Hebetchnik GmbH & Co KG

for ITB Internationale low-loader rail transport

Last update 08/2003

1. General:

All services performed by Felbermayr Transport und Hebetchnik GmbH & Co KG [Felbermayr Transport and Hoisting Technology Inc.] Dept. ITB – International Low-Loader Rail Transports and its subcontractors – hereinafter referred to in short as ITB – are exclusively based on the following special terms and conditions, unless they infringe obligatory statutory regulations or international conventions on shipping goods (e.g. CMR, CLNI, COTIF/ER, CIM, WA). Business terms and conditions of our contractual partners (the Principal) deviating even in only some items shall only apply if arranged expressly and in writing and only for one individual instance. In cases of repeated performance transactions (continuous business relationship) with merchants, agreement at the outset of the business relationship concerned shall be sufficient to establish the continued applicability of our special terms and conditions. These special terms and conditions also apply to additional orders assigned subsequently. We provide our services either in the form of supplying equipment including personnel or in the form of so-called project transactions for handling railway transports and/or other multi-modal shipping orders or subdivided transports (rail/roadway, rail/inland waterway, etc.).

2. Offer and order:

All our offers are non-binding until definitive contractual conclusion, are exclusively valid dependent on freely available transport routes and – unless arranged otherwise – are valid for 14 days as of the offer's date. Upon accepting a offer, the principal shall undertake to send ITB a filled-in order form as confirmation of acceptance of the offer. Complex offer preparations, e.g. feasibility studies and project planning are subject to a fee and require a separate agreement. Unless arranged otherwise, the transport permits (authorisations) from the authorities or other sources necessary to perform a service shall be acquired at the Principal's risk and expense within the framework of a non-gratuitous contract for services or work. Any and all amendments or supplements to the order's scope due to instructions, conditions and regulations from the authorities or other source not expressly set out in the order's scope must be recompensed separately. In general, the Principal must issue bills of lading which contain all the information required under the law. Should the Principal not prepare a bill of lading by the date for a shipment's departure, ITB may issue a bill of lading for the shipment on the Principal's behalf and account. ITB expressly points out that, upon his enquiry, the Principal shall be informed of the type and scope of the authorisation usually required. Unless arranged otherwise, ITB shall acquire the authorisations directly for the Principal. Unless stipulated otherwise in the offer, the price calculation is based on a »simple« application for authorisation without supplementary instructions imposed. Unless otherwise expressly negotiated, instructions, transport security measures, etc. from the authorities or other sources are not included in the offer's price structuring. Offers are based on the shortest rail route. Should the authorisations (transport permits) required for carrying out the service ordered not be granted, ITB shall be entitled to withdraw [from the contract] and to invoice the services performed to date, any and all claims for damages on the part of the Principal being precluded.

3. Calculation, prices, delimitation of scope of service:

The prices on which our offers are based are founded on the suitability of the shipping goods for transport on low-loader cars (e.g. gooseneck cars) and on the Principal's information on executing the order, as well as the technical specifications of the means of conveyance used, which the ITB shall provide to the Principal upon the latter's request. Should the shipping goods become a supporting part of the railway low-loader car, The ITB shall inform the Principal thereof when submitting a offer. The Principal must ensure that the shipping goods plus any and all adapters are geometrically and statically so constructed that the low-loader car can suitably dock at the shipping goods according to the low-loader overview plans available from ITB; at the same time, ITB shall be liable for the shipping goods plus any and all adapters safely leading off the energy and stresses developing during transport and in loading condition. At ITB's request, the Principal must provide him with the static calculations for reviewing purposes, whereby such a review shall not release the Principal from his liability. The Principal shall also be liable to ITB in the event that ITB constructs special adapters on the basis of the plans and specifications the Principal has provided and uses them for the transport. The adapters shall constitute loading aids which will be given to the Principal and/or sender in the course of providing equipment. The Principal must provide information on special aspects and characteristics of the goods to be transported, such as sensitivity to shock or impact, as well as special aspects of the loading and unloading sites, company-owned railway enterprises or rail routes, etc. If required or necessary, the Principal is to order an inspection of the loading and unloading sites to establish the aspects indicated; if necessary, suitable sketches and/or key plans and ITB stowage and loading plans are to be provided. Unless arranged otherwise, costs of shipping and unloading, insurance, Customs duties, levies, taxes and outlays are not included in our offers. Our offers are calculated on the basis of immediate and punctual provision and acceptance of the shipping goods by the Principal at the loading and unloading sites. ITB shall be entitled to invoice surcharges if the actual unit weights and/or dimensions and/or other aspects of the parts to be moved deviate from the Principal's information. The Principal must also separately recompense changes to the scope of performance and/or additional orders assigned subsequently to or during performance of service, even in the case of lump-sum price agreements. This shall also apply if the transport takes longer than arranged and/or if the transport route is extended, as well as to any standstill and waiting charges for the train cars and other means of conveyance at the loading or unloading site.

4. Consequences of delay:

Should order-processing be delayed for reasons not attributable to ITB, the latter shall be entitled to invoice resultant outlays and additional expenditures in every instance. However, should delays be caused due to reasons attributable to ITB, the Principal shall set a reasonable period of grace and initially require the ITB to perform the service. Any and all claims for damages due to consequences of delay – in particular fines and other of the Principal's contractual penalties - can only be imposed on ITB if the Principal has provably drawn attention to such consequences of delay, including the amount thereof, upon placing his order (damages warning). Otherwise, such consequences of delay shall be precluded, unless ITB is at fault due to intent or gross negligence. In any case, claims due to delay may only be asserted after a reasonable period of grace. Damages on grounds of non-fulfilment and damage which is not personal injury shall be expressly precluded. ITB shall not be liable for damage resulting from lateness. Unless expressly committed as fixed deadlines, delivery periods and dates shall be non-binding and dependent upon timely provision of train cars from the railway company concerned and other circumstances. Should the Principal be in arrears in payment of the negotiated fee, ITB shall be entitled to claim both default interest in the amount of the secondary market yield applicable in each instance with a surcharge of 7% per annum and to invoice the costs of out-of-court warning and claiming, as well as pre-litigation expenditures.

5. Withdrawal from contract:

The Principal may only withdraw on important grounds, which latter are to be agreed upon in writing, and if ITB does not meet his fulfilment obligation despite a reasonable period of grace, and if this delay is not remedied by third parties. Should circumstances arise in the course of executing an order beyond the foreseeable extent in such transports which entail substantial difficulties or if the deployment thereof could entail the risk of damage to third-party property and/or assets or which make such an occurrence seem likely, ITB shall be entitled either to withdraw from the contract or to suspend service work until the Principal eliminates such difficulties or risks, any and all claims for compensation being precluded. This will interfere with time-periods agreed. In such a case, ITB shall be entitled to invoice the Principal for services performed until that time, notwithstanding the type of contract chosen. Unless expressly arranged otherwise, standstill and waiting charges usual in the transport branch shall be deemed agreed. The Principal shall also be invoiced for standstill time if lumpsum price agreements have been made. Furthermore, in the event of non-payment of accounts due, established with legal effect and not disputed from previous contracts and/or upon the instigation of insolvency proceedings against the Principal, ITB shall be entitled to cease work and/or to withdraw from the contract and confiscate the shipping goods as lien (haulier-company right of lien).

6.1 Contractual parties' liability in project transactions, insurance:

ITB shall be liable for all direct damage connected with performing services to the extent that such damage is caused due to grossly negligent or intentional acts on the part of ITB or his vicarious agents during work. Liability for minor negligence shall be precluded. Furthermore, ITB shall not be liable for coincidence, force majeure, interference and dispositions by higher authorities, route closure following an accident or according to construction-work schedules, war, strikes, consequential damage, lost profits or other asset damage. The Principal's personnel, instructors or other employees provided to ITB shall not be deemed vicarious agents of ITB. ITB shall not be liable for consultation or information provided with respect to which he has not been separately commissioned in writing. The Principal must take out his own so-called »all-risk transport insurance« policy for the transport services, including waiver of claims outstanding and knock for knock (insurance for third-party interest). Simultaneously, the Principal shall indemnify ITB for all liability for its own claims for damages and third-party claims asserted in connection with such transport services, unless the damage is attributable to intent and gross negligence on the part of ITB and its employees. At the Principal's request and expense, ITB shall take out such an insurance policy covering transport, loading and unloading (recourse-exempt goods transport insurance). In such a case, the Principal shall undertake to inform ITB expressly and in writing of the shipping goods' insurable value and the risks to be insured. Mere statements of value shall not be deemed an insurance order. By accepting the insurance certificate (policy), ITB shall not assume the duties to which the Principal is obligated as policyholder; however, ITB must take all the usual steps to maintain insurance coverage. In the absence of deviating written agreements or instructions on the Principal's part, ITB shall insure within the framework of the insurance order under the insurance provisions usual at ITB's place of fulfilment. Provisions and tariffs are available from ITB. The Principal must allow ITB a reasonable period of time for remedying deficiencies or to deliver missing components. To the extent permissible under the law and in every instance of slight negligence, product liability claims shall be precluded. The same shall apply to consequential deficiency damage and to contracts with protective effect to the benefit of third parties. For his part, the Principal shall undertake to bind his contractual partners over to this disclaimer of liability. The Principal is aware that the liability provisions set out in the Railway Conveyance Act apply to rail transport within Austria, and that the liability provisions set out in the CIM apply to international transports, as well as the special provisions set out in the RIP and the LÜ (excess load) authorisation. Attention is expressly drawn to the restrictions set out in these liability provisions; they shall be agreed as liability restriction between the Principal and ITB. Subsequent regulations of the aforementioned railway provisions, e.g. the GTC of the RCA, shall apply to the same effect. The scope of liability agreed via these special terms and conditions shall also apply to non-contractual claims. Commissioned subcontractors and all personnel involved in implementing this order may also invoke these liability restrictions. The Principal shall be obligated to report without delay any damage caused through ITB's performance. The Principal must fully describe the facts and circumstances within a period of three days following an occurrence of damage. ITB must receive written reports of outwardly imperceptible damage without delay following the discovery thereof, and by no later than seven days following delivery and/or cessation of our performance. Complaints and/or deficiency reports made at a later date will not be acknowledged.

6.2 Contractual parties' liability for equipment, rail-car and personnel:

The term »equipment and rail-car provision« means that ITB shall provide equipment to the Principal in the form of railway cars, accompanying crew cars (i.e. private railway cars) and the like and, additionally, will make personnel available to the Principal upon the latter's request (labour provision). This shall constitute a combined provision of vehicles and personnel, whereby the personnel shall be integrated into the Principal's enterprise and shall work according to the Principal's instructions and at the latter's risk. Similarly, loading and unloading is to be carried out exclusively according to the Principal's instructions. Attention is expressly drawn to the Austrian Federal Railways' general authorisation provisions and those on dispatch with excess load and other railway enterprises; they shall also apply in ITB's relation to the Principal and the regulations set out therein are to be complied with. Freight orders when equipment is provided shall be concluded directly between the Principal and the railway enterprise concerned. ITB insures its equipment within the EU against collision damage. In such a case, the Principal shall bear a deductible of 1.0% of the equipment's value, not less than EUR 730.00 and not more than EUR 16,350.00. Furthermore, the Principal shall be liable for the undamaged return of the equipment upon termination of the contractual relationship. There shall be no ITB knock-for-knock with regard to any damages claimed against the Principal connected with tasking out the collision policy.

7. Execution of order:

The Principal shall be exclusively liable for damage be caused by persons who are not ITB's vicarious agents in the course of performing a service. This shall apply in particular to damage resulting from ITB following instructions given to them during loading and unloading. The Principal must state the corresponding special factors such as weights, dimensions and tensor points of the goods to be moved or transported bindingly and completely upon each order assignment. Attention is expressly drawn to the special provisions of the railways concerned on loading-procedure excess, including the waiver of knock-for-knock set out therein; they shall also be deemed as agreed between the Principal and ITB. The Principal is also expressly aware of this waiver of knock-for-knock vis-à-vis ITB. Third-party information provided at the Principal's instigation shall be deemed to be the Principal's. Should the Principal fail to comply with this duty to provide information and directions, he shall undertake to indemnify ITB for all third-party damage caused thereby and/or to effect compensation to ITB for its own damage incurred. The Principal shall warrant and assume the risk for the properties of the goods to be transported, the railway access road and the loading and unloading sites being suitable so that the order can be carried out duly and properly. In particular, the Principal shall be liable for all damage occurring due to a shipment being loaded, reloaded or organised in an improper manner attributable to him or due to the personnel or staff to be instructed by him improperly carrying out their duties during conveyance and/or loading or unloading. This liability shall also extend to cover damage caused to ITB and/or the railways concerned by third parties in the same manner. Attention is drawn to the fact that, in cases of damage due to loading or positioning a shipment which a railway enterprise performs itself or causes to be performed, the latter shall only be liable contingent upon the obligatory carefulness reasonably expectable during reloading or positioning a shipment, restricted according to the applicable provisions set out in the Railway Conveyance Act and the CIM.

8. Special provisions for providing private low-loader cars and other equipment:

ITB shall provide the Principal with a private railway car for a specific period of time for a correspondingly arranged fee for the purpose defined in the shipping contract. At the same time as the obligation to pay the fee, the usage relationship shall commence on the day ITB dispatches the car from the departure railway station as confirmed by the Railway Office and shall cease on the day the car is duly and properly returned to ITB on the day agreed at the departure railway station or other contractually arranged return site. Should maintenance work, Railway Office inspections or cleaning beyond the usual scope be necessary after the car is returned, the usage relationship shall cease upon the conclusion of such work, which ITB is to instigate without delay. When rail-cars are provided, the Principal shall be liable that the private rail-car provided by ITB is returned untarnished and undamaged, and the Principal shall be liable – irrespective of which party is at fault – for all damage and other detriment to the rail-cars provided during provision thereof, with the exception of wear and tear resulting from the contractually stipulated use.

9. Payment, jurisdiction and cancellation:

Unless agreed otherwise in writing, our invoices shall be payable upon receipt and without deduction. Set-offs shall only be permissible with counterclaims which are undisputed or which are legally effective. German shall be the contractual language. The location of ITB's head offices shall be the place of payment and fulfilment for both parties, including bill of exchange and cheque transactions. Austrian formal and material law shall be deemed applicable in every instance, to foreign orders as well, unless supranational statutes (CMR, CLNI, CIM, WA, COTIF/ER) are in opposition thereto. Should the Principal cancel an order, even if only in part, before ITB commences work, the Principal shall recompense the ITB for 10% of the order's total – but at least EUR 5,000.00, notwithstanding further claims which the ITB shall be entitled to assert.

10. Application provisions:

Until the time all its entitlements have been paid, ITB shall have the right to withhold goods received during the course of handling an order, or released to third parties or held for safekeeping. Should individual provisions set out in these special terms and conditions be or become invalid, the effectiveness of the other provisions set out therein shall remain unaffected thereby. In place of the invalid provision, a valid con-

tractual provision shall be inserted which corresponds to the intention of the original regulation. All information and/or other technical data contained in this offer (plans, static calculations, and the like) are the intellectual property of ITB and may not be used or passed to third parties without ITB's express written consent. Contravention shall entail a contractual penalty in the amount of 30% of the offer's total shall be due for payment, ITB's entitlement to claim further damages held in reserve. Without express technical or static confirmation, the technical drawings provided are non-binding and shall be understood as suggestions and/or recommendations.