

**General Terms and Conditions of Business (GTC)**  
**of**  
**TriCon Container - Terminal Nürnberg GmbH**

**Hamburger Straße 59**  
**D-90451 Nürnberg**

**Valid from 01.01.2019**

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## **1. Scope of Application**

1.1 The services associated with the use of the transshipment facility within the meaning of §§ 10, 11 ERegG (Railways Regulation Act) are provided by TriCon - Container-Terminal Nürnberg GmbH (hereinafter: TriCon) on the basis of these Terms and Conditions of Business and the supplementary provisions of the terms of use for railroad service facilities (NBS) in their respective valid versions. The terms of use for railroad service facilities (NBS) named above are stored under the internet address: <http://www.tricon-terminal.de> and can be provided on request. In the event of possible contradictions, the provisions of the NBS shall take precedence over these Terms and Conditions of Business.

Insofar as TriCon provides services which do not belong to the use of the transshipment facility as a service facility within the meaning of §§ 10, 11 ERegG, the supplementary application of the terms of use for railroad service facilities (NBS) shall be cancelled.

1.2 The GTCs of the customer (= ordering party and contractual partner of TriCon) shall apply only with the explicit written confirmation of TriCon.

1.3 These GTCs shall not apply to contracts with consumers. A consumer is a natural person who concludes a contract for a purpose which cannot be attributed to his or her commercial or self-employed professional activities.

## **2. Scope of Services**

2.1 TriCon shall provide the following services based on these GTCs:

- Transshipment of load units of the combined transport including transport-related intermediate parking;
- Authorized storage of load units to a limited extent;
- Other agreed services in connection with the processing of combined rail / road transport operations (such as, for example, agency activities);
- Parking of non-contractual train sections (Clause 4.4 NBS)

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2.2 All freight containers and vehicles which are suitable for transport by rail shall be considered to be a load unit, such as, for example,

- Freight containers with upper fittings or without upper fittings for top lift transshipment (ISO containers, non-ISO containers, swap bodies);
- Semi-trailers with or without gripping edges for transshipment using gripping jaws or other transshipment methods;
- Articulated vehicles, semi-trailer tractors, semi-trailers, heavy goods vehicles and trailers.

Before the transshipment and rail operations, the load units must satisfy the necessary requirements in accordance with the relevant ISO and EN Standards as well as the UIC Data Sheets and be appropriately approved. Insofar as they are applicable, the load units must be identified in accordance with the Standards ISO 6346 and EN 13044.

### 3. Licence Agreement, Order Placement, Order Acceptance

3.1 The precondition for access to and the use of the transshipment facilities in accordance with §§ 10, 11 ERegG is the conclusion of a licence agreement (Clause 3 NBS), on the basis of which specific individual orders are issued.

3.2 The issuing of an individual order is the communication, in writing, per fax or via an electronic interface, of the load unit type (Clause 2.2 GTC) and the load unit number prior to the acceptance of the load unit by TriCon. Specific individual orders for conditions-complying load units are considered to have been accepted on their communication if TriCon does not immediately object to them.

3.3 If load unit types and load unit numbers have already been recorded in the licence agreement (such as, for example, by a one-off use of the service facility), the licence agreement shall be considered to be simultaneously as order placement and order acceptance within the meaning of this provision.

3.4 Orders placed on TriCon that relate to the carrying out of services which do not belong to the use of the transshipment facilities as a service facility within the meaning of §§ 10, 11 ERegG must comply with all the necessary specifications for the correct and proper execution of the

contract and must be submitted in writing, per fax or via electronic interfaces. A written order confirmation for these services is only issued by TriCon when this has been specifically agreed with the customer.

#### **4. Transshipment and Transport-related Interim Parking**

- 4.1 Transshipment is the reloading from one means of transport to another and / or from one carrier to another.
- 4.2 The crane operation begins as soon as the loading gear of the transshipment equipment is lowered on to the load unit. The crane operation ends as soon as the loading gear of the transshipment equipment is detached from the load unit, is raised and is free of the load unit.
- 4.3 Load units arriving by road or rail that cannot be directly transhipped on to the next possible planned means of transport shall, subject to available and free capacity, be parked, transport-related, on the TriCon business premises. Parking takes place in the open air.
- 4.4 If no or only insufficient capacity for the transport-related parking of load units is available or such a situation develops later that necessitates the prompt collection of already parked load units for the maintenance of the operating ability of the transshipment facilities, TriCon shall inform the customer of this and seek instructions. If there are no instructions to be obtained, TriCon can take other steps in accordance with § 419 Section 3 HGB (German Code of Commercial Law). In the event of storage in accordance with § 419 Section 3 Clause 2 HGB, the customer expressly authorizes storage by a third party.
- 4.5 If a load unit is not collected within ten working days of arrival by rail or is loaded on to another train for further transportation, TriCon can take additional steps in accordance with § 419 Section 3 HGB without being obliged to obtain prior instructions. In the event of storage in accordance with § 419 Section 3 Clause 2 HGB the customer expressly authorizes storage by a third party.
- 4.6 Clause 4.5 applies accordingly to load units arriving by road that are not loaded on to a train for further transport within ten working days.
- 4.7 By way of derogation from Clauses 4.4 to 4.6, special provisions apply to load units with hazardous goods as the temporary presence of hazardous goods on the TriCon business premises must be kept to a minimum (Clause 8).

**5. Storage**

- 5.1 Subject to available and free capacities, on the basis of a separate storage contract, load units can be stored on the TriCon business premises in return for payment (= authorized storage). Storage takes place in the open air.
- 5.2 The storage of load units with hazardous goods, hazardous substances, waste materials or water polluting substances not subject to labelling is excluded.

**6. Parking of Non-Contractual Train Sections**

- 6.1 The provision of railway lines as a parking area in return for payment within the meaning of Clause 4.4 NBS shall establish a leasing relationship concerning the respective parking area. TriCon has the right during the parking time to carry out interim marshalling or to park the affected train sections on other track sections. TriCon is not responsible for the guarding of the train sections or their cargoes.
- 6.2 Within the meaning of Clause 4.4, train sections carrying load units with hazardous goods may always only drive on to the railway lines during the times of occupancy of the transshipment facilities.

**7. Condition of the Load Units, Liability of the Customer**

- 7.1 The load units must comply with the respective, valid statutory regulations and technical requirements.
- 7.2 The customer shall be liable for all injuries and damages which arise for TriCon and / or third parties due to the improper condition of the load units or the cargoes, even when no blame can be attached to the customer.
- 7.3 During the time that the load units are present on the delivery vehicle, TriCon, can inspect them from the ground. TriCon shall not be obliged to check the goods contained in the load unit, their packaging, stowage and securing nor the associated information provided by the customer or the submitted documents.

7.4 When preparing receipt reports (check-in), exclusively, only the external damage that is over and above the normal wear and tear visible from the ground shall be recorded.

## **8. Dangerous Goods and Waste Products**

8.1 Load units loaded with permissible hazardous goods or empty, uncleaned load units must comply with the Standards for transport by rail, road, and, where applicable, by sea, laid down by the statutory and / or official Regulations. Before the delivery of hazardous goods or waste material, all the necessary data must be submitted to TriCon.

8.2 TriCon has a licence in accordance with the German Immission Control Act (BImSchG) for the transshipment and the transport-related interim parking of load units containing waste materials. The permitted waste materials can be sent separately on request. The customer must ensure that load units containing non-permitted waste materials are not delivered to TriCon.

8.3 Upon the delivery of the load units and insofar as mandatory or GTC-determined legal provisions do not specify anything else, the customer shall, even when no blame can be attached to him, be liable for

- The compliance with the provisions and specifications stated in Clause 8.1 and in Clause 8.2;
- The full details of the goods and the correct and complete information in accordance with the hazardous goods regulations;
- The handing over, where applicable, of other required documentation;
- The notification of precautionary measures insofar as these are prescribed by the authorities or are otherwise necessary.

8.4 The customer shall be obliged to deliver the load units containing the hazardous goods on the next possible shipment day and to collect them on the day of receipt on the railway. If this is not case, then TriCon shall be permitted take action in accordance with § 410 Section 2 HGB.

## **9. Liability**

Insofar as the following conditions do not specify otherwise, the liability of TriCon arises from the statutory provisions.

### **9.1 Limitation of Liability for Transshipment and Transport-related Parking**

9.1.1 The liability for damage to goods (loss or damage) during transshipment activities or transport-related parking arises from §§ 425 et seq HGB and is limited, in accordance with §§ 431 Sections 1, 2 and 4 HGB, to 8.33 SDR for each kilogramme of the gross weight of the consignment.

9.1.2 Insofar as mandatory or GTC-determined legal provisions do not specify anything else, the liability for damage to goods shall be limited to 1.25 million Euros for each claim and 2.5 million Euros for each incidence of damage or to 2 SDR for each kilogramme of the lost and / or damaged goods depending on which amount is the greater. In the event of more than one injured party involved in one incidence of damage, TriCon shall be liable in proportion to the individual claims.

9.1.3 The liability for late delivery shall be limited to three times the amount of the transshipment fee.

9.1.4 Insofar as mandatory or GTC-determined legal provisions do not specify anything else, the liability for other than damage to goods with the exclusion of personal injury and material damage to goods not subject to the contract shall be limited to the amount equalling three times the amount that would have been payable in the event of loss or damage, but not more than 125,000 € per claim. §§ 431 Section 3, 433 HGB shall remain unaffected.

9.1.5 The limitations of liability for damage to goods or late delivery (Clause 9.1.1 to Clause 9.1.4) shall cease to apply in a qualified case of fault in accordance with § 435 HGB. The limitation of liability shall cease to apply in accordance with Clause 9.1.4 if the damage or loss has been caused wilfully and knowingly by company bodies of TriCon or their vicarious agents or through gross negligence as well as in the event of the negligent breach of contractual obligations, whereby the liability shall then be limited to the typical foreseeable damage.

9.1.6 Insofar as longer parking can no longer be considered to be transport-related and falls under the scope of application of §§ 467 et seq HGB, the following provisions for authorized storage shall apply correspondingly.



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### 9.2 Limitation of Liability in the Event of Authorized Storage

9.1.7 The statutory regulations of §§ 467 et seq HGB shall apply to authorized storage and extended, no longer transport-related parking. The liability for authorized storage shall be limited to:

- 8.33 Special Drawing Rights (SDR) for each kilogramme of the gross weight of the goods in the corresponding application of § 431 Sections 1, 2 and 4 HGB in the event of damage to goods;
- not more than 35,000 € per claim in the event of damage to goods.

9.1.8 Before storage, the customer can, against payment of a surcharge to be agreed, specify in text form a value for the increase of the liability which exceeds the above-named limits of liability. In this case, the respective specified value shall take the place of the limit of liability concerned.

9.1.9 The liability for other than damage to goods with the exclusion of personal injury and material damage to goods not subject to the contract shall be limited to 35,000 € per claim.

9.1.10 In every case, with the exception of personal injury and material damage to goods not subject to the contract the liability shall be limited to 2.5 million Euro for each incidence of damage; in the event of more than one injured party, TriCon shall be liable in proportion to the individual claims. Clause 9.2.2 shall remain unaffected.

9.1.11 In the event of storage, the preceding limitations of liability shall cease to apply if the damage or loss has been caused wilfully and knowingly by company bodies of TriCon or their vicarious agents or through gross negligence as well as in the event of the negligent breach of contractual obligations, whereby the liability shall then be limited to the typical foreseeable damage.

### 9.3 Limitation of Liability for Services in accordance with Clause 2.1 (3<sup>rd</sup> indent)

9.3.1 Insofar as contractually agreed additional services within the meaning of Clause 2.1 (3<sup>rd</sup> indent) are not subject to the statutory regulations for freight, haulage or storage contracts, the contractual and statutory liability of TriCon shall be limited to an amount equal to

- 25,000 € per claim and
- 500,000 € for all claims within one year

This shall also apply to extracontractual claims against TriCon, its employees and other vicarious agents. The parking of extracontractual train sections shall remain unaffected by the provisions of Clause 9.3.

9.3.2 The exemptions from and limitations of liability in accordance with Clause 9.3.1 shall not apply in the event of fatalities, physical injuries and / or damage to health or if mandatory regulations specify otherwise.

9.3.3 Against the payment of a liability surcharge, it can be agreed, in accordance with Clause 9.3.1, that the maximum amount of liability be replaced with another amount.

9.3.4 The preceding limitations of liability in accordance with Clause 9.3.1 and Clause 9.3.3 shall cease to apply if the damage or loss has been caused wilfully and knowingly by company bodies of TriCon or their vicarious agents or through gross negligence as well as in the event of the negligent breach of contractual obligations, whereby the liability shall then be limited to the typical foreseeable damage.

#### 9.4 Limitation of Liability for the Parking of Extracontractual Train Sections

9.4.1 The rental contract liability of TriCon for parked (loaded or unloaded) train sections within the meaning of Clause 4.4 NBS shall be limited to wilful intent and gross negligence. This shall not apply to personal injury, to fraudulent concealment of defects, to the breach of contractual agreements or when the mandatory regulations stipulate otherwise. In the case of Clause 2, TriCon shall be liable for existing deficiencies within the meaning of § 536a BGB (the German Civil Code), if it is responsible for them.

9.4.2 TriCon shall not be liable for damages caused by third parties (such as, for example, theft), unless, in accordance with the statutory regulations, TriCon must assume responsibility for the behaviour of third parties.

9.4.3 For damage or injury caused by TriCon through the interim marshalling of parked train sections, the liability shall be determined in accordance with the statutory regulations.

9.4.4 The preceding limitations of liability shall also apply to extracontractual claims insofar as statutory regulations do not specify otherwise.

## **10. Limitation Period**

The limitation period for claims shall be taken from the respective, applicable statutory regulations.

## **11. Payment, Late Payment and Exclusion of Set-off**

11.1 The basis of the calculation of charges shall be the TriCon charges list valid at the time. Charges to be paid must be paid in Euro and must include the statutory value added tax at the rate applicable at the time.

11.2 Invoices shall be sent to the customer online by means of electronic data transfer. The sending of invoices in paper form by post occurs only if the customer expressly requests it and indicates it to TriCon accordingly. As opposed to online transmission, the sending of invoices by post shall attract charges in accordance with the list of charges.

11.3 Payments shall be made by bank transfer, at the expense of the customer, to a specific account to be nominated by TriCon and shall be due on the receipt of the invoice. Different methods of payment can be specified within the framework of a separate agreement. In the event of late payment, default interest at the statutory rate (§ 247 Section 1 and § 288 Sections 2 to 4 BGB) and lump-sum dunning costs, in accordance with the list of charges, for each written additional overdue notice shall be payable.

11.4 The off-setting against or withholding of the claims of TriCon shall be excluded, unless the counterclaim is undisputed or is legally determined.

## **12. Place of Jurisdiction and Applicable Law**

12.1 Insofar as it does not contradict mandatory law, the sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship (including counterclaims and cheque and bill of exchange processes) is the location of TriCon. TriCon shall also have the right to sue the customer at the customer's place of jurisdiction.

12.2 German law shall be applicable to the legal relationships of TriCon with its customers or their legal successors. In addition, the statutory regulations shall apply.