

SCHENKER LAND TRANSPORT TERMS & CONDITIONS

1. Definitions

- 1.1. **Customer** means and includes: (i) the sender, consignee, receiver and owner of the goods; (ii) the holder of the Waybill or any person entitled thereto; (iii) any person owning or entitled to the possession of the goods; and (iv) the respective agents, representatives, contractors, servants, officers or employees of any of the above persons; in all cases jointly and severally.
- 1.2. **Dangerous Goods** means any and all Goods that are classified as such under applicable law or international convention, and any other Goods that are or may become dangerous, hazardous, noxious (including radioactive materials), inflammable, explosive or which are or may become liable to damage any property, or injure or cause the death of any person.
- 1.3. **Failed Delivery** means any instance where SCHENKER, in its reasonable opinion, is unable to deliver Goods or arrange for Goods to be delivered to the relevant consignee for reasons not attributable to SCHENKER, including where: (i) the relevant consignee does not take delivery of the relevant Goods for any reason whatsoever; or (ii) where the relevant Goods cannot be delivered due to insufficient information, consignee details, inappropriate marking or inappropriate packaging.
- 1.4. **Force Majeure** means in relation to either SCHENKER or Customer, any circumstances beyond the reasonable control of that party, including, without limitation, acts of God, compliance with any acts of any governmental or other authority, war or national emergency, riots, civil commotion, acts of terrorism, piracy, fire, explosion, flood, nuclear accidents, criminal acts, any information security-related threats including cyber-attacks, severe weather conditions, epidemic, pandemic, lock-outs, strikes and other industrial disputes (in each case whether or not referring to that Party's or Subcontractors' workforce), shortage of labor, materials and services and inability or delay in obtaining supplies.
- 1.5. **Goods** means any and all cargo, property, product, good, merchandise or article of any kind whatsoever which is the subject of the Waybill, including Dangerous Goods, as well as containers, pallets or similar articles of transport or packaging, not supplied by SCHENKER, irrespective of whether carried on or under deck.
- 1.6. **SCHENKER** means the Schenker entity, subsidiary, branch, division or agent who issues the Waybill and/or assumes liability and responsibility for the performance of the Services as a principal.
- 1.7. **SDR** means Special Drawing Rights, as defined and maintained by the International Monetary Fund.
- 1.8. **Services** means the whole or any part of the carriage, transportation, loading, unloading, handling, packing, storage and any third-party logistics services undertaken by SCHENKER in relation to the Goods under the Waybill.
- 1.9. **Shipment** means all the Goods described in the Waybill and taken in charge for Services by SCHENKER.
- 1.10. **Subcontractor** includes owners of vehicles, charterers and operators of vessels (other than SCHENKER), stevedores, terminal and groupage operators road and rail transport operators, warehousemen, and any independent contractors employed by SCHENKER performing the carriage or whose services or equipment have been used for the carriage, and any direct or indirect subcontractors, servants and agents thereof whether in direct contractual privity or not.
- 1.11. **Waybill** means the bill of lading, truck waybill and/or consignment note issued by SCHENKER (if any).

2. General

- 2.1. These terms and conditions ("Terms") set out the basis on which SCHENKER, will provide the Services. The legal relations between the Customer and SCHENKER shall be exclusively governed by these Terms.

- 2.2. The choice of suitable means of transportation is at the discretion of SCHENKER except as explicitly agreed otherwise. Friday, Saturday, public - and religious holidays are not regarded as working days for tariff and transit time purposes. SCHENKER may engage Subcontractors to perform transportation and incidental or additional services and contracts both on its own behalf and on behalf of its servants, agents and Subcontractors each of whom shall have the benefit of these Terms.
- 2.3. All Shipments covered under a single Waybill shall be considered a single shipment. A shipment may be carried via any intermediate stopping places that SCHENKER deems appropriate.

3. Commodities handled and service restrictions

- 3.1. SCHENKER offers its Services subject to the following conditions unless otherwise agreed in writing by SCHENKER:
 - 3.1.1. All shipments must be palletized and in gauge. For any out of gauge Shipments, contact your SCHENKER Account Manager.
 - 3.1.2. SCHENKER shall not be responsible for loading shipments onto SCHENKER's pickup vehicle.
 - 3.1.3. SCHENKER shall not be responsible for unloading or providing labour and/or equipment at destination for unloading shipments.
 - 3.1.4. Labour and/or equipment for loading and/or unloading can be arranged upon request. Additional charges will apply.
 - 3.1.5. No Services shall be rendered with regard to any prohibited articles including, but not limited to, articles of unusual value (such as works of art, antiques, precious stones, stamps, unique items, gold or silver), money or negotiable instruments (such as cheques, bills of exchange, bonds, savings books, share certificates or other securities) and dangerous goods.
 - 3.1.6. Perishable goods or temperature-controlled goods are accepted but at Customer's own risk as SCHENKER does not provide special handling, such a temperature-controlled transportation.

4. Dangerous Goods

- 4.1. Customer warrants that the Goods for which SCHENKER is asked or required to render the Services are not hazardous unless the Parties agree otherwise in writing.
- 4.2. In the event SCHENKER agrees to render the Services for Dangerous Goods, it is Customer's responsibility to provide SCHENKER with all documentation necessary to comply with the laws and regulations related to the handling or transporting of such goods, and to cover all costs related to all insurance policies required by law for the handling and transportation of hazardous goods.

5. Compliance and Code of Conduct

- 5.1. The Customer shall ensure compliance with all applicable export, import, re-export and in-country transfer of goods regulations and codes, sanctions laws and, including, without limitation, the identification and procurement of required permits, certificates, licenses, insurance, approvals and inspections related to a shipment tendered to SCHENKER, and warrants in particular that:
 - 5.1.1. neither Customer, nor any holding company, agent, consignee, consignor or any other third party directly contracted by Customer for the transport of the shipment are listed on any applicable sanctions lists as a denied or restricted party;
 - 5.1.2. no Shipments shall be tendered containing goods which are prohibited by any applicable law or regulation of any federal, state or local government in the country of origin or destination or any country of transit or which may breach any applicable export, import or other laws. In addition, certain goods may under applicable law

- only be transported under prescribed conditions.
- 5.2. In the absence of an own Code of Conduct, Customer will comply with the principles of the parent company of SCHENKER, the Deutsche Bahn code of conduct: See [KRWD \(deutschebahn.com\)](https://www.krwd.deutschebahn.com)
 - 5.3. The Customer agrees to provide SCHENKER, upon request, with copies of any relevant documents evidencing such compliance and further agrees to indemnify SCHENKER and its sub-contractors for any loss or damage, expenses or other claims that may be sustained by reason of any failure to comply with this section.
 - 5.4. SCHENKER reserves the right to suspend provision of any Services without any liability in cases where the Services would violate any trade regulations.

6. Transit and Arrival Time

- 6.1. Arrival times are given in good faith but are not guaranteed.

7. Customs Clearance

- 7.1. Where applicable, the Customer must provide appropriate documentation for customs clearance. By providing such documentation, Customer certifies that all statements and information therein relating to exportation and importation are true and correct.
- 7.2. The Customer acknowledges that civil and/or criminal penalties, including forfeiture and sale, may be imposed for making false or fraudulent statements.
- 7.3. Notwithstanding clause 1.6, when a shipment is tendered to SCHENKER, SCHENKER is thereby appointed as the agent for the performance of customs clearance, where applicable. SCHENKER is specified as the nominal receiver for the purpose of designating a customs broker to perform customs clearance.
- 7.4. Applicable duties and taxes, customs penalties, storage charges, or other expenses incurred as a result of any action by customs or failure by Customer or receiver to provide proper documentation or to obtain a required license or permit will be charged to the receiver.
- 7.5. The Customer is liable for and shall indemnify SCHENKER against all such costs in the event of any non-payment by the receiver. SCHENKER shall not be liable for any damages, costs, expenses, or other claims arising out of, or, in connection with the performance of customs clearance by SCHENKER unless caused by the gross negligence or wilful misconduct of SCHENKER, its statutory representatives, servants, agents or Subcontractors.

8. Validity and Non-Binding Offer

- 8.1. Our rates are not binding and remain subject to acceptance within the validity period.

9. Delivery, Liens, and Failed Deliveries

- 9.1. SCHENKER will be conclusively presumed to have delivered the Goods in accordance with these Terms if it obtains from any person present at the relevant delivery address a receipt or signed proof of delivery for the Goods.
- 9.2. Without prejudice to clause 9.1, Goods shall be deemed delivered when: (i) they have been handed over or placed at the disposal of the relevant consignee, or its agent, in accordance with the terms of this consignment note or with the law or usage of the particular trade applicable at the place of delivery; (ii) when the Goods have been handed over to any authority or other party to whom, pursuant to the law or regulation applicable at the place of delivery, the Goods must be handed over; or (iii) delivered at such other place at which SCHENKER is entitled to call upon the Customer to take delivery.
- 9.3. Without prejudice to any other rights that SCHENKER may have, SCHENKER shall have a general right of lien, exercisable unilaterally and without a court order, in respect of any Goods or any documents relating to Goods in its actual or constructive possession

- or control at any time, for all sums which are due to it by or on behalf of the Customer.
- 9.4. In case of: (i) unpaid amounts due to SCHENKER; (ii) Failed Delivery, where the Customer refuses to take redelivery of the relevant Goods promptly following written request by SCHENKER; or (iii) any other reason whatsoever not attributable to SCHENKER and delaying the Goods in SCHENKER's possession; SCHENKER may take such steps as it sees fit to protect its and other parties' interest, including but not limited to the destruction or abandonment of all or any part of the Goods, the storage of the Goods or any part thereof, or the disposal of all or part of the Goods (by direct sale, auction or otherwise as SCHENKER may deem reasonable), always at the risk and cost of the Customer, without court order to that effect:
- a) for perishable Goods, immediately and without further notice; or
 - b) for non-perishable Goods, after sending the Customer a twenty-one (21) calendar day written notice of SCHENKER's intention for the Goods.
- 9.5. Where SCHENKER disposes of the Goods pursuant to clauses 9.3 and 9.4 above, SCHENKER has the right to apply any sale proceeds towards the balance of any payments due to SCHENKER.
- 9.6. Any costs and expenses associated with the destruction, abandonment, storage or disposal of the Goods pursuant to clauses 9.3 and 9.4 above (including legal expenses) shall be borne by the Customer and may be deducted by SCHENKER from any proceeds of sale of the Goods.
- 9.7. Where Goods must be redelivered to the Customer by SCHENKER for any reason whatsoever, including at the Customer's request or in case of Failed Delivery, all costs and expenses associated with such redelivery are to be borne by the Customer.
- 9.8. If at any time the Carriage under this consignment note is or is likely to be affected by any hindrance or risk of any kind (including but not limited to the condition or nature of the Goods) not arising from any fault or neglect of SCHENKER and which cannot be avoided by the exercise of reasonable endeavour, SCHENKER may abandon the Carriage of the Goods under this consignment note and, if reasonably possible, place the Goods or any part thereof at the Customer's disposal at any place which SCHENKER may deem safe and convenient, whereupon delivery shall be deemed to have been made, and the responsibility of SCHENKER in respect of such Goods shall cease. In any event, SCHENKER shall be entitled to full Freight under this consignment note and the Customer shall pay any additional costs resulting from the above-mentioned circumstances.
- 9.9. SCHENKER shall be entitled to and may use an electronic device to obtain proof of delivery. Where such a device is used, Customer acknowledges and agrees that the printed name of the receiver and a digitally imaged or electronically captured signature by or on behalf of the receiver shall be evidence of delivery of a package or a number of packages in a shipment and that a clear reproduction of such a signature shall be conclusive proof of the delivery of the packages to the receiver. The Customer expressly waives any right to challenge the validity of the printed copy of the signature establishing proof of delivery by reason that such printed copy has been prepared and obtained by electronic means.

10. Payment

- 10.1. Charges for transportation and any incidental or additional services shall be due and payable to SCHENKER in accordance with the rates provided to Customer. Unless paid before the date of shipment all charges shall be paid to SCHENKER within thirty (30) days of receipt of an invoice or within the time limits agreed in writing with SCHENKER. All payments made by SCHENKER on behalf of Customer in respect of value added tax (VAT), duties and other taxes and levies shall be due and payable to SCHENKER upon demand (whether such demand is addressed to Customer, receiver or any third party).

Any sums not paid by the due date shall bear interest in arrears at the prime rate charged by SCHENKER's bankers plus 2% per month of the outstanding balance due.

- 10.2. The Customer guarantees payment of all charges. If the receiver, or, in the case of third-party billing, a third party fails to pay charges upon first request by SCHENKER, Customer shall be liable on demand to pay any such amounts and any costs incurred by SCHENKER (including any interest accrued thereon).

11. Indemnity

- 11.1. The Customer shall be liable for and shall defend, indemnify and hold harmless SCHENKER, at all times, immediately upon first written demand, from any and all liability, demands, claims, losses, damages, penalties, fines, interest, costs (including legal costs) and expenses, whether direct or indirect, that SCHENKER might incur arising out of or in connection with (i) the Services and/or (ii) the nature, condition, packaging or labelling of the Goods and relevant documentation or information supplied and/or: (iii) a breach of the terms of these Terms; (iv) any negligence or wilful misconduct; or (v) any breach of statutory duty; by the Customer.

12. Liability

- 12.1. Where the rules relating to liability established by the CMR Convention apply (including rules imposed under national legislation implementing such a Convention or extending its rules to carriage which is not "international carriage" as defined therein), SCHENKER's liability is governed by and shall be limited in accordance with such rules. Where the above-mentioned Convention do not apply or are excluded in terms of national legislation, any liability of SCHENKER shall be exclusively governed by these Terms where such liability for proven damage shall be limited to the lowest of (i) the Shipments actual declared value; (ii) the equivalent of 666.67 SDR per package, (iii) 2 SDR per kilogramme of gross weight of the goods lost or damaged or (iii) SDR 50,000.
- 12.2. Subject to the aforesaid, SCHENKER shall not be liable to the Customer, for any loss or damage to goods or delays arising out of or in connection with the Services unless caused by the negligence of SCHENKER and there has been no contributory negligence on the part of the Customer.
- 12.3. SCHENKER shall in no circumstances whatsoever be liable for any indirect or consequential loss or damage or loss of profits (howsoever caused) unless otherwise stipulated by law.
- 12.4. SCHENKER shall be relieved of liability for any loss or damage if:
- a) the loss or damage has been caused by robbery, action of armed gangs, and events which are of a force majeure nature.
 - b) the loss or damage has been caused by any cause or event which SCHENKER is unable to avoid and the consequences of which SCHENKER is unable to prevent by the exercise of reasonable diligence.

13. Cargo Insurance

- 13.1. To secure the value of Customer Shipments during the Services, SCHENKER offers the possibility to insure the Goods with the insurance premium to be borne by the Customer. Shipment insurance covers physical cost compensation, but consequential costs or damages are excluded.

14. Capacity and Availability

- 14.1. If SCHENKER is not able to provide the Services at any given moment as a result of supply shortage, SCHENKER will immediately provide proof of this shortage(s) but SCHENKER shall not be obliged to provide the Services.

15. Packaging

15.1. Customer is responsible for packing, marking and labelling goods for transportation by SCHENKER. SCHENKER shall not be liable for damage to, or loss of goods caused or contributed to by defects in the packaging used by Customer or for damage to or loss of the packaging used by Customer.

16. Terms of Delivery

16.1. SCHENKER refers to the Incoterms, latest version.

17. Data Protection

17.1. SCHENKER shall be entitled to collect, store and process data provided by Customer or receiver in connection with Services provided by SCHENKER and to transmit such data to, and have such data centrally processed by other companies in the SCHENKER group, including SCHENKER affiliates in other countries. In addition, SCHENKER shall be entitled to transmit data to government agencies including, but not limited to, customs authorities, to the extent required by law. Data may also be used for the purpose of advertising other services and products provided by SCHENKER companies. The rights of the Customer are subject to applicable data protection legislation and may be asserted irrespective of the location at which the data is stored by SCHENKER.

18. Waiver

18.1. No waiver by SCHENKER of any breach of any provision of these Terms shall constitute a waiver of any subsequent breach or any other provision. No Subcontractor, servant or agent of SCHENKER has authority to waive or vary any of these Terms.

19. Claims and Claim Deadlines

19.1. SCHENKER shall be deemed prima facie to have delivered the Goods on time, undamaged and in full, unless notice of delay, loss or damage to the Goods and the general nature thereof is given in writing to SCHENKER within the timeframes below:

1. in the case of visible damage to the Goods, within 24 (twenty-four) hours of delivery;
2. in the case of damage to the Goods which is not apparent, within 7 (seven) calendar days of delivery;
3. in the case of delay, within twenty-one (21) calendar days from the date on which the Goods were placed at the disposal of the person entitled to delivery; and
4. in the case of non-delivery of the Goods, within 14 (fourteen) calendar days of the date on which delivery was supposed to have been made.

20. Force Majeure

- 20.1 SCHENKER shall not be in breach of these Terms or otherwise be liable to the Customer for damages (including but not limited to loss, damage, or delay to Goods) or otherwise for any failure, partial failure or delay in performing any of its duties or obligations under these Terms to the extent such failure is due to Force Majeure.
- 20.2 If SCHENKER's performance of its obligations under these Terms is affected by Force Majeure, the date for performance of such obligation shall be deemed suspended for a period equal to the delay caused by such Force Majeure and SCHENKER shall resume prompt performance (including a reasonable start up period) as soon as such Force Majeure shall have ceased.
- 20.3 If, by reason of a Force Majeure, SCHENKER can only fulfil its obligations by incurring additional costs, then such reasonable and agreed additional costs shall be borne by Customer.

21. Severability

- 21.1. Insofar as any provision of these Terms may be contrary to any applicable law or held by any competent authority to be invalid such provision shall remain applicable to the extent that it is not overridden thereby. The invalidity of any such provision shall not affect the validity of any other provision of these Terms.
- 21.2. If any provision or part of a provision of these Terms is or becomes for any reason, invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions and part thereof contained herein shall not be affected thereby and these terms shall, to the fullest extent permitted by law, be reformed and construed as if such invalid, illegal or unenforceable provision, or part of a provision, had never been contained herein, and such provision or part reformed so that it would be valid, legal and enforceable to the maximum extent possible.

22. Governing Law and Jurisdiction

- 22.1. Unless otherwise agreed in writing, any claim or action against SCHENKER in relation to these Terms and any Services performed under these Terms may be instituted only in the place where SCHENKER has its place of business and shall be decided according to the law of the country in which that place of business is situated.

23. Entire Agreement and Variations

- 23.1. This document embodies the entire agreement between the Parties hereto. No amendment or variation of any of the provisions of this Agreement shall be of any force or effect unless reduced to writing and signed by both Parties.
- 23.2. This requirement will only be satisfied if such amendment or variation is made in a written, paper-based form.