

ERGO Insurance SE

Terms and conditions of road carrier's liability insurance



These Road Carrier's Liability Insurance terms and conditions apply to insurance contracts entered into by ERGO Insurance SE, in which the insured object is the policyholder's proprietary obligations arising from civil liability in connection with contracts of carriage of goods for hire or reward concluded with customers. On issues not resolved under the terms and conditions of Road Carrier's Liability Insurance, we are guided by the General Terms and Conditions of Insurance Contracts, the Law of Obligations Act and other laws and regulations.

1. Insurer

The insurer is ERGO Insurance SE.

2. Policyholder and insured person

- 2.1. Policyholder is the person who has entered into an insurance contract with the insurer.
- 2.2. Insured person is the policyholder or a person designated by name in the insurance contract, whose insurance risk is insured.
- 2.3. The policyholder can be a person with an insurable interest.
- 2.4. Upon performance of the obligations arising from the insurance contract, the employees of the policyholder and persons, agents, subcontractors, servants and other persons, whose services are used by the policyholder in the carriage, are equivalent to the policyholder.
- 2.5. The policyholder shall hold a valid road transport license or an international road freight transport license.
- 2.6. The policyholder shall carry out the transport by means of vehicles owned or held by the policyholder, the details of which are set out in the insurance contract.
- 2.7. Vehicles specified in the insurance contract shall have a license card issued.

3. Insured event

- 3.1. Insured is the civil liability of the policyholder in relation to:
 - 3.1.1. contracts of carriage of goods for hire or reward concluded with customers in accordance with the current version of the Convention on the Contract for the International Carriage of Goods by Road (hereinafter the CMR Convention) in international transport;
 - 3.1.2. contracts of carriage of goods for hire or reward concluded with customers in accordance with the Law of Obligations Act or similar laws and regulations of European Union member states (but not wider than the CMR Convention) in domestic transport;
 - 3.1.3. payment of customs duties in accordance with the TIR Convention (Customs Convention on the International Transport of Goods under Cover of TIR Carnets, 1975).
- 3.2. An insured event is an unexpected and unforeseeable event in which all of the following circumstances have occurred:
 - 3.2.1. the event has occurred during the insurance period and in the area of validity of the insurance contract;
 - 3.2.2. direct material damage has been caused to the injured party as a result of the event due to loss, damage or destruction of the goods or direct material damage or financial loss due to delay of the goods;
 - 3.2.3. the insured person is required to compensate the injured party for damage according to the Law of Obligations Act, similar laws and regulations of the European Union member state (but only to the extent of the CMR Convention) or according to the CMR Convention.
- 3.3. If the exact time of occurrence of an insured event cannot be determined, it is deemed to be the time when the policyholder or a person equivalent to the policyholder should have become aware of the insured event.
- 3.4. Several losses that occurred at the same time, in the same place and for the same reason are treated as a single insured event.

4. Validity and area of validity of insurance contract

- 4.1. The insurance period is the period specified in the insurance contract.
- 4.2. The area of validity of the insurance contract is the territory specified in the insurance contract.
- 4.3. The liability of the insurer under the insurance contract commences from the moment the policyholder accepts the goods for carriage and lasts until delivery of the goods.
- 4.4. The insurer's liability for TIR operations shall remain in force for TIR operations carried out during the period of validity of each TIR carnet issued to the insurer (in accordance with the TIR Convention), provided that the TIR carnet was issued or the TIR procedure was commenced during the insurance period indicated in the insurance contract.
- 4.5. Upon termination, cancellation or withdrawal of the insurance contract, the payment calculated for the special condition of the TIR (guarantee to the Association of Estonian International Road Carriers) shall not be returned.

5. Limits on insurance indemnities

- 5.1. The amount of the insurance indemnity per insured event is limited to the amount of the proprietary obligations arising as a result of the insured event and the limit of the insurance indemnities.
- 5.2. The overall limit of indemnity is the amount agreed in the insurance contract, which is the upper limit of all insurance indemnities payable during the insurance period.
- 5.3. In addition to the overall limit of indemnity, it is possible to agree on the limit of indemnity relating to:
 - 5.3.1. financial claims;
 - 5.3.2. third party liability;
 - 5.3.3. unpaid freight charges.
- 5.4. The limit of indemnity is the maximum insurance indemnity payable in respect of the claims listed in clause 5.3.
- 5.5. The general limit of indemnity and the limit of indemnity are indicated in the insurance contract. If the limit of indemnity is not indicated separately, it shall be considered equal to the overall limit of indemnity.
- 5.6. In case of loss, destruction or damage of goods, the limit of indemnity for international transport is defined in accordance with Article 23 of the CMR Convention (carriage of goods without indicating their cost on the delivery note) and for domestic transport in accordance with sections 794, 795 and 796 of the Law of Obligations Act. The insurance indemnity shall not exceed the sum of the cost of the goods and freight charges.
- 5.7. The compensation for unpaid freight charges shall not exceed the average amount of freight charges on the market of relevant service.
- 5.8. The overall limit of indemnity in the case of misuse of the TIR carnet by the policyholder is USD 50 000 (fifty thousand US dollars) per insured event and for the entire insurance period.
- 5.9. The overall limit of indemnity and the limit of indemnity will decrease by the amount of insurance indemnity paid out under the same insurance contract.

6. Third party liability

- 6.1. According to the insurance contract, the policyholder's liability towards a third party is also insured in the event of damage caused to the policyholder by the goods, if such liability arises in connection with the destruction of or damage to the property of the third party.
- 6.2. According to the insurance contract, the policyholder's liability is also insured towards the owner of the container, if due to the fault of the carrier damage has been caused to the container in the carrier's possession during carriage.
- 6.3. Liability towards a third party does not include liability towards the owner of the vehicle or trailer or liability towards a person considered equivalent to the policyholder.

7. Rescue costs, disposal expenses, legal protection costs, costs related to customs duties

- 7.1. According to the insurance contract, the insurer will additionally compensate for:
 - 7.1.1. reasonable and unavoidable expenses to prevent or reduce damage to goods caused by an insured event (incl. rescue or retention after an insured event). If the insurer has agreed to the rescue costs, the insurer will compensate for all accepted rescue costs even if the total sum of money necessary to satisfy the claims against the policyholder and the rescue costs exceed the sum insured;
 - 7.1.2. reasonable and unavoidable additional expenses related to the removal and disposal of the goods or their remains (excluding the costs related to contamination or other environmental damage, as well as the costs of removal of the goods from the means of maritime transport), if the policyholder is responsible for compensating for such costs;
 - 7.1.3. reasonable and unavoidable expenses for investigating the circumstances of the insured event and protecting the interests of the policyholder involved in the insured event in court and/or arbitral tribunal, if the respondent is the policyholder. If the insurer has agreed to the court and legal protection costs, the insurer will compensate for all accepted court and legal protection costs, even if the total sum of money necessary to satisfy the claims against the policyholder and the court and legal protection costs exceed the sum insured;
 - 7.1.4. expenses (where such reimbursement is agreed in the insurance contract) related to customs duties, fees and other charges, which may be imposed on the policyholder in accordance with national customs laws and regulations as a result of the performance of customs operations established by the TIR Convention or of the non-compliance with the procedure for the carriage of goods when using the TIR carnet.
- 7.2. The cost of avoiding or reducing damage shall not be included in the sum of damage, if the insurer is not required to compensate for the avoided or reduced damage (e.g., costs of reducing the damage caused by intoxication).
- 7.3. The insurer is not obliged to reimburse costs that would have been incurred even if the accident had not occurred (e.g., normal transport and storage costs).
- 7.4. Lost income, wages, contractual penalties, moral damage, loss of market share, etc., due to an insured event does not constitute damage.

8. Unpaid freight charges

The insurer will compensate the policyholder for the freight charges arising from the carriage related to the claim event, if the policyholder is not liable for the damage to the goods as a result of the claim event or is released from liability in accordance with the legislation and conventions in force and the person who filed the claim against the policyholder therefore refuses to pay the freight charge to the policyholder.

9. Obligations of the policyholder

- 9.1. The policyholder is required to:
 - 9.1.1. comply with the laws and regulations of the area of validity of the insurance contract, international conventions and other agreements (e.g., transport of dangerous goods, carriage of large-scale or heavyweight goods, use of winter tires, etc.) and additional conditions specified in the insurance contract; do everything in their power to prevent an insured event and reduce possible damage, not increase the insured risk and not enable the persons for whom the policyholder is liable to increase it;
 - 9.1.2. explain the obligations arising from the insurance contract to the persons in whose possession the goods are transferred;
 - 9.1.3. upon receipt of the goods from the sender, check the preparation of the packaging and the goods for the safe transport of the goods, the correctness of the number of places indicated on the delivery note upon receipt or delivery of the goods and the external condition of the goods and their packaging; if necessary, make a corresponding note on the delivery note;
 - 9.1.4. ensure that the cargo compartment is clean, dry, free of extraneous odors and has the required temperature before loading the goods;
 - 9.1.5. in the case of a temperature-mode transport, check the temperature of the cargo compartment of the means of transport together with the sender of the goods upon receipt of the goods and make a note thereon on the delivery note. If possible, check the temperature of the goods at the place of departure with the sender of goods and at the place of unloading with the recipient and make a note on the delivery note. In the case of temperature-mode transport, the vehicle shall be equipped with equipment for storing temperature measurement data. Measurement data shall be stored for at least one year. The means of transport and refrigeration shall be properly inspected and maintained;

- 9.1.6. in the case of temperature-mode transport, check the temperature and the operation of the temperature equipment on a regular basis;
- 9.1.7. give clear instructions to drivers and/or the next carrier on the transport of the goods, such as the necessary temperature or humidity in the cargo compartment, loading of the goods or the arrangement of the cargo compartment, security measures, etc.;
- 9.1.8. take all precautions to prevent theft of the goods;
- 9.1.9. park the means of transport in a designated and approved car park for road carriers during daytime, rest periods or other short stops;
- 9.1.10. securely lock the means of transport, remove the keys and securely close all openings. The driver shall be in close proximity at all times; park the means of transport at night or during the day, except in the case of rest breaks or other short stops, in a closed building or in a fully enclosed location which is permanently locked (unless authorized vehicles enter and leave it) and under constant physical supervision or that of a security firm; or securely lock the means of transport, remove all keys and securely close all openings and park the vehicle in a designated and approved car park for road carriers. The driver shall continuously monitor the vehicle;
- 9.1.11. when leaving the means of transport temporarily (to meet customs or border crossing requirements), securely lock the means of transport, remove and carry the keys, securely close all openings and turn on security alarm, etc.; also carry accompanying documents.
- 9.2. Upon occurrence of an insured event, the policyholder is required to:
 - 9.2.1. immediately take all necessary measures to preserve the goods and prevent the damage from increasing, as well as minimize the possible damage;
 - 9.2.2. in the event of visible defects or damage to the goods, make a corresponding note on the delivery note of the goods immediately upon receipt of the goods. In the case of latent defects, inform the prior carrier and/or the forwarding agent in writing within three days of receipt of the goods. The note or the statement of loss shall indicate the number of items damaged or injured, the type of damage and, where possible, the probable cause;
 - 9.2.3. immediately report the incident to the police (if there is a road traffic accident or if intentional action by a third party is suspected); the local Rescue Board or the relevant competent authorities or persons;
 - 9.2.4. notify the insurer in writing of the occurrence of the insured event, by doing so in person or through their representative at the earliest opportunity, submitting in the application information concerning the events, the estimated extent of the damage, witnesses, parties and persons responsible, and follow the instructions of the representative of the insurer in the future;
 - 9.2.5. where possible, preserve the damaged goods intact and unloaded from the means of transport until the representative of the insurer reviews the goods or gives other instructions;
 - 9.2.6. submit a copy of the complaint or claim of the person claiming compensation for damage;
 - 9.2.7. submit a list of goods lost, damaged or destroyed as a result of the insured event within two weeks as of becoming aware of the insured event;
 - 9.2.8. submit accompanying documents, i.e., invoices, commercial invoices, delivery notes, packing notes, cargo manifests, etc.;
 - 9.2.9. submit a cargo inspection report in accordance with the law or practice of the place where the claim event occurred;
 - 9.2.10. submit a claim to the previous carrier or forwarding agent for compensation for the damage caused;
 - 9.2.11. present evidence of contact with the police and/or a certificate of initiation of criminal proceedings;
 - 9.2.12. submit a report on the destruction and/or damage of seals;
 - 9.2.13. submit the driver's letter of explanation;
 - 9.2.14. provide copies of the TIR carnet and all other documents required to be attached to the TIR carnet by the customs authorities (in case of a TIR claim);
 - 9.2.15. submit a copy of the document, which applies to the policyholder liability for the violation of the TIR procedure and which sets the amount of the claim (in the case of a TIR claim);
 - 9.2.16. submit other documents certifying the policyholder's expenses related to the insured event;
 - 9.2.17. provide correspondence with the party who submitted the claim;
 - 9.2.18. allow the insurer, during the claims handling, to ascertain the causes and extent of the damage caused as a result of the insured event by submitting all documents concerning the causes and extent of the damage without delay, but not later than within one year from the date of the damage;

- 9.2.19. immediately notify of the event or circumstances of which the policyholder has become aware that may give rise to the damage.
- 9.2.20. If an insured event is caused by the fault of a third party or parties, the policyholder is required to take all necessary measures to prove their rights and to apply them against the persons responsible and/or subsequently transfer those rights to the insurer so that they can make a claim for recourse.
- 9.3. The policyholder shall not commence the restoration of damaged goods or the disposal of destroyed goods without the consent of the insurer.
- 9.4. The obligation to prove the insured event lies with the policyholder. The policyholder shall submit to the insurer the information necessary for determining the insurer's contractual obligations.
- 9.5. Upon finding the goods lost as a result of an insured event, the policyholder is required to notify the insurer thereof in writing within two working days as of the finding.

10. Rights and obligations of the insurer

- 10.1. The insurer is required to:
- 10.1.1. introduce the documents of the insurance contract to the policyholder before entry into the insurance contract;
- 10.1.2. after receiving a written application from the policyholder, commence immediately the handling of the insured event and ascertain the amount of damage to be compensated;
- 10.1.3. register the claim notice and introduce to the policyholder the procedure for the settlement of the insured event and compensation for damage;
- 10.1.4. submit to the policyholder a list of documents necessary for determining the causes and extent of the damage caused as a result of the insured event.
- 10.2. The insurer has the right to demand originals of the submitted copies, if they are necessary for ascertaining the damage and the amount thereof.

11. Indemnification procedure

- 11.1. Insurance indemnity will not be paid if the third party has fully compensated for the damage.
- 11.2. Part of the value added tax or other refundable payments to be refunded to the policyholder or the injured party on the basis of the Value Added Tax Act or other laws and regulations are not subject to compensation.
- 11.3. If the amount or reason of damage caused as a result of the insured event has not been proved, the insurer will compensate only the part of the damage which has been proved within the prescribed term.
- 11.4. If the monetary unit of the sum insured and the compensation payable differ, the compensation will be paid according to the daily rate of Eesti Pank on the date of acceptance of the goods, unless otherwise agreed in the insurance contract.
- 11.5. Upon failure to arrive at the place of destination of the goods, the goods shall be deemed to have disappeared, if there is no indication of the location of the goods and/or of the means of transport transporting them within 30 days in the case of national transport and 60 days in the case of international transport, starting from the estimated time of arrival of the goods at the place of destination.
- 11.6. The insurer shall have the right to independently appoint experts, legal representatives and other persons to investigate the circumstances of the insured event and, with the authorization of the policyholder, to appear in arbitral tribunal, in court or before the claimant on behalf of the policyholder.
- 11.7. The insurer reserves the right to offset any parts of the outstanding premiums against insurer's obligation to fulfil the insurance contract until the end of the insurance period.
- 11.8. If the policyholder or the injured party regains possession of the lost goods, the property shall be transferred to the insurer or the insurance indemnity shall be returned.
- 11.9. Upon payment of the insurance indemnity, the policyholder's claims against the persons liable for the damage shall transfer to the insurer to the extent of the indemnity paid.
- 11.10. If the insurer has paid the damage to the goods, the owner of the goods shall transfer the right of ownership of the goods to the insurer to the extent of the compensated part, if the insurer so requests.

- 11.11. In the case of multiple insurance, the policyholder's liability for the same insurance risk is fully or partially insured at several insurers for the same insurance period. In the case of multiple insurance, insurers shall be liable as joint and several debtors.
- 11.12. In the case of customs duties and duties covered by other insurance contracts or guarantees, the insurer shall compensate proportionally only the part not covered by other insurance contracts or guarantees.
- 11.13. The policyholder or the injured party are not entitled to assign their right of claim to a third party or parties without the written consent of the insurer.
- 11.14. The insurer decides the form and amount of compensation. Forms of compensation are financial compensation, restoration of damaged property or its replacement with equivalent.
- 11.15. The rights and obligations derive from the insurance contract (insurance terms and conditions, sum insured, limit of indemnity, insurance risks, deductible, limitations, etc.) in force during the insurance period, in which the accident giving rise to the claim occurred.

12. Release of insurer from obligation to perform insurance contract

- 12.1. The insurer shall be released in whole or in part from the obligation to perform the insurance contract if:
 - 12.1.1. the policyholder has violated at least one of the obligations specified in clause 9 and there is a causal link between the failure to perform the obligation and the occurrence of the insured event and/or the amount of damage caused as a result thereof;
 - 12.1.2. the policyholder has not paid the insurance premium by the agreed due date (in the case of periodic payments no later than by the due date specified by the insurer) and if the insured event occurs after the due date for payment of the insurance premium;
 - 12.1.3. the policyholder or person(s) equivalent to the policyholder have, intentionally or due to gross negligence (substantial failure to observe due diligence in the performance of a contractual obligation), violated at least one of the terms of the insurance contract, which has an impact on the occurrence of the insured event or the amount of damage;
 - 12.1.4. the insured event has occurred due to the gross negligence or intent of the policyholder or the injured party. Gross negligence means the situation when a person foresees the consequences of his or her behavior, but recklessly hopes that the consequences will not happen;
 - 12.1.5. the insured event was caused by unlawful activities of the policyholder or person(s) equivalent to the policyholder, as well as by acting under the influence of alcohol, drugs or psychotropic substances. If the policyholder or the person equivalent to the policyholder refuses to establish intoxication immediately after the occurrence of the damage, the policyholder is deemed to have been intoxicated by alcohol, under the influence of drugs or psychotropic substances at the time of the occurrence of the damage. The same is true, if the aforementioned substances were consumed after the damage occurred, but before the police arrived or made a proposal to establish intoxication;
 - 12.1.6. damage is caused by the loss, damage, destruction or delay of illegal goods (including contraband, goods which the carrier is not authorized to carry);
 - 12.1.7. the policyholder waives their rights against the person who caused the damage or if the exercise of the right of recourse of the insurer proves impossible by the fault of the policyholder (exceeding the term for filing the claim, failure to submit the necessary documents to the insurer);
 - 12.1.8. the policyholder or the injured party misled or attempted to mislead the insurer as to the circumstances and/or extent of the damage or otherwise attempted to deceive the insurer as to the circumstances of the insurance contract or its performance.
- 12.2. The extent to which the insurer is released from the obligation to fulfil the insurance contract will be decided by the insurer.
- 12.3. The insurer shall be released from the obligation to perform the insurance contract in whole if:
 - 12.3.1. the claim against the policyholder has expired;
 - 12.3.2. in accordance with the legislation and conventions in force, the policyholder is not liable for causing damage or is released from liability, but accepts a claim against them.

13. Exclusions

13.1. Excluded are claims which are not caused by the insured event and claims which are caused by:

- 13.1.1. unlawful conduct of the policyholder;
 - 13.1.2. transport of persons;
 - 13.1.3. transport of the dead;
 - 13.1.4. relocation of apartment or office equipment;
 - 13.1.5. carriage performed in accordance with international postal conventions;
 - 13.1.6. towing or self-driving of vehicles;
 - 13.1.7. financial claims not resulting from direct material damage (damage to proprietary rights, loss of profit, salary, loss of market share, contractual penalties, damages from the prohibition to carry goods to the country of transit or destination due to the legislation in force there, etc.), except as provided for in the CMR Convention, the Law of Obligations Act or similar legislation of the Member States of the European Union (but only within the scope of the CMR Convention);
 - 13.1.8. the costs of eliminating environmental pollution;
 - 13.1.9. inherent characteristics or defects of the goods; normal leakage, loss of weight or volume, tear or wear of the goods;
 - 13.1.10. pests, insects and the like;
 - 13.1.11. uncovered or inadequately covered goods;
 - 13.1.12. inadequately secured goods;
 - 13.1.13. insufficient or inappropriate packing or preparation of the goods for transport. Packing shall also mean the loading of goods in a container or a transport van at the point of departure of the route by the sender of the goods or their representatives;
 - 13.1.14. the insolvency or lack of funds of the owners, forwarding agents or operators of the means of transport;
 - 13.1.15. the deficit of the goods in the case of externally untouched packaging or the seals by the sender of the goods;
 - 13.1.16. transport related to smuggling, undeclared goods and illegal trade;
 - 13.1.17. transport of precious metal blanks and goods made therefrom, precious stones and jewels, banknotes, coins, bonds, means of payment, securities, works of art and live animals;
 - 13.1.18. unsuitability of the means of transport (including a container, van, lifts, refrigerated trailers or other means of transport with refrigerated equipment) for the purposes of transport or the safe transport of goods, if the policyholder or persons equivalent to the policyholder were or should have been aware of it before loading the goods;
 - 13.1.19. failure to comply with the requirements of the temperature mode in the case of negligence on the part of the policyholder;
 - 13.1.20. delivery of the goods to the wrong recipient or recipient who is not entitled to receive the goods;
 - 13.1.21. seizure, confiscation, obstruction or detention;
 - 13.1.22. claims between persons covered by the same insurance contract;
 - 13.1.23. the use or operation of a computer, computer system, computer software, program or any electronic system, where such damage, defect, expense or liability was caused, directly or indirectly, by a date change; recognizing the time, date, week, month, year or century; and any expenditure to prevent such damage;
 - 13.1.24. driving in areas closed to traffic;
 - 13.1.25. claims under Articles 23.6, 24 and 26.1 of the CMR Convention or similar clauses in other laws and regulations governing the liability of the carrier (transport of goods at the cost indicated on the delivery note);
 - 13.1.26. the consequence of force majeure, which is independent of the will of the parties and beyond their control.
- 13.2. Excluded are claims and expenses which are directly or indirectly caused by:
- 13.2.1. terrorism and/or the activities of persons on political, religious, ethnic or ideological grounds, which endanger or threaten the life, health, security or property of any person or public;
 - 13.2.2. war, civil war, revolution, riot, invasion, civil unrest, coup, strike, state of emergency, expropriation, occupation, confiscation, seizure, obstruction or detention, or a consequence or attempt of such activity;

13.2.3. abandoned mines, torpedoes, bombs or other derelict explosives and weapons;

13.2.4. strikers, lockout workers or activities in disturbances or civil unrest of persons involved in labor unrest;

13.2.5. the use of a weapon involving the fission, fusion or similar reaction of an atom or its nucleus; a radioactive force or substance, a chemical, biological or biochemical reaction, or an electromagnetic effect;

13.2.6. the use of nuclear energy for any purpose, or the uncontrolled use of that energy, or other damage related to radioactive materials, fuel or residues;

13.2.7. computer viruses or an attempt by someone to cause damage through computer programs;

13.2.8. earthquake, landslide and/or land subsidence;

13.2.9. blasting or mining works;

13.2.10. the circumstance of which the policyholder or persons equivalent to the policyholder were or should have been aware before the entry into the insurance contract.