

## General Terms and Conditions

Valid from 01.01.2024

### 1. Area of validity

- 1.1 The General Terms and Conditions (GTC) govern the relationship between the customers and Swiss Federal Railways SBB Cargo International AG (hereinafter referred to as "SBB Cargo Int.") for carriage and other services. They apply to freight services provided by SBB Cargo Int. The Rules concerning the Contract of International Carriage of Goods by Rail (CIM) also apply.
- 1.2 The version of the General Terms and Conditions that was valid when the freight contract was concluded applies.
- 1.3 The General Terms and Conditions of the customer are only valid insofar as this has been agreed by the contractual partners in writing.

### 2. Relevant Provisions and Guidelines

- 2.1 The currently applicable version of the following guidelines applies in addition to the General Terms and Conditions of Business:
  - Guidelines for hazardous goods transport of SBB Cargo International (accessible at [www.sbbcargo-international.com](http://www.sbbcargo-international.com))
  - UIC Loading Guidelines
- 2.2 In connection with the use of railway wagons, the EU requirements on "Entity in Charge of Maintenance" (ECM) and the provisions of the "General Contract of Use for Wagons" (GCU) (currently effective version) apply.

### 3. Freight Services Agreement and freight contracts

- 3.1 Services to be provided by SBB Cargo Int. are based on a written Freight Services Agreement concluded with the customer and signed by both parties. This agreement includes the main service-related data required for concluding a freight contract.
- 3.2 Freight contracts are drawn up once the customer has submitted a carriage order to the head office of SBB Cargo Int. in Olten and this has been accepted, subject to other conditions specified in the Freight Services Agreement.
- 3.3 The freight contract terminates upon delivery of the cargo and the related handover of the transportation and waste documentation to the recipient at the agreed handover point and acceptance by it. These terms and conditions are subject to differing arrangements in the transport services agreement. If the cargo is not accepted by the recipient on time, SBB Cargo Int. shall request an instruction from the shipper. Any additional costs incurred by SBB Cargo Int. shall be borne by the customer.
- 3.4 SBB Cargo Int. reserves the right to have freight carried by a «sub-contracted carrier» according to Art. 3 CIM.

### 4. Carriage order

- 4.1 The carriage order is to be submitted electronically through interface between the customer and SBB Cargo Int. Other forms of order are subject to a fee. Carriage orders must contain all details required for the correct execution of the carriage.
- 4.2 SBB Cargo Int. is not obliged to check the content of consignments.

### 5. Loading and unloading

- 5.1 As stated in the «UIC loading guidelines», the customer is responsible for loading and unloading consignments. SBB Cargo Int. reserves the right to check that wagons and load units are being loaded and unloaded in accordance with operational safety procedures.
- 5.2 If there is justified doubt at the dispatching location or en route as to compliance with the loading guidelines, SBB Cargo Int. shall have the right to take the necessary action (e.g. refusing to accept the loaded wagon, suspension of the wagon). This will be deemed to pertain, in particular, if:
  - there is a significant discrepancy between the agreed and the actual cargo,
  - the loading gauge profiles permitted for the envisaged route in conjunction with the wagon are exceeded,
  - the permissible total weight or the load distribution in the wagon is exceeded, or
  - safe transportation is impossible due to non-conformant cargo / load units or their condition,
  - the cargo / load unit and the loading do not comply with the UIC Loading Guidelines.
- 5.3 SBB Cargo Int. shall invoice the customer for the costs of:
  - remedial measures for defective loading or cargo / load units
  - delays of the transport
  - any intervention measures with regard to the cargo / load units if cargo is lost or in the event of non-conformities involving a danger to the environment or third partiesin accordance with the pricelist for additional services of SBB Cargo Int. and reserves the right to claim compensation. This includes passing on incurred costs through third-party service providers which had to cooperate in the remedial measures or intervention.
- 5.4 If the sender or recipient is unable to accept the wagons on time, the customer must bear the costs incurred.
- 5.5 If the loading and unloading limits are exceeded, demurrage will be charged. If trains or waggons have to be shed on third-party-infrastructure due to customer's fault, the actual costs will be charged.
- 5.6 Any damage to the cargo must be reported without delay to the head office of SBB Cargo Int. in Olten (CIT form verbal process).
- 5.7 SBB Cargo Int. has the right to inspect damage at any time.
- 5.8 If the authorities impose fines in connection with defective cargo, loading, hazardous materials regulations or the condition of the provided wagons, SBB Cargo Int. shall have the right to charge them to the customer.

### 6. Customs and other administrative regulations

If customs and other administrative requirements are met by SBB Cargo Int. or its sub-contracted carriers, the customer will be charged for these services, and for any delays to their performance not caused by SBB Cargo Int. or its sub-contracted carriers.

## **7. Dangerous goods**

- 7.1 The customer must comply with the relevant dangerous goods regulations (RID) as well as the SBB Cargo Int. guideline on the transport of dangerous goods.
- 7.2 Within the scope of its liability, the customer releases SBB Cargo Int. from any obligations that could arise during the carriage or storage of consignments or other dealings with third parties, or that can be traced back to characteristics of the consignment or failure of the customer to act with due diligence.

## **8. Waste transport**

- 8.1 In the event of transportation of waste requiring notification (hazardous waste), the customer must submit and hand over full notification documents before the first transport.
- 8.2 The customer shall ensure that any transport participants upstream of the railway transport sign the chain of custody records.
- 8.3 The customer shall ensure that the unloader (e.g. the terminal) further processes the handed over chain of custody records in accordance with the requirements and attaches them to the cargo / load unit.

## **9. Invoicing and payment**

- 9.1 Invoices are to be paid in full as soon as they fall due, as per the payment conditions. The payment deadline is usually agreed stated in the individual Freight Services Agreement. Otherwise, a payment deadline of 14 days after the billing date applies. If payment is not made by the due date, the customer is automatically in default without a reminder having to be issued by SBB Cargo Int. Interest will be charged at a rate of 8% a year.
- 9.2 Invoices are sent by Email.
- 9.3 SBB Cargo Int. is entitled to request advance payment or collateral (e.g. bank guarantees) at any time as part of the contractual performance of freight orders.

## **10. Liability**

- 10.1 SBB Cargo Int. will be liable only to the extent provided for by the statutory provisions. Further reaching claims (due to delay or non-fulfilment) are excluded. Pure financial losses (in particular lost profits) are excluded. The liability restrictions defined in the CIM also apply to non-contractual claims. Special liability restrictions may be agreed for goods which are particularly difficult to carry or which entail special risks.
- 10.2 Timetables communicated to the customer do not constitute agreements on transit periods in the meaning of Art. 16 §1 CIM.
- 10.3 The right to assert any substitute claims against SBB Cargo Int. above and beyond those stipulated in the laws is excluded.
- 10.4 The customer will be held liable for all damages and additional costs incurred by SBB Cargo Int. which are caused by a wagon provided by the customer, and the customer will indemnify SBB Cargo Int. if SBB Cargo Int. is held liable by third parties. Fault by the wagon keeper according to Art. 27 GCU is not required to establish the customer's liability. SBB Cargo Int. is not liable for damages to transported goods in such case.
- 10.5 The customer will be held liable for its own errors and omissions and for those of its auxiliaries, in particular for all consequences arising from incorrect packing and loading or from incorrect, imprecise or omitted information in the carriage order, customs forms or maintenance details.

10.6 If the customer provides a wagon whose owner has not acknowledged the GCU, the customer must take full responsibility for this owner as set out in the GCU, and relieves SBB Cargo Int. of any liability in the event of an incident.

10.7 In the event of vandalism and theft of cargo or freight wagons by third parties, SBB Cargo Int. declines all responsibility and liability (see CIM Art. 23 § 2).

10.8 The carrier shall not be liable for losses due to unforeseen circumstances for which it cannot be held responsible and whose consequences are unavoidable. These include but are not limited to: war, riots, sabotage, natural disasters, frost, fire, explosions, boycotts, strikes, lock-out, occupation of workstations, disruption of the railway infrastructure and power cuts (hereinafter referred to as "events of force majeure"). In all cases of events of force majeure, the carrier shall have the right to (entirely or partially) suspend the performance of the contract for the duration of such an event.

## **11. Entity in Charge of Maintenance (ECM)**

- 11.1 In accordance with Art. 15 attachment G (ATMF) of the Convention concerning International Carriage by Rail (COTIF) all freight wagons must be certified by a so-called Entity in Charge of Maintenance (ECM). This ECM must in turn be certified.
- 11.2 The customer is required to ensure that the wagons it provides for carriage have been allocated an ECM and must be able to provide proof of this to SBB Cargo Int. on demand.
- 11.3 If the customer provides a wagon, which has not been allocated an ECM, SBB Cargo Int. is entitled not to haul this wagon and to charge any costs arising from this decision to the customer.

## **12. Statutory limitation**

Subject to binding legal provisions, all claims against SBB Cargo Int. will expire after one year. The limitation period commences at the time the freight is delivered or, in the event of loss, damage or delay, from the day on which delivery should have been made.

## **13. Disputes, place of jurisdiction**

- 13.1 The contractual relationship between the customer and SBB Cargo Int. is subject to Swiss law and/or binding international laws.
- 13.2 The sole place of jurisdiction for any disputes arising from this contractual relationship is Basel, Switzerland.

## **14. Transfer clause**

Should SBB Cargo Int. transfer its entire freight business, or substantial portions thereof, to a subsidiary, either wholly owned or a joint venture, the contractual relationship will continue with the company concerned, following notification of this to the customer.

## E-services

### 1 Scope of applicability

Electronic services and digital services (hereinafter referred to as "e-services") are a part of the order management and production systems (hereinafter referred to as the "cargo system") of SBB Cargo International AG (hereinafter referred to as "SBB CINT"). These provisions regulate the use of the e-services and of the provided interfaces and the related electronic transmission and receipt and/or accessing of information and/or data through systems or employees of the customer. By signing the transport contract, the customer accepts the conditions of use. The conditions of use apply for all systems and employees of the customer and third parties commissioned by it (hereinafter referred to jointly as "users"), irrespective of whether they have registered for the use of the e-services themselves or are registered on their behalf by employees or systems of the customer or SBB CINT. References below to the customer analogously include the users ascribed to it.

### 2 Service

E-services enable the customer to receive information and/or data from SBB CINT or pass it on to SBB CINT via the Internet or interfaces. They include, in particular, the following services:

- a. Mail service for exchanging e-mails, via which communication is conducted between the customer and SBB CINT.
- b. Customer app, via which customers receive information.
- c. Web views via which customers can receive and/or enter information or data.
- d. Transport order portals (TOP portals) via which customers receive and/or enter data relating to their trains.
- e. Interfaces via which customers can receive data relating to their transport services.
- f. Interfaces via which customers can transmit data to SBB CINT relating to their transport services.
- g. Provision and receipt of data and/or information by way of data platforms.
- h. Other services (all services that are not explicitly specified in points a. to g.).

### 3 Access

- 3.1 Access to e-services occurs via the Internet through a provider selected by the customer or through the customer's system via an interface. The browser software and the apps must be purchased and installed by the customer itself; the customer must also implement the interfaces. The customer shall independently bear the expenses for establishing the access channels. This applies both for the initial establishment of access and the adjustment of access due to further development and/or security updates.
- 3.2 Access to the services shall be granted to persons who, prior to use, identify themselves by way of electronic identification with a user ID and password. The password must consist of at least 12 characters, at least one special character and both upper and lower case letters. Persons who thus identify themselves shall be deemed entitled to use e-services. This applies irrespective of whether the identified person is a contract partner of SBB CINT. SBB CINT may therefore, within the framework of the e-service offer and without further verification, allow the entitled person to carry out searches and receive orders and notifications for the customer specified by the entitled person. For paid e-services the fee must be additionally paid.
- 3.3 For certain services the customer shall receive so-called administration access possibilities, with which it can set up access for users independently and at its own responsibility. It shall ensure that the users set up by it acknowledge these General Terms and Conditions of

Business as being binding and act in accordance with them. It shall be responsible for the users set up by it.

- 3.4 The customer shall acknowledge all information and data which is recorded via e-services with its ID details or those of its authorised representatives (including issuance of orders and cancellations) as having been recorded by it. All instructions and notifications that reach SBB CINT via e-services shall be deemed to have been drafted and approved by the customer.
- 3.5 The data will be transmitted via the publicly accessible Internet or the interface. By accepting these conditions of use the customer assumes the risk of electronic data transmission. The customer understands that, despite extensive security precautions, confidentiality cannot be guaranteed for data transmitted via the Internet. Data protection shall be ensured through user identification and the password.
- 3.6 When using data platforms the customer shall independently create a connection with them. It shall itself bear the costs incurred for the data exchange.

### 4 Processing and changing of orders

- 4.1 The customer shall acknowledge all orders placed via e-mail or other channels with its ID details or those of its authorised representatives as having been placed by it. In particular, the customer may not claim that a particular notification was sent to SBB CINT without its knowledge or approval. All instructions and notifications that reach SBB CINT via e-mail or other channels (including via analogue channels or by telephone) shall be deemed to have been drafted and approved by the customer.
- 4.2 SBB CINT shall verify the incoming data and reserves the right to reject entire orders or parts thereof. The customer may change or cancel an order which has not yet been implemented in accordance with the contractual arrangements.

### 5 Diligence obligations of the customer

- 5.1 The customer must keep the password confidential and protect it against misuse by unauthorised persons. It must regularly change the password, particularly if it becomes aware or suspects that unauthorised persons have gained knowledge of or used it. The customer shall be liable for any risks that arise from misuse of the ID details issued to the authorised representatives (user ID and password).
- 5.2 Any disclosure of access data to third parties is prohibited.
- 5.3 Access to the e-services must be personalised.
- 5.4 The customer shall ensure that data and information provided to SBB CINT is complete, correct, consistent and redundancy-free. It shall ensure that data and information is made available to SBB CINT in good time and in accordance with the agreed processes. This applies irrespective of the e-services used, particularly for the use of data platforms and interfaces.
- 5.5 The customer shall ensure that it provides SBB CINT with information and data for the fulfilment of the orders within the limits of the statutory requirements.
- 5.6 Each customer shall appoint a competent contact person through whom communication with SBB CINT concerning e-services can be conducted.

### 6 Diligence obligations of SBB Cargo International

- 6.1 As a rule, SBB CINT shall not have access to the customer's password. If the customer discloses its password to SBB CINT, SBB CINT shall keep it confidential and protect it against misuse by unauthorised persons. If the password is communicated to SBB CINT in connection with support services, the customer shall be obliged to immediately change the password after the

completion of the support services.

- 6.2 SBB CINT must ensure, within the limits of technical possibilities, a high level of availability of the system. For that purpose, at regular intervals maintenance work will be carried out during which the system is partially unavailable. SBB CINT has no influence on the availability of the Internet. SBB CINT shall archive all relevant customer data for the duration of the legally prescribed time limits. SBB CINT's privacy policy, which can be accessed at the following Internet address, applies for the protection of personal data: <https://www.sbbcargo-international.com/de/datenschutz/>. In the event of malfunctions or for service queries, the designated competent contact person may open a service ticket with SBB CINT. For that purpose it should send an e-mail to [it-service@sbbcargoint.com](mailto:it-service@sbbcargoint.com).

## 7 Notifications concerning e-services

- 7.1 If SBB CINT receives an order, a purchase order or other message via e-services, it shall have the same legal consequences as a notification submitted in a different written form (e.g. by letter). In particular, the customer may not claim that a particular notification was sent to SBB CINT without its knowledge or approval.
- 7.2 Where data is transmitted, it must be specified in the required fields. If missing or incomplete information is discovered by the customer, it must correct the deficiency. If SBB CINT identifies missing or incomplete information, the customer shall be informed if possible. However, it shall not have any entitlement in that respect. If the customer subsequently adds to the data and the additions are not received by SBB CINT before the beginning of the transport in accordance with the arrangements agreed in the main contract (e.g. the transport agreement), timely implementation of the order cannot be guaranteed.

## 8 Term, amendments and termination of the agreement

- 8.1 The conditions of use shall become effective upon the conclusion of the transport contract and apply for an indefinite term. SBB CINT and the customer may terminate the thus concluded agreement on the use of e-services and/or the interface by way of a registered letter, with a notice period for termination of three months. In any event, this agreement shall terminate upon the expiry of the transport contract between SBB CINT and the customer.
- 8.2 SBB CINT shall have the right to change at any time the service offer available through e-services and the conditions of use. The customer shall be notified of the amendments in a suitable manner. Any objection shall be deemed termination of the agreement.

## 9 Liability with regard to e-services

- 9.1 SBB CINT accepts no liability for:
- ➔ the correctness and completeness of the recorded and transmitted information, particularly of RID data and the customs-related consignment data;
  - ➔ losses occurring due to the software used by the customer or due to the provider (network operator) selected by it;
  - ➔ consulting provided at the customer's request in connection with the purchase of software;
  - ➔ losses which occur as a result of defective telecommunications equipment or unlawful interventions in such equipment, in particular for transmission errors, technical defects, interruptions and malfunctions;
  - ➔ losses that result from use of the Internet;
  - ➔ any software downloaded from data carriers provided by it or from the Internet.
- 9.2 SBB CINT obtains its master wagon data from GCU Broker of GCU Bureau Sprl., Brussels. The customer undertakes to ensure that the master wagon data for the wagons to be transported by SBB CINT is complete,

unambiguous, correct and consistent and made available in the master wagon database in good time before the transport is carried out. If particular master wagon data is not available, SBB CINT will be able to use other sources made available to it by the customer through direct or indirect channels. However, it shall not be obliged to do so. SBB CINT accepts no responsibility for the correctness of the master wagon data (irrespective of its origin). The customer shall indemnify SBB CINT against any losses that result from defective master wagon data.

- 9.3 The customer shall be responsible for security measures (e.g. virus protection, access, etc.) on the end device. SBB CINT accepts no liability for the losses resulting from missing or defective security measures.
- 9.4 In the event of losses resulting from careless use in the meaning of sections 5 and 6 above, the customer shall bear the burden of proof.
- 9.5 The customer shall bear the risk of loss of notifications, orders or purchase orders or any delays or duplicate copies thereof.

## 10 Blocking access

- 10.1 The customer may arrange to have its access to the e-services blocked. A simple written notification in the form of an e-mail sent to [it-service@sbbcargoint.com](mailto:it-service@sbbcargoint.com) will be sufficient. The data and information already transmitted up to that moment shall continue to be valid. Orders shall continue to be fulfilled.
- 10.2 SBB CINT shall have the right to block the access to e-services. In particular, access may be blocked if the customer is late in making payments or if collateral is no longer available. Access possibilities may also be blocked if SBB CINT suspects security incidents.

## 11 Provided information

- 11.1 The customer may have information relating to its trains displayed, for example, via the customer app. It may also receive that information via interfaces.
- 11.2 SBB CINT accepts no liability for the correctness of provided information, particularly information on customer orders and trains which is either entirely or partially calculated from or consists of information from third-party systems. This includes information on the estimated time of arrival, other forecasts and actual times.

## 12 Modifications to the API

- 12.1 SBB CINT has and shall continue to have the right to modify, extend or discontinue interfaces or their functioning at any time if valid reasons exist for doing so. SBB CINT shall inform the customer and endeavour to comply with a reasonable advance time limit.
- 12.2 The customer is responsible for carrying out, at its own expense, any adjustments to its systems which may be necessary due to such changes. If the changes are unreasonable for the customer and it is unable or unwilling to implement them, it must immediately stop using the interface. The customer has no entitlements against SBB CINT due to such changes.

## 13 Fair use / the number of uses of e-services and their frequency

- 13.1 The customer must limit the number and frequency of uses of e-services (e.g. use of interfaces, particularly the functions for obtaining current information on the transport) to the necessary minimum.
- 13.2 If SBB CINT incurs unreasonable costs due to the use of e-services by the customer or if the performance of internal applications of SBB CINT is adversely affected, SBB CINT shall have the right to restrict the use of the e-

services by the user.

- 13.3 Use of the productive version of the e-services for development or testing purposes of the customer is prohibited. SBB CINT shall provide alternative e-services for that purpose.

**14 Applicable law and place of jurisdiction**

This Agreement is exclusively subject to Swiss law. The place of jurisdiction is Basel.