

GENERAL TERMS AND CONDITIONS
FOR THE INFRASTRUCTURE USAGE AGREEMENT
(GTC)

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Preliminary Remarks

The General Terms and Conditions in hand apply to the access to the railway infrastructure made available by Steiermärkische Landesbahnen (hereinafter StLB for short) and the associated use of other services of StLB by railway undertakings (hereinafter RUs for short) for the purpose of performing their railway transportation services.

1 Definition of Terms

Unless otherwise defined below, reference is made in particular to the Austrian Federal Act of 13 February 1957 on Railways, Federal Law Gazette no. 1957/60 (hereinafter referred to as EisbG 1957 for short) as amended from time to time.

1.1 Permit

The permit granted according to the laws and regulations of the state in which the railway undertaking/ the international group (RU) has its place of business as defined by EU Directive 95/18 as amended by EU Directive 2012/34/EU on the performance of rail transport services or a transport permit/license pursuant to EisbG, 1957.

1.2 Auxiliary Persons

Auxiliary persons are retainers or other persons whom StLB or the RU employ in order to perform the agreement insofar as these retainers and other persons act in execution of their performance.

1.3 Third Parties

Any natural or legal person other than StLB and the RU, including their auxiliary persons.

1.4 Train Path

Railway infrastructure capacity that is required for a train to be employed between two locations at a certain point in time.

1.5 Disruptions of the Operations Process

Deviations from the normal operating conditions, in particular due to accidents, vehicle defects, malfunctions of safety systems, contact line faults, work on the track, natural events, and other unavoidable events.

2 Requirements for the Exercising of Access Rights, Scope of Usage

2.1

The requirement for the exercising of access rights according to the Infrastructure Usage Agreement is the permit according to Section 1.1, the safety certificate (§§, 37 et seqq. EisbG), the valid coverage of liability (see Section 8) and the valid assignment of railway infrastructure capacity (Train Path Agreement). The requirements have to be proven and accounted for by the RU (Section 3). Before proof has been furnished according to Section 3, the RU is not authorised to exercise the rights from the Infrastructure Usage Agreement.

2.2

The railway infrastructure usage offered to the RU by StLB in the scope of the network access and other services of StLB and the fees to be paid for that result from the RNTU in the version valid for the respective timetable period. The usage of the railway infrastructure made available by StLB and the use of the other services offered is only allowed in the contractually agreed scope, for the contractually agreed purpose and to the usual operational extent.

3 Certificates, Documents

3.1

The RU shall hand over to StLB all documents required for the exercising of the rights from the Infrastructure Usage Agreement (hereinafter also referred to as Agreement) (permit pursuant to Section 1.1, the safety certificate pursuant to §§ 37 et seqq. EisbG and the valid coverage of liability) as proof of the fact that it fulfils the requirements for access to the railway infrastructure within a period of time to be fixed by StLB.

3.2

The RU declares that it has neither applied for an amendment of the permit pursuant to Section 1.1 at the time when the agreement was concluded and that such has not been made in the meantime and that no revocation proceedings have been initiated either. The RU shall notify StLB of any change relevant to the Agreement in hand concerning the existence of the requirements for exercising pursuant to Section 2.1 or the revocation of the permits without delay. Any damage claims on the part of StLB shall remain unaffected thereof.

3.3

The requested certificates/documents have to be submitted in the original or as officially certified copy and in German or in a certified German translation.

4 Assignment of Rights and Obligations

4.1

With the exception of Section 4.2, the RU shall not have the right to assign rights and obligations from this Agreement to other natural or legal persons. As far as the right of StLB to cancel the Agreement without notice is concerned, see Section 23.

4.2

With the previous consent of StLB, the RU may employ other railway undertakings as subcontractors for the performance of services if and insofar as this is covered by the safety certificate of the RU. The RU is obliged to and responsible for compliance with the provisions of the safety certificate and the Agreement. Upon request of StLB, the RU is obliged to submit the agreement concluded with the subcontractor to StLB. The above-mentioned submission obligation is limited to those provisions (parts) of the Agreement which govern the usage of the railway infrastructure made available by StLB and the use of other services, in particular the use of staff and travelling resources. The Agreement between the RU and StLB shall remain unaffected. The RU may only use such railway undertakings which are able to fulfil the requirements of this Agreement from a financial and technical point of view. The RU shall be liable for an act or omission on the part of a railway undertaking commissioned by the RU like for its own. As far as the right of SCHIG and/or StLB to cancel the Agreement without notice is concerned, see Section 23.

4.3

The RU is prohibited from any dealing with the railway infrastructure capacity (capacities) assigned to the RU, failing which SCHIG and/or StLB shall have the right to cancel the Agreement without notice (see Section 23).

5 Staff

5.1

The RU is obliged to only use staff that fulfils the requirements that result from the legal and other regulations and rules as well as provisions relevant for the performance of the scheduled railway transportation service, in particular those for the safety and order of railway traffic and railway operation.

5.2

Insofar as the safety certificate contains no information in that regard, the RU shall, at any time during the term of the Agreement at the request of StLB, show in particular proof at any time of the fact that the staff

5.2.1

disposes of the required local knowledge and journey route knowledge and of the technical qualification for the fulfilment of the obligations of the Agreement in hand,

5.2.2

is aware of the regulations applicable to the journey routes of StLB in each case and observes these,

5.2.3

has a sufficient command of the operating language (see Section 11) in order to enable the application of the regulations in speech and writing and an exchange of information under normal operating conditions as well as in the event of malfunctions in the operations process.

6 Accessing STLB Facilities

STLB grants the employees of the RU and lawfully commissioned third parties in accordance with Section 4 basic access rights to its railway infrastructure facilities to the extent necessary for the performance of rail transportation services by the RU. In doing so, the STLB safety regulations included in the operational documents and the provisions of the Railway Act are to be observed, in particular.

7 Vehicles

7.1

The RU is obliged to use only vehicles (rolling stock) on the railway infrastructure to be used which were approved by the agency in charge for transportation. As far as its contents are concerned, this approval has to correspond to the law applicable.

7.2

The RU shall make sure that the vehicles fulfil the requirements of the safety certificate during the entire term of the Agreement. Otherwise StLB shall have the right to cancel the Agreement without notice. Any damage claims on the part of StLB shall remain unaffected thereof.

8 Insurance

8.1 The RU undertakes to be adequately protected against liability by taking out insurance in accordance with Article 22 of Directive 2012/34/EU or by equivalent means in good time before the contract becomes effective and to maintain such insurance with the necessary level of coverage for the duration of the contract. STLB must immediately be notified of any changes to the insurance contract or to the level of coverage. A sufficient coverage of liability shall be sourced without delay, should a state of insufficient coverage or a loss of insurance coverage occur after conclusion of the Agreement. Any claims for damages on the part of STLB shall remain unaffected thereof.

8.2 The RU expressly authorises StLB to be able to contact the liability insurer for information concerning the insurance contract and the level of coverage. Furthermore, StLB shall reserve the right to view the insurance documents of the RU.

8.3 The RU shall inform StLB of the continuance or loss of the asset fund or of any potential changes relating to said asset fund through the submission of the appropriate documents.

8.4 With regard to StLB's right to terminate the Agreement without prior notice, see Section 26.

9 Operational Documents

9.1

On the Internet at the address www.stlb.at, StLB makes available a description of all journey routes of the available network that can be retrieved by anyone and will be updated at regular intervals. In particular, the description comprises the following information for each journey route:

Maximum speed depending on the type of train, axle load, structure clearance, type of electrification, type of signal system, locating equipment, train radio system, largest allowed train length, greatest allowed train weight.

9.2

Upon completion of the Train Path Agreement (assignment of a train path pursuant to Section 2.1) at the latest, StLB shall hand over to the RU the documents which comprise this information as well as detailed timetable documents. Any updated versions of the timetable documents shall be made available to the RU in good time.

10 Operating Instructions

10.1

The operating instructions and the respective amendments can be requested by the RU free of charge via e-mail. At the RU's request, the operating instructions can also be handed over to it in hard copy. The RU shall be notified of alterations, amendments or new operating instructions to be observed.

10.2

The RU is obliged to verifiably share the operational documents with its staff and other natural or legal persons whom it employs in relation to the usage of railway infrastructure ahead of time and to ensure that said instructions are complied with. Furthermore, the RU is obliged to keep abreast of the current state of the regulations and to be aware of all safety-related information and to comply with said information.

11 Operating Language

The language to be used on the network of StLB is German.

12 Railway Infrastructure Quality

12.1

StLB grants access to the railway infrastructure in such a way that the condition of the railway infrastructure under normal operating conditions is suitable for the provision of the respective contractual railway services.

12.2

Regardless of that, StLB has the right, insofar as that is necessary, but not arbitrarily at any rate, to

12.2.1 upgrade,

12.2.2 or downgrade the railway infrastructure quality,

12.2.3 and to change the technical standards in that regard.

If such a change is made during the term of the Agreement, StLB is obliged to minimise the negative impact on the RU, in particular by means of the measures according to Section 15 insofar as that is financially acceptable. Any warranty and damage claims on the part of the RU shall remain unaffected thereof.

12.3

If the RU makes special demands exceeding the existing railway infrastructure quality, in particular regarding the equipment of the track or a shortened execution period for the performance of work in this connection, a separate agreement has to be concluded in particular about execution, scope, duration and financing. StLB has the right to refuse conclusion of an agreement, but not arbitrarily at any rate.

13 Information and Reporting Obligations

13.1

Unless information and reporting obligations to the contrary are fixed in the operating instructions, the RU shall report the following to StLB in good time - i.e. for cross-border trains two hours ahead of their arrival in the border admission station, for national trains before departure of the train:

13.1.1

Composition of the train (power car set, length, weight, wagon numbers and number of wagons, braking scope),

13.1.2

Specifics such as non-RIC/RIV-compatible vehicles, hazardous goods as defined by the RID, special restrictions concerning the vehicle or its load,

13.1.3

Factors that are relevant concerning delays (e.g. engine failures on power cars),

13.1.4

Other information that may be necessary for performance accounting.

13.2

The RU shall make sure that there is train staff on board each train that is able to receive the information from StLB and is authorised and able to make in particular operational decisions concerning the respective railway transportation service on behalf of the RU.

13.3

Based on the resources available to StLB, StLB shall notify the RU of the position of its train upon request. The contact points, the channels of information and the possible information times in that regard result from the Train Path Agreement.

14 Effects that are Hazardous to the Environment

14.1

In the event of effects that are hazardous to the environment (immission, emission, contamination, etc.) or if there is an explosion, fire or other hazard for the railway operation, the RU shall notify the operation point of StLB fixed according to the operating instructions without delay.

14.2

This report and any measures to be taken by StLB according to the operating instructions or general statutory regulations leave the RU's responsibility for the immediate initiation of measures and the obligations incumbent on it (e.g. reporting to the police authorities in charge and the fire service) unaffected.

15 STL B's Right to Perform Work on the Track During the Term of the Agreement

15.1

STLB reserves the right to carry out any work or any operation on its railway infrastructure related to the provision and the expansion of the railway infrastructure.

15.2

With regard to planned works and any resulting operations which are known ahead of time (such as diversions, railway replacement services), STL B undertakes to notify the RU six months in advance of said works provided this is possible, but no less than two months prior to commencement of the work or operations; STL B shall notify the RU of all other work or operations as soon as possible once they have become known.

15.3

STLB shall carry out the work or operations in such a way that minimises the impact on the railway transportation services of the RU.

15.4

Disruptions to operations of the RU as a result of work on the railway infrastructure do not entitle the RU to the assertion of claims for damages unless the RU is able to provide proof that the damages were caused wilfully or due to gross negligence on the part of STL B and/or its vicarious agents (§1313a, Austrian General Civil Code).

16 Rights of Examination and Direction

16.1

StLB has the right to check, at any time and any place, whether the RU performs the contractual railway transportation services in compliance with the operating instructions, in particular with a view to the integrity of the railway infrastructure. StLB has the right to make sure of the type of service performance and the fitness to perform of the RU's staff entrusted with the performance of the transportation service at any time on grounds of a justified cause. In addition, StLB may check whether the RU fulfils its contractual rights and obligations regarding the use of the railway infrastructure.

16.2

For the purpose of exercising the above-mentioned rights, the staff of StLB entrusted with the performing of these checks has the right to give the RU's staff operational instructions and the right to access vehicles, systems and facilities of the RU and to pursue the forwarding documentation insofar as this access or the perusal is necessary for the checks. In the event of accidents or suspected violations of the operating instructions, StLB is among others entitled to take and/or copy records of the registration equipment of the power cars (e.g. speed tapes). If these records are made ADV-assisted, the programmes necessary for data analysis have to be made available to StLB unless this has already been done in the course of the granting of the safety certificate.

16.3

StLB's rights mentioned in Sections 16.1 and 16.2 also apply in particular in the event of damage caused to railway infrastructure systems (tracks, safety systems, overhead contact lines, etc.).

16.4

The rights of government agencies in particular and the RU's responsibility remain unaffected by the provisions above.

17 Interruptions of the Operations Process

Between the RU and StLB, there is a mutual and immediate information obligation in the event of imminent or actual interruptions of the operations process, in particular in the event of interruptions that might result in deviations from the agreed train path (delays, etc.) and about any imminent or actual damage that could affect the safety and order, the punctuality, the correct sequence of the railway transportation services, the integrity of the railway infrastructure or the environment, other users or third parties.

18 Traffic Control Aiming at Restoring Normal Operating Conditions

18.1

StLB shall endeavour to minimise deviations from the agreed train paths.

18.2

In the event of interruptions of the operations process, StLB shall make every effort to restore normal operating conditions. For that purpose, StLB may in particular slow down or accelerate trains or assign another train path than the originally agreed one to them, if possible upon consultation with the RU.

19 Clearing of the Railway Infrastructure

19.1

The RU shall clear the railway infrastructure used in due time at the end of the term of usage.

19.2

If the RU fails to fulfil its obligation according to Section 19.1, StLB shall have the right, in particular in the event of interruptions of the operations process caused by vehicle defects (power car damage, etc.), to clear or have cleared the railway infrastructure at the cost and at the risk of the RU.

19.3

In addition to that, the RU to which train paths in the respective railway infrastructure were allocated shall assist with the rectification of interruptions occurred in the operations process as defined by § 66 EisebG at the request of StLB.

19.4

StLB has a comprehensive right of disposal and right of direction. It is obligatory to follow its instructions. Section 16 shall apply accordingly.

20 Liability

The contracting parties shall be liable in accordance with the statutory regulations and the provisions under international law, in particular those of the Austrian Civil Code (ABGB), the Austrian Commercial Code (UGB), the

Railway and Motor Vehicle Liability Act (EKHG) and the CUI, insofar as these General Terms and Conditions do not contain any provisions to the contrary.

The contracting parties shall indemnify and hold each other harmless from any damages caused by them to third parties and auxiliary parties, to include recourse and insurance recourse, as well as against any immissions caused by them, and shall inform each other without delay if third parties or auxiliary parties assert such claims.

21 Environmental Liability

In the connection with the usage of the railway infrastructure, the RU shall be liable for compliance with the applicable legal provisions and shall keep free and indemnify and hold harmless StLB. If StLB is obliged to rectify environmental damage that was caused by the RU, even if through no fault of its own, the RU shall reimburse StLB for the costs incurred and other expenses. Any damage claims on the part of StLB shall remain unaffected.

22 Liability for transport handling

Considering STLB merely grants the RU access to the railway infrastructure in accordance with the present Agreement, STLB is not liable for the handling of transport by the RU (transport regulations such as in particular the Rail Transport Act, conditions for compensation, provisions concerning passenger rights, etc.). As such, only the RU carrying out the transport is liable to its contracting parties and any injured third parties.

23 Termination of the Agreement

23.1

Irrespective of any claims for damages, contracting parties of SCHIG reserve the right to terminate the Agreement without prior notice for good reason and in particular for the reasons stated below by means of a letter:

23.1.1.

Should the RU no longer fulfil the requirements necessary to access the railway infrastructure made available by STLB, in particular if there is no valid safety certification or permit or if an appropriate level of insurance cover no longer applies;

23.1.2.

if the RU transfers its rights and obligations as per the Infrastructure Usage Agreement to another natural or legal person without gaining the previous consent of STLB contrary to Section 4.1 or 4.3, or if the RU fails to fulfil the submission obligation in accordance with Section 4.2;

23.1.3.

in the event of gross violations of the fundamental provisions of the Infrastructure Usage Agreement, in particular the GTC;

23.1.4.

if the safety standards (as per the safety certificate) of the vehicles of the RU or of another natural or legal person commissioned by the RU which are necessary for the performance of railway transportation services have deteriorated;

23.1.5.

if the reliability (in accordance with Section 5) of the RU's employees or the employees of another natural or legal person commissioned by the RU no longer applies during the term of the Agreement.

23.2

SCHIG reserves the right to revoke the right of the RU to access the train paths assigned to said RU subject to 14 days' notice by means of a unilateral, written declaration requiring proof of delivery wholly or partly at any time should the RU fail to exercise its right to access these train paths within the three months prior to the revocation due to circumstances for which the RU itself is responsible (§ 60, EisbG).

23.3

SCHIG reserves the right to only conclude further agreements concerning the usage of the railway infrastructure with RUs whose Infrastructure Usage Agreements were terminated pursuant to Section 23.1 or 23.2 after careful examination of their reliability and trustworthiness.

24 Data usage and data protection

24.1

The party responsible for the processing of personal data in accordance with data protection legislation within the context of the performance of the services outlined in these General Terms and Conditions is STLB. STLB's data protection declaration is available at <http://www.stlb.at/datenschutzerklaerungstlb/>. It should be noted that documents relating to the aforementioned services or the specific personal data of the contracting parties or their employees may be disclosed to the authorities, to the extent necessary, as well as to insurers, for the purpose of checking or assessing any insurance risk.

24.2

Should the RU submit data of a natural person other than itself (e.g. as a point of contact) within the scope of establishing contact or for processing the contract, the RU shall inform said person(s) of both the data protection provisions of these General Terms and Conditions and the data protection declaration under <http://www.stlb.at/datenschutzerklaerungstlb/>.

24.3

In the case of trains being transferred to other railway infrastructure companies, the data provided to STLB in accordance with Section 13 shall be forwarded by STLB to the railway infrastructure companies concerned, provided the RU, at the time of providing the data or documents to STLB, did not specifically document legitimate economic interests, which would prevent such a transfer.

24.4

The contracting parties shall comply with the statutory provisions on data protection, in particular the Data Protection Act, in the relevant current version, and the General Data Protection Regulation of the EU.

25 Non-Disclosure

25.1

Without prejudice to Section 24, the contracting parties undertake to keep all the information, data and documents obtained in connection with the services that are the subject matter of the Agreement secret unless the respective contracting party dispenses the other contracting party from this obligation in writing in the individual case.

25.2

In relation to a no-fault liability for damages, the contracting parties additionally undertake to transfer these non-disclosure obligations to third parties, in the event that said third parties are used to render the contractual services. In particular, the contracting parties undertake to observe data protection within the meaning of § 6 of the Data Protection Act in the relevant current version and to commit their employees and any subcontractors to follow suit.

26 Amendment of the GTC

StLB shall notify the RU in writing of amendments to this GTC. In this letter, StLB shall point out expressly that the amendments are deemed agreed unless the RU objects in writing within a period of four (4) weeks.

27 Billing

Billing by StLB to the RU shall be carried out according to the provisions of the Train Path Agreement.

28 Default of Payment

In the event of a default of payment, the RU shall pay default interest in the amount of 9,2 % p.a. above the respectively applicable base interest rate of the European Central Bank (published by the Austrian National Bank) from the day following the due date and an amount of € 12.00 as lump-sum dunning costs for each written reminder.

29 Set-Off Right

The RU may only offset claims of StLB if its counter-claims are undisputed or have been ascertained with legal effect or arise directly from the usage relationship.

30 Special Terms and Conditions

If the RU also utilises the services or service facilities of other companies belonging to the Steiermarkbahn Group for the purpose of access to the railway infrastructure, the special terms and conditions of the Steiermarkbahn Group shall apply exclusively, unless otherwise stipulated therein.

31 Severability Clause

Should individual provisions of this Agreement be invalid or unenforceable due to legal reasons without this making the maintenance of the Agreement unacceptable for one contracting party, the remaining provisions of the Agreement shall remain unaffected thereof. The same shall apply in the event of a regulatory gap. Instead of the invalid, unenforceable or incomplete provision, the Agreement shall be amended or interpreted in such a way that the goals aimed at by the contracting parties are achieved insofar as possible.

32 Right of Retention

The RU shall not be entitled to any right of retention whatsoever concerning contractually owed payments.

33 Place of performance

Place of performance for all reciprocal payments is Graz, at the registered office of StLB.

34 Governing Law, Place of Jurisdiction

Austrian law shall apply exclusively. The place of jurisdiction for any and all disputes arising in connection with this Agreement between StLB and the RU(s) shall be — unless special jurisdictions or legal protection systems are provided — the court having subject matter jurisdiction in Graz in each case.