

General Terms and Conditions

of Bahnoperator Germany GmbH

A. General Provisions

1. Scope of Application, Exclusive Application, Statutory Provisions

- 1.1 These General Terms and Conditions ("**GT&C**") shall apply
 - 1.1.1 for all business relationships between Bahnoperator Germany GmbH with statutory seat in Sassnitz, Germany ("**Bahnoperator Germany**") and its customers ("**Customer**"; Bahnoperator Germany and Customer each individually "**Party**" and jointly "**Parties**").
 - 1.1.2 for agreements regarding the organisation and/or execution of national and international freight transports as well as related logistics services (jointly "**Contractual Services**") by Bahnoperator Germany for the Customer.
 - 1.1.3 only if the Customer is an entrepreneur (section 14 of the German Civil Code (*BGB*)), a legal entity under public law (*juristische Person des öffentlichen Rechts*) or a special fund under public law (*öffentlich-rechtliches Sondervermögen*).
 - 1.1.4 not to the transport of goods to be towed or salvaged, the transport of relocation goods, heavy or large-volume transports requiring a transport permit or special exemption under traffic law, crane services and related assembly work.
 - 1.1.5 in the version valid at the time of the Customer's order, in any case in the version last communicated to the Customer in text form as a framework agreement also for similar future agreements, without Bahnoperator Germany having to refer to the validity of these GT&C in each individual case.
 - 1.1.6 exclusively, *i.e.*, deviating, conflicting or supplementary general terms and conditions of the Customer shall only become part of the Contract of Carriage if and to the extent that Bahnoperator Germany has expressly agreed to their validity in writing. This requirement of consent shall apply in any case, *e.g.*, even if Bahnoperator Germany provides the Contractual Services to the Customer without reservation in the knowledge of the Customer's general terms and conditions.
- 1.2 In addition to and taking precedence over these GT&C under Section A, the following shall apply
 - 1.2.1 for carriage subject to the CIM: the special provisions under Section B;
 - 1.2.2 sea transport: the special provisions under Section C; and
 - 1.2.3 air transport: the special provisions under Section D.
- 1.3 Individual agreements made between the Parties in individual cases (including collateral agreements (*Nebenabreden*), supplements (*Ergänzungen*) and amendments (*Änderungen*)) shall always take precedence over these GT&C. Subject to proof to the contrary, an agreement between the Parties or a written confirmation from Bahnoperator Germany shall be decisive for the content of such individual agreements.
- 1.4 References that are made in these GT&C to the validity of statutory provisions are for clarification purposes only. Even without such clarification, the statutory provisions shall apply unless they are directly amended or expressly excluded in these GT&C.
- 1.5 The ADSp shall apply in addition to, but subordinate to, these GT&C.
- 1.6 If logistics services are the subject matter of the Contract of Carriage and these are not merely of secondary importance in the overall context of the Contract of Carriage, the Logistics T&C shall apply to these services ("**Independent Logistics Services**") in addition to, but subordinate to, these GT&C.

2. Definitions

In these GT&C the following terms shall have the following meanings, unless the context requires otherwise:

- 2.1 **“Contract of Carriage”**: contract for the organisation and/or execution of the transport of goods.
- 2.2 **“ADSp”**: the German Freight Forwarders Standard Terms and Conditions (*Allgemeine Deutsche Spediteurbedingungen*), available at <https://www.bahnoperator.com/en/rechtliches>.
- 2.3 **“CIM”**: Uniform Rules concerning the Contract of International Carriage of Goods by Rail.
- 2.4 **“Consignee”**: natural or legal person to whom the goods are to be delivered in accordance with the Contract of Carriage or on the basis of effective and authorised instructions from the Customer or another person authorised to dispose of the goods.
- 2.5 **“Customer”**: the client, *i.e.*, the natural or legal person who concludes the Contract of Carriage with Bahnoperator Germany.
- 2.6 **“Logistics T&C”**: The 2019 Logistics General Terms and Conditions recommended by the Federal Association of Goods Transport, Logistics and Waste Disposal (*Bundesverband Güterkraftverkehr Logistik und Entsorgung (BGL)*), the Federal Association of Furniture Removers and Logistics (*Bundesverband Möbelspedition und Logistik (AMÖ)*) and the Federal Association of Freight Forwarding and Logistics (*Bundesverband Spedition und Logistik (DSLVL)*), available at <https://www.bahnoperator.com/en/rechtliches>.
- 2.7 **“SDR”**: Special Drawing Right as defined by the International Monetary Fund.
- 2.8 **“Business Day”**: Each day from Monday to Friday except public holidays at the registered office of Bahnoperator Germany.

3. Goods excluded from Transport

- 3.1 Dangerous Goods (*e.g.*, labelled according to RID, IMO), steel coils and live animals are not transported by Bahnoperator Germany. **“Dangerous Goods”** are goods which, even under normal conditions of transport, storage or other activities, may pose an immediate danger to persons, vehicles and the legal interests of third parties. Dangerous Goods are, in particular, goods that fall within the scope of relevant dangerous goods laws and regulations as well as hazardous substances, water or waste regulations.
- 3.2 Goods whose transport is prohibited by law or only permitted under special conditions are also excluded from transport.
- 3.3 The list of goods excluded from transport will be made available to the Customer upon request. Bahnoperator Germany may change the list at any time. The list of goods excluded from transport valid at the time the Contract of Carriage is concluded shall be authoritative.

4. Conclusion of Contract of Carriage

- 4.1 Offers from Bahnoperator Germany are – unless otherwise stated in the offer – always subject to change and non-binding. This also applies if Bahnoperator Germany has provided the Customer with catalogues, technical documentation (*e.g.*, plans, calculations, other service descriptions or documents).
- 4.2 The commissioning of contractual services by the Customer shall be deemed a binding offer by the Customer to conclude a Contract of Carriage. Unless otherwise stated in the Customer's order, Bahnoperator Germany shall be entitled to accept the order within three (3) Business Days after receipt of the order.
- 4.3 If valuable goods or goods at risk of theft are to be transported, the Customer must inform Bahnoperator Germany in writing of the type and value of the goods and the existing risk when placing the order, so that Bahnoperator Germany can decide whether to accept the order or take appropriate measures to ensure that the order is carried out safely and without damage.

4.4 As a rule, Bahnoperator Germany accepts an order from the Customer either by confirming the order (e.g., by e-mail) or by taking over the transported goods. The order confirmation from Bahnoperator Germany shall be deemed binding acceptance, unless Bahnoperator Germany declares otherwise in the order confirmation. The transported goods shall be accepted for transport in the case of agreed delivery at the terminal immediately after loading onto the carrier vehicle, and in the case of booking a pre-carriage service immediately after loading onto the truck.

4.5 Bahnoperator Germany is not obliged to accept orders issued by the Customer.

4.6 If Bahnoperator Germany has explicitly sent a binding offer to the Customer in an individual case, the Customer is entitled to accept the offer from Bahnoperator Germany within five (5) Business Days of receipt of the offer, unless a different acceptance period is explicitly stated in the offer.

5. Subject Matter of the Contract, Performance of the Contractual Services

5.1 The subject matter of the Contract of Carriage is the performance of the Contractual Services listed in the offer or order confirmation from Bahnoperator Germany. The details of the service provision, such as the time, scope, content and location of the service, are also set out in the offer or order confirmation from Bahnoperator Germany.

5.2 Unless explicitly agreed in the Contract of Carriage, the following services are not subject of the Contract of Carriage and are therefore not owed by Bahnoperator Germany:

5.2.1 The provision and/or exchange of pallets or other loading equipment.

5.2.2 The loading and/or unloading of the goods, unless circumstances or customary practice imply otherwise.

5.2.3 The provision of a shipment tracking system, unless this is customary in the industry; however, any information and/or disclosure obligations on the part of Bahnoperator Germany shall remain unaffected.

5.3 Bahnoperator Germany is entitled to have the Contractual Services fulfilled in whole or in part by third parties. The Customer's consent is not required for the engagement of third parties.

5.4 If Bahnoperator Germany carries out the transport itself using its own means of transport, Bahnoperator Germany prepares the consignment note for the transported goods on behalf of the Customer on the basis of the information provided to Bahnoperator Germany by the Customer. The consignment note may also consist of electronic data records. The Customer receives the duplicate consignment note.

5.5 Performance of the Contractual Services is subject to the proviso that no applicable national, European or international export control regulations, such as embargoes, sanctions or other prohibitions and restrictions, prevent the performance.

5.6 Bahnoperator Germany is not subject to any prohibition on transshipment (*Umladeverbot*). Section 486 of the German Commercial Code (*HGB*) shall not apply.

5.7 If the subject matter of the Contract of Carriage is cross-border transport and/or import or export clearance, Bahnoperator Germany shall, in case of doubt, also take over the customs clearance or other legally prescribed handling of the goods if cross-border transport to the destination is not possible without such clearance. In doing so, Bahnoperator Germany shall be entitled in particular to open packaging to the extent necessary to carry out a legally required inspection and to take all measures necessary to fulfil the Contract of Carriage, e.g., repackaging the goods.

6. Responsibilities and (Cooperation) Obligations of the Customer, Indemnification

6.1 If Bahnoperator Germany does not prepare the consignment note for the Customer (cf. Section 5.4), the Customer shall prepare the consignment note

6.2 The Customer shall, at its expense, in good time and without being requested to do so, take all actions necessary to ensure that Bahnoperator Germany can perform the Contractual Services properly and on time. In particular, the Customer shall

- 6.2.1 hand over the transported goods in good time, *i.e.*, at the time notified to the Customer by Bahnoperator Germany.
- 6.2.2 provide all information required for the performance of the Contractual Services, in particular the information required under section 408 of the German Commercial Code (*HGB*), in a suitable manner and form. This includes, in particular, the following information:
- a. addresses (Customer, sender and recipient), type and nature of the goods, gross weight (including packaging and loading equipment provided by the Customer) or the quantity specified in another manner, distinguishing marks, numbers, quantity and type of packages, special characteristics of the goods (such as perishability), the value of the goods (*e.g.*, for customs purposes or insurance of the goods),
 - b. all obligations under public law, *e.g.*, customs law, foreign trade law (in particular embargoes relating to goods, persons or countries) and security law,
 - c. in case of sea transport: all data required under maritime safety regulations (*e.g.*, SOLAS) in the prescribed form,
 - d. industrial property rights existing vis-à-vis third parties, *e.g.*, trademark and licence restrictions associated with the ownership of the goods, as well as legal or official obstacles that prevent the performance of the Contractual Services,
 - e. Special technical requirements for the means of transport and special load securing equipment.
- Unless otherwise specified by Bahnoperator Germany, the Customer shall provide Bahnoperator Germany with information in digital form.
- 6.2.3 provide Bahnoperator Germany with all documents and records necessary for the performance of the Contractual Services and provide the necessary information, in particular for the fulfilment of customs or other administrative regulations, including security checks, *e.g.*, for air freight shipments.
- 6.2.4 immediately notify Bahnoperator Germany of any special features, concerns or differences of opinion with regard to the Contractual Services.
- 6.3 The Customer is responsible for ensuring that all information is complete and correct. Bahnoperator Germany and any third parties engaged by Bahnoperator Germany to provide the Contractual Services may use all information provided by the Customer without verification and rely on its completeness and correctness. The Customer shall be liable for the completeness and correctness of the information required under section 408 of the German Commercial Code (*HGB*) in accordance with section 414 of the German Commercial Code (*HGB*) even without the issuance of a consignment note.
- 6.4 The Customer shall comply with all regulations applicable to the transport of the goods (in particular all relevant regulations at the place of dispatch, all transit countries and the country of destination, trade restrictions and sanction provisions relating to the goods or the recipients).
- 6.5 The Customer is obliged to pack the transported goods properly and in a manner suitable for transport and to secure the cargo inside the container. In particular, the Customer must observe all applicable specifications, guidelines, standards and statutory provisions for cargo securing. The packaging must be done in such a way that the transported goods are protected against total or partial loss and against damage during the transport and cannot injure persons or damage equipment or other goods. Bahnoperator Germany is entitled to refuse acceptance of transported goods that are inadequately packaged or secured.
- 6.6 The Customer must properly seal the containers used for the transport and hand them over to Bahnoperator Germany or its vicarious agents in a condition that is safe for traffic and transport. This shall apply regardless of whether the containers are provided by the Customer or by Bahnoperator Germany.
- 6.7 Any equipment of the Customer used for tracking or recording transport or shipment-related data on or in the goods to be transported ("**Tracking Devices**") must be reported to Bahnoperator Germany

in writing (email is sufficient), at the latest upon handover of the goods, stating the product used. Tracking Devices are only permitted if they have been developed specifically for use in the means of transport intended for the carriage, are certified in accordance with official requirements and comply with the conditions set by Bahnoperator Germany or the carrier performing the carriage. Tracking Devices must be kept by the Customer in a good, safe condition that does not deviate from the original factory standard. The use of Tracking Devices does not create any additional obligations for Bahnoperator Germany. The use of Tracking Devices is permitted exclusively for quality assurance purposes.

- 6.8 Any loading and unloading residues at the loading point, including the access routes, must be removed by the Customer immediately at its expense.
- 6.9 The Customer shall bear all disadvantages and additional costs arising from the fact that the Customer violates its (cooperation) obligations. Bahnoperator Germany shall not be responsible for any deficiencies in performance and delays resulting from the Customer's failure to fulfil its (cooperation) obligations in accordance with the Contract of Carriage. The statutory rights and claims of Bahnoperator Germany shall remain unaffected.
- 6.10 The Customer shall indemnify and hold harmless Bahnoperator Germany against claims asserted by third parties against Bahnoperator Germany on the basis of a culpable breach of duty by the Customer. The indemnification shall be provided upon first request. The indemnification by the Customer shall include any necessary costs incurred by Bahnoperator Germany in the defence against the claim asserted by the third party (court costs, lawyers' fees, other consultancy or expert costs).

7. Execution Dates and Deadlines

- 7.1 Dates and deadlines proposed by Bahnoperator Germany for the performance of the Contractual Services shall always be approximate only. They are non-binding for Bahnoperator Germany as expected dates and deadlines, unless a fixed date or deadline has been expressly promised by Bahnoperator Germany or agreed between the Parties. The announcement of timetables, information on planned transport and delivery times or information on a usual or estimated delivery period shall also not constitute a guarantee of fixed delivery periods or dates by Bahnoperator Germany.
- 7.2 Agreed dates and/or deadlines shall be suspended for the duration of export control inspections or approval procedures. If the necessary authorisations are not granted, Bahnoperator Germany shall be entitled to withdraw from the Contract of Carriage. As the Customer is responsible for ensuring the compliance with export control law, claims for damages of any kind, in particular due to delay or non-fulfilment, as well as other rights of the Customer are excluded in this respect.
- 7.3 Bahnoperator Germany may – without prejudice to the Customer's rights arising from default – demand an extension or postponement of agreed dates and deadlines by the period in which the Customer does not fulfil its contractual obligations towards Bahnoperator Germany, in particular does not provide necessary cooperation.

8. Terms for Containers provided by Bahnoperator Germany

- 8.1 If required, Bahnoperator Germany will provide the Customer with containers for the transported goods. Containers must be ordered from Bahnoperator Germany in good time before the commencement of the Contractual Services. Bahnoperator Germany allocates containers according to availability, *i.e.*, the Customer has no right to demand that Bahnoperator Germany accepts the Customer's order for a container and provides the Customer with a container.
- 8.2 Section 412 para. 3, section 415 and section 417 of the German Commercial Code (*HGB*) shall apply *mutatis mutandis* to the provision of containers prior to the conclusion of a Contract of Carriage.
- 8.3 The Customer must inspect the containers provided to it by Bahnoperator Germany ("**Bahnoperator Containers**") immediately upon receipt, and in any case before loading the goods, to ensure that they are suitable for the Customer's intended purpose and that there are no visible defects. Bahnoperator Germany accepts no liability for the suitability of Bahnoperator Containers for the Customer's goods. The Customer must inform Bahnoperator Germany immediately of any defects on a Bahnoperator Container.

- 8.4 The Customer may use Bahnoperator Containers only for the contractually intended purpose.
- 8.5 The Customer shall be liable for all damage to Bahnoperator Containers which (i) is caused by the Customer or a third party commissioned by it, or (ii) occurs independently of any contributory cause between the time the Bahnoperator Container is made available to the Customer, to a third party acting on behalf of the Customer or to the Consignee and the time the Bahnoperator Container is taken over by Bahnoperator Germany. The Customer shall not be liable for damage caused by a defect that was already existing when the Bahnoperator Container was handed over to the Customer. The Customer must immediately report any damage in text form (e.g., by e-mail) to the customer service of Bahnoperator Germany.
- 8.6 The Customer shall return Bahnoperator Containers to Bahnoperator Germany completely unloaded/emptied, cleaned and complete with any loose components at the agreed handover point and on time.

9. Loading and Unloading of the Transported Goods, Delivery

- 9.1 The following applies to loading and unloading by Bahnoperator Germany:
 - 9.1.1 If the Customer books a pre-carriage, Bahnoperator Germany takes care of loading the containers from the truck into the terminal. The Customer is responsible for loading the containers onto the truck.
 - 9.1.2 If the Customer books on-carriage, Bahnoperator Germany will unload the containers from the terminal onto the truck. The Customer or the Consignee is responsible for unloading the containers from the truck.
 - 9.1.3 If delivery of the containers to the terminal by Bahnoperator Germany has been agreed, Bahnoperator Germany takes over the loading of the containers from the terminal onto the carrying wagons.
 - 9.1.4 If collection of the containers at the terminal by the Customer or Consignee has been agreed, Bahnoperator Germany will unload the containers from the carrying wagons onto the terminal.
- 9.2 Bahnoperator Germany delivers the goods to the agreed location against a receipt and payment of the outstanding claims from the Contract of Carriage and hands over the consignment note to the Consignee. Bahnoperator Germany is entitled to refuse the handing over of the goods until Bahnoperator Germany's claims arising from the Contract of Carriage have been satisfied, in particular until the agreed remuneration has been paid in full.

10. Right of Disposal over the Transported Goods

- 10.1 The Customer shall be entitled to dispose of the transported goods upon presenting the duplicate of the consignment note. In accordance with the statutory provisions, the Customer may, in particular, demand that Bahnoperator Germany does not continue the transport of the goods or delivers them to another destination, to another delivery point or to another Consignee. Bahnoperator Germany is only obliged to comply with such instructions insofar as their execution does not threaten to cause disadvantages for the business operation of Bahnoperator Germany or a third party commissioned by Bahnoperator Germany or damage to the senders or recipients of other consignments.
- 10.2 Bahnoperator Germany shall invoice the Customer the costs of complying with an instruction in accordance with Bahnoperator Germany's price list applicable at the time the Contract of Carriage is concluded. Bahnoperator Germany shall be entitled to make the compliance with an instruction of the Customer dependent on an advanced payment by the Customer.
- 10.3 The Customer's right to issue instructions shall expire, even if the Customer is in possession of the duplicate consignment note,
 - 10.3.1 if the Consignee has redeemed the consignment note, or
 - 10.3.2 if the Consignee has accepted the transported goods, or

- 10.3.3 in case of an international transport: as soon as the transported good has arrived in the territory of the country of destination, unless otherwise stated in the consignment note.

11. Circumstances preventing Carriage or Delivery

- 11.1 If, after acceptance of the transported goods, it becomes apparent that the goods cannot be transported in accordance with the Contract of Carriage ("**Transport Obstacle**"), the following shall apply:
- 11.1.1 If a Transport Obstacle occurs, Bahnoperator Germany decides whether it is expedient to continue transporting the goods by another means of transport or whether it is in the interest of the person authorised to dispose of the goods to request instructions on how to proceed.
- 11.1.2 If a transport cannot be continued, Bahnoperator Germany shall ask the person authorised to dispose of the goods for instructions on how to proceed. If Bahnoperator Germany does not receive any instructions within a reasonable period of time after its request, Bahnoperator Germany shall take those measures which it deems to be in the best interests of the person authorised to dispose of the goods.
- 11.2 If, after acceptance of the transported goods, it becomes apparent that the delivery of the transported goods cannot be carried out in accordance with the Contract of Carriage ("**Delivery Obstacle**"), the following shall apply:
- 11.2.1 If a Delivery Obstacle occurs, Bahnoperator Germany shall inform the Customer immediately and obtain the instructions of the person authorised to dispose of the goods on how to proceed. This shall not apply if the Customer has indicated in the consignment note that the goods are to be returned to the Customer without further ado in the event of a Delivery Obstacle. In this case, Bahnoperator Germany will return the goods to the Customer.
- 11.2.2 If the Delivery Obstacle ceases to exist before Bahnoperator Germany has received the instructions of the person authorised to dispose of the goods, Bahnoperator Germany shall deliver the goods to the Consignee and inform the person authorised to dispose of the goods immediately.

12. Remuneration and Terms of Payment, offsetting and retention by the Customer

- 12.1 The Customer shall owe the agreed remuneration for the Contractual Services. The remuneration is in EUR plus statutory VAT. The remuneration to be paid by the Customer includes
- the freight, *i.e.*, all costs incurred for a transport service or a transport-related service between the place of acceptance and the place of delivery;
 - ancillary fees, *i.e.*, the costs for additional services provided by Bahnoperator Germany;
 - customs costs, *i.e.*, customs duties, taxes and other amounts levied by the customs and administrative authorities;
 - other costs charged by Bahnoperator Germany on the basis of corresponding receipts.
- The price list of Bahnoperator Germany valid at the time of conclusion of the Contract of Carriage shall apply for the calculation of the remuneration. The Customer may request the price list from Bahnoperator Germany at any time.
- 12.2 If the Customer is not domiciled in the same country as Bahnoperator Germany, Bahnoperator Germany shall be entitled, at its discretion, to demand payment in the Customer's national currency or in euros.
- 12.3 The Customer shall be in default of payment without a reminder if the Customer has not made payment within 14 calendar days after invoicing. During the period of default, interest shall be charged on the remuneration at the applicable statutory default interest rate. Bahnoperator Germany reserves the right to assert further claims for damages caused by default of payment.
- 12.4 Bahnoperator Germany may demand advance payments or other securities from the Customer for the remuneration to which Bahnoperator Germany is entitled.

12.5 If the Customer does not fulfil its payment obligation, does not fulfil it properly or not on time, or if circumstances become known which cast doubt on the Customer's creditworthiness, Bahnoperator Germany shall be entitled to demand immediate payment of all outstanding payments by the Customer. The same shall apply if the Customer is no longer able to conduct business in an orderly manner, in particular if the Customer's assets have been seized or if an application has been made for insolvency proceedings.

12.6 The Customer shall only be entitled to rights of set-off or retention insofar as the Customer's claim has become legally binding or is undisputed. This shall not apply to the Customer's rights of retention based on counterclaims of the Customer arising from the same contractual relationship.

13. Lien and Right of Retention

13.1 Bahnoperator Germany is entitled to the statutory rights of lien and retention to secure its claims arising from the Contract of Carriage.

13.2 A lien will be enforced in accordance with the statutory provisions subject to the following proviso:

13.2.1 When exercising the statutory right of lien, the threat of sale of the pledged good and the necessary notifications are sent to the Consignee, and

13.2.2 the period of one (1) month stipulated in section 1234 para. 2 of the German Civil Code (*BGB*) shall be replaced by a period of one (1) week.

13.3 The Customer may prevent the exercise of the right of lien by providing Bahnoperator Germany with an equivalent and sufficient means of security (e.g., directly enforceable bank guarantee) for the claims of Bahnoperator Germany.

14. Insurance of the Transported Goods

14.1 At the Customer's request, Bahnoperator Germany will assess the transport insurance for the Customer's goods. The provision of insurance will be offered to the Customer separately by Bahnoperator Germany and must be commissioned by the Customer before the goods are handed over.

14.2 When arranging insurance, Bahnoperator Germany will follow the Customer's instructions, in particular with regard to the sum and the risks to be insured. If Bahnoperator Germany does not receive any instructions, Bahnoperator Germany will decide on the type and scope of the insurance at its own discretion and take out the insurance on standard market terms.

14.3 If Bahnoperator Germany is unable to obtain insurance cover due to the type of transported goods or for any other reason, Bahnoperator Germany will inform the Customer immediately.

14.4 If Bahnoperator Germany arranges insurance at the Customer's request after conclusion of the Contract of Carriage, and/or Bahnoperator Germany collects compensation or performs other activities in connection with the settlement of insurance claims and accidents, Bahnoperator Germany shall be entitled to customary local or otherwise reasonable remuneration in addition to reimbursement of its expenses, even if this has not been agreed.

15. Warranty Rights for Independent Logistics Services

15.1 Independent Logistics Services are generally provided by Bahnoperator Germany as services (*Dienstleistungen*). In accordance with the statutory provisions, Bahnoperator Germany does not provide any warranty for legal or material defects in services (*Dienstleistungen*).

15.2 If, in an individual case, a logistics service qualifies as a service to produce a work (*Werkleistung*), the statutory warranty provisions shall apply to the Customer's rights in the event of defects, unless the following provisions provide otherwise:

15.2.1 If a work is defective, Bahnoperator Germany shall, at its own discretion, provide supplementary performance by remedying the defect or by producing a defect-free work. Bahnoperator Germany's right to refuse supplementary performance under the statutory conditions shall remain unaffected.

- 15.2.2 The Customer shall give Bahnoperator Germany the time and opportunity necessary for the supplementary performance owed. Supplementary performance shall only be deemed to have failed if three (3) attempts have remained unsuccessful.
- 15.2.3 Bahnoperator Germany may make the owed supplementary performance dependent on the Customer paying the remuneration due. However, the Customer is entitled to retain a reasonable part of the remuneration in proportion to the defect.
- 15.2.4 Even in the event of defects, the Customer's claims for damages or reimbursement of futile expenses shall only exist in accordance with Section 16 and shall otherwise be excluded. The Customer may not withdraw (*zurücktreten*) from the Contract of Carriage due to an insignificant defect. An insignificant defect shall be deemed to exist in particular if the cost of remedying the defect does not exceed five percent (5%) of the contract value. In this case, the Customer shall only be entitled to a reduction in payment.

16. Liability

- 16.1 The liability of Bahnoperator Germany shall be governed by the statutory provisions, unless otherwise stipulated below. Subject to mandatory statutory liability provisions (in particular according to CIM and CMR), Bahnoperator Germany is liable as follows:
- 16.2 Liability for Damage to Goods:

In all cases in which Bahnoperator Germany is liable for loss of or damage to the transported goods depending on fault, Bahnoperator Germany shall pay compensation for value and costs in accordance with section 429, 430, 432 of the German Commercial Code (*HGB*) instead of compensation for damages.
- 16.3 Limitations of Liability:
 - 16.3.1 Bahnoperator Germany's liability for damage to goods is limited to 8.33 SDR per kilogramme in accordance with section 431 para 1, 2 and 4 of the German Commercial Code (*HGB*).
 - 16.3.2 If the delivery period is exceeded, Bahnoperator Germany's liability shall be limited to three times the amount of the freight in accordance with section 431 para. 3 of the German Commercial Code (*HGB*).
 - 16.3.3 In all other respects, Bahnoperator Germany shall in cases of slight negligence only be liable in the event of a breach of material contractual obligations and only for the foreseeable, typical damage. A contractual obligation is material if its fulfilment is essential for the proper execution of the contract and if the Customer regularly relies and may rely on its fulfilment (so-called cardinal obligation).
 - 16.3.4 If the liability of Bahnoperator Germany for damage to goods exceeds an amount of one million euros (EUR 1 Mio.) per claim, the liability is also limited for each claim to an amount of one million euros (EUR 1 Mio.) or two units of account for each kilogramme, whichever is higher.

The above limitations of liability shall not apply in the case of section 435 of the German Commercial Code (*HGB*), i.e., if the damage is attributable to an act or omission committed by Bahnoperator Germany or a vicarious agent (*Erfüllungs- oder Verrichtungsgehilfe*) of Bahnoperator Germany intentionally or recklessly and in the knowledge that damage was likely to occur.
- 16.4 If the Customer asserts claim for damages against Bahnoperator Germany, the Customer must give Bahnoperator Germany the opportunity to inspect the damage.
- 16.5 The Customer shall indemnify Bahnoperator Germany against all third-party claims to the extent of the Customer's proportionate liability.
- 16.6 Insofar as Bahnoperator Germany's liability is excluded or limited, this shall also apply to breaches of duty by or for the benefit of persons for whose fault Bahnoperator Germany is responsible in accordance with the statutory provisions, as well as to the personal liability of its employees, workers, staff, representatives and vicarious agents.

- 16.7 The above limitations or exclusions of liability shall not apply (i) to defects which Bahnoperator Germany has fraudulently concealed, (ii) if Bahnoperator Germany has assumed a guarantee, (iii) to any claims under the Product Liability Act (*ProdHaftG*), and (iv) in the event of injury to life, limb or health.

17. Report of Damage

- 17.1 Damage caused by total or partial loss, by damage to the transported goods or by exceeding the delivery deadline must be notified to Bahnoperator Germany in text form (e.g. by email), provided that the notification is made after delivery of the transported goods. If the loss, damage or exceeding of the delivery deadline is reported immediately upon delivery of the transported goods, it is sufficient to report the damage to the person delivering the goods. The notification must clearly indicate the loss or damage.
- 17.2 If loss of or damage to the transported goods is externally recognisable and the Customer or Consignee does not notify Bahnoperator Germany of the loss or damage upon delivery of the goods at the latest, it shall be assumed that the transported goods have been delivered complete and undamaged. This assumption shall also apply if the loss or damage was not externally recognisable and was not reported within seven (7) days of delivery.
- 17.3 Claims for exceeding the delivery period shall lapse if the Customer or the Consignee does not notify Bahnoperator Germany of the exceeding of the delivery period within twenty-one days of delivery.
- 17.4 At the request of Bahnoperator Germany, the Customer shall inform Bahnoperator Germany at any time in text form (e.g. by email) whether the Customer or its client has already submitted the claim to an insurance company and whether the claim has been settled in whole or in part by the insurance company.

18. Cancellation (*Kündigung*), Withdrawal (*Rücktritt*)

- 18.1 The statutory provisions shall apply to the cancellation (*Kündigung*) of and the withdrawal (*Rücktritt*) from the Contract of Carriage, unless otherwise specified in these GT&C.
- 18.2 The Customer's right of cancellation at any time (*jederzeitiges Kündigungsrecht*) in accordance with section 415 of the German Commercial Code (*HGB*) is excluded.

19. Force Majeure

- 19.1 Force Majeure Events release the Party affected by a Force Majeure Event from the obligations arising from the Contract of Carriage for the duration and to the extent of the effects of the Force Majeure Event.
- 19.2 A "**Force Majeure Event**" is any event or circumstance that prevents a Party from performing one or more of its obligations under the Contract of Carriage if and to the extent that the Party affected by the impediment ("**Affected Party**") proves that (i) such impediment is beyond its reasonable control, (ii) such impediment could not reasonably have been foreseen at the time of the conclusion of the Contract of Carriage; and (iii) the effects of the impediment could not reasonably have been avoided or overcome by the Affected Party. In the following cases, a Force Majeure Event shall be deemed to exist to the extent that the Affected Party proves that Section 19.2 (iii) is fulfilled: (a) war (declared or undeclared), hostilities, aggression, acts of foreign enemies, large-scale military mobilisation; (b) civil war, riot, rebellion and revolution, military or other seizure of power, insurrection, acts of terrorism, sabotage or piracy; (c) currency and trade restrictions, embargo, sanctions; (d) lawful or unlawful official acts, compliance with laws or governmental orders, expropriation, confiscation of works, requisition, nationalisation; (e) pest, epidemic, natural disaster or extreme natural event as well as government orders in connection with these events; (f) explosion, fire, destruction of equipment, prolonged breakdown of means of transport, telecommunications, information systems or energy; (g) general labour unrest such as boycott, strike and lockout, go-slow, occupation of factories and buildings.
- 19.3 If a Party fails to fulfil an obligation under the Contract of Carriage due to the failure of a third party whom it has commissioned to fulfil the Contract of Carriage in whole or in part, this Party may only

invoke a Force Majeure Event if the Force Majeure Event applies not only to the Party itself but also to the third party.

- 19.4 The Party invoking a Force Majeure Event shall notify the other Party immediately upon becoming aware of the Force Majeure Event at least in text form (e.g., e-mail) and provide information about the Force Majeure Event, its expected duration and the extent of the effects of the Force Majeure Event. Each Party shall use all reasonable endeavours to avoid or remedy a Force Majeure Event and to resume performance of its affected obligations as soon as possible.
- 19.5 The Contract of Carriage may be terminated by either Party if a Force Majeure Event lasts longer than one (1) month.

20. Confidentiality, Reference

- 20.1 The Customer shall treat Confidential Information confidential in accordance with the following provisions.
- 20.2 **"Confidential Information"** is all information in any form or on any medium that is disclosed to the Customer by Bahnoperator Germany or its directors, officers, employees or representatives (collectively, **"Representatives"**) at any time or that the Customer otherwise obtains in the course of the business relationship between the Parties, regardless of whether the disclosure is made before or after the conclusion of a contract, directly or indirectly, in writing, orally or through examination or inspection of objects, and regardless of whether it is subject to intellectual property rights, provided that (i) it has economic value, (ii) Bahnoperator Germany has a legitimate interest in its confidentiality, and (iii) they are either marked as confidential by Bahnoperator Germany in an appropriate manner or Bahnoperator Germany's legitimate interest in their confidentiality arises either from the nature of the information or the manner of its disclosure. Provided that the aforementioned conditions of this Section 20.2 are met, Confidential Information includes, in particular, transport solutions/concepts developed by Bahnoperator Germany specifically for the Customer as well as offers sent to the Customer.
- 20.3 Confidential Information shall, however, not include any information, of which the Customer can prove that it (i) is generally known or readily available to persons in the circles that ordinarily handle that type of information before the disclosure by Bahnoperator Germany to the Customer; (ii) becomes generally known or readily available to persons in the circles that ordinarily handle that type of information after disclosure by Bahnoperator Germany to the Customer through no action or nonfeasance of the Customer; (iii) was already in the possession of the Customer at the time the Customer gets knowledge of the respective information in connection with the Contract of Carriage; (iv) was obtained by the Customer from a third party without a breach of the third party's obligations of confidentiality; or (v) was independently developed by the Customer without use of or reference to the Confidential Information of Bahnoperator Germany.
- 20.4 The Customer shall (i) keep all Confidential Information strictly confidential, treat it as strictly confidential and use it exclusively in connection with the business relationship with Bahnoperator Germany; and (ii) take appropriate measures to protect the Confidential Information and to prevent the disclosure, unauthorized access and unauthorized use of the Confidential Information; without limiting the foregoing, the Customer shall take at least such measures as it takes to protect its own confidential information of a similar nature, but no less than generally reasonable measures to comply with the duty of care required in business (*im Verkehr erforderliche Sicherheit*). The Customer may only disclose Confidential Information to persons who are employed by or working for the Customer and who need to know such information in order to perform the Contract of Carriage, provided that such persons are subject to confidentiality obligations at least equivalent to those set out in this Section 20.
- 20.5 If the Customer is required by law, court order or official authority to disclose Confidential Information, it may only disclose the Confidential Information to which the obligation relates. In this case, it shall inform Bahnoperator Germany of the disclosure as soon as and to the extent permitted by law.
- 20.6 The Customer shall surrender Confidential Information to Bahnoperator Germany upon request, but no later than upon fulfilment of the Contractual Services. All files or other types of storage shall be permanently deleted, with the proviso that copies necessary for documentation purposes and

information contained in regular data backups are not included. These shall remain subject to confidentiality.

20.7 The obligation to maintain confidentiality is unlimited in time. It ends with regard to a Confidential Information as soon as this information becomes publicly available in accordance with Section 20.3 (ii).

20.8 Bahnoperator Germany is entitled to name the Customer as a reference customer and to use its logo for this purpose.

21. Declarations, Amendments/Additions to the Contract, Form, Transferability

21.1 Legally relevant declarations and notifications by the Customer relating to the Contract of Carriage (e.g., setting a deadline, notification of defects, withdrawal (*Rücktritt*) or reduction (*Minderung*)) must be made at least in text form (e.g., email). Statutory formal requirements and further evidence, in particular in the event of doubts about the legitimacy of the person making the declaration, remain unaffected.

21.2 Amendments (*Änderungen*) and supplements (*Ergänzungen*) as well as the cancellation (*Aufhebung*) of the Contract of Carriage made after conclusion of the contract require a separate agreement between the Parties in writing. This also applies to any amendment to this Section 21.2 .

21.3 All agreements, declarations or other notifications that require the written form in accordance with these GT&C may, in addition to compliance with the written form requirement in accordance with section 126 of the German Civil Code (*BGB*), also be made by sending (also by email) a physically or digitally signed document as a PDF or by signing the document in question using digital signature software commonly used in Germany (e.g., *DocuSign* or *Adobe Sign*).

21.4 The Customer is not authorised to transfer and/or assign rights and obligations arising from the Contract of Carriage to third parties without the prior written consent of Bahnoperator Germany. This prohibition of assignment does not apply to monetary claims.

22. Applicable Law, Place of Jurisdiction, Arbitration

22.1 The Contract of Carriage concluded between the Parties shall be exclusively governed by the law of the Federal Republic of Germany to the exclusion of private international law.

22.2 The exclusive place of jurisdiction for all disputes arising directly or indirectly from or in connection with the Contract of Carriage is the registered office of Bahnoperator Germany.

22.3 If the Customer is domiciled outside the EU, the following shall apply instead of Section 22.2: All disputes arising out of or in connection with the Contract of Carriage or its validity shall be finally settled in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC) without recourse to the ordinary courts of law. The arbitral tribunal shall consist of three (3) arbitrators appointed in accordance with the ICC Rules of Arbitration. The place of arbitration shall be the registered office of Bahnoperator Germany. The language of the proceedings shall be English. All documents and other evidence may be submitted in English translation or in German if the original documents are in German.

23. Invalid Provisions, Unintended Gaps (*Salvatorische Klausel*)

Should a provision of the Contract of Carriage concluded between the Parties be or become void, invalid or unenforceable in whole or in part, or should a necessary provision not be included, the validity and enforceability of all other provisions of the Contract of Carriage shall not be affected. The invalid, ineffective or unenforceable provision or the loophole shall be replaced by a legally permissible provision that corresponds as closely as possible to what the Parties intended or would have agreed in accordance with the meaning and purpose of the Contract of Carriage if they had recognised the ineffectiveness or loophole. Section 139 of the German Civil Code (*BGB*) shall not apply, so that neither Party has to demonstrate (*darlegen*) and prove (*beweisen*) the Parties' intent to maintain the Contract of Carriage even without the void, ineffective, unenforceable or missing provision.

24. Interpretation, German Terms

- 24.1 The headings and sub-headings in these GT&C are inserted for convenience purposes only and do not affect in any way the interpretation of this GT&C.
- 24.2 Unless the context otherwise requires (i) the terms “including” and “in particular” and all forms and derivations thereof always mean “including, without limitation” and “in particular, without limitation”, respectively; (ii) the term “through” when describing a range, period, span or scope always means “through and including”, (iii) the words “hereof”, “herein” and “hereunder” and words of similar import refer to these GT&C as a whole and not to any particular provision of these GT&C; (iv) any reference to a gender includes all other genders and (iv) definitions contained in these GT&C are applicable to the singular as well as the plural forms of such terms. When reference is made to a “**Section**” within these GT&C, this means a reference to any section of these GT&C.
- 24.3 Where a German term has been inserted in quotation marks and/or brackets and/or italics it alone (and not the English term to which it relates) is authoritative for the purpose of the interpretation of the relevant English term in these GT&C.

B. SPECIAL PROVISIONS FOR THE CARRIAGE SUBJECT TO CIM

For carriage subject to the CIM, the following special provisions apply in addition to and take precedence over the general provisions under Section A. Mandatory provisions of the CIM remain unaffected.

25. Definitions

- 25.1 “**CIT**”: The International Rail Transport Committee, an association under Swiss law with legal personality and registered office in Berne (Switzerland), whose aim is, in particular, the uniform application and implementation of international rail transport law in accordance with COTIF.
- 25.2 “**COTIF**”: the Intergovernmental Organisation for International Carriage by Rail.
- 25.3 “**CIM Consignment Note Manual**” or “**GLV-CIM**”: the CIT publication containing the instructions for the use of the CIM consignment note. It is available at www.cit-rail.org.
- 25.4 “**Combined Transport**”: the intermodal transport of intermodal transport units where the major part of the journey is made by rail, inland waterway or sea, but the initial and/or final journeys are made by another mode of transport.

26. Consignment Note

- 26.1 Unless agreed otherwise, the Customer is responsible for completing the consignment note.
- 26.2 The GLV-CIM contains information on the use of the consignment note.
- 26.3 In accordance with Article 6 section 9 CIM, the consignment note may consist of electronic data records. Printouts of the electronic consignment note complying with the GLV-CIM are deemed to be equivalent to the paper consignment note.

27. Delivery Periods

Insofar as the statutory delivery periods of Article 16 CIM apply, an additional period of 96 hours is set for the following cases: In the event of exceptional circumstances resulting in an unusual increase in traffic or unusual operating difficulties.

28. Wagon Provisions by Bahnoperator Germany

- 28.1 If the Customer orders the provision of wagons, intermodal transport units and loading equipment from Bahnoperator Germany, the Customer shall be liable for the correctness, accuracy and completeness of the information it provides, in particular with regard to the consistency of the order with the carriage desired.
- 28.2 Bahnoperator Germany provides wagons, intermodal transport units or suitable loading equipment within the scope of the contractual provisions and the available capacities. The equipment provided shall be in a technical condition and a degree of cleanliness that permits its intended use. The

Customer shall check the equipment provided for obvious defects and notify Bahnoperator Germany immediately of any such defects.

- 28.3 The Customer may only use the equipment provided within the scope of the contractual transport.
- 28.4 The Customer shall be liable for all damage (loss and damage) to equipment provided by Bahnoperator Germany caused by itself or a third party authorised by the Customer.

29. Loading and Unloading

- 29.1 Unless explicitly agreed otherwise between the Parties, the Customer shall be responsible for loading the goods and the Consignee for unloading. In Combined Transport, the obligation to load and unload shall also include the handling of the intermodal transport unit on or off the wagon.
- 29.2 Subject to mandatory statutory provisions or deviating agreements, the rules of Bahnoperator Germany shall apply to the choice of wagon type, the loading and unloading of the goods and the return of the wagon or intermodal transport unit. In particular, the Customer is obliged to return the wagons or intermodal transport units in an appropriately clean condition.
- 29.3 The Customer must affix the seals to covered wagons if this is provided for in national law or has been agreed between the Parties. The Customer shall seal large containers, swap bodies, semi-trailers or other closed intermodal transport units that are used for Combined Transport which are handed over for carriage. For certain transport operations, the Parties may agree to dispense with seals.
- 29.4 Unless otherwise agreed with regard to loading and unloading times, the provisions of Bahnoperator Germany shall apply.
- 29.5 The loading and unloading points as well as the access routes must be cleaned immediately by the Customer at its own expense if they have been soiled by the Customer or its authorised representatives.

30. Subsequent Dispositions and Instructions

- 30.1 Subsequent dispositions by the Customer to amend the Contract of Carriage are only permissible if the Customer has endorsed on the consignment note: "*Consignee not authorised to dispose of the goods*". Other consignment note endorsements require a special agreement between the Parties.
- 30.2 The Customer's subsequent instructions (Article 18 and 19 CIM) and instructions in the event of obstacles to carriage and delivery (Article 20, 21 and 22 CIM) must be prepared in accordance with the GLV-CIM and sent to Bahnoperator Germany in an appropriate written form (letter, fax, e-mail, etc.).
- 30.3 The Customer must enclose the duplicate of the consignment note with any subsequent dispositions or instructions. In the event of obstacles to carriage, the duplicate consignment note must only be enclosed if the Customer changes the Consignee or the place of delivery.
- 30.4 Where the amendment of the Contract of Carriage would have the effect of ending carriage within a customs territory (e.g., within the European Union) for a consignment which should have ended outside that customs territory, or vice versa, the amendment may only be implemented with the prior agreement of the customs office of departure.

31. Takeover for Transport and Delivery

- 31.1 The agreements concluded between the consignor and the carrier who takes over the goods in accordance with the Transport Contract are decisive for the takeover of the goods and for the operation of the terminal or loading point or the railway siding at the forwarding point. In all other respects, takeover shall take place in accordance with the regulations applicable at the place of takeover.
- 31.2 The agreements concluded between the Consignee and the carrier who delivers the goods in accordance with the Transport Contract shall be decisive for the delivery of the goods and for the operation of the terminal or the loading point or the siding at the destination point. In all other respects, delivery shall be made in accordance with the regulations applicable at the place of destination.

32. Complaints

Complaints (Article 43 CIM) must be substantiated. All documents necessary to substantiate the claim must be enclosed with the complaint, in particular those relating to the value of the transported goods.

C. SPECIAL PROVISIONS FOR SEA TRANSPORT

International sea freight shipments are subject to the applicable international agreements, in particular the Hague Rules of 1924.

The following special provisions apply to sea transport in addition to and in preference to the general provisions under Section A. Mandatory provisions of the applicable international agreements remain unaffected.

33. Fees

- 33.1 In the event of unforeseen closures of waterways, stops due to high or low water levels, obstructions due to ice or other waiting times for which Bahnoperator Germany is not responsible, Bahnoperator Germany shall be entitled to charge the Customer any demurrage charges incurred in this case.
- 33.2 Bahnoperator Germany shall charge the Customer for surcharges at the rates valid at the time of transport upon presentation of proof (vatos). This applies, for example, to additional sea freight surcharges (peak season surcharge, congestion surcharge, etc.) or short-term market-related rate increases.

34. Loading

- 34.1 The goods shall be loaded onto a ship, shipping company and flag of Bahnoperator Germany's choice. Bahnoperator Germany is not subject to any restrictions regarding the age or flag of the ships used, unless expressly agreed otherwise with the Customer.
- 34.2 Any special loading equipment required (cross beams, shackles, etc.) shall be provided by the Customer.

35. Liability

- 35.1 The liability of Bahnoperator Germany shall be governed by the ADSp.

D. SPECIAL PROVISIONS FOR AIR TRANSPORT

36. Definitions

"Operating Carrier": carrier who, on the basis of an authorisation from Bahnoperator Germany, performs the carriage in whole or in part.

37. Air Waybill

- 37.1 The Customer must complete the air waybill in the manner prescribed by Bahnoperator Germany and with the prescribed number of copies, or have it completed on its behalf. The Customer shall provide the air waybill to Bahnoperator Germany or the Operating Carrier at the same time as handing over the goods to be carried and in the prescribed form.
- 37.2 Bahnoperator Germany and/or the Operating Carrier may require the Customer to complete separate air waybills or have them completed on its behalf if (i) the goods to be carried consist of more than one package, (ii) the consignment cannot be carried in a single aircraft, or (iii) the consignment cannot be carried with a single air waybill without violating government regulations or the provisions of Bahnoperator Germany or the Operating Carrier. The Customer shall always use the current version of the air waybill.

38. Execution of Carriage, Pre-carriage and Onward Carriage

- 38.1 Unless expressly agreed, Bahnoperator Germany shall not be obliged to transport the goods with a specific aircraft, under a specific flight number or on a specific route, or to reach a connection at a

specific point according to a specific flight schedule. Bahnoperator Germany is entitled to select the route for the transport of goods according to capacity or availability or to deviate from the route specified in the air waybill, even if this is specified in the air waybill. The times specified in the offer and flight schedules or the flight number and flight data entered in the air waybill do not constitute a binding agreement between the Parties.

- 38.2 The goods to be transported will be accepted at the place of departure in the terminal building of Bahnoperator Germany or the Operating Carrier or at its office at the airport for transport to the airport of destination. If expressly agreed in the Contract of Carriage, the goods to be carried will also be accepted for pre-carriage to the airport of departure and/or for onward carriage from the airport of destination. If pre-carriage or onward carriage is executed by Bahnoperator Germany or the Operating Carrier, such carriage shall be subject to the liability provisions set out in Section 16. In all other cases, the air waybill issuer and the last air carrier shall, depending on the circumstances, act solely as agents of the Customer, owner or consignee in respect of the pre-carriage and onward carriage of the goods. By concluding the Contract of Carriage, the Customer authorises these air carriers to do everything deemed advisable to carry out the pre-carriage and onward carriage. This includes, but is not limited to, the selection of the means of pre-carriage and onward carriage and the routes (unless specified by the sender in the air waybill), the issue and acceptance of transport documents (including those containing provisions on the exclusion or limitation of liability), and the transportation of the goods without declaration of value, regardless of any declarations of value in the air waybill.

August 2025