

1. Scope of Application

These GTC apply to the proper, adequate and professional provision of one-off or recurring

- maintenance services on the customer's rolling stock components as per **Annex 1**
- maintenance services on the customer's rolling stock as per **Annex 2**
- services on the customer's rolling stock as per **Annex 3**

for the purpose of the provision of the services mentioned herein pertaining to safety-related activities as per Art. 3 of the Swiss Ordinance on Safety-Related Railways Activities (STEBV, SR 742.141.2) by SBB. These GTC describe the minimum requirements for the tasks of SBB and the customer and supplement the requirements of the relevant legislation of Switzerland or the EU, as applicable, particularly as regards railway interoperability, railway and product safety and rolling stock maintenance.

2. Roles of the parties

Except as otherwise stated in the parties' written contract, the customer appears in the statutory Register of Vehicles as the registered a) owner of its vehicles, b) holder of the relevant vehicle registration, c) holder of the operating licence, d) designated entity in charge of maintenance (ECM) for each and every one of its vehicles.

3. Principles of the contractual relationship

- 3.1. The contract shall be performed as per these GTC and Annexes 1, 2 and 3, as amended from time to time, and as per the agreed list of services / cooperation manual, which must be made an integral part of the contract. If the customer requires documentation of services other than those prepared as per SBB's maintenance specifications (such as final inspection reports, conformity declarations, test certificates, measurement reports, identification and labelling, etc.), this documentation shall be ordered for a fee and expressly in advance but no later than when issuing the order.
- 3.2. The parties shall maintain a quality and risk management (QRM) system that, in terms of qualifications of their personnel, the quality of their services and as regards health, occupational safety, security and environmental protection (HSSE), as well as maintenance work for rolling stock, is in line with all statutory and regulatory requirements, as well as the state of the art.
- 3.3. As necessary, SBB shall fulfil the requirements for conducting safety-related activities in accordance with the relevant legislation and can provide the customer and the safety authorities with the relevant documentation at any time. Safety-related activities shall be performed in accordance with the safety measures ordered within SBB and the relevant SBB-external railway service regulations (RSR) and internal rules and regulations (e.g. I-30121: RSR implementing provisions local regulations for train travel and shunting movements).
- 3.4. The Parties shall avoid conflicts involving their own interests or those of third parties. Each of the parties shall inform the other of any potential conflicts of interest.

- 3.5. Both parties shall inform each other in writing within a reasonable time concerning any unclear, incorrect or missing information, contradictions in or changes to the contract, its Annexes and integral components thereof, particularly in the rule and regulations confirmed and approved by the customer. In any case, the customer shall be responsible for the proper functioning of the item even if the customer has not explicitly provided its own technical specifications for processing in advance. (...and the SBB requirements are utilised as a result.)
- 3.6. Both parties shall submit all necessary applications for registration with the social security authorities on their own behalf and that of their employees. Neither party shall be responsible for paying any social benefits (OASI, IV, LEC, unemployment insurance, etc.) or other compensation payments for the other party or its employees, particularly in the event of illness, disability or death.
- 3.7. Both parties may engage third parties for the performance of their services. The parties shall maintain a suitable system for assessing, selecting and regularly evaluating the third parties engaged by them and shall incorporate all the provisions of this contract that are needed to safeguard the interests of both parties in their contracts with third parties. Third parties shall be listed with their involvement in all work results. Third parties brought in by one party in order to fulfil the contract will in all cases count as the Company's subcontractors within the meaning of Art. 101 of the Swiss Code of Obligations (CO). The other party's consent to, or acknowledgement of, the involvement of third parties does not affect the liability of the company enlisting third parties under the contract or in connection with the contract. Article 399, para. 2 CO is explicitly excluded.
- 3.8. Both parties have the right to conduct audits to review the performance of their respective roles, their provision of services and that of the third parties engaged by them.

4. Contact persons / exchanging safety-related information

These key persons of the parties may only be replaced by persons equally qualified in their roles and only with the consent of the other party.

5. Rights and obligations of SBB

SBB shall document its services in accordance with the documentation requirements of SBB or, if so requested, in accordance with those of the customer and shall provide the customer with the documents generated (inspection reports, conformity declarations, test certificates, operating release certificates, etc.) upon completion of the contractual services. The traceability of spare parts or materials used is not guaranteed unless the customer requests this in writing when issuing the order.

6. Changes to services

- 6.1. Changes shall not be implemented unless and until SBB has sufficient capacities and both parties have signed an addendum to the contract.
- 6.2. Unless otherwise agreed, with long-term orders, SBB can request in writing a justified adjustment of the fees at least three months in advance. If the parties are unable to agree about the price change, the difference management process shall be followed where it has been agreed to do so. The parties reserve the right to terminate the individual contract.
- 6.3. Unless otherwise agreed, both parties shall continue their work as scheduled while proposed changes are being reviewed.

7. Rights and obligations of the customer / material and documentation for the provision of maintenance services

- 7.1. The customer shall provide SBB with the materials, resources, tools, equipment and spare parts necessary for performing the contract if this has been agreed in the individual contract. The customer shall supply the rolling stock and components to the place of performance at the agreed time. These items must comply with the maintenance specifications of SBB and/or the manufacturer. The customer shall provide the documentation necessary for this and shall declare the unique intended use thereof. In any case, the customer must adopt the ECM 2 requirements.
- 7.2. The customer shall inform SBB expressly and in writing if property and usage rights of third parties limit or preclude the performance of SBB's contractual services.
- 7.3. If the customer's personnel are on SBB's premises, the customer shall comply with SBB's operating regulations, particularly its safety regulations and building regulations, and shall follow all of SBB's instructions. The customer shall ensure that these regulations and instructions are observed by third parties engaged by it.
- 7.4. The customer shall, at its own expense, instruct SBB's employees in particular issues regarding maintenance and operation of its vehicles.
- 7.5. Unless otherwise specified in the individual contracts, the customer shall see to the transport of the rolling stock or components thereof from and to SBB's repair workshops. The Annexes to these GTC contain further details.
- 7.6. Unless the customer supplies other specifications, it shall remain responsible for delivered materials, even during the refurbishment period.

8. Passing of risk

The care and the risk of deterioration or loss (passing of risk) of any materials and resources supplied by the customer, as well as of the customer's rolling stock and the components thereof, shall begin upon delivery of the materials, tools, components or upon handover of the rolling stock and shall end upon delivery of the rolling stock at the place of performance and upon delivery of the components as soon as the rolling stock / components have been handed over to the customer at the place of performance.

9. Performance times

- 9.1. The contractual performance times for SBB's services shall not begin until the customer has fulfilled its own obligations to enable the performance of these services.
- 9.2. If SBB fails to meet firm deadlines (fixed-date transactions), it shall be in default automatically, and otherwise by way of a warning unless it proves that it is not at fault.
- 9.3. SBB shall bear liability for any failure to comply with deadlines, unless it establishes that it was not at fault. Any liability incurred shall be limited to documented losses that are causally related to its fault. Liability for default shall be capped at 5% of the order value.
- 9.4. SBB shall not be at fault for missed deadlines and SBB shall be entitled to an extension of the performance times of its services in particular in cases as per clause 9.1, in the event of force majeure, and in cases where the guarantee of such a deadline is excluded.

10. Representations and Warranty

- 10.1. SBB undertakes to provide the services in accordance with the contract.
- 10.2. SBB's warranty shall not apply in cases where the customer is at fault. The customer shall always be deemed at fault if it fails to perform its duties in accordance with section 3.1.
- 10.3. If SBB fails to correct a defect within two reasonable grace periods granted by the customer, the customer may, at its option:
- Deduct from the fee the decrease in value of the services owed, or
 - withdraw from the contract, however only in the case of repeated serious defects or to the extent that the defects determined affect the safety of the customer's rolling stock or are serious in another aspect (significant defects)
 - undertake the necessary, appropriate work specified in the contract itself at SBB's cost and risk or have the work carried out by a third party that meets the ECM requirements; however, this will only apply in the event of significant defects.
- 10.4. If the customer requests rectification, SBB shall remedy the defect within a reasonable period granted by the customer and shall cover any and all resulting costs.
- 10.5. The customer must indicate defects in writing within the notification period specified in the Annexes to these GTC. Articles 200 and 201 CO are excluded.

11. Exclusion of warranty

- 11.1. SBB's guarantee obligation does not include any rolling stock, sub-systems and components or parts thereof belonging to the customer that do not meet the standard specified in the contract as a consequence of faulty construction by the original manufacturer. Rolling stock, subsystems, components and parts thereof that have not been exchanged, have not been refurbished in full, or have merely been assessed, inspected or measured in consultation with the customer in the course of performing the contract but may give rise to consequential losses because of their condition are also excluded from the warranty for SBB's services.
- 11.2. If the customer is jointly responsible for causing the time frame or condition of SBB's services to violate the contract, SBB's liability/warranty shall be reduced in proportion to the degree to which the customer is at fault. SBB shall assign any compensation claims against manufacturers to the customer.

12. Liability of the parties

- 12.1. Other than the exceptions listed below, the parties shall be liable for all losses (with the exception of consequential losses), including losses resulting from contractual breaches, unless they prove that they are not at fault.
- 12.2. Liability for property losses and financial loss of both parties that are caused by slight negligence is limited to CHF 20 million. Liability for consequential damage resulting from defects and for loss of profit are excluded to the extent specified by law.
- 12.3. Each parties shall be directly liable for damage to the rolling stock unless it can prove wrongful intent or gross negligence by the other party. The amount of compensation is limited to the current market value of the damaged or destroyed rolling stock. The foregoing shall be without prejudice to contractual provisions to the contrary.
- 12.4. Any liquidated damages shall be deducted from the damages to be paid. Notwithstanding this, the above-mentioned limitations of liability shall also apply to liquidated damages.

13. Insurance

- 13.1. Both parties guarantee that they have and will continue to have adequate professional and commercial liability insurance for personal injuries, property damage and resulting pecuniary losses for the duration of the contract.
- 13.2. The cover shall be at least CHF 20 million per incident and per year.

14. Retention of Documents

In its role as keeper, the customer shall retain all technical documents relating to the rolling stock for the duration of its service life. The parties shall retain, in usable condition and at no cost, all documents and material that relate to the contract and have not been transferred as originals to the other party (such as work contracts, orders, correspondence, billing documents, data carriers, etc.), for at least 13 years as of the date on which final payment is received.

15. Occupational health and safety regulations, working conditions and equal treatment

- 15.1. For work done in Switzerland, the parties undertake to comply with health and safety regulations and the conditions of employment applicable at the place of work and to guarantee equal pay to men and women. The conditions of employment are comprised of the Federal Act on Illegal Employment, the Federal Act on Workers Posted to Switzerland, as well as the collective and standard employment contracts and, in the absence of the latter, employment conditions specific to the location and profession.
- 15.2. For services performed abroad, the parties undertake to comply with the core conventions of the International Labour Organisation (ILO).
- 15.3. Both parties undertake to transfer these requirements to the third parties engaged by them.

16. Integrity

The contractual parties agree to take all measures necessary to prevent corruption so that, in particular, no gifts or other benefits are offered or accepted.

17. No unlawful tendering agreements

- 17.1. The customer agrees to take all measures necessary to prevent the formation of any unlawful tendering agreements to the detriment of SBB (e.g. price, market-sharing and bid-rotation agreements).
- 17.2. If it breaches this duty, the customer must pay liquidated damages to SBB. These liquidated damages amount to 15% of the total payment value. Furthermore, SBB can claim the losses incurred by it unless the customer proves that it is not at fault.
- 17.3. The customer moreover acknowledges that any breach of the duty laid down in section 17.2 will normally also result in early cancellation of the contract for good cause by SBB.

18. Confidentiality

For the duration of the contract and for five years after the termination thereof, the customer shall treat confidentially all information and data arising from this contractual relationship that is not common knowledge or publicly available, even if such information and data are not marked confidential. Legal disclosure obligations remain reserved, as does the use of confidential information by one party and its group companies for the purpose of proper use of the services, particularly for the maintenance, refurbishment and replacement of components and for the operation, upgrading, renovation, repair and maintenance of vehicles.

19. Termination of the contract or individual services

- 19.1. The contractual relationship may be revoked or terminated by either party at any time. Any and all cancellation terms are indicated in the contract.
- 19.2. Cancellation or termination of this contract shall have no effect on
 - a. rights and duties of the parties that have already arisen at the time of termination;
 - b. rights and claims held by either party in relation to the termination;
 - c. provisions of this contract that either expressly or by nature claim validity beyond the termination of the contract.
- 19.3. Termination of individual services shall have no effect on the continuity of this contract as a whole.
- 19.4. SBB shall not be paid any surcharge for services performed as per the contract until the cancellation of the latter. SBB is not entitled to any further compensation as a result of termination of the contract. If the contract is terminated due to a serious breach of its terms by the customer, damages will be incurred.
- 19.5. If the contract is cancelled prematurely, the withdrawing Party shall compensate the other Party for the proven loss (but no loss of profit in any case) without any surcharge.
- 19.6. Cancellation by SBB because of outstanding, suspended or withdrawn licences of the safety authorities, as well as in cases of force majeure, shall not be deemed untimely. Furthermore, cancellation shall not be deemed premature if one party has given the other reasonable grounds to cancel the order, if the customer fails to initiate individual phases of the provision of services, or if key persons of either party, whose cooperation is material to the provision of services, are replaced in their roles without the consent of the other party, or if either party becomes insolvent, or if the provision of services does not begin within the jointly agreed period or a 10-day grace period granted by the other party.

20. Non-solicitation agreement

Employees entrusted with the provision of services under this contract may not be solicited away from one party during the term of the contract or for one year after its termination unless prior written consent is obtained from the other party.

21. Prohibition on assignment- and pledging

The claims held by either party may not be assigned or pledged without the written consent of the other party.

22. Contractual amendments

Amendments and additions to the contract and the components thereof must be made in writing and signed by both parties in order to be valid.

23. Applicable law and jurisdiction

- 23.1. This contract shall be governed exclusively by Swiss law. The provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) are explicitly excluded.

- 23.2. The courts of Bern shall have exclusive jurisdiction over disputes arising from or in relation to the contract.