

GENERAL TERMS AND CONDITIONS FOR THE USE OF THE RAILWAY INFRA- STRUCTURE (T&C-IO)

Dated 01.01.2018 (replaces the version dated 01.01.2014)

1. Scope of application and applicable regulations

Within the framework of the applicable legislation, these General Terms and Conditions (T&C-IO) govern the use of the railway infrastructure for national and international services by railway undertakings (hereinafter referred to as the RU) and form a constituent part of the Track Access Agreement. For international situations, the Track Access Agreement shall be governed by the provisions of Appendix E to the COTIF¹. The "[European General Terms and Conditions of use of railway infrastructure](#) (E-GTC-I)" currently in force form a constituent part of these T&C-IO. The provisions described below deviate from the E-GTC-I and take precedence over them.

2. Deviations from the E-GTC-I

2.1 Purpose and area of validity of the E-GTC-I

replaces point 1.1 para. 4 E-GTC-I

The following order of precedence shall apply in the event of contradictions between the various parts of the contractual relationships between the partners:

- a. Track Access Agreement
- b. T&C-IO
- c. List of Services
- d. Network Statement

2.2 Services to be performed by the infrastructure operator on behalf of the RU

replaces point 1.3 para. 1 E-GTC-I

The services laid out in art. 21 to art. 23 RailNAO shall apply in place of the services defined in Directive 2012/34/EU, Appendix II.

2.3 Consultation between RUs

concerning point 1.4 E-GTC-I

Point 1.4 shall not apply.

2.4 Complying with instructions and operating rules

replaces point 2.1 para. 1 E-GTC-I

The RU must obtain and update copies of the necessary rules and recommendations for its transport services from the infrastructure operator (hereinafter referred to as the IO) at its own expense. The IO shall advise the RU when putting together these documents. The IO shall inform the RU of any amendments to its operating rules and provide a copy of them. However, the RU shall be responsible for ensuring that the rules it applies are complete and up to date.

2.5 Billing methods

replaces point 3.2 para. 4 E-GTC-I

Payments shall be made by the RU within 30 days of invoicing. Complaints regarding invoices must also be received by the invoice originator at the latest 30 days after invoicing.

2.6 Default

replaces point 3.3 para. 2 E-GTC-I

The consequences of defaulting on a payment and the associated interest rates are determined in accordance with the Swiss Code of Obligations (see art. 102 et seq. CO on lack of timely performance by an obligor).

2.7 Disputes

replaces point 9.1 E-GTC-I

Disputes shall be resolved as per section 2.4 and the place of jurisdiction shall be determined by section 10 of the Track Access Agreement.

3. Addenda to E-GTC-I

3.1 Currency

replaces point 3.2 para. 3 E-GTC-I

The IO can issue invoices in euro (EUR) by agreement. The RU undertakes to use the chosen currency for one calendar year. The exchange rate on the date the invoice is issued shall apply.

¹ Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic (CUI – Appendix E to the Convention concerning International Carriage by Rail) [COTIF; SR, 0.742.403.1]

3.2 Concomitant causes

replaces point 6.5 E-GTC-I

Addenda in accordance with art. 10 § 1 CUI:

If it cannot be determined which cause or to what extent each cause is responsible for the damage, each party shall itself bear the costs of the damage it has suffered.

3.3 Liability for auxiliary agents

replaces point 6.7 E-GTC-I

The RU cannot be exempted from liability for damage caused by a defect in rolling stock or by the transported goods.

3.4 Vandalism

Addendum

To the extent permitted by law, the IO shall not be liable for damage caused by acts of vandalism which occur while the RU's vehicles are in use or stabled on sections of track owned by the IO.

3.5 Recourse to the IO as premises owner

Addendum

In the event that the IO, as owner of the infrastructure, is obliged to remedy environmental damage caused – even involuntarily – by the RU, the RU shall assume the costs for the IO's services, as well as the costs invoiced to it relating to the deployment of oil, fire or chemical incident response teams in accordance with the applicable regulations.

3.6 Control rights

Addendum

The IO can run checks at any time to verify whether the RU and its staff are in compliance with all the legal and contractual conditions for the use of the infrastructure. Safety checks shall be carried out in the form of announced or unannounced audits. Each party shall itself bear all costs arising from the audit.

The RU is obliged to allow staff from the IO to travel without charge on its locomotives for control purposes and for inspections of track installations. The IO shall bear the costs of any training required for driving the locomotive.

Any deficiencies noted shall be communicated to the RU concerned in writing. In the case of serious deficiencies, the Swiss Federal Office of Transport (FOT) shall also be informed.

3.7 Instructions

Addendum

In order to ensure the correction of a situation which is illegal or constitutes a breach of contract, the IO is entitled to set a deadline appropriate to the case in question. If the RU fails to comply with the IO's instruction or does not meet the deadline for compliance, the IO is entitled to carry out the stipulated measures itself or via third parties at the cost of the RU. The defaulting RU is responsible itself for checking/accepting the services provided for it.

The RU agrees that the IO may use qualified staff (inspectors) from any RU it chooses to analyse and rectify the problem.

3.8 Route closures

Addendum

The conditions and options for closing train paths in connection with route closures in order to carry out maintenance work or expand infrastructure shall be governed by art. 11b RailNAO and the corresponding FOT regulation.

Glossary

T&C-IO	General Terms and Conditions for the Use of the Railway Infrastructure
FOT	Swiss Federal Office of Transport, competent authority
CUI	“Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic”, Appendix E to the Convention concerning International Carriage by Rail [COTIF; SR, 0.742.403.1]
E-GTC-I	European General Terms and Conditions of use of railway infrastructure
RU	Railway undertaking
IO	Infrastructure operator
List of Services	Collection/definition of services offered and prices
Network Statement	Swiss version of the terms of use for the track network
Track Access Agreement	Swiss version of the user agreement
RailNAO	Rail Network Access Ordinance of 25 November 1998 [SR 742.122], legal basis
Directive 2012/34/EU	Directive of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (not applicable in Switzerland, where it has not been ratified)