

General Terms and Conditions of BLS Cargo AG for railway freight transport

– Effective as from 1st May 2011 –

1. Scope of application

- 1.1 These General Terms and Conditions shall be applicable to all services provided by BLS Cargo AG unless otherwise provided by law.
- 1.2 In addition to these General Terms and Conditions,
 - 1.2.1 domestic railway freight transport shall be governed by the provisions of Swiss federal legislation on public transport and of the Swiss Code of Obligations and, mutatis mutandis on a subsidiary basis, the provisions of para. 2;
 - 1.2.2 international railway freight transport shall be governed by the provisions of the Convention concerning International Carriage by Rail (CO-TIF) and its appendices, particularly CIM, general terms and conditions particularly those of CIM (ABB-CIM), and manuals, particularly the Consignment Note Manual (GLV-CIM), etc.
- 1.3 The use of railway wagons shall be governed by the General Contract for Use of Wagons (GCU).
- 1.4 Any freight agreements with BLS Cargo AG shall be governed by the version of these General Terms and Conditions that is in force at the time of the conclusion of such agreements.
- 1.5 Any arrangements that deviate from these General Terms and Conditions shall be laid down in writing to become effective.
- 1.6 Any general terms and conditions other than these General Terms and Conditions shall only be applicable in so far as the parties have expressly agreed to that effect in writing.
- 1.7 Any transaction and the binding nature of an electronic exchange of contractual and service-related data shall be regulated in a separate agreement.

2. Quotations and service agreements

- 2.1 Unless otherwise agreed, quotations shall remain effective for 60 (sixty) days after they have been communicated by BLS Cargo AG.
- 2.2 The basis for any services to be provided by BLS Cargo AG shall be constituted by a written service agreement concluded with the customer (transport agreement, etc.).

- 2.3 Unless otherwise agreed, service agreements shall have a term of 12 (twelve) months. If no service agreement has been signed and a customer has placed a shipment on the basis of a quotation, the last quotation submitted shall be valid for a term of 12 (twelve) months.
- 2.4 Any amendments, supplements or extensions of a service agreement shall be laid down in writing and shall only become effective after written confirmation by BLS Cargo AG.
- 2.5 If after the submission of a quotation or after the conclusion of a service agreement, economic, political or technical circumstances arise which at the time when the quotation was drawn up by BLS Cargo AG could not be foreseen and are outside the control of BLS Cargo AG and substantially compromise the economic equilibrium of quotations, then BLS Cargo shall be entitled to demand an adjustment of quotations and agreements in writing.
- 2.6 Service agreements shall be terminated through the delivery of the freight to the addressee at the agreed transfer point and through the acceptance of such freight by such recipient. Any other agreements in the transport service agreement shall remain reserved. If such freight is not accepted by the addressee within the period stipulated, then BLS Cargo AG shall request the sender to notify the addressee accordingly. Any additional costs incurred by BLS Cargo AG shall be borne by the customer.

3. Carriage

- 3.1 Unless otherwise agreed, the customer shall issue a consignment note in accordance with the model of BLS Cargo AG (as a rule, a CIM consignment note or a CUV wagon note), i.e. the relevant consignment notes or wagon notes shall be delivered to BLS Cargo AG.
- 3.2 A consignment note or wagon note shall be deemed to be a carriage order.
- 3.3 Customers shall be responsible for the correct loading, unloading and transshipment of freight and load units with the wagons used for the purpose and with the load securing methods designated for the loads. In particular, it is imperative that loads are correctly distributed and that the relevant axle load ratios are taken into account. The correct loading, unloading and

transshipment of freight shall be governed by the UIC Loading Guidelines, the directions provided by the carrier, as well as national provisions issued by the UIC's specialist bodies.

- 3.4 If a customer fails to satisfy his obligations pursuant to para. 3.3 above, if there is a substantial difference between the agreed load and the actual load, if the admissible overall weight, the load distribution or the axle load ratio are exceeded or if the type of freight or the way it has been loaded prevents carriage, such customer shall be obliged to remedy the situation with immediate effect. If such customer fails to satisfy such obligation, BLS Cargo shall be entitled to remedy the situation itself or through third parties at such customer's expense.

- 3.5 BLS Cargo AG may delegate carriage wholly or in part to one or several third-party carriers.

4. Entity in charge of maintenance (ECM)

- 4.1 The customer is required to ensure that the wagons it provides for carriage have been allocated to a so-called Entity in Charge of Maintenance (ECM) and must be able to provide proof of this to BLS Cargo AG on demand.

- 4.2 If the customer provides a wagon which has not been allocated an ECM, BLS Cargo AG is entitled not to carry this wagon and to charge any costs arising from this decision to the customer.

5. Liability

- 5.1 BLS Cargo AG shall be exclusively liable in accordance with statutory provisions. The limitations of liability pursuant to the Swiss Federal Transport Act and Ordinance and pursuant to CIM shall also be applicable to non-contractual claims.

- 5.2 Any indemnification claims against BLS Cargo AG that exceed any legally regulated claims shall be excluded.

- 5.3 If transport is limited by such occurrences as force majeure, infrastructural restraints or official directives, the provision of services in general and carriage in particular may be suspended wholly or in part, and BLS Cargo AG shall not accept any liability whatsoever for any damage resulting from such occurrences.

- 5.4 BLS Cargo AG shall be entitled to stable loaded and empty wagons. BLS Cargo AG shall accept liability for ordinary care for the duration of such stabling periods.

- 5.5 Customers shall be liable for their own mistakes and omissions, particularly for any consequences of deficient packaging and inadequate loading, as well as for any consequences of incorrect, inexact or erroneous in-

formation in the carriage agreement or in customs forms.

- 5.6 Customers shall be liable for any damage they cause to wagons, load units and loading equipment.

- 5.7 Customers shall be liable for their ancillary staff in the same way as they are liable for their own mistakes and omissions.

- 5.8 If a customer makes use of a wagon whose owner is not a party to the GCU, then such customer shall accept liability in accordance with the GCU, and if there is any incident BLS Cargo AG shall be saved harmless from any claims whatsoever.

- 5.9 Customers shall notify BLS Cargo AG of any impairment of service, particularly of any loss or damage, with immediate effect and shall aver such loss or damage and provide BLS Cargo AG with an opportunity to inspect such damage. Any claims against BLS Cargo AG shall become null and void in any case unless they are not lodged within 30 (thirty) days after the provision of the service.

- 5.10 If a customer fails to satisfy any obligations that are incumbent upon him, he shall fully indemnify BLS Cargo AG for any damage caused by such failure.

6. Dangerous goods

- 6.1 Customers shall comply with the relevant provisions for the transport of dangerous goods by railway.

- 6.2 BLS Cargo AG shall only accept and deliver dangerous goods if there is a written agreement with the sender/addressee that he will assume any safety and care obligations from the time when the dangerous goods are made available for transport until they are collected.

- 6.3 BLS Cargo AG shall not provide storage for dangerous goods either by stabling loaded wagons en route or in any other way.

- 6.4 Customers shall within their share of the liability release BLS Cargo AG from any obligations against any third parties that have arisen during transport, safekeeping or any other handling and are the result of the properties of the goods and customers' failure to observe due diligence.

7. Payment instructions, invoicing and payment

- 7.1 Unless payment instructions have been agreed, the costs shall be borne by the sender.

- 7.2 Invoices shall be payable within 30 (thirty) days (due date); any offset and retention shall not be admissible. If any payment is not made

within the payment deadline, the customer shall be in arrears without receiving a reminder from BLS Cargo AG. Interest on arrears shall be charged at a rate of 6 (six) per cent per annum. Customers shall additionally be charged a fee of CHF 50.00 for every reminder.

- 7.3 BLS Cargo AG shall be entitled to request customers to make an appropriate advance payment or provide collateral.

8. Customs provisions and other administrative provisions

- 8.1 Customers shall submit any information and documents required for compliance with any customs provisions and any other administrative provisions (in digital form or hard copy depending on requirements) to BLS Cargo AG in good time. In cases of inadequate information and the consequences resulting from it, the customer shall be exclusively liable.

- 8.2 BLS Cargo AG or its agents shall satisfy any customs provisions and any other administrative provisions as long as the goods are en route. BLS Cargo AG is entitled to charge a consideration for such services and for any delays in the course of the provision of these services that are not BLS Cargo AG's responsibility.

9. Applicable law, forum

- 9.1 Contractual relations between customers and BLS Cargo AG shall be governed by Swiss law and international mandatory legal provisions.
- 9.2 **Berne/Switzerland** shall be the forum for any disputes arising from contractual relations.

10. Confidentiality

- 10.1 If in the course of negotiations a party provides information on a confidential basis, the other party shall be obliged to treat such information as such, particularly not to disclose it or to exploit it for purposes other than those for which it was provided, irrespective of whether an agreement is subsequently concluded or not.