

## Appendix 1 General Terms and Conditions relating to Agreement No. XXXX.XX

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

– Effective as from 1 January 2020 –

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| <p><b>1. Scope of application</b></p> <p>1.1. These General Terms and Conditions shall be applicable to all services provided by BLS Cargo AG unless otherwise provided by law.</p> <p>1.2. In addition to these General Terms and Conditions,</p> <p>1.2.1. domestic railway freight transport is governed by the provisions of the Swiss Federal Transport Act and Ordinance;</p> <p>1.2.2. international railway freight transport is governed by the uniform regulations governing contracts for the international transport of goods by rail ("CIM") of the Convention concerning International Carriage by Rail (COTIF), general terms and conditions ABB-CIM, manuals, particularly the Consignment Note Manual (GLV-CIM), etc.</p> <p>1.3. The use of railway wagons is governed by the General Contract for Use of Wagons (GCU).</p> <p>1.4. Any freight agreements with BLS Cargo AG are governed by the version of these General Terms and Conditions in force at the time of the conclusion of such agreements.</p> <p>1.5. Any arrangements that deviate from these General Terms and Conditions shall be laid down in writing to become effective.</p> <p>1.6. Any general terms and conditions other than these General Terms and Conditions shall only be applicable as far as the parties have expressly agreed to that effect in writing.</p> <p>1.7. Any transaction and the binding nature of an electronic exchange of contractual and service-related data shall be regulated in a separate written agreement.</p> <p><b>2. Quotations and service agreements</b></p> <p>2.1. Unless otherwise agreed, quotations shall remain effective for 60 days after they have been communicated by BLS Cargo AG.</p> <p>2.2. The basis for any services to be rendered by BLS Cargo AG shall be constituted by a written service agreement concluded with the customer (carriage agreement, etc.). This agreement contains key data required to perform the services.</p> <p>2.3. Unless otherwise agreed, service agreements shall run for a term of 12 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 months.</p> <p>2.4. Any amendments, supplements or extensions of a service agreement shall be laid down in writing</p> | <p>and shall only become effective after confirmation in writing by BLS Cargo AG.</p> <p>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 which substantially compromise the economic equilibrium of quotations, BLS Cargo shall be entitled to submit a written demand that quotations and agreements be adjusted.</p> <p><b>3. Carriage</b></p> <p>3.1. Unless otherwise agreed, the customer shall issue a consignment note in accordance with the template provided by 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 on time to BLS Cargo AG.</p> <p>3.2. A consignment note or wagon note shall be deemed to be a carriage order.</p> <p>3.3. The carriage agreement is deemed complete when the goods are delivered to the recipient at the agreed point of transfer and when the recipient takes possession of the goods. This is subject to any other arrangements made in the service agreement. If trains and/or wagons are not accepted by the sender or the recipient on time, BLS Cargo AG shall seek instructions from the sender and/or recipient. Any additional costs incurred by BLS Cargo AG shall be borne by the customer.</p> <p>3.4. BLS Cargo AG is entitled to withdraw trains and/or wagons from service. If, due to faults attributable to the customer, trains and/or wagons have to be withdrawn from service and parked using third-party infrastructures, actual costs incurred will be passed on to the customer. BLS Cargo AG reserves the right to issue other claims for damages.</p> <p>3.5. 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 load securing methods designated for the loads.<br/>In particular, it is imperative that loads be correctly distributed and that the relevant axle load ratios be taken into account. The correct loading, unloading and transshipment of freight is governed by the UIC Loading Guidelines, the directions provided by the carrier, as well as national provisions issued by the UIC's specialist bodies. BLS Cargo AG is entitled to check that wagons and load units have been loaded in an operationally safe manner.</p> |
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3.6. If a customer fails to satisfy his obligations pursuant to Section 3.5 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.

3.7. Train schedules provided to the customer are not part of any delivery agreements, within the meaning of Article 16.1 of the CIM.

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

#### **4. Freight wagons**

4.1. The customer is required to ensure that the wagons it provides for carriage in accordance with Appendix G (ATFM) of the COTIF of a maintenance have been maintained by a duly certified Entity in Charge of Maintenance (ECM) and shall inform BLS Cargo AG of the ECM prior to the conclusion of the service agreement. The customer shall inform BLS Cargo without delay of any changes in ECM features.

4.2. The customer is required to ensure that the wagons it provides for carriage fully comply with all legal provisions covering all countries affected by the transport (and/or provisions regarding compliance with noise emission limits)

4.3. If the customer provides a wagon which has not been allocated an ECM or does not comply with one or more legal provisions, BLS Cargo AG is entitled not to carry this wagon and to charge any costs arising from this decision to the customer.

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

4.5. BLS Cargo will provide suitable wagons at the customer's request. The customer shall use the wagons provided by BLS Cargo carefully and professionally and solely for the purpose agreed under contract.

4.6. The customer must check all freight wagons - whether provided by itself or by BLS Cargo - prior to loading for their suitability for the intended purpose and for visible defects, and shall inform BLS Cargo AG immediately of any complaints.

4.7. The customer is liable for all damage to freight wagons caused by the customer or its vicarious agents while in its care, in particular during loading or unloading. Liability also includes all subsequent costs, such as the transfer to a workshop, repairs or expert reports. The customer must immediately report damage and/or accidents while in its care to BLS Cargo AG and secure and provide suitable evidence/documentation.

4.8. If wagons provided by BLS Cargo AG are withheld from service in whole or in part due to faults of the customer or its vicarious agents (e.g.

due to damage, incorrect loading or delays in the course of operations), the customer shall not be entitled to a reduction in the transport price.

4.9. After use, the customer is responsible for ensuring that the wagons provided by BLS Cargo AG are returned ready for use and cleaned at the agreed place of delivery at the agreed time. In the event of non-performance, BLS Cargo AG shall invoice the customer for the expenses actually incurred and documented. Any further claims for damages remain unaffected by this.

#### **5. Liability**

5.1. The liability of BLS Cargo AG shall be excluded as far as legally permissible. Any indemnification claims beyond these limits shall be excluded. 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. In case of transport restrictions, for example through force majeure, infrastructural disruptions or public authority orders, the provision of services, in particular carriage, may be discontinued in whole or in part. BLS Cargo AG shall not be liable in any way whatsoever for any resulting damage.

5.3. 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 information in the carriage agreement or in customs forms.

5.4. Customers shall be liable for any damage they cause to wagons, load units and loading equipment. It shall also be liable for all damage and resulting additional costs incurred by BLS Cargo AG as a result of a defect in a wagon provided by the customer and shall indemnify BLS Cargo AG in full for damage to third parties.

5.5. Customers shall be liable for mistakes and omissions made by their ancillary staff in the same way as they are for those made by their own staff.

5.6. Customers shall notify BLS Cargo AG of any impairment of service, particularly of any loss or damage, with immediate effect and shall 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 lodged within thirty days after the provision of the service.

5.7. If a customer fails to satisfy any obligations incumbent upon it, it 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 (in particular RID).

6.2. BLS Cargo AG shall only accept and deliver dangerous goods if there is a written agreement with the sender/addressee that it 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. Within their share of the liability, customers shall 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 its duty of care.
- 6.5. BLS Cargo AG has the right to exclude certain categories of dangerous goods from transport. Details of this are regulated in the service agreement.
- 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 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 automatically in arrears, without receiving a reminder from BLS Cargo AG. Interest on arrears shall be charged at a rate of 6% per annum. In addition, customers shall 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 a security deposit.
- 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 solely liable And shall hold BLS Cargo AG harmless.
- 8.2. If BLS Cargo AG is contractually responsible for customs clearance, the customer shall pay BLS Cargo AG compensation for these services and for any delays for which BLS Cargo AG is not responsible.
- 8.3. The customer is responsible for complying with all regulations for goods that are subject to special restrictions or approval procedures in any one of the countries affected by the transport. In particular, this includes trade control obligations, security requirements and other customs or administrative regulations, such as waste, goods control, embargo and war material legislation. BLS Cargo AG is not obliged to check the content of consignments with regard to compliance with these regulations. The customer shall hold BLS Cargo AG harmless in the event of infringements.
- 9. Applicable law, legal venue**
- 9.1. Contractual relations between customers and BLS Cargo AG shall be governed by Swiss law and mandatory international legal provisions.
- 9.2. For any disputes arising from contractual relations, Berne, Switzerland, shall be the exclusive place of jurisdiction.
- 10. Confidentiality**
- 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, in particular 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.
- 11. Amendments**
- BLS Cargo AG reserves the right to amend these General Terms and Conditions at any time. In such a case, the customer has the right to raise objections. If the customer does not exercise this right within 30 days of being notified of the amendment, the changes shall be deemed accepted.