

Rail Operations (UK) Limited
General Terms and Conditions of Sale (“GTCS”) – [ROUK/GTC/24/11/2022]

1. Applicability

1.1 Any Movement undertaken by the Supplier pursuant to an Authorisation is subject to these General Terms and Conditions of Sale which shall take precedence over any general terms and conditions or provisions of other documents of the Customer and shall apply in so far as they are not precluded by any statutory provision or derogated from by any specific condition in the Movement Agreement or order signed between the parties.

Any clauses to the contrary, whether printed on the commercial documents of the Customer or otherwise referred or purported to be incorporated, shall not be binding on the Supplier.

Amendments to and derogations from these GTCS shall apply only if agreed in writing between the Parties and shall be valid only for the Movement or order concerned. Such amendment shall not establish a precedence or course of dealings in respect of future contracts.

1.2 Defined Terms

Term	Definition
Authorisation	An instruction in writing (including without limitation an e-mail) issued by or on behalf of the Customer, or other agreed form requesting that the Supplier carry out a Movement. Where the Customer seeks to make a verbal Authorisation, the Supplier may (at its sole discretion) either decline such an Authorisation, or accept it by confirming it in writing to the Customer.
CAHA	The railway industry Claims Allocation and Handling Agreement made 01 March 2019 or as subsequently amended, governing the handling of claims by third parties in respect of injuries or damage caused by the railway industry.
Customer	The entity named in the Movement Agreement
Goods	The Goods consigned to be carried as set out in the Movement Agreement
Movement	Depending upon the nature of the services set out in the relevant Movement Agreement, the movement of Customer-provided Rolling Stock between agreed locations, or the carriage of consigned Goods.
Movement Agreement	The document embodying the specification and contractual details of a Movement or series of Movements
Planned Movement	A Movement which has been (i) the subject of an Authorisation (ii) notified by the Customer and (iii) scheduled in accordance with the Supplier's weekly scheduling process.
Railway Costs	Additional charges under Network Rail's Trust Delay Attribution process.
Representative	The authorised individual identified in the Movement Agreement

Rescheduled Movement	A Movement necessitated by the cancellation, failure or abandonment of a Planned Movement and which may result in additional cost.
Rolling Stock	A "Unit" or "Units", "Coaching Stock", "Locomotives", "Wagons" and/or any other "Vehicle" or "Vehicles" all as more particularly set out in a Movement Agreement.
Supplier	The Rail Operations (UK) Limited company identified in the relevant Movement Agreement.

2. Services to be Performed by the Supplier

- 2.1 All services are to be performed by the Supplier in accordance with the terms of the relevant Movement Agreement.
- 2.2 In providing the Movements, the Supplier accepts that the Customer is relying on the advice given by the Supplier in connection with the provision of the Movements.
- 2.3 Further, in providing the Movements the Supplier shall:
 - a. co-operate with the Customer in all matters relating to the Movements, and comply wherever possible (and subject to agreement of a variation where necessary) with the reasonable instructions of the Customer;
 - b. perform the Movements with the level of reasonable care and skill to be expected in the Supplier's industry;
 - c. comply with all applicable statutory and regulatory requirements, standards or practises relating to the Movements;
 - d. use personnel who are suitably skilled, experienced and qualified to perform tasks assigned to them to ensure that the Supplier's obligations are fulfilled in accordance with the Movement Agreement;
 - e. provide all equipment, tools and vehicles and such other items as are agreed and relevant to the provision of the Movement(s) as set out in the Movement Agreement.
 - f. obtain and maintain (or enter into contracts to obtain the benefit of) all licences and consents necessary to carry out the Movements, and comply with all applicable standards;
 - g. inform itself of and observe all health and safety legislation, rules and regulations relevant to the performance of the Movements;
 - h. notify the Customer as soon as the Supplier becomes aware of any health, safety or environmental hazards or issues which might or do arise in relation to the performance of the Movements;
 - i. ensure that all the Supplier's employees, sub-contractors and other persons engaged by it in relation to the Movement Agreement have all necessary and up to date competency certification and medical certification and receive safety and skills training in accordance with the requirements of the Movement Agreement.

3. Variation

- 3.1 No changes to a Movement Agreement shall be valid unless it is agreed in writing between the parties respective Representatives.
- 3.2 The Supplier shall not be obliged to provide any additional services or requirements requested by or on behalf of the Customer, and if it agrees to do so the parties shall agree specific details of the variation as well as the impact on price and programme in writing prior to such variation being effective.

- 3.3 The Supplier is under no obligation to comply with a verbal request or verbal amendment to these Conditions or a Movement Agreement
- 3.4 The Supplier reserves the right to cancel the agreed service at any time. In that event, the Supplier shall make every effort to re-arrange the service for a later date as soon as possible. The Supplier shall not be liable for any compensation for cancellation of the service.

4. Terms of Payment

- 4.1 Unless agreed otherwise, settlement shall be within 30 days of the invoice date, shall be in pounds sterling. Prices shall be exclusive of VAT, which shall be at the prevailing rate in force on the applicable invoice.
- 4.2 In the event of failure to pay an invoice by the due date, all current bills and invoices shall fall due for payment immediately to the Supplier and without prior formal notice. In addition, in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 the Customer shall be liable, without prior formal notice, for:
 - a. interest on all amounts in arrears calculated at 8 percentage points per annum above the statutory interest rate published by the Bank of England, and
 - b. administration fees as follows:

Invoice Amount	Administration Fee
Up to £999.99	£40 per invoice
£1,000 - £9,999.99	£70 per invoice
Over £10,000.00	£100 per invoice

- 4.3 For the avoidance of doubt, an invoice shall be considered due for payment in accordance with 4.2 notwithstanding that the invoice has been rejected or delayed as a result of a failure by the Customer to complete any administrative step required by its own internal governance, including without limitation the issue of a PO number. If no such document is issued, the Customer warrants and represents that a PO number is not required for the purposes of remitting fees due by the customer hereunder.
- 4.4 All invoices shall be paid without set-off, deduction or counterclaim in respect of sum claimed by or payable to the Customer for whatever purpose.

5. Liability and Compliance

5.1. Third Party Liability

Each Party shall be liable for any loss or damage which it or its servants might cause to third parties through their fault or negligence in the performance of the Movement Agreement.

5.2. Liability Between the Parties

Subject to the limitations and exclusions set out herein and in the relevant Movement Agreement:

- (a) Each Party shall be liable for direct damage, personal injury and/or property damage, which it, its servants or its sub-contractors cause to the other Party through their fault or negligence in the performance of the Movement Agreement.

- (b) The liability of the Supplier for any breach default or failure shall be limited to the price of the relevant Movement.
- (c) In the event of damage being caused:
 - (i) to the Rolling Stock whilst they are in the Supplier's custody and control as a result of any act or omission of an infrastructure owner or third party, the Supplier shall offer all reasonable assistance to the Customer, the owner of the Vehicle and their respective insurers to facilitate the submission of claims to the liable party. Such assistance shall include the provision of information and the relaying of claims and associated correspondence, but the Supplier shall have no obligation to advise upon or prepare any claim. For the avoidance of doubt, the Supplier shall have no liability for any under-recovery or failure to recover any amount from such infrastructure owner or third party.
 - (ii) to Goods while they are consigned to the Supplier, the Supplier's liability shall be governed by the relevant Movement Agreement.
- (d) The liability of the Supplier for property damage caused by its negligence shall be limited:
 - (i) in respect of Rolling Stock and existing property of the Customer (excluding consigned Goods) to £10 million (pounds sterling) per claim.
 - (ii) in respect of consigned Goods, the value as set out in the relevant Movement Agreement.

Except within the above limits, each Party shall waive any recourse against the other Party and its insurers, save in cases of fraud, gross negligence or wilful misconduct, and shall undertake to obtain equivalent commitments from its insurers.

- (e) The Customer warrants that it is authorised to enter into this commitment and accept these limitations on behalf of the owner or any other third party with a proprietary interest in the Rolling Stock or Goods

5.3 Liability for Delay

- (a) Unless agreed otherwise, the delivery and performance timescales shall be indicative. The Supplier shall have no liability in the event of late completion of a Movement or other failure to adhere to any estimated.
- (b) No liquidated damage may be charged to the Supplier if it has not been agreed in advance and set out expressly in the relevant Movement Agreement. Any liquidated damages agreed by the Supplier shall represent full discharge and final compensation for any loss or damage suffered by the Customer.
- (c) The Customer acknowledges that the Supplier may be subject to additional charges ("Railway Costs") under Network Rail's Trust Delay Attribution process where a Movement results in delay to or cancellation of a service operated by a third party. Where such Railway Costs are caused or contributed to by the Customer, their supplier or agent or matters within the Customer's control, the Customer shall reimburse the Railway Costs to the Supplier.
- (d) For the avoidance of doubt, compliance with the directions of Network Rail, or the occurrence of unplanned diversion due to incident en-route shall not be regarded as matters within the Customer's control.

5.4 Compliance

The parties shall comply with their obligations at law, including without limitation all applicable anti-bribery, anti-slavery, taxation and data protection legislation and regulation. The Supplier shall not be liable for Rolling Stock or Goods where there has been a fraud on the part of the Customer, its servants, agents or contractors.

5.5 **Consequential Loss**

Notwithstanding anything express or implied to the contrary, the Supplier shall in no circumstances be liable for any consequential or indirect loss, which without limitation to the generality of the foregoing shall be defined to include any loss of profit, loss of contracts, loss of savings, or loss of revenue.

5.6 Nothing in these conditions or a Movement Agreement shall be construed to exclude or limit any liability for death or personal injury caused by a party's negligence, any fraud, or any other matter in respect of which liability may not legally be excluded or limited.

5.7 The Customer shall indemnify and hold harmless the Supplier against:

- (a) All damage, losses, liabilities, expenses or costs of whatever nature suffered by or claimed against the Supplier as a result or consequence of an error, omission, misrepresentation or breach by or on behalf of the Customer (which without limitation to the generality of the foregoing shall include any damage or loss to the Goods or Rolling Stock, any defect in labelling or packaging, or any fraud) or
- (b) All damage, losses, liabilities, expenses or costs of whatever nature irrespective of actual or alleged defect, default, failure or other culpability by or on the part of the Supplier, to the extent that such damage, losses, liabilities, expenses or costs exceed the Supplier's limitations of liability in these conditions or the relevant Movement Agreement.

6. **Insurance**

Subject to the limitations and exclusions set out herein and in the relevant Movement Agreement:

6.1. **Public liability insurance**

Each Party shall undertake to take out with a reputable company and to keep up to date a policy of insurance to protect against any liabilities it incurs in the performance of the Movement Agreement, including without limitation any liabilities arising under paragraph 5.1 above. In particular, each Party shall insure against loss or damage which it causes to the Goods and/or railway Rolling Stock which is the subject matter of the Agreement.

6.2. **Property damage insurance**

Each Party shall take out with a reputable company and keep up to date throughout the duration of the Movement Agreement an insurance policy for damage to its own moveable and immovable property to cover it against risks of fire, explosion, water damage, natural disaster, attack, terrorism and other associated risks unrelated to the performance of the services by the Parties. In respect of those risks not ascribable to one of the Parties, the insurance shall include a waiver of recourse against the Party and its insurers.

In the event of damage to the existing property of the Customer through fault or negligence on the part of the Supplier, the liability of the Supplier shall be limited in accordance with clause 5 above.

6.3 The Customer declares that it or the keepers have insured the Vehicles or Goods against the risks of fire, explosion, lightning, natural disaster, attack and other associated risks and waives any recourse against the Supplier and its insurers for risks not ascribable to the Supplier.

6.4 **Insurance Claims**

- (a) The Customer shall advise the Supplier in writing as soon as possible, and in any event within seven (7) days of completion of the relevant Movement of any loss or damage to the Rolling Stock or Goods or any other matter which might result in an insurance claim.
- (b) The Customer shall further comply with any notification or co-operation requirements set out in the insurance provisions of the relevant Movement Agreement
- (c) Notwithstanding 6.4(a) and (b) the Customer shall notify the Supplier as soon as possible of an insurance claim being made by it or a third party.

6.5 The Customer acknowledges that failure to comply with 6.4 above may prejudice the Supplier's ability to defend, manage or mitigate any claim, and may therefore prejudice the Customer's ability to recover any damages from the Supplier.

6.6 Claims Allocation and Handling Agreement (CAHA)

Without prejudice, and in addition, to any rights and remedies of the Supplier, the Customer shall indemnify the Supplier against all losses, claims, liability, costs and expenses which are borne by the Supplier under CAHA and which arise out of either a breach of contract by the Customer or a breach of duty of care owed to a third party which is the subject of a claim under the Claims Allocation and Handling Agreement.

7. Confidentiality

- 7.1 Each Party undertakes not to disclose the confidential information furnished by the other Party and identified as such, during either the negotiation phase or the performance of the Movement Agreement, whilst the information is not in the public domain.
- 7.2 The Movement Agreement and the annexes thereto shall also be confidential, unless an authority requests their disclosure for fiscal or legal purposes, in which case the Party concerned must (save where it is prevented by law from doing so) notify the other Party promptly.
- 7.3 Each Party shall take the necessary steps to ensure compliance with those obligations by its representatives and servants.

8. Force Majeure

- 8.1 Neither party shall be liable to the other for a failure to perform its obligations in the event of an occurrence attributable to force majeure. The Party that is unable to fulfil its obligations shall notify the other Party as soon as possible and make every effort to provide an estimate of the duration of its inability.
- 8.2 Unforeseeable and unavoidable events such as natural disasters (e.g. flood, fire), riot, war, epidemic or any other circumstances outside the direct control of one of the Parties, as well as the similar circumstances listed below, shall constitute force majeure:
 - (i) no vehicles able to travel on all or part of the planned route due to works, maintenance or incidents not known of before the departure of each train or known of within a period incompatible with the order from the Customer;
 - (ii) strikes by rail companies, infrastructure operators or personnel of a Party and/or sites served that affect one of the Parties;
 - (iii) rail traffic problems not ascribable to one of the Parties and/or its sub-contractors.
- 8.3 In the event of force majeure, each Party shall make reasonable endeavours to fulfil its obligations to the other Party.

8.4 This clause shall not apply to either Railway Costs arising under an access agreement or to claims arising under CAHA save (in either case) where such obligation is also relieved by a force majeure or equivalent provision thereunder.

9. Assignment

9.1 Save as provided below, neither Party may transfer or assign its rights and obligations under the Movement Agreement, either in part or in full, with or without consideration, in any form, without the prior written agreement of the other Party, such agreement not to be unreasonably withheld.

9.2 The Supplier may transfer, assign or hand over a Movement Agreement or order to a company within its group, and is expressly authorised to sub-contract all or part of its services to any appropriately skilled and licenced subcontractor so long as it remains responsible for the performance of the whole of its obligations.

10. Notices

In order to be valid, any notification or formal notice is to be sent by registered post with acknowledgment of receipt to the address indicated in the Movement Agreement or order, or, failing that, to the registered office of each Party.

11. Entire Agreement and Exclusive Remedies

11.1 The Movement Agreement, these conditions, and the documents referred to herein it constitute the entire agreement and understanding of the parties and supersede any previous agreement between the parties relating to the subject matter.

11.2 The rights and remedies of the Customer, and the liabilities of the Supplier as set out herein shall be the sole and exclusive rights, remedies and liabilities and shall apply to the exclusion of any other rights, remedies or liabilities that might be available at law, custom and practice or otherwise, whether express or implied.

12. Termination

Should one of the Parties fail to fulfil its obligations in part or in full, the other Party may send it a written formal notice, subject to the defaulting Party being given no less than 28 days opportunity to fulfil its obligations. If it fails to comply with the formal notice, the notifying Party reserves the right to terminate the Movement Agreement or order without compensation (subject to the respective rights of the parties accrued prior to such termination).

13. Dispute Resolution

In the event of a dispute or difference arising between the parties which cannot be resolved at a working level, the matter will be escalated to the senior management or directors of the parties. If they are unable to achieve a resolution the matter may be referred to mediation or another method of alternative dispute resolution. Notwithstanding the foregoing, neither party shall be prevented from referring a dispute to the courts.

14. Law Applicable and Jurisdiction

The law applicable shall be English law, and the parties submit to the exclusive jurisdiction to the courts of England and Wales.