



Terms of use for service facilities

General part

(ToU-GP)

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List of abbreviations

Para.	Paragraph
resp.	respectively
RIU	Railway Infrastructure Undertaking
RU	Railway Undertaking
ff.	following
ToU-GP	Terms of Use for Service Facilities - General Part
ToU-SP	Terms of Use for Service Facilities - Special Part
No.	Number
RID	Regulations concerning the International Carriage of Dangerous Goods by Rail
DIR	Directive
etc.	and so on
e. g.	for example



1. Purpose and scope

1.1 The terms and conditions of use for service facilities guarantee the following vis-à-vis everyone

Authorised users uniformly

- the non-discriminatory use of service facilities **and**
- the non-discriminatory provision of the services offered.

They contain the information required under Article 4 of Implementing Regulation (EU) 2017/2177 on access to service facilities and rail-related services of 22 November 2017.

1.2 The terms of use for service facilities apply to the entire business relationship between "**CargoBeamer Servizi Terminalistici Italia s.r.l.**" as the railway infrastructure company (**EIU**) and all contractual partners as authorised users, which results from the use of the service facilities and the provision of the services offered.

The general terms and conditions of the authorised user do not apply.

1.3 The terms of use for service facilities are divided into a general section (NBS-AT) and a company-specific special section (TOU-SP).

1.4 **Regulations supplementing the NBS-AT and any regulations deviating from the NBS-AT are set out in the TOU-SP. Regulations in the TOU-SP take precedence over the regulations in the NBS-AT.**

1.5 Contractual agreements between authorised parties and the RUs commissioned by them have no influence on the contractual agreements between the authorised parties and the RUs.

1.6 The provisions concerning authorised users and RUs also apply mutatis mutandis to vehicle keepers.

1.7 The NBS and its amendments are published on the CargoBeamer website at <https://www.cargobeamer.com/technology/domodossola>.

2. General admission requirements

2.1. Authorisation

2.1.1 When concluding the first agreement in accordance with Article 28 of Directive 2012/34/EU each year, the RU shall provide evidence by submitting the original or a certified copy that it is in possession of one of the following official authorisations:

- a company authorisation in accordance with Art. 17 (1), (3) of Directive 2012/34/EU and the respective national transposition law ;
- a licence issued under the law of another Member State of the European Union or a contracting state of the Agreement of 2 May 1992 on the European Economic Area Economic Area for the provision of railway transport services in accordance with railway transport services in accordance with Article 17 (4) of Directive 2012/34/EU.



Annual verification in accordance with sentence 1 is not required as long as the RU maintains a permanent business relationship with the RIU on the basis of a contractual arrangement.

The RU may also furnish proof in accordance with sentence 1 by submitting the original or a certified copy.

- a standardised safety certificate within the meaning of Art. 10 of Directive 2016/798/EU and of the respective national transposition law.

2.1.2 When concluding the first agreement in accordance with Art. 28 of Directive 2012/34/EU, the vehicle keeper shall prove annually by submitting the original or a certified copy that he is in possession of a company authorisation in accordance with Directive 2012/34/EU or of the national transposition law for independent participation in railway operations as a vehicle keeper.

Annual proof in accordance with sentence 1 is not required as long as the vehicle owner maintains a permanent business relationship with the EIU on the basis of a contractual arrangement.

The vehicle owner may also provide proof in accordance with sentence 1 by submitting the original or a certified copy

- a safety certificate or - an additional national certificate.

2.1.3 In the case of a business licence issued by a foreign authority, the EIU requires the submission of a certified translation into Italian and German.

2.1.4 The RU shall notify the RIU immediately in writing of the revocation and any change to the company licence, the safety certificate or the additional national certificate.

2.1.5 Information regarding the application for business licences in Italy pursuant to Art. 7-9 D.lgs. No. 112/2015 as well as safety certificates and national certificates pursuant to Art. 9 D.lgs. No. 50/2019 are provided by the Ministry of Transport and Traffic on its website (<https://www.mit.gov.it/normativa/circolare-del-14-giugno-2022-n-4159-linee-guida-materia-di-licenze-ferroviarie>) and the National Agency for Railway, Road and Motorway Infrastructure Safety (*Agenzia Nazionale per la Sicurezza ferroviaria e delle infrastrutture stradali e autostradali*) on its website (www.ansfisa.gov.it).

2.2. Liability insurance

2.2.1 When concluding the first agreement in accordance with Article 28 of Directive 2012/34/EU in conjunction with the national transposition law, the RU shall provide evidence of the existence of liability insurance in accordance with Article 22 of Directive 2012/34/EU and the national transposition law.

2.2.2 Annual verification in accordance with point 2.2.1 is not required as long as the RU maintains a permanent business relationship with the RIU on the basis of a contractual arrangement.

2.2.3 The RU shall notify the RU immediately in writing of any changes to the existing insurance relationship.

2.3. Staff requirements, local knowledge

2.3.1 The operating personnel employed by the RU must fulfil the requirements of the construction and operating regulations applicable to the respective service facility and have



a written and spoken command of Italian to the extent required for their respective activities.

2.3.2 Anyone driving a railway vehicle requires the necessary licence.

2.3.3 The RIU shall provide the RU's personnel with the necessary local knowledge and information prior to their deployment. With the RU's consent, it may use the services of a vicarious agent. The RU shall charge all RUs the same fee for providing local knowledge if it has made provisions to this effect in the special section of its terms of use. After the initial provision of local knowledge, the RU may also provide its staff with the necessary local knowledge itself.

2.4. Requirements for the vehicles

2.4.1 The design, equipment and maintenance of the vehicles used must comply with the provisions of the construction and operating regulations applicable to the respective service facility and must be approved by the competent authority or have a commissioning authorisation. This may be deviated from in the case of the intended use of maintenance facilities and other technical equipment as well as for test and trial runs if the safe operation of the vehicle is guaranteed in another way.

2.4.2 The equipment of the vehicles used must be compatible with the technical and operational standards described in the Special Section of the Terms of Use as well as with the control, safety and communication systems of the railway lines used.

2.4.3 At the request of the RU, the RU shall confirm the fulfilment of the requirements set out in sections 2.4.1 and 2.4.2.

2.5. Security deposit

2.5.1 The RIU shall make the use of the railway infrastructure dependent on the provision of appropriate security if there are doubts about the ability of the authorised user to pay. This does not apply to "applicants" within the meaning of Article 3(19) of Directive 2012/34/EU.

2.5.2 There are doubts about the authorised user's ability to pay

- if payment is more than one month in arrears with a full invoice amount or with a full monthly payment, and
- in the event of payment arrears amounting to an average total monthly fee payable in the past three months.

There are also doubts about the authorised user's ability to pay if

- the expected fee to be paid exceeds the credit line that a credit agency considers acceptable for the authorised user or the credit rating of a credit agency otherwise suggests that the user may have difficulties with future payments,
- an application for the opening of insolvency proceedings against its assets has been filed,
- he has applied for legal aid or
- he cannot be contacted at the address he has provided for more than two weeks.

2.5.3 A security deposit in the amount of the total remuneration to be paid in one month (security period) for services already agreed or utilised based on experience is appropriate. The following applies:



- Security shall be provided in the amount of the total fee to be paid for the remainder of the current month. Subsequently, security shall be provided in the amount of the total fee to be paid for the following month.
- If further services are agreed for a security period for which security has already been provided, additional security must be provided for the fee to be paid for these services.

2.5.4 The security may be provided by deposit or pledge or by bank guarantee (directly enforceable, on first demand and waiving the defence of failure to pursue remedies). The guarantee of a bank that has been given a non-investment grade by a rating agency will not be accepted.

2.5.5 The EIU shall assert the request for a security deposit in text form. The following applies to the due date of the security deposit:

- If remuneration is to be secured for the remainder of the current month, the security deposit must be provided within five bank working days of receipt of the request for security, but in any case before performance begins.
- If remuneration is to be secured for a subsequent month, the security deposit must be provided no later than two working days before the start of the following month.
- If payment is to be secured for further services falling within a security period for which security has already been provided, the security for these services must be provided no later than two working days before the start of the service. If this is no longer possible in good time due to services agreed at short notice, the security deposit must in any case be provided before the start of the service.
- If the EIU is unable to establish that the security has been provided on time, it shall be entitled to refuse performance without further notice until the security has been demonstrably provided.
- The authorised user can avert the provision of security by paying the fee in advance.

3. Use of the railway infrastructure

3.1. General

3.1.1 The use of railway infrastructure is only permitted within the scope of and in accordance with the contractual agreements.

3.1.2 In addition to the statutory provisions, the provisions of the EIU contained in the General and Special Sections of the Terms of Use shall apply to the use of the railway infrastructure.

3.1.3 The RU shall provide the RU with all other information required to use the service facility. The RU may reproduce the information provided, provided that the copyrights of third parties are not infringed.

3.1.4 The actual use of the railway infrastructure is governed by the operating instructions issued verbally by the RIU on the basis of the contractual agreements or by the documentation provided to the RU.

3.2. Applications for the use of service facilities

3.2.1 The formal and content-related requirements for applications for the use of service facilities are based on the specifications contained in the Special Section of the Terms of Use.



3.2.2 If an application is incomplete or otherwise deficient, the EIU shall request missing or corrected information without delay.

3.3. Principles of the coordination procedure and decision-making process

3.3.1 If there are applications for simultaneous, incompatible uses, the EIU shall proceed in accordance with Articles 10 to 12 of Regulation (EU) 2017/2177 with the aim of finding a mutually acceptable solution. The same procedure shall apply if an application conflicts with capacities that have already been allocated.

- The EIU shall enter into negotiations with all authorised parties affected by a conflict at the same time and, if available, point out a viable alternative. All affected parties are to be involved in the negotiations with the same level of information.
- In justified exceptional cases, the EIU may, in deviation from point 3.3.1.1, offer individual authorised parties affected by a conflict uses that deviate from the requested uses. The reason for the exception must be communicated to the authorised user concerned in text form. The EIU must enter into negotiations with all authorised parties affected by a conflict if bilateral negotiations have not been successful.
- If no agreement can be reached, a decision will be made on the basis of the prioritisation criteria defined by the operator of the service facility (see Article 11 of the ORP). The criteria can be found in the Special Section of the Terms of Use.
- If the request of an authorised user cannot be granted, the operator of the service facility and this authorised user shall jointly examine whether viable alternatives exist (cf. Art. 11 of the ORP).
- An authorised party whose request is to be rejected in whole or in part may lodge a complaint with the regulatory authority after receiving the rejection (Art. 13 Para. 1 and Para. 3 in conjunction with Art. 14 of the Implementing Regulation in conjunction with Art. 13 Para. 5 of Directive 2012/34/ EU).

4. User fee

4.1. Assessment basis

The basis for calculating the charge for the use of the service facility and the provision of services are the EIU's charging principles and charges. The charging principles are set out in the TOU-SP. The charges are set out in the list of charges attached to the NSS.

4.2. Payment method

The authorised user must transfer the fee to be paid at his own expense to an account to be specified by the EIU within one week of receipt of the invoice. The EIU may provide for regulations on instalment payments for services already provided in the special section of its terms of use.

4.3. Offsetting authorisation

The contracting parties may only offset against claims of the other contracting party if these claims are undisputed or have been recognised by declaratory judgement.



5. Rights and obligations of the contracting parties

5.1. Principles

- 5.1.1 The contracting parties undertake to cooperate in a spirit of trust, taking into account the special features of the use of the railway infrastructure and minimising any negative impact on the other contracting party.
- 5.1.2. In order to ensure safety and efficiency in the use of the railway infrastructure, the contracting parties shall provide each other with all necessary information without delay. This applies in particular with regard to dangerous events.
- 5.1.3 The contracting parties shall designate in the contract one or more person(s) or body(ies) authorised and able to make operational decisions on their behalf within the shortest possible time.

5.2. Information on the agreed uses

- 5.2.1 The RIU shall ensure that the contractual partner is informed immediately of at least the following circumstances:
- Condition of the railway infrastructure used, in particular changes affecting the track infrastructure that may affect the RU's operations (e.g. construction work, temporary speed restrictions Construction work, temporary speed restrictions, signalling changes, changes to the technical or operational characteristics of the track)
 - irregularities during the use of the railway infrastructure, insofar as they may be of significance for further dispositions of the authorised may be of significance,
 - service restrictions (e.g. failure of handling equipment or passenger information systems),
 - Special features due to major events.
- 5.2.2 The RU shall ensure that the RIU is informed immediately of at least the following circumstances:
- composition of the train (e.g. length, train mass, changes compared to the the utilisation applied for),
 - any special features (e.g. transport of dangerous goods in accordance with D.lgs. No. 35/2010- RID and their position in the train formation, loading gauge overruns),
 - Irregularities during the use of the railway infrastructure, in particular delay-related factors (e.g. limited braking braking capacity, failure of traction units),
 - Special features due to major events.

5.3. Disruptions in operational processing

- 5.3.1 The RIU and RU shall inform each other immediately of any special incidents, in particular deviations from the agreed utilisation and other irregularities (disruptions to operations). The RU shall inform the RU immediately of any operational effects on its utilisation options.
- 5.3.2 The contracting parties undertake to eliminate disruptions. The disruption shall be rectified immediately, unless immediate rectification is unreasonable.



- 5.3.3 To rectify the disruption, the RU shall apply the regulations that apply to it for operational traffic management in the event of disruption. These regulations are binding on the RU as part of the terms of use.
- 5.3.4 To remedy the disruption, the RIU may in particular provide for the use of a railway infrastructure other than the agreed railway infrastructure within the service facility. In the event of disruptions, the RIU shall apply the principles of the coordination procedure in accordance with point 3.3 and the priority regulations provided for therein.
- 5.3.5 The RU must immediately remedy any disruptions to operations for which it is responsible (e.g. breakdown of railway vehicles). In particular, it must ensure that the service facility used is not utilised beyond the contractually agreed extent (e.g. due to broken-down trains). In any case, the RIU is also authorised at any time to remedy the disruption to operations at the expense of the party responsible (e.g. by towing away broken-down trains). To this end, authorised personnel of the RIU may - where possible after prior consultation with the persons or bodies designated in accordance with Section 5.1.3 - enter vehicles of the RU, ride in the driver's cabs of the vehicles free of charge and issue instructions to the RU's personnel. The RU's personnel must follow the instructions given.
- 5.3.6 The RIU must immediately rectify service restrictions and disruptions to operations that are attributable to its area of responsibility (e.g. failure of handling equipment, passenger information systems, control, safety and communication systems or points faults).

5.4. Right of inspection and access, authority to issue instructions

The RIU has the right to inspect its premises at any time to ensure that the RU is fulfilling its contractual obligations. To the extent necessary to ensure safe and proper operation, authorised personnel of the RU may enter the RU's vehicles and issue instructions to the RU's personnel. The RU's personnel must follow the instructions.

5.5. Ride in the driver's cab

- 5.5.1 The RIU or its authorised personnel may ride in the driver's cabs of the RU's vehicles in order to check that the railway infrastructure is in good condition, subject to prior agreement with the persons or bodies designated in accordance with point 5.1.3.
- 5.5.2 The journey is free of charge unless the RU expressly requests an appropriate charge.

5.6. Changes to the railway infrastructure

The RIU is authorised to modify the railway infrastructure and the technical and operational standards for the use of the railway infrastructure, taking due account of the interests of the authorised parties. It shall inform the authorised parties of any planned changes without delay. Existing contractual obligations remain unaffected.

5.7. Maintenance and construction measures

- 5.7.1 The RU may carry out maintenance and construction work at any time. It shall carry out maintenance and construction work within the bounds of what is economically reasonable in such a way as to minimise any negative impact on the RU's operations.
- 5.7.2 The EIU shall provide information on restrictions on use due to maintenance and construction measures without delay. This shall not apply in the case of ad hoc measures that are only associated with short-term or otherwise minor restrictions on use. The information channel is set out in the Special Section of the Terms of Use.



5.7.3 Item 6.5 applies to deviations from the agreed utilisation due to maintenance and construction measures.

6. Liability

6.1. Principle

6.1.1 Each contracting party shall be liable in accordance with the statutory provisions, unless the Terms of Use (AT/BT) contain provisions to the contrary.

6.1.2 The contracting parties shall only be liable to each other for indirect damage in the event of injury to life, limb or health and in the event of gross negligence. In the event of simple negligence, the contracting parties shall only be liable to each other for indirect damages in the event of a breach of material contractual obligations and only for typically foreseeable damages. Essential contractual obligations are obligations whose fulfilment is essential for the proper execution of the contract and on whose compliance the contractual partner may regularly rely. Otherwise, there is no liability for indirect damages.

6.1.3 In the relationship between the RU and the RU, compensation for own damage to property is excluded. This shall not apply if the property damage of a party involved exceeds the amount of 1,000 euros; nor shall it apply if a party involved is guilty of wilful intent or gross negligence or if, in addition to the parties' own property damage, property damage to third parties or personal injury is to be compensated.

6.2. Contributory negligence

If the damage was caused by the fault of the injured party, the obligation to pay compensation and the amount of compensation to be paid shall depend on the circumstances, in particular on the extent to which the damage was primarily caused by one party or the other.

6.3 Liability of employees

The liability of employees shall not exceed the liability of the contracting parties. The personal liability of employees towards third parties shall remain unaffected. Recourse to employees of the respective liable contracting party is only possible for that party itself on the basis of its internal principles.

6.4. Distribution of liability if the party responsible for the damage is unknown

If it is not possible to determine who caused damage to the RU or to third parties, both contracting parties shall be equally liable. If other RUs use or have used the railway infrastructure concerned, the following rule applies:

- If a railway undertaking proves that it obviously could not have contributed to the damage, it is exempt from liability.
- In all other respects, the damage is initially divided equally among the total number of remaining participants.
- The share attributable to the RUs as a whole shall then be divided among them in the ratio resulting from the extent of actual use of the railway infrastructure in the last three months before the damage occurred.



6.5. Deviations from the agreed utilisation

Deviations from the agreed use, which could not be avoided even when exercising the care required in traffic, are within the scope of the general operating risk and are at the expense and risk of the contracting party affected in each individual case, unless otherwise agreed between the parties on the basis of specific provisions in the special section of the Terms of Use or unless otherwise regulated within the framework of the incentive system Art. 35 Directive 2012/34/EU in conjunction with the respective transposition law. Liability for intent and gross negligence as well as statutory rights of reduction remain unaffected by this.

7. Dangers for the environment

7.1. Principle

The RU is obliged to refrain from environmentally hazardous activities. In particular, the handling of environmentally hazardous goods and substances and the refuelling of vehicles may only take place at suitable locations designated for this purpose.

7.2. Environmentally hazardous effects

If environmentally hazardous emissions occur in connection with the RU's operations or if substances hazardous to water are released into the ground from the equipment used by the RU or if there is a risk of explosion, fire or other hazards, the RU must notify the nearest manned operating centre of the RU without delay. This notification shall not affect the RU's responsibility to immediately initiate countermeasures and rescue measures (e.g. notification of the nearest police authority, fire brigade, etc.). If the hazardous situation pursuant to sentence 1 necessitates the evacuation of the RIU's operating facilities, the contracting party responsible shall bear the costs.

7.3. Soil contamination

In the event of soil contamination caused by the RU - even through no fault of its own - the RIU shall initiate the necessary remediation measures. The costs of remediation shall be borne by the RU that caused the contamination. If a polluter cannot be identified, liability shall be determined in accordance with Section 6.4.

7.4. Compensation obligation between EIU and RU

If the RIU is obliged to remedy environmental damage caused by the RU, even if it is not at fault, the RU shall bear the costs incurred by the RIU. If the RIU contributed to causing the damage, the obligation to pay compensation shall depend on the circumstances, in particular on the extent to which the damage was predominantly caused by one or the other. If it is not possible to determine who caused the damage, liability shall be determined in accordance with point 6.4.



Imprint

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