

NETWORK STATEMENT

FOR SERVICE FACILITIES

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Abbreviations

AEG	German General Railways Act
AT	General Part
BGB	German Civil Code
BOA	German Regulations on the Construction and Operation of Sidings
BT	Special Part
e. V.	Registered association
EBO	German Railway Construction and Operating Regulations
EBOA	German Regulations on the Construction and Operation of Railway Sidings
e.g.	for example
ERegG	German Railway Regulation Act
ESBO	German Narrow-Gauge Railway Construction and Operating Regulations
GGVSEB	German Ordinance on the Transport of Dangerous Goods by Road, Rail and Inland Waterways
H-NBS-BT	Notes on the Terms and Conditions of Use of the Service Facilities – Special Part
HPfIG	German Third-Party Liability Act
NBS-AT	Terms and Conditions of Use of the Service Facilities – General Part
NBS-BT	Terms and Conditions of Use of the Service Facilities – Special Part
No.	Number
RID	Regulations concerning the International Carriage of Dangerous Goods by Rail
RIU	Railway Infrastructure Undertaking
RU	Railway Undertaking
TEIV	German Trans-European Railway Interoperability Regulation
VDV	Association of German Transport Companies

1 Objective and Scope

- 1.1 The Terms and Conditions of Use of the Service Facilities ensure that all authorised access users enjoy
 - open access to the service facilities and
 - non-discriminatory provision of services offered.
- 1.2 The Terms and Conditions of Use of the Service Facilities apply to the entire business relationship between the RIU and authorised access users arising from the use of the service facilities and the provision of services offered.
- 1.3 The Terms and Conditions of Use of the Service Facilities consist of a General Part (NBS-AT) and an RIU-specific Special Part (NBS-BT).
- 1.4 The NBS-BT contain complementary provisions to or may contain deviating provisions from the NBS-AT. The provisions of the NBS-BT have priority over the provisions of the NBS-AT.
- 1.5 Contractual agreements between authorised access users and the RUs operating on their behalf do not have any effect on the contractual agreements between authorised access users and the RIU.
- 1.6 The provisions concerning authorised access users and RUs apply *mutatis mutandis* to holders of rail vehicles.
- 1.7 Only the German version of the Terms and Conditions of Use is binding. If the Terms and Conditions of Use are published in another official language of the European Union, this will be for the convenience of authorised access users only.

2 General Access Prerequisites

2.1 Authorisation

- 2.1.1 Each year RUs enter into an initial agreement as provided for in sections 20 and 21(1) 2nd sentence ERegG RUs must, at the time the initial agreement is concluded, submit the original or a certified copy of one of the following licences issued by a competent authority:

Railway undertaking licence [Unternehmensgenehmigung] for the provision of rail services as set forth in section 6(1) 1st sentence number 1 AEG. The licences for the provision of passenger and freight rail services granted in accordance with section 6(3) number 1 AEG in force until 2 September 2016 are deemed to be railway undertaking licences (section 38(3) AEG);

Railway undertaking licence for the provision of rail services as set forth in Article 17(4) Directive 2012/34/EU granted in accordance with the laws of another Member State of the European Community or a Member State that is a party to the Agreement on the European Economic Area of 2 May 1992.

Annual proof of the licence pursuant to the first sentence above is not required so long as RUs maintain a permanent relationship with the RIU, which has been contractually agreed upon.

Instead of a licence as provided for in the first sentence above RUs can also submit the original or a certified copy of a safety certificate as set forth in section 7a(1) 1st sentence AEG, or an additional national certificate pursuant to section 7a(4) 1st sentence AEG.

- 2.1.2 Each year holders of rail vehicles enter into an initial agreement as provided for in sections 20 and 21(1) 2nd sentence ERegG holders of rail vehicles must, at the time the initial agreement is concluded, submit the original or a certified copy of the railway undertaking licence as set forth in section 6(1) 1st sentence number 2 AEG to prove that they are authorised to participate directly in railway operations as holders of rail vehicles. The licences for the direct participation in railway operations as holders of rail vehicles granted in accordance with section 6(3) number 2 AEG in force until 2 September 2016 are deemed to be railway undertaking licences (section 38(3) AEG). Annual proof of the licence pursuant to the first sentence above is not required so long as holders of rail vehicles maintain a permanent relationship with the RIU, which has been contractually agreed upon. Instead of a licence as provided for in the first sentence above holders of rail vehicles can also submit the original or a certified copy of
- a safety certificate as set forth in section 7a(1) 1st sentence AEG, or
 - an additional national certificate pursuant to section 7a(4) 1st sentence AEG.
- 2.1.3 If the railway undertaking licence was issued by an authority abroad, the RIU requires holders to submit a certified translation of the licence into German.
- 2.1.4 RUs must notify the RIU promptly of any revocation of or amendment to the railway undertaking licence, the safety certificate or the additional national certificate.
- 2.1.5 Information on how to apply for railway undertaking licences pursuant to section 6 AEG as well as for safety certificates or additional national certificates pursuant to section 7a AEG is available on the website of the German Federal Railway Authority [Eisenbahn-Bundesamt] (www.eba.bund.de).

2.2 Third-party liability insurance

- 2.2.1 Each year RUs enter into an initial agreement as provided for in sections 20 and 21(1) 2nd sentence ERegG RUs must, at the time the initial agreement is concluded, provide proof that they have taken out third-party liability cover as set forth in section 14(1) AEG. In the event that the provisions of section 14a(1) 1st sentence number 1 letter a) AEG apply RUs must provide proof that the association [Haftpflichtschaden-ausgleich] exempted from insurance supervision as provided for in section 1(3) number 3 German Insurance Supervision Act [VAG] provides similar third-party liability cover.
- 2.2.2 Annual proof pursuant to sub-clause 2.2.1 hereof is not required so long as RUs maintain a permanent relationship with the RIU, which has been contractually agreed upon.
- 2.2.3 RUs must promptly notify the RIU of any changes to their existing insurance relationship.

2.3 Staff competence, knowledge of the place

- 2.3.1 The operating staff deployed by RUs must meet the requirements of the German Railway Construction and Operating Regulations (EBO/ESBO and/or BOA/EBOA) applicable to the respective service facility. They must be fluent in both spoken and written German to the extent their duties require it.
- 2.3.2 Any person operating a rail vehicle must be qualified and authorised to do so.
- 2.3.3 The RIU will make RU staff familiar with the local surroundings as required before they start working and provide the required information. With the consent of the RU the RIU may engage the services of a vicarious agent. The

RIU charges all RUs the same fee for making their staff familiar with the local surroundings as may be set out in the RIU'S Special Part of Terms and Conditions of Use. After the initial familiarisation training, RUs may directly instruct their staff as required.

2.4 Rail vehicle requirements

- 2.4.1 The design, equipment and maintenance of the rail vehicles deployed must meet the requirements laid down in the German Railway Construction and Operating Regulations (EBO/ESBO and/or BOA/EBOA) applicable to the respective service facility. They must either have been accepted by the authority in charge or authorisation for the placing in service of rail vehicles as provided for in section 6 et seq. TEIV has been granted. Exemptions are permissible if maintenance facilities and other technical facilities are planned to be used or for trial trips and test runs, provided it has been ensured that the rail vehicle is safe for operational use.
- 2.4.2 The equipment the rail vehicles used are fitted with must be compatible with the technical and operational standards outlined in the Special Part of the Terms and Conditions of Use as well as with the control, safety and communication systems of the tracks used.
- 2.4.3 On the request of the RIU RUs must confirm that the requirements set forth in sub-clauses 2.4.1 and 2.4.2 have been met.

2.5 Provision of security

- 2.5.1 The RIU requires the provision of reasonable security for the use of the rail infrastructure if there are doubts as to the solvency of authorised access users. This does not apply to authorised access users within the meaning of section 1(12) number 2 letters a) and c) ERegG.
- 2.5.2 Doubts as to the solvency of authorised access users arise if
- payment of the full invoice amount or payment in full of the monthly amount due has been delayed for more than one month; and
 - users are in arrears with payments amounting to the average total monthly amount due in the past three months. Doubts as to the solvency of authorised access users also arise if
 - based on the assessment of a credit reference agency the estimated fees and charges due exceed the acceptable credit line of authorised access users or the credit rating by a credit reference agency otherwise suggests that authorised access users may have payment difficulties;
 - authorised access users have filed an application to open insolvency proceedings with the court;
 - authorised access users have applied for legal aid; or
 - authorised access users cannot be reached at the address stated for more than two weeks.
- 2.5.3 A security is deemed to be reasonable if it equals the total amount payable per one month (period for which security must be provided) for services already agreed upon or services which based on experience will be used, whereby the following applies:
- 2.5.3.1 Security amounting to the total fees and charges due for the remainder of the current month must be provided.

After that security amounting to the fees and charges due for each following month must be provided.

- 2.5.3.2 If the parties have agreed on other services to be rendered within a period for which security has already been provided for, additional security must be provided for the fees and charges due for such services.
- 2.5.4 The security can be provided in accordance with the provisions of section 232 BGB or by bank guarantee (absolute guarantee [selbstschuldnerische Bürgschaft], payable on first demand and waiving the right of the benefit of discussion). A bank guarantee which has been assigned a non-investment grade by a credit rating agency will not be accepted.
- 2.5.5 The RIU will inform authorised access users in writing if it requires securities. The securities are due as follows:
- 2.5.5.1 If fees and charges due for the remainder of the current month are to be secured, security must be provided within five bank days after receipt of the request for security, however in any case before the service is rendered.
- 2.5.5.2 If fees and charges due in the following month are to be secured, security must be provided not later than two business days prior to the first day of the following month.
- 2.5.5.3 If fees and charges for other services, which will be rendered in a period for which security has already been provided for, are to be secured, the security for such services must be provided not later than two business days before the service is rendered. If this is not possible because the services have been agreed on at short notice, the security must in any case be provided before the service is rendered.
- 2.5.6 If the RIU has not been provided the security in time, it is entitled - without notice - to refuse to render the services until such time as the security and proof of it have been provided.
- 2.5.7 Authorised access users do not need to provide any security if they pay in advance the fees and charges due.

3 Use of the Railway Infrastructure

3.1 General information

- 3.1.1 The railway infrastructure may only be used as agreed and set forth in the contractual agreements.
- 3.1.2 The provisions contained in the General Part and the Special Part of the Terms and Conditions of Use of the Railway Infrastructure of the RIU apply in addition to the statutory provisions.
- 3.1.3 The RIU will provide RUs with any further information required to use the service facilities. RUs may reproduce the information provided insofar as this does not infringe third-party copyrights.
- 3.1.4 The concrete use of the railway infrastructure is based on the operational instructions orally given by the RIU on the basis of the contractual agreements and/or on the documents prepared and handed over to RUs.

3.2 Applications to use service facilities

- 3.2.1 The requirements regarding the form and content of applications to use service facilities are governed by the provisions of the Special Part of the Terms and Conditions of Use.
- 3.2.2 If an application is incomplete or otherwise faulty or incorrect, the RIU will immediately request to be provided the missing information or correct information.

3.3 Principles of the co-ordination procedure

- 3.3.1 If applications have been submitted that request the use of facilities at identical periods of time and such uses are not compatible with each other, the RIU, aiming to find a fair solution in compliance with section 13 ERegG, will proceed as follows:
 - 3.3.1.1 The RIU will simultaneously hold negotiations with all authorised access users concerned and suggest feasible alternatives if available. All authorised access users concerned will receive the same information at the same time.
 - 3.3.1.2 Deviating from sub-clause 3.3.1.1 the RIU may, in duly substantiated exceptional cases, offer individual authorised access users affected by the conflict alternative uses that are different from the uses applied for. The authorised access users concerned must be informed in writing of the reason for such exceptional circumstances. The RIU must take up negotiations with all authorised access users affected if bilateral negotiations have been unsuccessful.
 - 3.3.1.3 If the parties cannot agree on a mutually acceptable solution, the RIU will point out feasible variants. If no agreement is reached, the parties will proceed as provided for in section 13(3) ERegG. The criteria set out in section 13(3) number 3 ERegG are laid down in the Special Part of the Terms and Conditions of Use.
- 3.3.2 Authorised access users whose application has been denied in full or in part are entitled to file a complaint [Beschwerde] with the regulatory authority (section 13(5) 1st sentence ERegG) within three working days after receipt of the decision to deny access (section 13(4) 1st sentence ERegG).

4 User Fees and Charges

4.1 Basis of assessment

The bases to assess the fees and charges payable for the use of the service facilities and the provision of services are the principles of charging of the RIU and the RIU's fees and charges. The principles of charging are laid down in the NBS-BT. The fees and charges are set forth in the Schedule of Fees and Charges annexed to the NBS.

4.2 Reimbursement of unjustified discounts and surcharges

Authorised access users must reimburse any discounts granted in accordance with the RIU's principles of charging if they have not met the requirements to be eligible for the discounts. The same applies to the reimbursement of surcharges imposed by the RIU.

4.3 Value-added tax

The fees and charges payable by authorised access users in accordance with the RIU's principles of charging are exclusive of the statutory VAT. VAT will be charged as required by law.

4.4 Terms of payment

Authorised access users must transfer the fees and charges due within one week of receipt of the invoice at their cost to an account to be specified by the RIU. The RIU may provide for partial payment of services already rendered in the Special Part of the Terms and Conditions of Use.

4.5 Right to offset

The contractual parties are entitled to offset amounts owed by the respective other party only if such amounts are undisputed or recognised by declaratory judgment.

5 Rights and Duties of the Contractual Parties

5.1 Principles

- 5.1.1 The contractual parties agree to co-operate in a trusting manner that takes account of the special nature of railway infrastructure and its use as well as to minimise adverse effects on the other contractual party.
- 5.1.2 In order to ensure the safe and efficient use of the railway infrastructure, the contractual parties agree to provide each other the required information without delay, in particular information about dangerous incidents.
- 5.1.3 The contractual parties will name one or several person(s) and/or entity(ies) in the contract that is/are authorised and able to make operational decisions within a very short time on their behalf.

5.2 Information concerning the agreed uses

- 5.2.1 The RIU ensures that the contractual party will immediately be notified of:
- the condition of the railway infrastructure used and in particular changes that concern the tracks to be used and may have an impact on RUs' operations (e.g. construction/engineering work, temporary speed limits, signal changes, changes in the technical or operational characteristics of the tracks to be used);
 - irregularities during the use of the railway infrastructure in as far as they may be of importance to authorised access users' planning and scheduling activities;
 - limited or non-availability of services (e.g. non-availability of rail terminals / transshipment facilities or passenger information systems);
 - special circumstances due to large events.
- 5.2.2 RUs ensure that the RIU will immediately be notified of:
- the composition of trains (e.g. length, weight, deviations from the use originally applied for);
 - non-ordinary circumstances (e.g. transport of dangerous goods pursuant to GGVSEB/RID and their position within the train, out-of-gauge loads),
 - irregularities during the use of the railway infrastructure, in particular factors that cause delays (e.g. restricted braking power, failure/breakdown of multiple units);
 - special circumstances due to large events.

5.3 Operational disruptions

- 5.3.1 The RIU and RUs will notify each other promptly of specific incidents, i.e. deviations from the originally agreed use of the facilities and other irregularities (operational disruptions). The RIU will immediately inform RUs if operational conditions have an impact on the use of the facilities by RUs.
- 5.3.2 The contractual parties agree to rectify disruptions. The disruption must be rectified immediately unless the parties cannot reasonably be expected to do so.
- 5.3.3 To rectify disruptions, the RIU relies on the disruption regulations that apply to its operational traffic/transport management. These regulations form an integral part of the Terms and Conditions of Use and are legally binding on all RUs.
- 5.3.4 To rectify disruptions, the RIU may, within a service facility, ask the RU concerned to use railway infrastructure other than the one previously agreed upon. In the event of disruptions the RIU will apply the principles of the co-ordination procedure and adhere to the order of precedence set forth in clause 3.3.
- 5.3.5 RUs must rectify operational disruptions that lie within their area of responsibility without delay (e.g. failure/breakdown of rail vehicles). In particular they must ensure that the respective service facilities are not used in excess of what has been contractually agreed (e.g. by trains that have broken down). In each case the RIU has the right to rectify the operational disruption at any time at the expense of the party that caused it (e.g. by hauling off trains that have broken down). In this case authorised staff of the RIU are permitted to enter vehicles of the RU – in as far as possible upon prior consent of the persons and/or entities mentioned in sub-clause 5.1.3 hereof –, join drivers in the driving cab of the vehicles and give instructions to the RU's staff. The RU's staff must comply with these instructions.

- 5.3.6 The RIU must promptly restore full services and rectify operational disruptions that lie within its area of responsibility (e.g. non-availability of rail terminals / transshipment facilities or passenger information systems, control, safety and communication systems or railway point disruptions).

5.4 Right to inspect, access rights, authority to instruct

On its premises the RIU has the right to check at any time if RUs meet their contractual obligations. In as far as it is necessary to ensure safe and proper operations, authorised staff of the RIU are permitted to enter RU vehicles and give instructions to the RU's staff. The RU's staff must comply with these instructions.

5.5 Joining drivers in the driving cab

- 5.5.1 Upon prior consultation with the persons and/or entities mentioned in sub-clause 5.1.3 hereof the RIU or authorised staff of the RIU have the right to ride along in the driving cabs of RU vehicles to check if the railway infrastructure is in proper condition.
- 5.5.2 The ride is free of charge unless RUs explicitly ask for a reasonable fee.

5.6 Changes concerning the railway infrastructure

The RIU has the right to modify the railway infrastructure as well as the technical and operational standards applicable to the use of the railway infrastructure, taking appropriate account of the needs of authorised access users. It will promptly notify authorised access users of the planned modifications. Existing contractual obligations remain unaffected.

5.7 Maintenance and construction/engineering work

- 5.7.1 The RIU may at any time carry out maintenance, construction and engineering works to an economically reasonable extent and in such a manner that potentially adverse effects on RUs' operations are kept to a minimum.
- 5.7.2 The RIU will promptly inform RUs about use restrictions caused by maintenance, construction and engineering works. This does not apply to *ad hoc* measures that only cause short or negligible use restrictions. Notification procedures are laid down in the Special Part of the Terms and Conditions of Use.
- 5.7.3 In the event of deviations from the agreed use due to maintenance, construction and engineering works the provisions of clause 6.5 above apply.

6 Liability

6.1 Principle

- 6.1.1 Each contractual party is liable as provided for in the statutory provisions unless otherwise provided for in the Terms and Conditions of Use (AT/BT).
- 6.1.2 The contractual parties are mutually liable for indirect damage only in the event of injury to life, body and health or in the event of gross negligence. In the event of slight negligence the contractual parties are mutually liable for indirect damage only if the breach of duty is material for the purpose of the contract execution and only if the damage was foreseeable and is typical of the type of agreement. Material contract obligations are obligations that are material for the purpose of the contract execution and which the contractual partner relies on and may regularly rely on to be complied with. In other respects the parties are not liable for indirect damage.
- 6.1.3 Neither the RIU nor the RU is liable for damage to the other party's property unless the property damage of one party exceeds 10,000 euros, or the damage was caused by wilfulness or gross negligence on the part of one of the parties, or compensation must be paid for damage to third-party property or personal injury on top of compensation for damage to the parties' own property.

6.2 Contributory negligence

The provisions of section 254 BGB and – in as far as they apply – the provisions of section 13 HPfIG apply analogously.

6.3 Employees' liability

The liability of employees is limited to the liability of the contractual parties. The personal third-party liability of employees remains unaffected. The employees of the contractual party that is liable can only be held liable by that party based on its internal principles.

6.4 Apportionment of liability if the party that caused the damage is unknown

If it is not possible to determine who caused the damage at the RIU or third parties, both contractual parties will be held liable in equal measure. If other RUs also use or have used the tracks concerned, the following will apply:

- a) If RUs can prove that they obviously cannot have contributed to causing the damage, they will be exempted from liability.
- b) In other respects the damage will at first be apportioned in equal measure to the remaining parties involved.

- c) The total portion attributable to the RUs involved will then be apportioned to them at a ratio determined based on the actual use of the tracks over the past three months before the damage occurred.

6.5 Deviations from the agreed use

Deviations from the agreed use, which could not have been prevented even if due care had been exercised, fall within the scope of general operational risk, and the responsibility and risk will be borne by the contractual party affected in a given case unless otherwise agreed between the parties based on the provisions set forth in the Special Part of the Terms and Conditions of Use or unless otherwise provided for in section 39(4) in connection with section 39(2) ERegG under the incentive system. Liability for damage caused by wilfulness or gross negligence and statutory rights to reduce liability remain unaffected.

7 Risks to the Environment

7.1 Principle

RUs must refrain from activities that harm the environment. In particular, goods and materials or substances dangerous to the environment must only be handled and the refuelling of vehicles must only take place at suitable, specially designated locations.

7.2 Environmentally adverse impacts

If the operations of RUs cause emissions harmful to the environment or if the equipment used by RUs releases substances hazardous to water into the soil or if there is a risk of explosion, fire or other hazards, RUs must notify the RIU's nearest operating control centre on duty without delay. The notification does not free RUs from their responsibility to immediately take countermeasures and emergency response measures (e.g. notification of the nearest police authority, fire brigade, etc.). If the hazardous situation as mentioned in the 1st sentence above is such that operating premises of the RIU must be evacuated, the contractual party that caused the situation must bear the costs.

7.3 Soil contamination

In the event of soil contamination caused by RUs – even if it was not their fault – the RIU will take the necessary remediation measures. The costs of the remediation are to be borne by the RU that caused the damage. If the party that caused the damage cannot be determined, liability will be as provided for in clause 6.4 hereof.

7.4 Liability for damages of the RIU and RUs

If the RIU as the “state raider” (owner of the site) is obligated to rectify the environmental damage caused by RUs – even if it was not their fault –, the RU that caused the damage must bear the costs incurred by the RIU. If the RIU contributed to the damage, the obligation to pay damages depends on the circumstances and in particular, which party is predominantly responsible for it. If the party that caused the damage cannot be determined, liability will be as provided for in clause 6.4.

Legal Notice

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Notice:

In the event of any inconsistency or conflict between the German and the English version, the German version shall prevail.