

General Terms and Conditions of Trade applicable to GSM-R Services at DB Netz AG (GSM-R GTCT)

as of: 18.10.2020

1. Validity of contractual conditions, entering into a contract

- 1.1. DB Netz AG (referred to hereinafter as DB Netz) provides GSM-R services for GSM-R users (referred to hereinafter as Customers) on the basis of the following GTCT, the performance specifications and the price list (contractual conditions).
- 1.2. GSM-R services for the purposes of these GTCT constitute the assignment of SIM cards and their activation in the GSM-R network as per the agreed subscriber profile plus utilisation of the GSM-R network for voice, fax and data services.
- 1.3. Any contrary terms and conditions of trade issued by the Customer shall have no force even when not explicitly repudiated by DB Netz.
- 1.4. The contract takes effect on the activation order being signed by the Applicant and this being accepted by DB Netz through sending the SIM card to the delivery address stated in the order.

2. Scope of performance, dereliction of duty by DB Netz

- 2.1. In activating GSM-R SIM cards, DB Netz makes its telecommunications services in the GSM-R network available to the Customer. This shall not affect conclusion of a train path usage contract.
- 2.2. DB Netz provides its services in compliance with telecommunications secrecy, the provisions variously stipulated by the Federal Railway Agency (EBA), the Federal Network Agency, the Federal Commissioner for Data Protection and Freedom of Information, corporate guidelines adopted by DB AG and guidelines adopted by DB Netz.
- 2.3. Content transmitted by the Customer or third parties shall not form part of the service performed by DB Netz and shall not be examined by DB Netz. This also applies in respect of whether the content contains damaging software (e.g. viruses) or infringes third-party rights.
- 2.4. DB Netz is entitled to temporarily discontinue its contractual services in whole or part where this is needed for proper or enhanced network operation or due to train operating requirements. Where possible, DB Netz shall provide corresponding advance notification in good time and avoid any unnecessary disruption of railway operation.
- 2.5. The GSM-R SIM card handed over to the Customer remains the property of DB Netz. DB Netz is entitled to replace the GSM-R SIM card with a substitute card at any time or to demand its return upon termination of the contractual relationship (cf. Subclause 4.5).
- 2.6. DB Netz determines the directory numbers for subscriber lines in accordance with its directory number schedule and notifies the customer thereof when handing over the GSM-R SIM card. DB Netz reserves the right to alter directory numbers for technical or operational reasons.

3. Liability of DB Netz

- 3.1. DB Netz is only liable to compensate the Customer for damage – on whatever legal grounds – if culpable of malicious intent or gross negligence. In cases of the latter, DB Netz shall not be liable to an extent exceeding the limits set forth in Germany's Public Liability Act.
- 3.2. There shall be no liability for slight negligence, including for indirect damage, most notably on account of delays.

4. Duties and liability of the customer

- 4.1. The GSM-R network is used exclusively as a communications facility for railway operations. This results in special duties for the Customer as stipulated inter alia in DB Netz

Guideline 408 and Guideline 481. It is forbidden to use the GSM-R network for any other purpose than railway operations.

- 4.2. The customer is liable in full towards DB Netz, most notable in the event of improper use of the GSM-R network, unless, following receipt of the GSM-R SIM card, the Customer notifies GSM-R Customer Service straightaway that the card has been mislaid or put to unauthorised use by a third party. In this case, the Customer shall only be liable for any damage before notification was given or for which the Customers is accountable in some other way.
- 4.3. The Customer undertakes to use only TSI-compliant terminal devices.
- 4.4. The Customer shall notify DB Netz within 5 working days of any change to
 - its name, (invoice) address and legal status;
 - customer data (e.g. where SIM cards [plus terminal device if applicable] are assigned to another customer);
 - subscriber data, notably rail-related data, e.g. for traction units (change in the traction unit number). Furthermore, changes to the terminal device model or software are subject to mandatory certification and authorisation pursuant to Subclause 4.3.
- 4.5. If DB Netz orders the replacement of a SIM card, the Customer undertakes to exchange its GSM-R SIM card for a new SIM card provided by DB Netz within a reasonable period of time.
- 4.6. Given remote configuration of the SIM card (updates), the Customer is obliged to support DB Netz in this process. Failure to implement the requisite support measures shall result in the Customer being accountable for the consequences.
- 4.7. The Customer undertakes not to make improper use of GSM-R services, specifically
 - not to disrupt, alter or damage the GSM-R network and its logic structure and/or other networks;
 - not to use the GSM-R network for any other purposes than railway operations;
 - not to transmit viruses, inadmissible advertising material, chain letters or any other nuisance mail;
 - not to infringe any third-party rights, notably industrial property rights (e.g. proprietary and trademark rights);
 - not to violate the provisions of criminal law or those designed to afford protection to the young;
 - not to violate train running regulations and guidelines.

Should the customer be in breach of any of its duties, DB Netz is entitled to adopt any means needed to rectify the situation.

- 4.8. DB Netz issues monthly invoices. Payments are to be made in full by the customer on receipt of the invoice. The Customer is deemed to be in arrears 20 days after the invoice date. Once the Customer is in arrears, legal provisions governing compensation, interest on arrears and reminder charges apply as set forth in the German Civil Code (BGB).

5. Prices

- 5.1. Use of the operational train and shunting radio network is included in the train path or infrastructure facility charge.
- 5.2. DB Netz offers its customers the product "GSM-R based communication for RUs" as a chargeable ancillary service beyond the standard usage of the operational train and shunting radio network. The contractual provisions governing use of these services can be found in the

corresponding product information (available at https://fahrweg.dbnetze.com/fahrweg-de/kunden/leistungen/neben_und_zusatzleistungen/produkte_nebenleistungen/anbindung_evu_leitstellen_gsmr-1392042) or obtained from the sales contacts in the Regional Units. The product information contains a detailed service description and the prerequisites for connection to the GSM-R network. More information is available from our contacts in the Regional Units:

<https://fahrweg.dbnetze.com/fahrweg-de/unternehmen/kontakt>.

The charges are levied in a non-discriminating manner from each Applicant and calculated according to the costs for order handling, operations management, call centre, software maintenance, maintenance and personnel costs together with a going rate of return.

- 5.3. The individual charges for train path and infrastructure facility (subclause 5.1) as well as for ancillary services (subclause 5.2) can be found in the applicable lists of charges for train paths, additional and ancillary services: <https://fahrweg.dbnetze.com/fahrweg-de/kunden/leistungen>.

6. Use of data, proof of correctness of calculated charges

- 6.1. DB Netz processes the data of the customer and its subscribers in order to deliver customer-focused services to optimum effect and also in the interests of quality assurance and the securing of evidence. This complies with the relevant provisions of EU General Data Protection Regulation (GDPR), Germany's Federal Data Protection Act (BDSG) and Telecommunications Act (TKG).
- 6.2. Traffic (call) data such as directory numbers and the codes of the line calling and of that called, subscriber's authorisation code, SIM card number, service used, beginning and end of call, volume of data and location code are captured and processed in the GSM-R data network. Traffic data are captured and processed to corroborate the charges billed to the Customer.
- 6.3. Traffic data are deleted within six months of capture.
- 6.4. On request, traffic data can be made available to the Customer in the form of call-by-call records under the conditions stated in Subclauses 6.5 and 6.6. Otherwise, apart from DB Netz itself, the traffic data will only be made available to the EBA and prosecution service if so demanded by these under statutory provisions.
- 6.5. DB Netz can only review billed charges in retrospect to the extent that the traffic data have been saved.
- 6.6. Call-by-call records shall only be provided to the Customer if it has declared in advance in text form that the employees have been informed, that future employees will be promptly informed and that the works council or staff representative was involved in accordance with statutory requirements or that such involvement is not necessary (co-user declaration).
- 6.7. Invoice data are kept according to the legal requirements.
- 6.8. If the Customer uses services provided by foreign network managers, the call data shall be forwarded to outside entities for accounting purposes. Such data are then subject to the laws of the specific country.
- 6.9. Unless agreed otherwise, DB Netz may process and use traffic and inventory data in an anonymous form with a view to designing demand-responsive services and for consulting over and refining its service.

7. Voice records

- 7.1. The contents of calls made in the GSM-R network between mobile shunting radio subscribers and train drivers or where at least one user device of the participants is a stationary GSM-R device used for train operating purposes (ART GeFo), may be recorded in order to secure evidence in case of a dangerous occurrence or other irregularities in railway operations and in order to check safety in handling

and speech discipline according to the requirements of the German General Railway Law (AEG), the German Railway Construction and Operating Regulation (EBO) and the Technical Specifications for Interoperability (TSI) traffic operations and traffic control (voice recording).

- 7.2. The contents of messages shall be deleted no later than 14 days after they have been recorded.
- 7.3. The Customer shall inform its employees that all calls conversations referred to in 7.1 may be recorded for the purposes specified therein for the period of time specified in 7.2.
- 7.4. The stored contents of messages shall be provided to offices outside DB Netz AG, namely to the EBA, the Central Office for Railway Accident Investigation and the offices of public prosecution in accordance with the statutory provisions, only upon the request of the aforementioned authorities.

8. Contract term, notice to terminate, debarment

- 8.1. The contract is concluded for an indefinite period. Unless termination is precluded by § 14 AEG, the standard period of notice to terminate shall be one month. Notice to terminate shall be submitted in writing and cannot be substituted by electronic means.
- 8.2. Extraordinary termination is only possible for good cause. In the case of DB Netz, this applies in particular if services are used in contravention of 4.7. If good cause does apply, DB Netz is also entitled to bar the subscriber registered with the Customer from using GSM-R services with immediate effect. This applies in particular in the case of wanton disruption of operating routines.
- 8.3. DB Netz is also entitled to arrange for immediate debarment of the subscriber or Customer,
- to prevent improper use of the GSM-R network;
 - if the Customer has submitted a statutory declaration in lieu of an oath within the meaning of § 807 of the German Code of Civil Procedure (ZPO) or if proceedings pursuant to Germany's Insolvency Regulation (InsO) have been started or an application to start proceedings under InsO has been rejected due to insufficiency of assets or else either judicial sequestration or a foreclosure sale have been ordered;
 - if accounts remain unsettled for two consecutive months;
 - otherwise, at the Customer's request.

9. Amendments to the contractual conditions

- 9.1. The Customer shall be informed of any amendments to our General Terms and Conditions of Trade and prices pursuant to the Amendments provisions in Section 1.2.2 NSSF or Section 1.3 Network Statement; such amendments shall come into force when these are effective.
- 9.2. If DB amends the General Terms and Conditions of Trade or prices to the detriment of the Customer, the latter may submit a written objection to the amendment, apart from the cases stated in Subclause 9.4, pursuant to the provisions in Section 1.2.2 NSSF or Section 1.3 Network Statement.
- 9.3. If DB Netz responds to the Customer's objection by indicating that the contract cannot be continued under the existing conditions, the Customer may terminate the agreement pursuant to the provisions in Section 1.2.2 NSSF or Section 1.3 Network Statement.
- 9.4. Notwithstanding Subclause 9.2, DB Netz shall be permitted to adapt its prices
- a) if the statutory rate of Value Added Tax is changed and
 - b) given changes in the costs for special network access, interconnections and services by other providers to which DB Netz grants access, upon the change in question taking effect.

10. Governing law

- 10.1. All legal relations between DB Netz and the Customer are governed exclusively by German law, notably German railway legislation and other laws, regulations and provisions relating to the railway, to the exclusion of the Convention on Contracts for the International Sale of Goods.
- 10.2. The place of jurisdiction is Frankfurt am Main.