



Capacity agreement

General terms & conditions applicable to the reservation of railway infrastructure capacities

INFRABEL



This agreement for the reservation of capacities, hereinafter referred to as “the Agreement”, is concluded between,

Of the one part:

INFRABEL, a public limited company in law, with registered office at Marcel Broodthaersplein 2, 1060 Brussels, registered in the Crossroads Bank for Enterprises under number 0869.763.267; represented by *[NAME]* as *[FUNCTION]*

Hereinafter referred to as “INFRABEL”

And of the other part:

[NAME OF THE COMPANY], with registered office at *[ADDRESS]*, registered in *[XXX]*, represented by *[NAME]*, as *[FUNCTION]*

Hereinafter referred to as “the APPLICANT”,

INFRABEL and the APPLICANT are hereinafter referred to jointly as “the Parties” and individually as “a Party”.

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Introduction

Having regard to the European legislation applicable to access to the railway infrastructure, and in particular Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways and Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of the railway infrastructure, recast by Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area, and Regulation (EU) No 913/2010 of the European Parliament and of the Council of 22 September 2010 concerning a European rail network for competitive freight ("the Regulation");

Having regard to the Belgian legislation applicable to access to the infrastructure, and in particular the Law of 30 August 2013 establishing the Rail Code (hereinafter referred to as "the Rail Code") and the related Royal Decrees, in particular the Royal Decree of 9 December 2004 on the distribution of railway infrastructure capacities and the fee for the use of the railway infrastructure;

Having regard to the Network Statement (NS) published on Infrabel's website www.infrabel.be and the general terms and conditions of the track access agreement annexed to the NS;

Since any railway undertaking or other natural or legal persons or entities, such as the competent public authorities within the meaning of Regulation (EEC) No 1370/2007, and shippers, freight forwarders and combined transport operators, who/which have an interest in acquiring infrastructure capacity for public-service or commercial reasons, may apply for the reservation of train paths under the law;

Since INFRABEL, as the Belgian railway infrastructure manager, allocates the capacities to applicants demonstrating an interest;

Since the applicant is not a railway undertaking and the term "APPLICANT" here means that the applicant contracting party is not a railway undertaking;

Since only railway undertakings that have a licence and a safety certificate and have concluded a Track Access Agreement with INFRABEL have access to the railway infrastructure and can use the reserved train paths under this Agreement;

Having regard to the need for INFRABEL to make optimum use of the railway infrastructure and, consequently, to have the reserved train paths used efficiently by a railway undertaking;

Since, in relation to the Belgian rail network of freight corridors within the meaning of the Regulation, a Single Point of Contact for each Corridor (the so-called Corridor One Stop Shop) decides on the requests for pre-arranged paths and the reserve capacity on behalf of the infrastructure managers concerned and informs them accordingly, on the basis of the applicable rules, as provided for in Book 4 of the Corridor Information Document of each freight corridor;

the Parties agree as follows:

General terms and conditions applicable to the reservation of railway infrastructure capacities

Article 1: Subject matter of the Agreement

1.1 In the context of compliance with the terms and conditions of the Network Statement (NS) (www.infrabel.be), the Agreement lays down the general and special terms and conditions of an administrative, financial and legal nature applicable to the reservation by the APPLICANT of infrastructure capacity on the Belgian rail network and the other Services provided by Infrabel.

1.2. The Agreement comprises two parts:

- the first part, which sets out the general terms and conditions for the reservation of railway infrastructure capacity and applies to all applicants who/that are not railway undertakings,
- the second part, containing the special terms and conditions for the reservation of railway infrastructure capacities, and which is specific to the particular situation of the APPLICANT.

The two parts cannot be seen in isolation and together they constitute the Agreement.

1.3 INFRABEL shall provide the APPLICANT with the capacities and the other Services, in accordance with the terms of the Agreement and the NS.

Article 2: Definitions

Railway infrastructure capacity, hereinafter referred to as "Capacity"	The ability to plan the train paths required for a railway infrastructure element for a certain period of time;
Network Statement or NS	The statement that is published on the internet (www.infrabel.be) and which sets out in detail the description of the network, general traffic rules, time limits, procedures and criteria on the arrangements for levying user charges and allocating railway infrastructure capacity; this document also contains all other information necessary for submitting requests for railway infrastructure capacity.
Railway undertaking	Company with private- or public-law status that has been granted a licence under the applicable European legislation and the principal activity of which is to provide transport services for goods and/or passengers by rail; that company must provide traction. This term also covers undertakings that provide traction only.
Designated Railway Undertaking	The Railway Undertaking validly designated by the APPLICANT pursuant to the terms of the Agreement, as the party that will use the capacities and other Services reserved by the APPLICANT.
Timetable	The information on all scheduled train and rolling stock movements to be carried out on the railway infrastructure concerned during the period of operation of the working timetable.

Regulation	Regulation (EU) No 913/2010 of the European Parliament and of the Council of 22 September 2010 concerning a European rail network for competitive freight.
Distribution	The allocation of railway infrastructure capacities by the infrastructure manager.
Services	The services of Chapter 5 of the NS provided by Infrabel.
Train path	The infrastructure capacity required for a given train to move from one point to another at a given moment in time.
Pre-arranged path	Predefined train path on a Freight Corridor, pursuant to the Regulation. A pre-arranged train path can be allocated on the whole Corridor or on sections crossing one or more borders.
Reserve capacity	Capacity - e.g. pre-arranged paths - remaining available during the current timetable for ad hoc market needs, pursuant to Article 14(5) of Regulation (EU) No 913/2010.
Regulatory body	The Regulatory Body for Railway Transport and for Brussels Airport Operations , as designated in accordance with the Rail Code as the authority responsible for the economic regulation of rail transport.

Article 3: Designation of the railway undertaking(s)

3.1 The APPLICANT designates the railway undertaking, which is authorised to use the capacities allocated to the APPLICANT as well as the other Services provided to the APPLICANT under a “designation agreement” between the APPLICANT and each railway undertaking that the APPLICANT wishes to designate, that remains in force throughout the term of the Agreement.

The APPLICANT is solely responsible for designating the railway undertaking(s). The APPLICANT shall assure INFRABEL of the existence of the designation agreement(s). The APPLICANT shall provide INFRABEL with the designation agreement(s) on request.

3.2 The APPLICANT shall communicate the name of the Designated Railway Undertaking(s) to INFRABEL within the following time limits:

- i. Not later than 7 calendar days before the first journey day of the order for the train path concerned.
- ii. At the latest at the time of the request for train paths if the first journey takes place less than 7 calendar days after the request;
- iii. According to the rules of the Framework for Capacity Allocation of the freight corridors, with regard to pre-arranged paths and reserve capacity.

3.3 The APPLICANT may designate several railway undertakings for the use of its capacities as well as the use of other related services, but only one railway undertaking may be designated per train path.

The APPLICANT may change the Designated Railway Undertaking by designating another railway undertaking 7 calendar days before the first journey day of the train path it is carrying out for the APPLICANT.

Article 4: Ban on transferring capacities

The capacities reserved by the APPLICANT cannot, once allocated to it, be transferred to another undertaking or to another transport service, otherwise it shall be deemed to be transferring capacities, which is prohibited by law.

The capacities may not be used by any railway undertaking other than the one designated by the APPLICANT, otherwise the APPLICANT shall be deemed to be transferring train paths, which is prohibited by law.

Article 5: Modification, renunciation, suspension and withdrawal of capacities

5.1 Until the start of real time within the meaning of the NS, the APPLICANT can waive using all or part of the allocated infrastructure capacities in accordance with NS. From the start of real time, this right may only be exercised by the Designated Railway Undertaking.

The capacities to which the waiver relates shall be considered as being available again and may be allocated by INFRABEL to third parties.

5.2 The right to change capacity is exercised on the basis of the principles laid down in the NS.

This right can be exercised by the APPLICANT until real time comes into effect within the meaning of the NS. From the start of real time, this right may only be exercised by the Designated Railway Undertaking.

5.3 INFRABEL may suspend or revoke the right to use the allocated capacity or modify it in accordance with the terms and conditions and rules of the NS.

The disruptions affecting traffic do not entitle the APPLICANT, as holder of the capacity, to any compensation from INFRABEL.

Article 6: Communication and information obligation

6.1 INFRABEL shall inform the APPLICANT in good time about:

- (i.) The major changes concerning the quality or capacity of the infrastructure used;
- (ii.) The suspension or withdrawal of capacities as described in this article, under the terms and conditions set out in Chapter 4 of the NS;
- (iii.) A change in capacities under the terms and conditions set out in Chapter 4 of the NS.

6.2 The APPLICANT shall provide INFRABEL in good time with all information useful for the handling or modification by INFRABEL of its capacity request, on the basis of the NS, as well as all information relating to the use of the Services.

All real-time communications within the meaning of the NS relating to capacities, traffic and Services shall be made by INFRABEL exclusively to the Designated Railway Undertaking.

6.3 Without prejudice to paragraphs 1 and 2 above, any communication in real time of any kind whatsoever (information, decision, etc.) made by INFRABEL to the Designated Railway Undertaking shall be deemed to be made simultaneously to the APPLICANT, without the latter being able to invoke a lack of knowledge thereof. The APPLICANT itself shall ensure that the Designated Railway Undertaking informs it in good time of any communication from INFRABEL.

Any communication of any nature whatsoever (information, application, decision, including any capacity change, or waiver of capacity, irrespective of the fact that it causes a change in the charging etc.) addressed to or requested from INFRABEL by the Designated Railway Undertaking shall be deemed to be made simultaneously to or by APPLICANT. The APPLICANT itself shall ensure that the Designated Railway Undertaking informs it in good time of any communication from INFRABEL.

The APPLICANT and the Designated Railway Undertaking shall provide each other, whenever required, with the necessary information at their disposal, in particular concerning safety, capacity utilisation and exceptional transport, as well as the Services.

Article 7: Pricing and invoicing of the user charge

7.1 Charge for using the railway infrastructure

The APPLICANT shall pay INFRABEL the charges for the use of the infrastructure as described in Chapter 6 of the NS and in accordance with NS. In addition, the payment arrangements are laid down in the special terms and conditions.

The APPLICANT is required to pay a monthly advance payment. The way this advance is calculated is laid down in the special terms and conditions. The advance must be paid by the 20th of the month preceding the month of use.

At the end of each month, INFRABEL shall calculate the total charge for the use of the infrastructure on the basis of the advance payments already collected.

The tariff rules that apply in the event of suspension or withdrawal of capacity by INFRABEL, in the event of waiver of capacity by the APPLICANT, or in the event of restriction or disruption of traffic, are laid down in the NS.

7.2 Charges for the other Services

The APPLICANT shall pay INFRABEL the charges for the other Services as described in the Network Statement and in the special terms and conditions.

7.3 General rules for invoicing

7.3.1 Contesting the invoice

The notification of contestation of an invoice (or of several billing elements) does not remove the obligation to settle all invoiced amounts within the time limits set.

7.3.2 Billing terms and conditions

The APPLICANT shall indicate a billing address and the chosen method of payment in the special terms and conditions. The APPLICANT shall notify INFRABEL of any change in billing address or payment method. The change shall take effect on the first day of the second month following notification to INFRABEL.

7.3.3 Non-payment

In the absence of full payment within 30 days of receipt of the invoice, the amounts due will automatically be increased by statutory interest in accordance with the terms and conditions as set out in the NS.

In addition to the amount of interest, a lump sum of 100 euros without fees is added for handling charges.

In the event of late payment for two consecutive instalments, INFRABEL may inter alia decide to suspend the benefit of infrastructure use for all the capacities allocated to the APPLICANT.

INFRABEL shall recover the sums due from the APPLICANT by all means of redress.

Article 8: Sanctions

8.1 Any breach of Article 3 3.2 shall be considered as a waiver of the relevant train path by the APPLICANT within the meaning of the NS. As a result, the relevant train path is cancelled.

The APPLICANT is immediately liable for the amount of the levy calculated in accordance with point 6.4.1 of the NS for each respective traffic without prejudice to the right of INFRABEL to claim compensation for the damage suffered as a result of that breach.

8.2 In the event of a breach of Article 3, INFRABEL may refuse the use of capacities, by operation of law and without prior notice of default, at any time in the running timetable, without prejudice to INFRABEL's right to claim compensation for the damage suffered as a result of that breach.

8.3 In the cases provided for in §§ 1 and 2 of this article, the APPLICANT shall not be entitled to claim compensation for the termination of the contract.

The capacities concerned will then be deemed to be available again.

Article 9: Compliance with the timetable

The Parties shall not be entitled to claim compensation from each other for the damage suffered in the event of delays in rail traffic, irrespective of the cause (accident and/or incident and/or damage to third parties, theft of equipment, strikes and related incidents, fallen trees, suicides, etc.).

Consequently, INFRABEL and the APPLICANT shall bear their own costs and losses incurred as a result of such delay and shall refrain from any legal action against each other in that regard.

Article 10: Liability

10.1 Liability for appointees and subcontractors

Each Party shall be liable for its appointees and subcontractors.

The Designated Railway Undertaking of the CANDIDATE is not its subcontractor.

10.2 Liability in the event of physical or material damage

10.2.1 Each Party shall be held liable for the direct damage caused to the other Party by the performance of its obligations under this Agreement, without prejudice to the provisions of the Track Access Agreement concluded between the Designated Railway Undertaking and INFRABEL:

1. Physical damage (death, injury or any other damage to physical or psychological integrity);
2. Material damage (destruction or damage to movable and immovable property).

Each Party shall be exempt from such liability:

1. If the damage is caused by force majeure or accident,
2. If the damage is caused by the fault of the other Party, or of persons for whom it is liable under the Agreement.

10.2.2 In the event of liability as provided for in this article, the compensation shall be paid in accordance with the provisions of Article 5, points 5.4 to 5.10 of the general terms and conditions of the Track Access Agreement, which is annexed to the NS.

10.2.3 Where the causes attributable to INFRABEL and the causes attributable to the APPLICANT have contributed to the damage, each Party shall only be liable for the damage to the extent that its causes have contributed to the damage.

If it is not possible to determine to what extent the various causes have contributed to the injury, each party shall bear the damage it has suffered.

10.3 Other actions

10.3.1 In all cases where this Agreement is applicable, any claim for liability, on any grounds whatsoever, but against INFRABEL or the APPLICANT, may be brought in accordance with the terms and conditions of this Agreement.

The same shall apply to any claim against subcontractors for which INFRABEL or the APPLICANT is liable under this Article, without prejudice to the application of the Track Access Agreement between INFRABEL and the Designated Railway Undertaking.

10.3.2 Any compensation under the Track Access Agreement paid by INFRABEL to the Designated Railway Undertaking shall be deemed to cover the damage suffered by the APPLICANT, so that the APPLICANT shall not be entitled to claim any compensation from INFRABEL for this damage.

The APPLICANT shall itself agree with the Designated Railway Undertaking the terms and conditions for the mutual distribution of compensation paid by INFRABEL to the Designated Railway Undertaking, without INFRABEL being involved in this agreement or any other agreement between the APPLICANT and the Designated Railway Undertaking.

10.3.3 The Parties shall indemnify each other against any claim, enquiry or appeal relating to the Agreement, from any third party or person for whom they are liable.

10.3.4 The APPLICANT cannot enforce in any way more rights vis-à-vis INFRABEL than those granted to railway undertakings under the Track Access Agreement.

Article 11 Insurance

11.1 The APPLICANT assures INFRABEL that it has signed an insurance policy in accordance with the amounts specified in the Royal Decree of 8 December 2013, covering the financial consequences of its liability towards INFRABEL, as referred to in Article 10.2, for the entire duration of the Agreement.

Upon signing the Agreement, the APPLICANT shall provide a document in the annex to this Agreement issued by the insurer that provides proof of the existence, duration and domain covered by this policy and that imposes an obligation on the insurer to inform INFRABEL by registered letter - of which the APPLICANT shall simultaneously receive a copy - of all major changes to the insurance policy (suspension, cancellation, etc.) as soon as that change occurs.

11.2 As soon as the insurer has sent that letter to INFRABEL, it is permissible for INFRABEL, on the one hand, to suspend performance of its obligations as long as the APPLICANT has not proven that it has taken out new insurance and, on the other hand, to consider the Agreement, without prior notification or compensation, as terminated against the APPLICANT, if the APPLICANT has not provided it with this proof within ten days of the letter being sent.

Article 12: Confidentiality

Both Parties undertake to treat all information in confidence and without notice to third parties that is inherent in and related to the Agreement and that has been transmitted between them, which the

providing Party considers confidential and/or that is to be considered confidential under the applicable laws and regulations, except when one of the following conditions is met:

1. If a Party is summoned to appear before a court of law, in the context of its relations with the bodies supervising the railway market or other administrative bodies;
2. In the case of agreement in writing from the Party that supplied the confidential information;
3. In the case of INFRABEL, in consultation with the managers of other networks or within the framework of agreements and/or rules with foreign infrastructure managers, and provided that the recipient of such information undertakes to provide such information with the same degree of confidentiality;
4. If the information is available in an easy or normal manner or if it is accessible to the public;
5. Where information provided by a Party is essential for technical or security-related reasons, including for subcontractors and/or their employees and/or their representatives, insofar as such recipients are bound by confidentiality rules ensuring appropriate confidentiality of information.

The special terms and conditions of the Agreement shall be regarded as confidential.

The Parties agree not to invoke the confidentiality of the data either among themselves or in relation to the Designated Railway Undertaking.

This obligation of confidentiality shall remain valid for a period of five years following the expiry of the Agreement.

Article 13: Duration and termination

13.1 The Agreement shall be concluded for a scheduling period and shall be tacitly renewed.

Either Party may terminate the Agreement by registered letter no later than three months before the expiry of the current scheduling period. The tacit renewal of the Agreement does not release the APPLICANT from the obligation to submit a new application for capacities for each scheduling period in accordance with the arrangements already provided for and, in all circumstances, to designate a railway undertaking to use the capacities, as provided for in the Agreement.

The Agreement shall terminate automatically after the end of the scheduling period if the APPLICANT has not submitted a new capacity request for the next scheduling period.

13.2 However, the Agreement may be terminated by the other Party by operation of law, in whole or in part, in the following cases:

1. Bankruptcy of the APPLICANT or judicial reorganisation of the latter pursuant to the Law of 31 January 2009 on the continuity of enterprises;
2. Acquisition of railway undertaking status by the APPLICANT;
3. Due to a serious or repeated failure to fulfil one of the obligations of the agreement;
4. As a result of the non-payment of monthly advances of the user charge for two successive instalments.

The Party causing the termination of this Agreement shall be liable to the other Party for any damage resulting therefrom and shall not be entitled to claim compensation for such termination.

Article 14: Applicable law

The Agreement is subject to Belgian law.

Article 15: Competent court

In the event of a dispute concerning the Agreement and the rights and obligations arising therefrom, as well as its formulation, implementation and expiry, the Parties shall negotiate in good faith with a view to reaching an amicable settlement.

If no such settlement is reached within two months of the dispute arising, either Party may submit the dispute to the exclusive jurisdiction of the courts and tribunals of Brussels, without prejudice to the powers conferred by the law on other bodies.

Article 16: Miscellaneous

16.1 In the event of incompatibility between a provision of the general terms and conditions and a provision of the special terms and conditions, the latter shall prevail.

16.2 The nullity and/or non-application of any provision of the Agreement shall not affect the validity of the other provisions of the Agreement. In the event of the nullity and/or non-application of any provision of this Agreement, the Parties undertake to negotiate in good faith and to replace it with a valid or applicable equivalent provision.

16.3 A delay or failure to require the exercise of a right or an appeal under the Agreement shall not constitute a waiver of the right to exercise, or of the right of recourse.

16.4 INFRABEL has the right to amend this Agreement in accordance with the regulations if the management of the Belgian railway infrastructure requires this, depending on the changes to the applicable regulations or according to the notices of the supervisory bodies (including the Regulatory Body). INFRABEL shall provide the APPLICANT with those changes in writing and without delay. If the APPLICANT informs INFRABEL within thirty (30) days of such written notification that it does not agree with these changes, the APPLICANT shall have the option of terminating the agreement by operation of law with a simple notice, without any intervention by the Courts and without prior notice or compensation. In the absence of a reply from the APPLICANT within the above-mentioned thirty (30) days, the APPLICANT shall be deemed to have approved those amendments.

16.5 The Agreement shall be concluded between independent co-contractors that have full liability for their own activities. Each party must comply with all obligations arising out of the performance of its activities, whether or not arising out of the Agreement, and therefore neither of the two co-contractors is liable for the debts or obligations of the other party.

Unless otherwise specified, no provision of the Agreement shall confer rights or other benefits on others. Unless otherwise provided for in the Agreement, no provision of the Agreement shall provide for a mandate, agency agreement, partnership or joint venture between the co-contractors.

16.6 Under no circumstances will the Agreement in any event waive the rights of INFRABEL granted to it by the Rail Code, the NS and the Regulation.

Special terms and conditions for the reservation of railway infrastructure capacities

1. Principle

These special terms and conditions, together with the general terms and conditions, constitute the capacity agreement between INFRABEL and the APPLICANT.

2. Rail transport service

The rail transport operations in question concern: national/international transport of passengers/goods.

3. Services

3.1 Minimum services and access to facilities and provision of services

[NAME OF APPLICANT] wishes to make use of the services covered by the user charge for railway infrastructure.

[NAME OF APPLICANT] wishes (does not wish) to make use of the transport and distribution of traction current.

3.2 Additional services

[NAME OF APPLICANT] wishes (does not wish) to make use of the supply of traction current.

[NAME OF APPLICANT] is free to make use of the “Your XXL” service.

3.3 Ancillary services

[NAME OF APPLICANT] requires access to the applications of the Business Corner, on the website partners.infrabel.be, via a filter that allows [NAME OF APPLICANT] access only to its own data.

4. Financial terms and conditions

4.1 Minimum services and access to facilities and provision of services

The calculation and collection of the capacity utilisation charge are described in the NS (as well as in the F-appendices)

The APPLICANT is required to pay a monthly advance payment. This advance payment shall be calculated on the basis of traffic forecasts for the scheduling period concerned.

The amounts of the advance payments and the date of invoicing and payment shall be shown in a table annexed to this contract. This table may be revised at INFRABEL’s request (excluding VAT) if it appears that the number of train paths used by the APPLICANT increases during the term of the agreement.

INFRABEL shall draw up monthly regularisation invoices for the user charge. To this end, it shall base itself on actual use and take account of the advance payments already made.

INFRABEL shall also send a detailed pro forma invoice 5 days before the date of dispatch of the official invoice. The APPLICANT has 5 days to send its comments to INFRABEL. If INFRABEL has not received any comments within 5 days, it shall charge the total amount of the pro forma invoice to the APPLICANT. If the APPLICANT has submitted its comments, INFRABEL will charge only the part that has not been disputed. After receipt of the invoice, the APPLICANT has 30 days to pay the invoice.

The calculation and collection of the charge for the transport and distribution of traction current are described in the NS (as well as in the F-appendices).

4.2 Additional services

The calculation and collection of the charge for the supply of traction current are described in the NS (as well as in the F-appendices).

The calculation of the costs for the exceptional transport studies is described in the NS (as well as in the F-appendices).

4.3 Ancillary services

Not applicable

5. Billing terms and conditions

5.1 Billing address

Invoices from INFRABEL shall be sent to the following address:

[NAME OF APPLICANT]

[Service concerned]

[Street]

[Postcode - City]

And by e-mail via the following addresses: [e-mail address]

5.2 Payment method

Payments shall be made by bank transfer.

5.3 Payment term

Each invoice issued by INFRABEL is payable within 30 calendar days to the following account number:

Bpost bank: 679-0023037-48

IBAN: BE11 6790 0230 3748

BIC: PCHQBEBB

Appendices

1. Certificates of insurance or equivalent measures
2. Prepayments for the infrastructure charge
3. Prepayments for electricity

Drawn up in two copies in Brussels on [XX XXXX 20XX]

Ann BILLIAU
Director
Infrabel Customer & Business Excellence

[NAME OF CEO]
CEO
[NAME OF APPLICANT]