

Terms of Use for the Railway Workshop of InfraServ GmbH & Co. Gendorf KG - General Part -

The following provisions ("**Workshop General Terms**") apply to the use of the railway workshop of InfraServ GmbH & Co. Gendorf KG in the Gendorf Chemical Park by parties authorized to have access by law (in particular pursuant to § 14 (2), § 31 of AEG).

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1. Abbreviations and terms

The following terms and abbreviations are used within the framework of the Workshop General Terms:

AEG	German General Railways Act
AT	General Part
BayEBOA	Regulation of the Bavarian Ministry of Economic Affairs and Traffic regarding the Construction and Operation of Connecting Lines
BGB	German Civil Code
BGBI.	Federal Law Gazette
BT	Specific Part
Contracting Parties	InfraServ Gendorf and the respective Authorized Parties using the railway workshop within the framework of an agreement under § 14, para. 6 of the AEG
EIBV	Railway Infrastructure Usage Regulation
GGV SEB	Regulation on the Transport of Dangerous Goods by Road, Rail and Inland Waterways
HPfIG	German Liability Act
InfraServ Gendorf	InfraServ GmbH & Co. Gendorf KG
no.	Number
para.	paragraph
Railway workshop	Railway workshop in the Gendorf Chemical Park
RID	Regulations concerning the International Carriage of Dangerous Goods by Rail
RU	Railway undertakings
TEIV	Trans-European Railway Interoperability Regulation
Use	Use and/or access within the meaning of § 14, para. 1 of the AEG and EIBV
Use fee	Financial consideration for the access to the railway workshop and the services used therein, including the use of materials.
Workshop General Terms	Terms and Conditions of Use for the Railway Workshop of InfraServ GmbH & Co. Gendorf KG – General Part
Workshop Specific Terms	Terms and Conditions of Use for the Railway Workshop of InfraServ GmbH & Co. Gendorf KG – Specific Part

2. Purpose and scope of application

- 2.1. The Workshop General Terms guarantee the following to all parties entitled to have access ("**Authorized Parties**") in accordance with statutory provisions:
- the non-discriminatory use of the railway workshop operated by InfraServ Gendorf,
 - the non-discriminatory provision of the services offered by InfraServ Gendorf therein
 - and – in accordance with the requirements of InfraServ Gendorf – the non-discriminatory use of the railway tracks leading to the railway workshop, including the three dead-end tracks behind the railway workshop (currently tracks 21-23), but excluding use of the access roads as stabling tracks ("**Related Railways**").
- 2.2. The term "**use**" in these Workshop General Terms includes access to the railway workshop and the use of the services offered therein. The term "**railway workshop**" in these Workshop General Terms also includes the Related Railways, unless otherwise specified in the Workshop General Terms or in the Workshop Specific Terms. An explicit mention of the "Related Railways" has only declaratory function and does not justify a reverse conclusion.
- 2.3. The Workshop General Terms is valid for the entire business relationship between InfraServ Gendorf and the Authorized Parties, to the extent that this relates to the use of the railway workshop, including the provision of the services offered therein.
- 2.4. All natural and legal persons who are entitled to use the railway workshop and to make use of the respective services offered therein on the basis of the applicable statutory provisions are entitled to access. Upon the preparation of these General Terms, these are the persons specified in § 14, para. 2 and § 31 of the AEG.
- 2.5. Neither the Workshop General Terms nor the Workshop Specific Terms establish a claim to services that are not generally offered in InfraServ Gendorf's railway workshop.
- 2.6. Contractual agreements between Authorized Parties and third parties commissioned by them, in particular RUs, have no influence on the contractual relationship between the Authorized Parties and InfraServ Gendorf regarding the use of the railway workshop.

3. Legal framework for the use of the railway workshop

- 3.1. The use of the railway workshop requires a special agreement with InfraServ Gendorf (§ 14, para. 6 of the AEG). A workshop order accepted by InfraServ Gendorf ("**Workshop Order**") is sufficient as a special agreement with the meaning of sentence 1. Workshop Orders can enter into force on the basis of an individual agreement or on the basis of a written call-off order within a framework contract. The use of the railway workshop is only permitted within the framework of and in accordance with the relevant contractual agreements.
- 3.2. The basis of any use of the railway workshop is comprised of the Workshop General Terms, the Workshop Specific Terms, the special agreement in accordance with no. 3.1, instructions in accordance with no. 3.3 and the applicable legal provisions.
- 3.3. InfraServ Gendorf is entitled to issue operational instructions, orally or in writing, to the Authorized Parties on the basis of the contractual agreements in accordance with para. 3.1 and 3.2. Instructions are part of the legal basis for the use of the railway workshop and are to be observed by the Authorized Parties concerned. Written instructions will be delivered to the Authorized Parties.
- 3.4. All further information required for the use of the railway workshop is provided by InfraServ Gendorf to the Authorized Parties. An Authorized Party may copy the information provided.
- 3.5. InfraServ Gendorf warrants non-discriminatory access upon the conclusion and application of the agreements according to no. 3.1 and 3.2 and upon the issuance of instructions according to no. 3.3.

4. General access requirements

4.1. Approvals

- 4.1.1. Upon the conclusion of an agreement according to no. 3.1 (§ 14, para. 6 of the AEG), an RU that is authorized to have access shall verify, by means of the presentation of the original or a certified copy, that it is in possession of the following regulatory approvals:

- an approval to provide railway transport services within the meaning of § 6, para. 3, no. 1 of the AEG or
- an approval for the provision of rail transport services issued under the laws of another Member State of the European Union or of a Member State to the Agreement of 2 May 1992 on the European Economic Area.

An RU that is authorized to have access may provide verification with the meaning of sentence 1 also by furnishing the original or a certified copy of

- a safety certificate within the meaning of § 7a, para. 1, s. 1 of the AEG or
- a safety certificate pursuant to § 14, para. 7 of the AEG in the version valid until April 20, 2007, with continued validity in accordance with § 38, para. 5a of the AEG, or
- an additional national certificate in accordance with § 7a, para. 4, s. 1 of the AEG

4.1.2. Upon the conclusion of an agreement pursuant to § 14, para. 6 of the AEG, **an authorized holder of railway vehicles** that is authorized to have access, for independent participation in railway operations (§ 31 of the AEG), shall verify, by presenting the original or a certified copy, that it holds the following regulatory approvals:

- an approval for the independent participation in railway operations as a holder of railway vehicles within the meaning of § 6, para. 3, no. 2 of the AEG or
- an approval issued under the laws of another Member State of the European Union or of a Member State to the Agreement of 2 May 1992 on the European Economic Area for independent participation in railway operations as a holder of railway vehicles.

The holder of railway vehicles may provide verification with the meaning of sentence 1 also by furnishing the original or a certified copy of

- a safety certificate within the meaning of § 7a, para. 1, s. 1 of the AEG or
- a safety certificate pursuant to § 14, para. 7 of the AEG in the version valid until April 20, 2007, with continued validity in accordance with § 38, para. 5a of the AEG, or
- an additional national certificate in accordance with § 7a, para. 4, s. 1 of the AEG

4.1.3. In the case of an approval issued by a foreign authority, InfraServ Gendorf requires the submission of a certified translation into German. By way of derogation from this, InfraServ Gendorf may specify in the Workshop Specific Terms the languages for which it does not require the submission of a certified translation.

4.1.4. InfraServ Gendorf may, for objective reasons, generally or in individual cases, waive the submission of the approvals, certificates and/or translations specified in nos. 4.1.1 - 4.1.3, provided that Authorized Parties are not disadvantaged without an objective reason.

4.1.5. If InfraServ Gendorf does not waive the submission of approvals and/or certificates pursuant to no. 4.1.4, the Authorized Parties will immediately notify InfraServ Gendorf in writing of any revocation or modification of the approval, the safety certificate or the additional national certificate.

4.2. Liability insurance

Upon the conclusion of an agreement according to para. 3.1. (§ 14, para. 6 of the AEG), the Authorized Party shall verify the existence of a liability insurance within the meaning of the German Regulation on the Liability Insurance of Railways (*Eisenbahnhaftpflichtversicherungsverordnung*, "EB-HaftpfIV") of December 21, 1995 [BGBl. 1995 I, p. 2101], to the extent that compulsory insurance exists according to the EBHaftpfIV.

It shall immediately notify InfraServ Gendorf in writing of any changes to the existing insurance contract.

4.3. Requirements for personnel

- 4.3.1. If an Authorized Party employs its own operating personnel, they must meet the requirements of the BayEBOA applicable to the railway workshop and must have spoken and written command of the German language to the extent necessary for their respective activity. Upon request of InfraServ Gendorf, the Authorized Party shall confirm in writing the fulfillment of such requirements.
- 4.3.2. Vehicles of the Authorized Parties for which the services of the railway workshop are to be used will be accepted by InfraServ Gendorf on the transfer tracks of InfraServ Gendorf at the Kastl Train Station and will be switched with its own locomotives at the railway workshop. In principle, personnel of the Authorized Parties may not travel on the railway tracks in the Gendorf Chemical Park either with their own locomotives or with foreign locomotives.
- 4.3.3. To the extent that, in an objectively justified exceptional case, the operating personnel of Authorized Parties are permitted by InfraServ Gendorf to operate a railway vehicle in connection with the use of the railway workshop and/or the Related Railways, the following conditions shall apply:
 - a. The persons commissioned by the Authorized Parties to operate the railway vehicle must be in possession of the necessary permit recognized in the country. At the request of InfraServ Gendorf, the corresponding vehicle driver's license must be presented in its original form.
 - b. Independent use of railways in the Gendorf Chemical Park is only permitted to the operating personnel of the Authorized Parties together with an attendant with local knowledge (pilot) provided by InfraServ Gendorf.

4.4. Requirements for the vehicles

- 4.4.1. Vehicles that operate in the railway workshop or that are used for the services of the railway workshop must, in terms of design, outfitting and maintenance, subject to defects to be remedied in the railway workshop, conform to the provisions of the BayEBOA, and must be approved by the competent authority or possess a commissioning approval within the meaning of § 6 *et seq.* of the TEIV. Derogation from this may be made for the use of the railway workshop and for trial and test drives, if the safe operation of the vehicle is guaranteed in other manners.
- 4.4.2. The outfitting of vehicles with the meaning of no. 4.4.1 must be compatible with the technical and operational standards described in the Workshop Specific Terms and with the control, safety and communication systems of the railways used.

- 4.4.3. Upon the request of InfraServ Gendorf, an Authorized Party shall confirm in writing the fulfillment of the conditions under nos. 4.4.1 and 4.4.2.

4.5. Advance payment

- 4.5.1. InfraServ Gendorf is entitled to make the use of the railway workshop dependent on the making of a reasonable advance payment, if there are doubts regarding the solvency of an Authorized Party.
- 4.5.2. In particular, doubts as to the solvency of an Authorized Party within the meaning of this contract are justified
- if the credit rating index determined by the Creditreform Group for the particular Authorized Party exceeds 300; the credit rating index is calculated according to the method explained in **Annex 1**;
 - or upon an application to open insolvency proceedings;
 - or upon a delay in payment, lasting for more than one month, with a full invoice amount or a full payment to be made on a monthly basis;
 - or upon a delay in payment, lasting for more than one month, in an amount equal to the average monthly fee to be paid during the past three months.
- 4.5.3. Advance payments up to the amount of the expected fee for the particular Workshop Order, including the use of materials, are reasonable.
- 4.5.4. If an Authorized Party does not comply with the request for an advance payment made in text form in accordance with items 4.5.1 to 4.5.3 within ten calendar days, InfraServ Gendorf shall be entitled, without further notice, to refuse performance until the advance payment has been made.

5. Requests for use of the railway workshop – the access procedure

5.1. Requirements for use requests

- 5.1.1. Workshop Orders with the meaning of no. 3.1 come about through the individual acceptance of the service request of an Authorized Party or by means of a call-off order within a framework contract. A service request and/or a call-off order is, for the purposes of the Workshop General Terms, identified as a **"Use Request."**
- 5.1.2. Use Requests must be in text form to be effective. You must always provide the following information regarding the vehicles used for the services of the railway workshop:
- Type and model of the vehicles;

- Number of vehicles;
- Identification numbers of the vehicles;
- Description of the defects to be remedied;
- Type and scope of the requested workshop services;
- If applicable, special features to be observed when using the railway workshop.

No. 7.2.2 remains unaffected.

- 5.1.3. If a Use Request is incomplete or otherwise flawed, InfraServ Gendorf shall immediately request missing or corrective information prior to rejection.

5.2. Competing Use Requests – principles of the coordination procedure

If there are multiple Use Requests by Authorized Parties concerning simultaneous, incompatible uses of the railway workshop, InfraServ Gendorf shall proceed as follows in accordance with § 10 of the EIBV:

- a. In principle, InfraServ Gendorf shall simultaneously initiate negotiations with all Authorized Parties affected by a conflict. In such negotiations, all affected Authorized Parties shall participate with the same level of information. The primary objective is to reach a mutually agreed solution.
- b. By way of derogation from letter a, InfraServ Gendorf may offer uses to individual Authorized Parties affected by a conflict, which deviate in type, timing and/or scope from the requested uses, to the extent that the deviation appears acceptable to the applicant and conflicts are thereby likely to be avoided.
- c. As soon as it becomes clear that it is most probable that bilateral negotiations with the meaning of letter b will not be successful, InfraServ Gendorf must immediately start or resume negotiations with all affected Authorized Parties in accordance with letter a.
- d. If an agreement is not reached within five business days of the first start of negotiations in accordance with letters a or b, the ranking according to § 10, para. 6 of the EIBV shall apply. Pursuant to § 10, para. 6, no. 2 of the EIBV, InfraServ Gendorf may give priority to the Use Requests of an Authorized Party that owns the railway workshop, provided that the consideration of other Use Requests is not possible or not reasonable for reasons of the operations of an Authorized Party with priority.

Thereafter, InfraServ Gendorf itself can also be granted priority access in its capacity as an RU.

- e. If no decision can be made on the basis of the criteria of § 10, para. 6 of the EIBV, InfraServ Gendorf shall decide according to the time sequence of the requests received ("first come, first served").

6. Principles of compensation for workshop services – use fee

6.1. Calculation of the use fee

The term "**use fee**" in the sense of the Workshop General Terms covers all financial consideration for access to the railway workshop and the services used therein, including the use of materials. The charging principles specified in the Workshop Specific Terms are decisive for the calculation of the use fee.

6.2. Adjustment of inequitable discounts or surcharges

Use fees are calculated without discrimination. Discounts and surcharges are only possible in accordance with the principles of the Workshop Specific Terms.

Discounts for the granting of which the conditions under the charging principles did not exist are to be adjusted by the Authorized Parties.

6.3. Sales tax

The use fees to be paid by an Authorized Party shall be invoiced with the addition of the statutory value-added tax in the valid amount.

6.4. Payment method

An Authorized Party must transfer the use fee to be paid at its own expense to the account specified by InfraServ Gendorf within one week after receipt of the invoice. InfraServ Gendorf shall send its invoices upon completion of a Workshop Order or a definable part of a Workshop Order. Details are specified in the particular Workshop Order. For objectively justifiable reasons, InfraServ Gendorf and the respective Authorized Parties ("**Contracting Parties**") using the railway workshop may mutually agree to deviate from the preceding provisions regarding invoicing and payment methods.

7. Duties of care and safety

7.1. Basic principles

- 7.1.1. The Contracting Parties are obligated to cooperate in good faith, taking into account the special features of the use of the railway workshop and minimizing negative effects on the other Contracting Party.

7.1.2. In order to ensure the safety and efficiency of the use of the railway workshop, the Contracting Parties shall immediately provide each other with all necessary information. This applies in particular to dangerous events. This does not affect the duties of the Authorized Parties under no. 11.2.

7.1.3. Each Contracting Party shall designate one or more persons who are authorized and able to make operational decisions with binding effect on their behalf within a short period of time.

7.2. Information regarding contractual use

7.2.1. Information duties of InfraServ Gendorf

InfraServ Gendorf shall ensure that all Authorized Parties using the railway workshop are informed immediately of the following circumstances as a minimum requirement:

- a. the condition of the railway infrastructure used, in particular any change affecting the railway workshop itself or railways related to the railway workshop, to the extent that such circumstances are of importance to an Authorized Party itself (for example, construction work, temporary speed restrictions, signal changes, track closures, changes to the technical or operational characteristics of the track systems);
- b. irregularities during the use of the railway workshop and/or the Related Railways, to the extent that they may be of importance for further dispositions of an Authorized Party.

7.2. Information duties of the Authorized Parties

Authorized users of the railway workshop shall ensure that InfraServ Gendorf is informed of the following circumstances as a minimum requirement with respect to the vehicles used for the services of the railway workshop:

- number, type, dimensions and weight of the vehicles;
- the identification numbers of the vehicles according to the National Vehicle Register (NVR);
- cleaning condition of the vehicles with the submission of the last cleaning certificate;
- notification of whether and to what extent the cleaning of the vehicles is desired;
- submission of the CIM last bill of lading concerning the aforementioned vehicles;
- any special features of the vehicles for which the services of the railway workshop are used;

- any circumstances establishing risks (for example, transport of dangerous goods in accordance with the GGV SEB / RID, residues of hazardous substances, limited braking capacity of vehicles, etc.);
- any circumstances that could lead to irregularities in the use of the railway workshop (for example, belated registration of railway vehicles, loss of locomotives, etc.);
- any provision of spare parts by the Authorized Parties or third parties.

7.3. Disruptions in the management of operations

- 7.3.1. The Contracting Parties shall inform each other immediately regarding special occurrences and disruptions in the management of operations, if and to the extent that they have effects on the agreed use of the railway workshop. This shall not affect the duties of the Authorized Parties under no. 11.2.
- 7.3.2. The Contracting Parties shall immediately remedy any disruption with regard to the agreed use of the railway workshop, unless a delay in remedying the disruption will not present disadvantages for the other Contracting Party. Each Contracting Party shall be individually obligated to remedy the disruption arising in its respective area of responsibility.
- 7.3.3. Authorized Parties, in whose area of responsibility a disruption with the meaning of no. 7.3.2 has arisen, must ensure that the railway workshop is not used beyond the contractually agreed level (for example, due to vehicles that have been immobilized or long shutdown periods based on a lack of spare parts deliveries). At any time, InfraServ Gendorf is entitled to remedy any such disruption at the expense of the Authorized Party responsible for it (for example, through the interim stabling of vehicles on a stabling track or by removing immobilized vehicles). InfraServ Gendorf is entitled to charge a fee for the interim stabling of vehicles. The stabling fee is charged without discrimination; further details are governed by the charging principles and the valid price list. No. 6. applies accordingly to the stabling fee.
- 7.3.4. To the extent that, upon the remedy of disruptions within the meaning of no. 7.3.2, conflicts arise among multiple Authorized Parties of the railway workshop, InfraServ Gendorf shall implement the principles of the coordination procedure pursuant to no. 5.2 and apply the priority rules specified therein.

7.4. Maintenance and construction work

- 7.4.1. InfraServ Gendorf shall carry out maintenance and construction work within the framework of the commercially reasonable options, in such a manner that negative effects on the management of the operations of the railway workshop and the operations of the Authorized Parties are minimized.

- 7.4.2. Any restrictions on the use of the railway workshop due to foreseeable maintenance and construction work are set forth in the Workshop Specific Terms.
- 7.4.3. At any time, InfraServ Gendorf can carry out maintenance and construction work that cannot be postponed for reasons of safety of the operation of the railway workshop or the Related Railways. InfraServ Gendorf shall inform affected Authorized Parties immediately of any effects on the management of the operations of the railway workshop or the operations of the Authorized Parties.

8. Changes to the railway workshop

InfraServ Gendorf is entitled to change the railway workshop itself, the Related Railways along with the technical and operational standards for their use with reasonable consideration of the interests of the Authorized Parties. InfraServ Gendorf shall inform the Authorized Parties of any planned changes with a reasonable period prior to their implementation. This shall not affect existing contractual obligations.

9. Warranty

9.1. Basic principle

If and to the extent that the railway workshop provides work services within the meaning of § 631 of the BGB to the Authorized Parties, for defects of quality or title of such services, InfraServ Gendorf shall provide a warranty in accordance with statutory provisions, unless provisions deviating from this are agreed in these Workshop General Terms or the Workshop Specific Terms.

9.2. Warranty disclaimers

InfraServ Gendorf assumes no warranty whatsoever for defects that are attributable to one of the following causes:

- incorrect installation by the Authorized Parties or third parties;
- changes or repair work on the part of the Authorized Parties or third parties that take place improperly and without the prior approval of InfraServ Gendorf;
- the improper use of the affected vehicles by the Authorized Parties or third parties or the faulty or negligent treatment of the affected vehicles by the Authorized Parties or third parties, to the extent that InfraServ Gendorf has not been explicitly commissioned to remedy such defects;
- the use of unsuitable equipment by an Authorized Party or third parties;
- natural wear and tear;

- chemical, electrochemical or electrical influences, unless InfraServ Gendorf is responsible for them.

9.3. Supplementary performance

- 9.3.1. To the extent that there is a defect in the work service of the railway workshop, InfraServ Gendorf shall be entitled, at its discretion, to remedy the defect or to once again carry out the work service that was commissioned ("**Supplementary Performance**").
- 9.3.2. If one of the two or both types of Supplementary Performance according to no. 9.3.1 is impossible or disproportionate, InfraServ Gendorf shall be entitled to refuse it.
- 9.3.3. InfraServ Gendorf shall be further entitled to refuse Supplementary Performance as long as an Authorized Party does not fulfill its payment duties to InfraServ Gendorf in the scope that corresponds to the defect-free part of the work service.

9.4. Reduction of the use fee and withdrawal

- 9.4.1. If the Supplementary Performance under no. 9.3.1 is impossible or fails, an Authorized Party shall have the right to choose between reducing the use fee accordingly or withdrawing from the contracts regarding its use of the railway workshop (see no. 3) in accordance with the statutory provisions.
- 9.4.2. The Authorized Parties shall be entitled to the rights under no. 9.4.1 particularly if InfraServ Gendorf refuses Supplementary Performance for a reason other than that specified in no. 9.3.3 or culpably delays the Supplementary Performance, or after the Supplementary Performance has failed for the second time.

9.5. Self-performance

The right to self-performance is barred, unless InfraServ Gendorf has fraudulently concealed the defect of the work service in question or has assumed a guarantee for the quality of the work service.

9.6. Compensation for damages and reimbursement of expenses

- 9.6.1. With regard to claims for damages and reimbursement of expenses, reference is made to the provisions under no. 10.
- 9.6.2. This does not apply to the reimbursement of expenses according to § 635, para. 2 of the BGB.

9.7. Assurances and guarantees

Assurances and guarantees on the part of InfraServ Gendorf are only effective if InfraServ Gendorf has given them expressly and in written form.

9.8. Period of limitations

- 9.8.1. The claims of the Authorized Parties to Supplementary Performance, compensation for damages and reimbursement of expenses based on defects in the work service shall be time-barred one year after acceptance. This shall not apply to claims for damages based on any injury to life, limb or health or based on damages caused by InfraServ Gendorf intentionally or with gross negligence. In that respect, the statutory periods of limitation shall apply.
- 9.8.2. The right to reduce the use fee and the right of withdrawal shall be barred to the extent that the claim to Supplementary Performance is time-barred and InfraServ Gendorf invokes the period of limitations. However, in such a case, an Authorized Party may refuse to pay the use fee to the extent that it would be entitled to do so based on a withdrawal or a reduction of the use fee. If an Authorized Party refuses to pay the use fee in the event that withdrawal is barred under sentence 1, InfraServ Gendorf on its part shall be entitled to withdraw from the contracts relating to the use of the railway workshop.

10. Liability

10.1. Scope of liability

- 10.1.1. Each Contracting Party shall be liable according to the legal provisions, unless provisions deviating from this are agreed in these Workshop General Terms or the Workshop Specific Terms. Deviating provisions in the Workshop General Terms and Workshop Specific Terms apply in the same way to all Authorized Parties.
- 10.1.2. InfraServ Gendorf shall be liable in the full extent to the Authorized Parties, their vicarious agents or other persons who fall within the scope of protection of the constituent contracts for the use of the railway workshop in accordance with nos. 3.1 - 3.3
- a. for damages resulting from any injury to life, body or health;
 - b. for damages based on an intentional or grossly negligent breach of duty of InfraServ Gendorf, its statutory representatives or vicarious agents;
 - c. for damages arising from a maliciously concealed defect in the work service of the railway workshop or based on a breach of a warranty for the work services of the railway workshop with the meaning of no. 9.7.

- 10.1.3. In the event of a simple negligent breach of a duty on the part of InfraServ Gendorf, its statutory representatives or vicarious agents, InfraServ Gendorf shall be liable to the Authorized Parties, its vicarious agents or other persons who fall within the scope of protection of the constituent contracts for the use of the railway workshop in accordance with nos. 3.1 - 3.3 solely
- if and to the extent that material contractual duties with the meaning of no. 10.1.4 were violated,
 - and then only for damages typical for contracts and foreseeable upon the conclusion of the contract.
- 10.1.4. Material contractual duties are duties, the fulfillment of which is a prerequisite for enabling the proper fulfillment of the constituent contracts for the use of the railway workshop in accordance with nos. 3.1 - 3.3, and the adherence to which the Contracting Parties may regularly rely, such as the final acceptance and the notification of completion to an Authorized Party.
- 10.1.5. In all other respects, the liability of InfraServ Gendorf in relation to the persons specified in nos. 10.1.2 and 10.1.3 - regardless of the legal grounds - is completely barred. This shall not affect no. 10.1.8.
- 10.1.6. If, without the prior approval of InfraServ Gendorf or in an improper manner, the Authorized Parties or a third party undertakes modifications or repair work to the works services of the railway workshop or to the vehicles for which such work services are used, the liability of InfraServ Gendorf for all damages that are to be attributed to such changes or repair work, in whole or in part, shall be barred.
- 10.1.7. The culpability of statutory representatives or vicarious agents is equivalent to the culpability of the Contracting Parties. Likewise, any personal claims of the Authorized Parties and the persons specified in nos. 10.1.2 and 10.1.3 against statutory representatives or vicarious agents of InfraServ Gendorf shall be limited according to the provisions of nos. 10.1.2 to 10.1.6.
- 10.1.8. The limitations of liability agreed above also apply to the liability of InfraServ Gendorf under the HPfIG, to the extent that this is permissible pursuant to § 7 of the HPfIG.
- 10.1.9. Authorized Parties, their vicarious agents and other persons who fall within the scope of protection of the constituent contracts for the use of the railway workshop in accordance with nos. 3.1 - 3.3 are obligated to notify InfraServ Gendorf in writing within 14 days of any obvious damages that may be the subject of an obligation to provide compensation for damages on the part of InfraServ Gendorf.

10.2. Contributory fault

If the aggrieved party has contributory fault, § 254 of the BGB and § 4 of the HPfIG shall apply without limitation.

10.3. Multiple parties causing the damages

10.3.1. If the Contracting Parties – possibly together with other persons – are obligated to provide compensation for the same damages to a third party, § 13 of the HPfIG shall apply directly or correspondingly in the relationship between the contracting parties.

10.3.2. If the scope of the cause of the damages cannot be determined, the Contracting Parties shall be liable to the aggrieved party in equal parts.

10.3.3. For the internal relationship between a Contracting Party and a vicarious agent appointed by it, this shall not affect the distribution of liability according to § 840, para. 2 of the BGB.

10.3.4. In the external relationship with the aggrieved parties, § 840, para. 1 of the BGB shall apply.

11. Hazards to the environment

11.1. Avoidance of environmental hazards

Authorized Parties are always obligated to refrain from effects that endanger the environment. In particular, the transshipment of environmentally hazardous goods and materials, along with the refueling or cleaning of vehicles, may only take place in designated and suitable places.

11.2. Measures to avert dangers and rescue measures

11.2.1. If, in connection with the conduct of an Authorized Party, the use of the railway workshop results in environmentally harmful emissions or if water-polluting substances enter the soil or if explosion, fire or other hazards arise in connection with such conduct ("**hazardous situation**"), each Authorized Party who becomes aware of it shall immediately inform the operations center of the plant fire department in the Gendorf Chemical Park. This notification shall not affect the individual responsibility of the Authorized Party using the railway workshop for the immediate initiation of measures to avert dangers and/or rescue measures. To the extent that there is no danger of delay, such measures are always to be taken in coordination with the plant fire department.

11.2.2. If a hazardous situation with the meaning of no. 11.2.1, sentence 1 makes a vacating of the operating facilities of InfraServ Gendorf necessary, the costs shall be borne solely by the Contracting Party

that caused the hazardous situation. It does not depend on culpability. If multiple causing parties have been identified, they shall be liable as joint and several obligors.

If a causing party cannot be identified, no. 11.3.3 shall correspondingly apply to the apportionment of the costs of vacating the operating facilities.

11.3. Remedy of environmental damages

- 11.3.1. If a claim is made against InfraServ Gendorf, as the party causing the disruption because of ownership (*Zustandsstörer*), for the remedy of environmental damages caused (culpably) by an Authorized Party using the railway workshop, such Authorized Party, as the causing party, shall solely bear the costs that arise from this. It shall be obligated to reimburse InfraServ Gendorf for such costs in full.

If several Authorized Parties with whom equivalent contractual relationships exist have been identified as the causing parties, they shall be liable with respect to to InfraServ Gendorf as joint and several obligors.

- 11.3.2. If, in addition to an Authorized Party using the railway workshop, InfraServ Gendorf has also caused environmental damages, and a claim for the remedy of such damages is made against it as the party causing the disruption because of ownership or party causing the disruption because of conduct (*Zustandsstörer*), such Authorized Party, as causing party, shall be proportionately liable to InfraServ Gendorf for the reimbursement of the costs incurred.

The scope of the reimbursement duty under sentence 1 shall depend on the circumstances of the individual case. The decisive factor is first and foremost the extent to which the specific environmental damages were caused predominantly by InfraServ Gendorf or by the other Contracting Party.

If multiple Authorized Parties with which equivalent contractual relationships exist have been identified as the causing parties, they shall be liable with respect to to InfraServ Gendorf as joint and several obligors.

- 11.3.3. If the party causing environmental damages, for the remedy of which a claim is made against InfraServ Gendorf as the party causing the disruption because of ownership or party causing the disruption because of conduct cannot be identified, the following arrangement applies to the internal relationship for the bearing of costs between the Contracting Parties:

- a. In principle, the costs of remedying the damages shall be borne equally by all Contracting Parties that objectively come into consideration as causing parties. In doing so, equivalent contractual relationships with other Authorized Parties shall be included in the cost sharing. If, in addition to InfraServ Gendorf, more than one Authorized Parties is considered to be the causing party, InfraServ Gendorf shall be taken into consideration in the cost sharing only once.

- b. If a Contracting Party proves that it obviously cannot have contributed to the development of the specific environmental damages, it shall be exempt from the obligation to bear the costs. The same shall apply if a Contracting Party obviously cannot have caused environmental damages due to the passage of time or due to other objective circumstances; in such a case, proof of this need not be provided. The costs of remedying the damages shall then be divided equally among the remaining parties of equivalent contractual relationships.

11.4. Ground contamination

If soil contamination is detected by an Authorized Party in connection with the use of the railway workshop, InfraServ Gendorf shall arrange for the necessary remedial measures.

For a possible reimbursement of the costs of remediation, no. 11.3 shall apply accordingly.

12. Place of performance, area of jurisdiction, applicable law

- 12.1. The place of performance for the fulfillment of all obligations of InfraServ Gendorf under the contracts concerning the use of the railway workshop (see no. 3) is the railway workshop. The place of payment with respect to all payment claims in connection with the use of the railway workshop is the registered office of InfraServ Gendorf.
- 12.2. With regard to all claims and rights in connection with the contracts concerning the use of the railway workshop (see item 3), the laws of the Federal Republic of Germany shall apply, to the exclusion of the conflict-of-law rules of the Introductory Act to the German Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuch*).
- 12.3. The courts at the registered office of InfraServ Gendorf are responsible for the resolution of all disputes arising from and in connection with the contracts concerning the use of the railway workshop (see no. 3). This shall only apply if the Authorized Parties using the railway workshop is a merchant (*Kaufmann*), a legal entity under public law or a special fund under public law, and if it has no general area of jurisdiction within Germany or relocates its registered office abroad after the conclusion of the contract. In any event, InfraServ Gendorf shall be entitled to sue an Authorized Party at any other permissible area of jurisdiction.

13. Concluding provisions

- 13.1. There are no side agreements.
- 13.2. Any amendment, supplement or cancellation of the contracts concerning the use of the railway workshop (see no. 3), in particular these Workshop General Terms, must be in text form to be effective. This also applies to this clause regarding text form.

Annex 1: Creditreform, Information Sheet entitled "Credit Index – Effective Early Warning Indicator"