



**NOVATRANS**

**TERMS AND CONDITIONS**

*Applicable as of January 1<sup>st</sup> 2023*

## GENERAL PROVISIONS

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<b>General Provisions</b>
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## 1. DEFINITION

**Client** Haulage companies or logistic operators who purchase combined transport services within the framework that they remit ITU (intermodal transport unit) to Novatrans, through their own means or by resorting to third party transporters, for rail transportation from a departure Terminal to a destination Terminal.

Clients also purchase ITU parking services and Road Vehicles on departure or destination Terminals.

**Combined Transport Contract and Related Services** Contract under which:  
 - NOVATRANS organizes loading onto freight cars, dispatch by rail and full or empty ITU unloading by the Client in France and internationally.  
 - NOVATRANS can make ITU and road vehicle parking, as well as handling and other related services available to Clients.

This contract is materialized upon acceptance of the present General Conditions by the Client and of any Special Conditions, where applicable.

**Handling Cost** Rate applicable to ITU loading services of a Road Vehicle onto a freight car, and unloading from a freight car onto a Road Vehicle (loading and unloading). This Handling Cost is included in the NOVATRANS rates applicable to combined transport services for “loading and unloading” at the departure Terminal, and “loading and unloading” at the destination Terminal.

NB: Any additional handling cost, particularly that which is related to ITU parking on a Terminal, causing one or several ITU displacement, is subject to additional billing according to the conditions in effect for each Terminal.

**Train Operating Company** Company designated by NOVATRANS to perform the service of railway traction.

**Volume Commitment** Business agreements between NOVATRANS and the Client under which the Client commits to purchasing a capacity in number and type of ITU on determined “train-routes,” studied per day of circulation of said “train-routes,” according to a negotiated price, and agreed upon regularity and period.

These capacities shall be allocated and provided by NOVATRANS, within the limit of the defined reservation conditions.

The terms applicable in the Volume Commitment are described in the Particular Conditions annexed to the present General Conditions.

These Particular Conditions represent the business agreements and stipulate the mutual obligations between the Parties.

<b>Latest Delivery Time</b>	Latest Delivery Time of the last ITU to be loaded onto a train.
<b>MAD</b>	Time of Availability of first ITU to be unloaded from a train.
<b>Reservation</b>	Reservation corresponds to the order placed by the Client to remit one or several ITU at a train's departure, on a given day of running of this train.
<b>Reservation Conditions</b>	Terms corresponding to the (order) or Reservation made with the Client Service Department by the Client by adapted means and in respect of the agreed-upon announcement times based on the Volume Commitments.
<b>Furrows</b>	<p>According to the annual NOVATRANS transportation plan, Réseau Ferré de France (French Rail Network) provides the ability to circulate on the National Rail Network.</p> <p>There are several categories of furrows guaranteeing circulation of the NOVATRANS trains, taking the work slots planned by SNCF Réseau into consideration. In this context, plan adaptations are possible according to the information returned by SNCF Réseau, and modified furrows can have an impact on regularity.</p>
<b>Terminal</b>	Site operated by NOVATRANS, its subsidiaries, by a company in which it is a shareholder, or by a third party subcontractor service provider, serving to transfer ITU from the route to freight car and vice versa, or offering related services.
<b>ITU</b>	<p>ITU (Intermodal Transport Unit) refers to the following:</p> <ul style="list-style-type: none"> <li>- Cranable semi-trailers</li> <li>- Swap bodies or similar vehicles (containers, etc.)</li> </ul>
<b>Road Vehicles</b>	<p>Road Vehicles refers to the following:</p> <ul style="list-style-type: none"> <li>- Trailers</li> <li>- Semi-trailers other than cranable semi-trailers</li> <li>- Isolated tractors</li> <li>- Vehicle combinations (tractor semi-trailer, truck and trailer)</li> </ul>
<b>Central Booking</b>	Novatrans Client Services representing the sole entry point for Clients for reservations or any other information related to follow-up and processing of these reservations.

## 2. OBJECT AND SCOPE

### 2.1

The object of the present General Conditions is to regulate the relationships between NOVATRANS and its Clients for the execution of a national system of combined transport services and related services.

The General Conditions come with the relevant tariffs and/or Special Conditions agreed between NOVATRANS and the Client, where applicable.

Any and all points not stipulated in the present General Conditions shall be governed by the legal and/or regulatory provisions or the international conventions applicable on the day on which the service provision is fulfilled.

The combined transport services purchased from NOVATRANS automatically lead to rental by the Client of terminal locations on Terminals.

Clients can also purchase parking and handling services on Terminals not directly related to combined transport services. These services are regulated by the General Conditions relating to each terminal.

The present General Conditions substitute any prior written or oral agreement linking NOVATRANS to its Clients.

## **2.2**

A copy of the present General Conditions is sent to the Client upon simple request on his part. However, the General Conditions are also published on the NOVATRANS website and are thus presumed to be known to the Clients at the time their request for a reservation. Failing a prior written agreement to the contrary from NOVATRANS, any and all requests for reservations shall imply unreserved acceptance of the present General Conditions.

Confirmation by NOVATRANS of a request of reservation by a Client materializes the conclusion of a Combined Transport Contract and related services, as well as the application of the present General Conditions.

## **2.3**

The present General Conditions are applicable for all combined transport services provided by NOVATRANS as of January 1, 2014.

Clients are informed that certain Terminals used today by NOVATRANS could be transferred to independent legal entities during the period of validity of the present General Conditions. In the hypothesis of such a transfer, NOVATRANS could modify the present General Conditions within the limit made necessary by this transfer.

NOVATRANS reserves the option to amend the General Conditions at any time. Clients shall be notified of any and all amendments to the present General Conditions, by any appropriate means, at least one (1) month prior to the effective date of the amended General Conditions.

The new General Conditions shall apply to the Client after such period of time and shall replace the previous General Conditions in force.

## **2.4**

Any particular provisions agreed upon between NOVATRANS and its Clients departing from the present General Conditions shall prevail over the latter, on condition that they have been subject to a signed written agreement between the parties, and only for the conditions and duration provided on the occasion of this departure.

No amicable exemption from the present General Conditions can be cited as precedent.

# **3. ENTRY INTO FORCE AND DURATION OF THE CONTRACTS**

## **3.1**

In case of conclusion of a Combined Transport Contract with Volume Commitment under the conditions provided in Annex I, the conditions of entry into force and duration of the relationship between NOVATRANS and the Clients in question shall be determined within the framework of the Particular Contract.

### 3.2

In all other cases, the Combined Transport Contract takes effect on the day of confirmation by NOVATRANS of a request for a reservation by the Client.

In any case, the General Conditions shall apply upon the parking of a Road Vehicle or ITU on a Terminal, for any related service, and for Combined Transport services, upon placement of the ITU on the handling area in view of being loaded on a freight car.

Combined Transport services are concluded upon arrival at the destination Terminal when ITU is placed on the handling area, or in case of inability on the part of the recipient, from the moment when handling was to have normally taken place.

## 4. RESERVATION AND DELIVERY OF ITU UPON EXPEDITION

### 4.1 Requests for reservations

The Client undertakes to forward to NOVATRANS, with each request for reservation, the following information:

- The number of the vehicle or, failing that, the description of the vehicle (type, tare weight, gauge, length, body, etc.);
- Number of ITUs concerned;
- Weight of each ITU;
- The route / train concerned;
- Any specificities relating to the goods transported.

And, in general, any and all information that enables correct fulfilment of the service provisions entrusted to NOVATRANS.

The Client acknowledges that the provision of aforesaid information is essential in allowing NOVATRANS to register the request for reservation and perform the service provision.

#### ▪ Request for reservation until the Day of Transportation:

The Client who wants to deliver ITU to NOVATRANS for transportation on a given date (“Day of Transportation”) must address a request for reservation to NOVATRANS before midnight on the day prior to the Day of Transportation (“Day of Transportation -1”) at the latest, using the NOVATRANS online reservation service or by EDI.

However, if these are lines for which the Day of Transportation is a Saturday, the Client must address his request for a reservation to NOVATRANS by Friday at 12:00 PM at the latest.

Any request made under these conditions produces a response formulated by NOVATRANS departments (confirmed, reported or notwithstanding) of the reservation or to a refusal by NOVATRANS by the Day of Transportation at 12:00 PM at the latest (or Friday before 4:00 PM if the Day of Transportation is a Saturday). Confirmations or refusal of a request for reservation are sent to the Client by NOVATRANS by electronic mail.

Requests sent on the Day of Transportation shall only be fulfilled subject to available transportation capacity on the route / train concerned. Failing available transportation capacity on the route / train concerned, the request for reservation shall be fulfilled on the following Day of Transportation.

- Request for reservation before the Day of Transportation

NOVATRANS commits to responding 24 hours before a train's departure to any request for a reservation addressed sufficiently in advance before the Day of Transportation. This response shall carry the following:

- Either confirmation of the request for a reservation, according to the residual capacities available
- Or registration of the request for a reservation on a waiting list, according to the transportation capacities susceptible of becoming available, in which case NOVATRANS shall provide its final response by the Day of Transportation at the latest.

These provisions are without prejudice to the requirements for prior information weighing on the Client due to the specific nature of certain transports and that are specified in section 5 below.

#### **4.2 Processing of requests for reservation**

NOVATRANS meets requests for reservation according to the capacities for transport on each route / train, and contractual volume commitments. Capacities for transport are distributed according to the following order of priority:

1. Client having made a contract for **Volume Commitment** and made his reservation on the Day of Transportation -1, for the capacities corresponding to the Volume Commitment provided for the Day of Transportation; then
2. Case of clients **without commitments or temporarily surpassing their initial commitment:** Processing case by case according to spot availability.

Transport capacities available are granted by chronological order of receipt of requests for reservation.

On his reservation, the Client must indicate the number of ITU, number and weight for each ITU, the route / train involved, and any information required in accordance with section 5 below.

### **5. CLIENT OBLIGATIONS**

The Client undertakes to forward to NOVATRANS any and all exact information required for fulfilment of the service provisions.

As such, the Client shall indemnify NOVATRANS and hold it harmless against any and all legal action, claim or recourse resulting from erroneous, incomplete or inapplicable statements or documents and any such provided late.

The Client undertakes to abide by the safety instructions given by NOVATRANS and forwarded to the Client and/or its employees.

The Client undertakes to inform NOVATRANS at the earliest opportunity of any and all delays or deferred reservations. Failing which, such reservation shall be automatically deferred to the following



day and shall be cancelled after 48 hours and this without the Client being permitted to claim the payment of an indemnity of any kind.

NOVATRANS reserves the option to claim payment from the Client of the price relative to the reservation and/or any and all additional costs in the event of deferment or cancellation of the reservation on the part of the Client.

## **5.1 Respect of regulations**

Road Vehicles and ITU must:

- Be compliant with all the legislation regulating traffic;
- Include all documents required to answer any control by officials authorized to verify road transportation of merchandise;
- Have a registration plate that is compliant with the legislation regulating vehicles and ITU by rail BIC-code or ILU-code.

In the event of failure to abide by the regulations, NOVATRANS may carry out an external inspection of the ITU with the naked eye prior to acceptance and express reservations on the transportation contract or refuse acceptance of the ITU in the event that transportation safety is compromised.

## **5.2 Refusal of responsibility**

NOVATRANS reserves the possibility of refusing to take responsibility for a Road Vehicle or ITU where a review or an external inspection of the ITU:

- Reveals an anomaly, a defect or the failure to activate a device of any kind on an item of equipment on the Road Vehicle or the ITU likely to be harmful in any way, on the one hand, to rail transportation, to its safety or to handling operations and, on the other hand, to damage equipment belonging to the Client, to NOVATRANS or to third parties, and/or to result in damage of any kind to property or persons;
- Leads to suggesting poor conditioning of merchandise and/or defective or insufficient merchandise stowing;
- Reveals apparent damage to the ITU or the Road Vehicle rendering it impossible to perform the transportation operations and/or handling operations under normal operating conditions or under conditions that may be of a kind likely to cause damage to the goods transported, to property or to third parties.
- Enables to detect an abnormality on the material's marking (gauge, approval plate, etc.), and on the signaling of hazardous material transports.

NOVATRANS also reserves the possibility of refusing to take responsibility for a Road Vehicle or ITU when:

- The weight noted during the weighing operation differs from the declaration during reservation of the weight mentioned on the transport documents (waybill, CMR declaration of hazardous merchandise);
- The ITU or road vehicle is overloaded;

- The dimensions, gauge, and type of ITU differ from those of the ITU mentioned during the reservation.

Novatrans also reserves the right to overbill the Road Vehicle or ITU according to the real weight noted. These refusals of responsibility and their motivations shall be confirmed in writing to the Client upon his request.

The liability of NOVATRANS may under no circumstances be invoked in the event that it refuses acceptance pursuant to the terms and conditions set out in these General Conditions.

### **5.3 Hazardous materials and waste transportation**

Road Vehicles or ITU loaded with hazardous materials or hazardous or non-hazardous waste must meet the conditions established by TDG (Transportation of Dangerous Goods) regulations and the environmental code.

Any transportation of hazardous materials must be subject to a feasibility study and accepted by NOVATRANS.

The reservations must specify particularly and expressly the nature and quantity of dangerous materials provided for loading by the client in accordance with TDG regulations.

If the packing list is declared, the Road Vehicle or ITU must be presented at least one hour before latest delivery time in order for technical and administrative controls to be performed. If the list is not declared, the ITU must be presented at least one hour and a half before latest delivery time.

For an explosive transport (class 1), with classification code 1.1 and 1.5, the reservation must reach NOVATRANS 72 hours before departure by rail.

The Road Vehicle or ITU must be presented on the day of train departure expressly notified by NOVATRANS and maximum two hours before the train's latest delivery time in order for technical and administrative controls to be performed.

Notwithstanding any written or oral agreement to the contrary between the parties, the Road Vehicles or ITU loaded or empty (not cleaned and/or degassed) of hazardous materials cannot pass on a Terminal for a duration above 48 hours prior to Latest Delivery time, or as of Time of Availability. In case this 48-hour time limit is surpassed, NOVATRANS shall bill the Client a penalty of 100 Euros per Road Vehicle or ITU and per business day surpassed in addition to the rate provided in the Parking space Rental Rate provided in section 7 below. NOVATRANS can also, at its discretion, and according to the terms it deems appropriate, have the Road Vehicles or ITU in question removed, transported and stored, at the Client's cost and risk, or refuse delivery from the Client for transportation of any new Road Vehicle or ITU loaded with or empty of hazardous materials at the given Terminal destination.

The movement of Road Vehicles or ITU transporting explosives (class 1), infectious materials (classes 6.2) and dangerous or non-dangerous waste is prohibited. The Road Vehicles and ITU are presented on the train's day of departure and taken back on the day of the train's arrival at destination.

Particular measures are applicable for certain hazardous materials such as toxic gas or inflammable gas.

### **5.4 Findings of damage and shortages**

When removing an ITU or its load from a Road Vehicle at a Terminal, it is up to the Client to make exceptions for damages or shortages that may cause NOVATRANS, the railway company or other third parties to be held liable.

The driver shall position the Road Vehicle as indicated by terminal personnel. The driver shall have adjusted his spoilers in such a way as to enable unloading or loading of the ITU on the Road Vehicle in complete safety.

If these rules are not observed, NOVATRANS shall not accept liability for any damage caused to the Road Vehicle.

The findings cannot be jointly by a representative of the Client and by a representative of NOVATRANS, and if necessary, with assistance from a representative of the railway company.

The possible exceptions must be noted on the documents exchanged between the parties (such as the shipping contract) at time of receipt and removal of the ITU.

Removal or acceptance without reservation of an ITU or Road vehicle by the Client or his representative extinguishes any action born of the contract for loss, damage or shortage of the delivery time

However, the recipient or his representative preserves his right to issue a claim for non-apparent damage when its existence is noted after the ITU is removed by the Client or his representative, on double condition of that the latter does the following:

- Addresses his claim to NOVATRANS by registered mail with acknowledgment of receipt within three business days following removal of the ITU; and
- Proves that the damage was produced between the time ITU is handed off and time of availability.

## **5.5 Abnormality / Non-compliance of the shipped ITU**

If, during transportation, repair of the load is required, the cost of repair and that which is related to halting the freight car is incurred by the Client.

NOVATRANS cannot be held liable for any damage, including that which is caused to third parties (Railway Companies), whose origin is found in an abnormality of the shipped ITU.

The same applies when this follows defective packaging or stowing of the merchandise in the ITU.

NOVATRANS cannot be held liable for the consequences of an error on the part of the Client, with regard to declaration of the shipment's weight, or ITU characteristics (gauge) indicated during the reservation.

NOVATRANS reserves the right to take action against a Client who is liable for an incident.

## **5.6 Receipt and removal of the ITU**

Clients or their correspondents must make all arrangements to receive and remove the ITU addressed to them, without requiring NOVATRANS to notify them of its arrival.

NOVATRANS reserves the right to proceed to remove the Road Vehicles and ITU or to have them removed, if prolonged parking on handling areas is susceptible of causing operating difficulties. This right shall be exercised by all convincing means after formal demand remaining unheeded after 24 hours. All expenses incurred by this type of removal shall be incurred by the Client and payable immediately.

In case the Client does not remove the ITU addressed to him on the established date, NOVATRANS shall be cleared from all responsibility in case of degradation or damage caused to the ITU and/or its

content while parked on the Terminal, before removal by the Client, this, without prejudice to invoicing by NOVATRANS of the parking cost in accordance with the rate in effect.

## **6. LIABILITY**

In general, each of the Parties is required to answer for any damage that it causes and to indemnify any direct material and consequential damage for which it is responsible.

Each of the Parties shall answer to third parties for any direct material and consequential damage for which it is responsible and shall hold the other Party harmless of and protected from any claims thereto pertaining.

It is stipulated that NOVATRANS may not be held liable for any damage imputable to the Client, its employees and/or subcontractors owing, in particular, to negligence, wrongdoing and omission and, more generally, in the event of failure to abide by safety instructions.

The liability of NOVATRANS shall be limited to the repair of proven, direct and foreseeable damage, in application of legal and/or regulatory provisions or of international conventions applicable on the day of fulfilment of the service provision, and this to exclude any and all indirect damage.

NOVATRANS undertakes to fulfil the service provisions agreed with its Clients and to make every effort adequately to complete such service provisions.

Should it fail to abide by its obligations, the Parties hereby agree that the liability of NOVATRANS may be invoked solely in cases and according to the terms hereinafter.

### **6.1 Principles**

NOVATRANS commits to providing the services established with its Clients and to implementing all means required for the proper execution of these services.

In case of poor execution of its obligations, it is agreed upon by the parties that NOVATRANS' liability can be accepted only in the situations and according to the terms specified in section 6.2 below.

### **6.2 Client compensation**

#### **6.2.1 Client compensation in case of damage or loss of merchandise**

In the event that NOVATRANS becomes liable for loss or damage of merchandise, compensation to the Client by NOVATRANS shall be limited to the following:

- 14 Euros per kilogram for each of the objects included in the ITU;
- 1,830 Euros per gross ton of weight, not surpassing 45,800 Euros per ITU.

In case the loss suffered by the Client includes, in whole or in part, damages other than material, the compensation owed to the Client by NOVATRANS for this loss cannot surpass an amount equivalent to double the price of the transport services owed by the Client for the shipments in question.

NOVATRANS is not subscribed to any specific and supplemental insurance beyond the maximum compensation indicated in the present section. If the Client wants the merchandise transported by NOVATRANS to be insured by an amount above the said maximum compensation, he must subscribe to a specific insurance policy in his name and at his expense from his insurance company.

It is stipulated that, in the event of damage to goods in the course of an international transportation operation fulfilled by NOVATRANS, indemnification of the Client shall be done in accordance with the provisions provided under the Convention on the International Transport of Goods by Rail (CIM).

### **6.2.2 Client compensation in case of delayed delivery (after closing of latest delivery time and with delivery in progress)**

In case of a delay in the course of a domestic transport operation of more than 6 hours in relation to the last transmission of Time of Availability, and in the event that this has caused known damage to the Client, whose origin is a recognized shortage on the part of the Railway Company, NOVATRANS may award the Client compensation for delay, not to surpass 75% of transportation cost.

This compensation for delay is fixed and final. The Client cannot claim any other compensation of any nature and for any loss whatsoever.

This compensation can be accepted only upon presentation by the Client of a supporting invoice (specifying the criteria for the transport in question, *(ex: date de event, number(s), ITU(s), copy of the notice of irregularity, etc.)*)

NOVATRANS cannot be held responsible and shall not be liable for compensation for delay of delivery when this delay results from the following:

- The fault of the Client or any person mandated by him, including (but not exclusively) for exceeding the Time of Latest Delivery;
- A defect of the Road Vehicle or ITU, and/or that of the merchandise, or inaccurate or incomplete declaration of the transport's nature;
- A case of force majeure as defined in section 10 below.

In the event of late delivery in the course of an international transportation operation fulfilled by NOVATRANS, indemnification of the Client shall be done in accordance with the provisions provided under the Convention on the International Transport of Goods by Rail (CIM).

It is stipulated that claims for late delivery must be submitted within a maximum period of sixty (60) days of delivery, under penalty of preclusion.

### **6.2.3 Specific compensation for conductor delay caused by breakdown on a Novatrans Terminal**

This compensation applies if the delay is caused by breakdown of an engine operated by NOVATRANS on a Terminal for the purposes of ITU or Road Vehicle (crane, self-propelled crane, tractor or locotractor) transfer.

Delay	Fixed Compensation per ITU
From 2:00 .....	80€

Compensation for engine breakdown shall be granted only if the client's conductor presents at the Terminal office on the day of breakdown to notify of the more than 2-hour delay.

The compensation provided above shall not be owed in the **following** cases:

- Accident between a vehicle combination and the equipment
- Accident between a person and the equipment
- Climate conditions preventing safe use of the equipment
- Fault on the part of the supplier (EDF, SNCF, etc.) depriving the site from the energy required for its proper function
- Scheduled maintenance, on condition that it has been officially announced to the client

Each complete and justified case accompanied by an invoice for 80€, received and investigated by NOVATRANS shall be subject to payment. This type of compensation corresponds to settlement of any account and extinguishes any action against NOVATRANS.

No expectation can be eligible for compensation upon receipt of invoice from the Client.

#### **6.2.4 Client compensation within the framework of a related service**

Within the framework of related Space Rental services, only material loss directly attributed to an error by NOVATRANS is likely to be compensated by the latter, with the exclusion of any other harmful act.

No liability can be sought from NOVATRANS in the case of damages or incidents caused to a material client parked on a Terminal outside the framework of a Transport Contract.

#### **6.3 Liability resulting from an act by NOVATRANS service providers**

It is agreed moreover between the parties that NOVATRANS cannot be held liable beyond the liability incurred by the service providers called upon by NOVATRANS within the framework of the transport operation at the origin of the damage to which they may have contributed.

At the Client's request, NOVATRANS shall make the conditions for liability of its principal service providers available to him.

#### **6.4 Terms of payment of the compensation**

Claims for compensation in case of loss, damage or delay must be addressed by registered letter with acknowledgment of receipt to NOVATRANS at the following address:

NOVATRANS  
Service Litiges  
10 rue Vandrezanne  
CS 91397  
75634 Paris Cedex 13

Any claim for compensation must refer to a single even upon which the compensation sought is based, and specify the following:

- The date of departure of the train
- The number of the train
- The route / train (origin/destination and day and time of departure/arrival)
- Numbers of the ITU or Road Vehicles concerned
- Reason for request and supporting documents
- Indication for the compensation sought in value or percentage or reduction on the service in question

Without prior written agreement with NOVATRANS, no compensation can be granted between the amount on the invoices owed by the Client and his claim(s) for compensation.

## **7. RATES**

### **7.1 Combined Transport Services Rates**

Within the framework of the national services, Combined Transport service rates correspond to each route / train operated by NOVATRANS and each type of ITU shall be negotiated with the NOVATRANS sales department.

Our rates include services contributing to railway transport (traction, freight car availability, transfer, terminal transfer) and ITU Handling Cost.

Transport Rates are communicated to Clients in the Particular Conditions relating to the business contract.

### **7.2 Related Services Rates**

Rates and conditions for parking and handling services on the Terminals are included in a price list established each year by Novatrans according to the conditions relating to each terminal (“Parking Space Rental Rates”).

## **8. CONDITIONS FOR SETTLEMENT AND GUARANTEES OF PAYMENT**

### **8.1 Principle**

NOVATRANS shall in no case consent to any payment delay beyond 30 days from date of issue of the invoice, pursuant to the provisions of section L441-6 of the Commercial Code.

Failure to pay the invoice when due shall incur delayed payment interest at the European Central Bank refinancing rate, plus 10 percentage points, payable immediately, with no necessary reminder, along

with a lump sum for recovery costs of 40€ per unpaid invoice, pursuant to the provisions of sections L441-3, L441-6 and D441-5 of the Commercial Code.

Any delay of payment shall lead to acceleration upon default, and thus all sums owed shall be payable immediately.

Failing payment of sums outstanding by the payment deadline indicated, NOVATRANS reserves the right to suspend the contract binding it to the Client and therefore to suspend fulfilment of the service provisions, as well as to refuse the fulfilment of new service provisions, until receipt of payment in full of the sums outstanding.

In any event, NOVATRANS reserves the right to render the fulfilment of all new service provisions on behalf of the Client responsible for a delay and/or failure to pay conditional upon a preliminary cash payment.

## **8.2 Non-compensation**

Any compensation between the amount on the invoices owed by the Client and possible claims for compensation is expressly excluded.

## **9. PRESCRIPTION**

All actions born of execution of the Contracts (Combined Transport and Related Services Contract) concluded between NOVATRANS and its Client are by express agreement prescribed for one year from the date Combined Transport is achieved.

## **10. FORCE MAJEURE**

The parties incur contractual liability in case of non-execution of any of their obligations. The parties cannot be held liable under any circumstance for interruption or failure to execute their obligations resulting from any case of force majeure, including but not limited to the following:

- General strike, within the limit of its actual
- Strike of SNCF Réseau agents, or of the appointed infrastructure manager, preventing or seriously perturbing railway traffic
- Execution of work on the railway infrastructure making performance of the service impossible, in the absence of any possible rerouting
- Strike of the Railway Company staff
- Strike depriving the Railway Company of the energy required for rail traffic, preventing railway traffic
- Exceptional climate conditions preventing or seriously perturbing railway operation
- Personal or material accident caused by a third party and unpredictable, leading to interrupted railway traffic



By express agreement, deemed in particular to be occurrences of force majeure are: total or partial strikes, whether internal or external, lock-out, exceptionally bad weather conditions, hail, flooding, storm, epidemics, blockage of means of transport or supply, irrespective of the reason, earthquake, fire, water damage, government or legal restrictions, total or partial blockage of networks, sources of energy, particularly electricity, or of means of telecommunication, the cause of which is beyond the control of the Parties.

Any and all damage in fulfilment of the service provision as a result of the intervention of a third party shall be deemed to pertain to an occurrence of force majeure exonerating NOVATRANS of any liability.

The Party which invokes force majeure shall notify the other Party by registered letter with acknowledgement of receipt at the earliest opportunity after becoming aware of the event or damage.

#### **11. PRIVILEGE / RETENTION / SURETIES**

The Client is assumed to be the owner of the goods entrusted to NOVATRANS, as well as of any and all documents, equipment and valuables handed over to NOVATRANS in the context of the service provisions fulfilled.

It is reiterated that our Company, acting in the capacity of broker, carrier or logistical / depositary service provider enjoys the corresponding privileges and sureties pursuant to the prevailing legal provisions.

Irrespective of the capacity in which NOVATRANS intervenes, the Client expressly acknowledges and accepts that NOVATRANS has a statutory right of distraint entailing a general and permanent right of retention of and preference over all goods and property of any kind whatsoever in the possession of NOVATRANS by dint of the commercial relationship, and this by way of guarantee of payment in full of the accounts receivable held by NOVATRANS in respect of the Client.

#### **12. VALIDITY OF CLAUSES**

Should any one of the provisions of the present General Conditions be declared null and void or deemed nugatory, all of the other provisions shall continue to apply.

#### **13. ASSIGNMENT OF JURISDICTION**

The General Conditions are governed by French Law.

The Parties shall endeavour to come to an amicable settlement in good faith of any and all disputes relating to execution of the service provisions or interpretation of the General Conditions and/or Contracts (Combined Transport and Related Services Contract).

Failing an amicable settlement, the Parties agree to bring any disputes before the competent court within whose jurisdiction the registered office of NOVATRANS is located, notwithstanding plurality of respondents or introduction of third parties, unless mandatory provisions to the contrary exist.

**APPENDIX TO THE GENERAL CONDITIONS ON COMBINED TRANSPORT AND  
RELATED SERVICES:**

**Special Conditions – Guaranteed Volumes agreed by the Parties**

**1. OBJECT OF VOLUME COMMITMENT**

By the present Particular Condition, NOVATRANS and the Client agree on a Volume Commitment on a calendar year or contractual period ending on the following December 31, subject to application of an annual revaluation formula focusing on the progression of direct and indirect production costs.

Through this Volume Commitment, the Client commits to purchasing from NOVATRANS a capacity for transport determined among the Parties over one or several routes / trains, and NOVATRANS commits in return to reserving the corresponding capacities for the Client.

**2. CLIENT VOLUME COMMITMENT PROPOSAL**

Annual Volume Commitments apply to round trips and per ITU category.

The Special Conditions negotiated by the Parties in good faith shall stipulate, more particularly, the following provisions:

- The hourly Transport Plan for the period in question
- The unit price per direction of the route / train, ITU category, given according to the annual quantities announced by the Client
- The weight brackets
- The number of ITU entrusted during the contract period, and per breakdown, the Client can indicate a quarterly, monthly, weekly or even daily estimate according to the period, in order to inform NOVATRANS of the possible flow seasonality or fluctuation.
- Any additional information negotiated among the Parties, enabling NOVATRANS to respect the available capacity

The Special Conditions must be signed by the Client and reach NOVATRANS at least one (1) week prior to the start date of the service provisions concerned.

It is stipulated that the Special Conditions, along with the General Conditions, form an indivisible whole, constituting the Contract.

**3. TERMS OF APPLICATION OF THE VOLUME COMMITMENT –  
PENALTIES**

**3.1 Number of ITU reserved for transport by the Client inferior to the Volume Commitment**

Novatrans reserves the right to review rate conditions consented if the Client fails to respect the negotiated Volume Commitments. Regular reporting shall be conducted jointly by the Parties.

### **3.2 Volume Commitment Modification during the contract period**

The Client can modify the Volume Commitment during the contract period without prejudice to the following provisions.

Any proposal to modify the Volume Commitment by the Client must be addressed in writing or by email to NOVATRANS. NOVATRANS commits to responding to the request for Volume Commitment modification.

Volume Commitment modification proposals must be addressed with advance notice of one (1) month from the date sought for the modification's coming into force.

These modifications can also be subject to discussions / validations during reporting on periodic activity monitoring between the Parties.

Moreover, NOVATRANS can suspend execution of its own obligations under the Volume Commitment, in case of the following:

- Repeated non-compliance of payment deadlines by the Client
- Non-compliance of regulations and safety rules by the Client, leading to a refusal by NOVATRANS to take responsibility.
- Non-compliance with the General Sales Conditions

### **3.3. Early cancellation by one or the other Parties of the Volume Commitment**

Within the framework of reduced activity or market loss by the Client, or within the framework of a deep modification of the NOVATRANS transport plan, the Volume Commitment contract can be cancelled early during the contract period in progress, by registered mail with acknowledgment of receipt, respecting prior notice of one (1) month. Such early cancellation shall not lead to the payment of compensation.

## **4. MODIFICATION OF THE NOVATRANS TRANSPORT PLAN DURING THE CONTRACT PERIOD**

The Client is informed that for adaptation of his activity, or on account of the Railway Company and/or Infrastructure Manager, NOVATRANS is susceptible of modifying certain conditions under which it receives and transports ITU. During a Volume Commitment period in progress, NOVATRANS can thus do the following:

- Modify the Time of Latest Delivery or Availability significantly
- Adjust the transport plan downward on a route / train (ex: remove a round-trip by one weekday)
- Reduce the transport plan during low season

NOVATRANS commits to informing the Client of these modifications as soon as possible. In case of impact of these modifications on the Volume Commitment, NOVATRANS and the Client shall redefine the latter's new conditions together. In case of reduction of the transport plan during low season, the Parties can neutralize the Volume Commitment during this period.

**5. APPLICATION OF THE GENERAL COMBINED TRANSPORT CONDITIONS**

Beyond the specific provisions of the present Volume Commitment Particular Conditions, the relationship between NOVATRANS and the Client is regulated by all the provisions non-contrary to the General Combined Transport Conditions.

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Signature:

*Preceded by the words "good for agreement"*