

**REGULATIONS  
OF THE SERVICE FACILITY  
  
IN KĄTY WROCŁAWSKIE  
AT 1 FABRYCZNA STREET**

**List of changes**

<b>No</b>	<b>Basis for change</b>	<b>Scope of change introduced</b>	<b>Date of change validity</b>
<b>1.</b>	<b>Change No 1 of 28 February 2019</b>	<b>II</b>	<b>01 April 2019</b>
<b>2.</b>	<b>Change No 2 of 17 May 2019</b> Commission Implementing Regulation (EU) 2017/2177 of 22.11.2017 on access to service facilities and rail-related services	<b>I.1.3</b>	<b>01 June 2019</b>
<b>3.</b>	<b>Change No 3 of 17 May 2019</b> Commission Implementing Regulation (EU) 2017/2177 of 22.11.2017 on access to service facilities and rail-related services	<b>II.4</b>	<b>01 June 2019</b>
<b>4.</b>	<b>Change No 4 of 16 December 2019</b> Commission Implementing Regulation (EU) 2017/2177 of 22.11.2017 on access to service facilities and rail-related services	<b>I.3.4</b> <b>II.3-7</b> <b>IV. 4-14</b> <b>V.1,6</b> <b>VI</b>	<b>01 January 2020</b>
<b>5.</b>	<b>Change No 5 of 10/09/2020</b> <b>Regulations of the operation of the rail siding "Schavemaker Railway Terminal"</b>	<b>I. 1.6. I.2.12-15, I. 4</b> <b>II.1 and 3,</b> <b>III.2,3,5,</b> <b>IV. 5a, V.2,6,8,9-13</b> <b>VI.2,5</b>	<b>01.10.2020</b>

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## I. GENERAL INFORMATION

### 1) INTRODUCTION

1. Schavemaker Invest sp. zoo., ul. Fabryczna 1, 55-080 Kąty Wrocławskie, by the decision of the District Court for Wrocław - Fabryczna in Wrocław (IX Commercial Department of the National Court Register) of 12.08.2004 was registered and entered in the Register of Entrepreneurs under KRS number 0000214723.
2. Schavemaker Invest sp. z o.o. performs the tasks of the Operator of the service facility with respect to the service facility indicated in paragraph 2 point 2 of Appendix No 2 to the Rail Transport Act of 28 March 2003 (Dz. U. [Polish Journal of Laws] of 2019, item 710).
3. These Facility Regulations were developed by the Operator of the service facility, Schavemaker Invest sp. z o.o., on the basis of the provisions of the Rail Transport Act of 28 March 2003 (Dz. U. [Polish Journal of Laws] of 2019, item 710), hereinafter referred to as: the "Act", as amended and Commission Implementing Regulation (EU) 2017/2177 of 22 November 2017 on access to service facilities and rail-related services.
4. The Facility Regulations specify the rights and obligations of the Service Infrastructure Operator, Schavemaker Invest sp. z o.o., and rail carriers with regard to the service facility made available by the Operator. Detailed conditions related to the services provided in the facility are specified in a separate agreement which constitutes **Appendix No 1** to these Facility Regulations.
5. The Service Infrastructure Operator does not disclose information which constitutes a business secret acquired in connection with making the facility available.
6. The Operator of the service facility, Schavemaker Invest sp. z o.o., has security clearances issued by the President of the Rail Transport Office on:
  - 6. 10.2016, No 210/UK/16, together with the update of 18.10.2019, constituting a document confirming the ability to run railway traffic safely on the "Schavemaker" rail siding; valid until 6 October 2021;
  - 11.08.2020, No 113/UK/20, constituting a document confirming the ability to run railway traffic safely on the "Schavemaker Railway Terminal" rail siding; valid until 11.08.2025;
7. The Facility Regulations can be downloaded from the website: [www.schavemaker.pl](http://www.schavemaker.pl). Additional information can be obtained by sending a request to the address: rail@schavemaker.com

### 2) DEFINITIONS

In these Facility Regulations, the terms defined in the applicable regulations are used.

The terms used in the Facility Regulations mean:

1. **railway infrastructure** - elements specified in Appendix No 1 to the Rail Transport Act;
2. **infrastructure manager** - an entity responsible for the management of railway infrastructure or, in the case of the construction of new infrastructure, the entity which started to build it as a project owner; the tasks of the infrastructure manager may be performed by different entities;
3. **rail carrier** - an undertaking licensed to provide rail transport services or a traction service or an entity providing services on narrow-gauge railway infrastructure;
4. **security clearance** - a document confirming the ability to run railway traffic and carry out rail transport services safely, issued to entities exempted from the obligation to obtain a safety certificate and a safety authorisation;
5. **safety certificate** - a document confirming that a rail carrier has an approved safety management system and is able to meet its safety requirements;

6. **train timetable** - a plan according to which trains are to travel on a given railway network or part of it, during the time it is in force;
7. **business secret** - a business secret within the meaning of the Act of 16 April 1993 on combating unfair competition (Dz. U. [Polish Journal of Laws] of 2018 item 419);
8. **service facility** - a civil structure together with the land on which it is located, as well as installations and equipment, intended in whole or in part to provide one or more of the services referred to in paragraphs 2 and 3 of Appendix No 2 to the Act on rail transport;
9. **service facility operator** - an entity performing activity consisting in managing a service facility or providing at least one of the services referred to in paragraphs 2 and 3 of Appendix No 2 to the Act on rail transport (hereinafter referred to as the "Operator") to rail carriers;
10. **stabling sidings** - tracks specially designed for temporary stopping of rail vehicles or drafts of vehicles between two periods of their operation;
11. **ILU** - *Intermodal Loading Unit*;
12. **rail siding** - a railway designated by the infrastructure manager, connected directly or indirectly to the railway line, used to perform loading, maintenance or parking operations for rail vehicles or to move and integrate rail vehicles into traffic on the railway network;
13. **user of a rail siding** - an infrastructure manager who does not manage a railway other than a rail siding;
14. **railway** - a rail track or tracks with the elements listed in points 2-12 of Appendix No 1 to the Act, if they are functionally connected to them, regardless of whether they are managed by the same entity;
15. **stabling siding** - a track specially designed for temporary stopping of rail vehicles or drafts of vehicles between two periods of their operation;

### 3) **VALIDITY, CHANGING AND UPDATING**

1. These Facility Regulations are valid from 1 December 2017 for an indefinite period.
2. The Facility Regulations are subject to an update in the event of changes in the information contained therein.
3. All modifications to the content of the Facility Regulations resulting from changes in the law will be made taking into account statutory deadlines.
4. Any changes and updates to the Facility Regulations come into force 14 days after they are announced and made available on the website of the Service Facility Operator, Schavemaker Invest sp. z o.o., at its website [www.schavemaker.pl](http://www.schavemaker.pl). Applicants may be informed of changes and updates by e-mail, provided that they indicate their e-mail address in the Agreement and agree to be informed.

### 4) **CONTACT DETAILS**

Please send your comments and enquiries regarding the Regulations to the following address:

**Schavemaker Invest sp. z o.o.**

ul. Fabryczna 1, 55-080 Kąty Wrocławskie

e-mail: [rail@schavemaker.com](mailto:rail@schavemaker.com), tel.: +48 667 705 429

National Court Register number : 0000214723

Tax Identification Number: 8961373290

REGON number: 933013339

Share capital: PLN 100.000,00, paid up in full

Website address: [www.schavemaker.pl](http://www.schavemaker.pl)

## **II. DESCRIPTION OF THE FACILITY MADE AVAILABLE**

1. The Service Facility Regulations apply to making available the railway infrastructure consisting of civil structures together with land, installations and equipment, located in Kąty Wrocławskie at ul. Fabryczna 1, made available by Schavemaker Invest sp. z o.o. The Regulations contain a list of all civil structures including land and installations and equipment, intended in whole or in part to provide one or more rail-related services, and information on their location and opening hours (24 hours a day).
2. The service facility is designed for the clearance of car shipments – receiving and unloading of whole drafts of rail cars as well as single cars with ILUs and loading of empty cars, and sending of cars with ILUs or empty cars after ILU unloading. The facility is able to reload other goods than ILUs after prior confirmation of technical capabilities by the Operator.
3. List of civil structures with land, installations and equipment and description of technical characteristics :

### **(a) “Schavemaker” Rail Siding**

- The facility includes the railway infrastructure branching off at the PLK Kąty Wrocławskie station with a single slip No 3 from station siding No 1, kilometre 20,238 of PKP PLK S.A.’s line No 247 Wrocław Świebodzki – Zgorzelec;
- The beginning of the facility, which is the point of contact of railways between PKP Polskie Linie Kolejowe S.A. and the “SCHAVEMAKER” Rail Siding, is located at the contact downstream the crossing plate of turnout No 3a, kilometre 0,016.00 of rail siding track No 101.
- S-49 classic surface on wooden and concrete sleepers with normal spacing – 1435 mm;
- The facility consists of two tracks 102 and 103, 605 and 609 metres long respectively, branching from access and holding track No 101 with two turnouts – turnout No 102 (Rzp) type S49 - 190 - 1:9 on hand-installed wood turnout ties and turnout No 103 (Rłs) type S49 - 215 - 1:4,8 on hand-installed wood turnout ties;
- The rules of using the “Schavemaker” Rail Siding are specified in the Regulations of the “Schavemaker” Rail Siding

### **(b) “Schavemaker Rail Terminal” Rail Siding**

- The facility includes the railway infrastructure which branches off at the PLK Kąty Wrocławskie station from station track No 5, in two places:
  - a) straight turnout No 8, kilometre 20-490 of PKP Polskie Linie Kolejowe S.A.’s railway line No 274 Wrocław – Zgorzelec;
  - b) the centre of double slip No 16, kilometre 21-130 of PKP Polskie Linie Kolejowe’s railway line No 274 Wrocław – Zgorzelec,
- The beginning of the facility, which is a point of contact between PKP Polskie Linie Kolejowe S.A. and the “Schavemaker Rail Terminal” Rail Siding, is located at:
  - a) the contact downstream the crossing plate of straight turnout No 8, kilometre 0,027.14 of rail siding track No 7,
  - b) the contact downstream the crossing plate of double slip No 16ab, kilometre 0,626.14 of rail siding track No 7;
- The facility consists of station track No 7 with a useful length of 553 metres, the rail siding has no turnout;
- The rules of using the “Schavemaker Rail Terminal” Rail Siding are specified in the Regulations of the “Schavemaker Rail Terminal” Rail Siding.

(c) The facility does not have private sidings, siding tracks which are not part of the railway infrastructure.

4. The service facility provides the services described in these Regulations (basic service listed in point 2 of Appendix II to Directive 2012/34/EU).
5. The Operator does not provide the additional services listed in point 3 of Appendix II to Directive 2012/34/EU (traction current, heating of drafts of cars, individual agreements, e.g. for inspections, assistance, etc.) and the auxiliary services listed in point 4 of Appendix II to Directive 2012/34/EU (access to telecommunications networks, provision of supplementary information, technical inspection of rolling stock, provided repair maintenance of rolling stock, etc.).
6. The Operator has implemented all legally required principles for the protection of sensitive and commercial data.
7. The Operator does not offer a discount scheme applicants.

### III. SCOPE OF MAKING THE FACILITY AVAILABLE

1. The service facility described in Section II is made available to rail carriers.
2. Rail carriers are entitled to access the railway tracks and use the services on an equal and non-discriminatory basis. This entitlement also applies to rail carriers from other Member States of the European Union as regards the facilities located on the railway network to which they are entitled.
3. The Operator makes the Service Facility, including the railway tracks, available and provides the services on an equal and non-discriminatory basis.
4. The service facility described in Section II point 3 is made available in accordance with the provisions of Commission Implementing Regulation (EU) 2017/2177 of 22 November 2017 on access to service facilities and rail-related services and the Act.
5. Railway track No 7, located on the “Schavemaker Railway Terminal” Rail Siding can be used as a stabling siding, available 24 hours/day.

### IV. PROCEDURE FOR MAKING THE FACILITY AVAILABLE

1. The Service Facility described in Section II is made available to rail carriers upon filing an **application for access to the service facility and use of rail-related services (application)** and conclusion of **an agreement** with the Operator setting out in particular the rights and obligations of the Operator and the carrier relating to the services provided. A model application is **annexed as Appendix No 2**. A model agreement is **annexed as Appendix No 1**.
2. The Applicant (carrier) indicates in its application a service facility and/or a rail-related service.
3. The Operator of the facility collects charges from rail carriers in accordance with the “Price List of Charges for Rail Carriers for Access to the Service Facility” published on the website – railway infrastructure constituting a part of the freight terminal located in Kąty Wrocławskie at ul. Fabryczna 1 (hereinafter referred to as the: **“Price List”**).
4. The manner of requesting access to the facility and use of rail-related services, the deadline for submitting applications and the scope of information to be included in an application, as defined by the Service Facility Operator, is as follows:

- a) The Applicant submits an application to the Operator for access to the service facility and use of rail-related services, which are part of the service facility, defined in the Facility By-laws and these Facility Regulations.
  - b) The application is submitted by e-mail to the following e-mail address: rail@schavemaker.com, in accordance with the model constituting Appendix No 2 to these Facility Regulations or an equivalent document that will contain the information required by the Operator indicated in the model.
  - c) The Operator acknowledges receipt of an application without undue delay. Where an application does not contain all the information required in accordance with the description of the service infrastructure and necessary for taking a decision, the Operator notifies the Applicant accordingly and sets a 7-day period for submitting the missing information. If information is not supplied in time, an application may be rejected.  
If an application contains all required information, the Operator considers the submitted application within 5 days, counting from the date of receipt of the application from the Applicant. With the consent of the Applicant, the deadline may be extended. The Operator confirms that the application has been accepted or refuses access.
  - d) The Service Infrastructure Operator takes all reasonable steps to accommodate all applications made, without being obliged to incur any expenses that are necessary for this purpose.
  - e) The railway infrastructure included in the Service Facility is made available to rail carriers (applicants) for the time indicated in the application, and the Operator reserves the right to make corrections by extending or shortening the time requested by a given carrier if the Operator considers that the requested time is too short or too long to carry out handling operations. The average time estimated by the Operator to reload a 600 m long train is about 6 hours. The time of access to the infrastructure may also be extended or shortened by the Operator at any time for reasons not foreseeable during the confirmation of the application.
  - f) The Operator charges the rail carrier for access to the railway infrastructure at the Facility in the amount specified in the Price List.
  - g) The Applicant is entitled to change its allocated time free of charge, after submitting a new application to the Operator for the same train, no later than 24 hours before the start of the allocated time.
  - h) The Operator charges the Applicant for reserved and unused or reserved and unchanged time (access charge) in the amount specified in the Price List. These charges are not charged if the time allocated to the Applicant has not been used by him/her as a result of circumstances for which he/she is not responsible.
  - i) The right of access to the service infrastructure and rail-related services cannot be transferred to other Applicants.
  - j) Where the Applicant does not intend to exercise the right of access to the service facility or rail-related service granted by the Operator, he/she notifies this without undue delay.
5. Where the Operator has received an application which conflicts with another application or concerns capacity already allocated to the service facility, it takes a decision based on:
- a) **coordination procedure** – consisting in the best fit of all applications through discussion and coordination (examples of measures: proposing an alternative date, changing opening hours, introducing a shift system, etc.); any changes are subject to mutual consent,
  - b) **non-discriminatory and objective priority criteria** in case of failure of the coordination procedure,
  - c) **viable alternative procedure** – where the coordination procedure has failed, and consisting in a common determination of whether viable alternatives exist for providing the freight service concerned on the same or an alternative route under economically acceptable



conditions; in addition, the Operator will indicate possible viable alternatives, based on published descriptions of other service facilities (including facilities in other Member States where necessary) and any information provided by the Applicant.

6. The Operator applies the following non-discriminatory and objective priority criteria for capacity allocation:

- a) best fit of capacity,
- b) timely submission and favourable processing of the application,
- c) conclusion or continuation of an agreement,
- d) the intention and ability to use the requested capacity, including any previous cases of total or partial underutilisation of the allocated capacity and the reasons for such underutilisation,
- e) previously allocated train routes related to the requested services,
- f) priority criteria for train route allocation.

7. When applying the viable alternative procedure, the Operator applies the following criteria

- a) the substitutability of the operational characteristics of the alternative service facility,
- b) the substitutability of the physical and technical characteristics of the alternative service facility,
- c) a clear impact on the attractiveness and competitiveness of the rail transport service planned by the Applicant,
- d) the estimated additional costs for the Applicant,
- e) other.

8. The Applicant assesses whether the use of the proposed viable alternative will enable it to provide the planned rail transport service under economically acceptable conditions and informs the Operator of the results of its assessment within 5 days.

9. The Applicant may request the Operator not to identify viable alternatives and not to conduct a joint assessment.

10. If the Operator and the Applicant conclude that no viable alternatives exist and that an application for access to the facility or for the provision of a service at the facility cannot be accepted as a result of the coordination procedure, the Operator of the facility may reject the application. If the Operator and the Applicant cannot agree on a viable alternative, the Operator may reject an application, indicating the alternatives it considers viable. The Applicant may submit a complaint to the regulatory authority.

11. The Operator should justify its position to the Applicant in writing when rejecting the application. Justification is not required when the Applicant has asked not to identify viable alternatives and not to carry out a joint assessment.

12. If the Applicant has repeatedly failed to pay for already granted and unused access rights, the Operator may request **financial guarantees** in order to secure its legitimate expectations regarding future revenues and use of the facility. Guarantees can take the form of: bank guarantees, advance payment, lien, mortgage, other legally permissible ones.

13. Conclusion of the Agreement by a rail carrier with the Operator is tantamount to reading and accepting the Facility Regulations (including attachments) made available by the Operator on the website [www.schavemaker.pl](http://www.schavemaker.pl).

1. The Service Facility Operator respects the commercial confidentiality of information provided by the Applicant.

## V. DETAILED TECHNICAL CONDITIONS OF ACCESS TO THE FACILITY

1. The facility is designed for 24-hour operation, except for public holidays and holidays.

2. The facility has no service sites and constitutes two shunting areas.
3. The facility does not have equipment to supply traction energy.
4. The facility is not equipped with a rail weighbridge.
5. The facility is not equipped with control and signalling devices and there are no traffic lights.
6. Due to the lack of traction energy, the entry of cars from the railway station in Kąty Wrocławskie to the site and their exit take place by using a diesel engine organised by the applicant. Shunting work on the site can be carried out by using a diesel engine.
7. The electric lighting switches on automatically at dusk.
8. Detailed technical conditions are specified in the Regulations of the “Schavemaker” Rail Siding Operation and the Regulations of the “Schavemaker Railway Terminal” Rail Siding Operation, which the carrier using the facility is obliged to know and strictly observe.
9. A rail carrier ensures and is responsible for the effective protection of the loads accepted for transport in such a way that they cannot be displaced, emissions through e.g. dusting, discharging, tipping, pouring, leaking and releasing and energy emissions. In the case of pollution on the premises of the Service Facility that will not be removed despite prior notice, the Operator has the right to remove it at the cost and risk of a given carrier.
10. A carrier using the Service Facility is responsible for all emissions to the environment inside or outside the railway area resulting from its activities. In the case of causing pollution and/or damage to the environment, bringing a direct threat of damage to the environment, a carrier will be obliged to bear all costs of actions taken to remove the pollution or preventive and remedial actions related to bringing about the required environmental quality standards, including those specified under the Environmental Protection Law and the Water Law.
11. Within the Service Facility, it is forbidden to clean and wash the rolling stock in such a way as to allow direct discharge of sewage into water or soil.
12. A carrier using the Service Facility is responsible for the proper management of the waste generated in connection with its operations.
13. The operations of a carrier using the Service Facility and entities acting on its behalf or commission cannot result in exceeding the values of permissible noise in the areas where protection against noise is required within the scope specified by law, in particular by the Regulation of the Minister of Environment of 14 June 2007 on permissible levels of environmental noise (consolidated text Dz. U. [Polish Journal of Laws] of 2014, item 112).

## **VI. RAILWAY OPERATIONS**

1. A rail carrier informs the Operator of the arrival of its train as follows:
  - **7 days** in advance, giving an approximate time of train arrival and preliminary information about the number of cargo/containers and type of rail services;
  - **24 hours** in advance, with coordination at 24, 12 and 4 hours before the estimated time of arrival, giving all relevant information about the cargo/containers and the time of arrival of the train.
2. An order for rail services must be made according to an agreed procedure, in writing for each train and related services and delivered electronically or by post. The Operator may also exceptionally accept the delivery of an order by fax or in person. The final confirmation of railway services will be provided to the Ordering Party by the Operator, after obtaining a set of information which is necessary to perform the services. The provisions of point IV.4 apply *mutatis mutandis*.
3. The Operator operates trains in the order of a fixed schedule of entry to the sidings. Trains with reserved time slots have priority over trains without reserved time slots or delayed trains. However, the Operator may change the order and priority of cars to be rolled on and

rolled off due to reserved time slots, the traffic situation on the access tracks to the Service Facility, or to improve the capacity, without incurring any liability for cars waiting.

4. The Operator reserves the right to refuse to roll wagons onto the loading tracks which are not ready to perform the ordered services, e.g. due to lack of readiness of the cargo, delays, poor technical condition of locomotives or cars. In this case, the Operator is not be liable for downtime.

## **VII. AMOUNT OF CHARGES FOR ACCESS TO THE FACILITY**

### **CHARGES LEVIED ON RAIL CARRIERS**

<b>No</b>	<b>TYPE OF CHARGE</b>	<b>AMOUNT OF CHARGE (nett)</b>	<b>UNIT</b>
1.	Charge for access to the facility	<b>330.00</b>	PLN/train
2.	Charge for handling the carrier's (applicant's) application	<b>55.00</b>	PLN/application
3.	Charge for booked and unused or booked and unchanged time (slot)	<b>330.00</b>	PLN/train
4.	Charge for stabling of a draft of cars in excess of its allocated train stabling time during standard working hours	<b>35.00</b>	PLN/h/car
5.	Charge for stabling of a draft of cars in excess of its allocated train stabling time outside standard working hours of the Facility	<b>45.00</b>	PLN/h/car
6.	Charge for access to stabling sidings	870.00	PLN/1 siding/day (day counted until midnight)

1. The prices specified in the Price List are net prices. VAT will be added to them in the amount resulting from the current regulations.

## **Appendix No 1 – Model agreement:**

### **Agreement defining the rights and obligations relating to the provision of services in the facility No ...../i/2020, concluded on .....2020 between:**

Schavemaker Invest Sp. z o.o., ul. Fabryczna 1, 55-080 Kąty Wrocławskie, entered in the register of entrepreneurs by the District Court in Wrocław for Wrocław-Fabryczna IX Commercial Division, National Court Register Number (KRS): 214723, Tax Identification Number (NIP): 896-137-32-90, fully paid-up share capital: PLN 100,000.00

represented by:

1. ....
2. ....

hereinafter referred to as the “**Operator**”,

and

.....  
entered in the Register of Entrepreneurs by the District Court in ....., .....  
Commercial Division, National Court Register Number (KRS): ....., National Business  
Registry Number (REGON): ....., Tax Identification Number (NIP): ....., fully  
paid-up share capital: PLN .....

represented by

3. ....
4. ....

hereinafter referred to as the “**Carrier**”.

## **§1**

### **DECLARATIONS OF THE PARTIES**

1. The Operator declares and warrants that:

- a) it performs the tasks of the operator of the service facility with respect to the service facility indicated in paragraph 2 point 2 of Appendix No 2 to the Rail Transport Act of 28 March 2003, as amended (Dz. U. [Polish Journal of Laws] of 2019, item 710, hereinafter referred to as: “**The Rail Transport Act**”), as well as fulfilling all the conditions required by law to act as a service infrastructure operator within the meaning of this Act;
- b) it undertakes to maintain, during the duration of this agreement, technical and operational parameters of the infrastructure managed by it at a level that allows undisturbed execution of transport by the Carrier and in accordance with the requirements specified in current national and European Union law, including the Rail Transport Act and its implementing regulations;

2. The Carrier declares that:

- a) it is authorised to conduct business activity consisting in the carriage of goods by rail, under Licence No ..... issued on ..... and holds the Safety Certificate issued by the Office for Railway Transport (part A No ..... dated ..... and part B No ..... dated .....);
- b) the railway vehicles in its possession which will run on the operator's infrastructure made available under this Agreement are authorised to be placed in service and carry a certificate of vehicle worthiness issued on the basis of the regulations in force on the certificates of railway vehicle worthiness;
- c) employs in the performance of transport services employees who meet the requirements set out in the Railway Transport Act and executive regulations issued on its basis, in particular

the Regulation of the Minister of Infrastructure and Development of 30 December 2014 on employees employed in positions directly related to the operation and safety of railway traffic and driving specific types of railway vehicles (Dz.U. [Polish Journal of Laws] of 2015, item 46).

## §2

### DEFINITIONS

1. The Parties agree that the terms used in the Agreement mean:
  - a) **“Agreement”** – this agreement;
  - b) **“Rail Transport Act”** – act of 28 March 2003 on rail transport (consolidated text, Dz. U. [Polish Journal of Laws] of 2019, item 710);
  - c) **“Regulation”** – the Regulation of the Minister of Infrastructure and Construction of 7 April 2017 on making railway infrastructure available (Dz. U. [Polish Journal of Laws] of 2017, item 755);
  - d) **“Regulations”** – the “Facility Regulations” developed by the Operator in accordance with Article 36f of the Rail Transport Act and the provisions of the regulation, available on the Operator's website;
  - e) **“timetable”** – a plan according to which trains are to travel on the Operator's infrastructure or a part of it - in the period for which it was drawn up.

## §3

### SUBJECT OF THE AGREEMENT

1. The Operator makes available to the Carrier, under conditions specified in the Agreement, railway infrastructure that is part of the service facility in order to use services referred to in paragraph 1 of Appendix No 2 to the Rail Transport Act, for the provision of which the facility has been specially adapted.
2. The facility is made available in accordance with the conditions specified in the Facility Regulations which are an integral part of this Agreement.

## §4

### LIABILITY

1. The Carrier is liable to the Operator and third parties only for damages resulting from its failure to implement or improper implementation of this Agreement and obligations contained in the Regulations and the Agreement.
2. The Operator assumes liability towards the Carrier and third parties for damages caused by reasons dependent on it, as a result of culpable failure to implement or improper implementation of this Agreement and obligations contained in the Regulations.
3. The Parties to the Agreement are not liable for the consequences resulting from “Force Majeure” for which the Parties on the grounds of the Agreement consider such extraordinary and external events which occurred or became known to the Party after the conclusion of the Agreement, and which the Party could not have foreseen at the time of conclusion of the Agreement, or which the Party could not avoid in any way, over which the Parties have no influence, but which prevent full performance of the obligations resulting from the Agreement, in particular such events as: the outbreak of a war, introduction of martial law, conducting military operations, internal fighting, catastrophe, fire, flood, strike, road or rail accidents, extraordinary weather phenomena that prevent the use of railway infrastructure, as well as other similar events.
4. In case of losses arising in the Operator's property as a result of culpable infringements of the Agreement and Regulations by the Carrier, the Carrier covers the amount of financial outlays necessary to remove the aforementioned damage to the Operator's property which are

direct consequences of the infringement, as well as on condition that the loss in question is not related to the infringement of the Agreement by the Operator.

## **§5**

### **PRINCIPLES FOR THE CALCULATION OF CHARGES**

1. In connection with the implementation of the Agreement, the Operator is entitled to collect charges from the Carrier included in the “Price List of Charges for Rail Carriers for Access to the Service Facility – railway infrastructure constituting a part of the freight terminal located in Kąty Wrocławskie at ul. Fabryczna 1”.
2. The charges specified in this Agreement are nett. VAT will be added to the charges, in accordance with applicable regulations.
3. Arrangements for the calculation and invoicing of charges are made by the railway department of Schavemaker Invest Sp. z o.o. which can be contacted by e-mail at the address: [rail@schavemaker.com](mailto:rail@schavemaker.com)

## **§6**

### **PAYMENT RULES**

1. The amounts due to the Operator, as referred to in the Agreement, resulting from services provided to the Carrier in a given settlement period, covered by the Agreement, are settled by the Carrier on the basis of VAT invoices issued by the Operator each time after the end of a given settlement period, but not later than on the 7th day of the following settlement period - always for the previous settlement period.
2. A period of 1 week from Monday to Sunday is considered to be the settlement period.
3. The payment dates of the amounts due are 21 days from the date of delivery of a correctly and timely issued invoice.
4. In order to simplify the circulation of invoices, the Parties will issue and deliver invoices by electronic means (e-invoice), after having signed an agreement on the transmission of invoices by electronic means in accordance with Appendix No 3.
5. The Carrier authorises the Operator to issue VAT invoices without the signatures of persons authorised to receive them.
6. The Operator charges statutory interest for late payments.

## **§7**

### **FACILITY REGULATIONS/PRICE LIST**

1. An integral part of this Agreement are:
  - a) the Facility Regulations, the Regulations of the Rail Sidings, the Regulations of Terminal Services,
  - b) the “Price List of Charges for Rail Carriers for Access to the Service Facility – railway infrastructure constituting a part of the freight terminal located in Kąty Wrocławskie at ul. Fabryczna 1”.
2. Failure by the Carrier to use the rights referred to in §8 paragraph 2 means acceptance of the content of the Facility Regulations and the “Price List of Charges for Rail Carriers for Access to the Service Facility – railway infrastructure constituting a part of the freight terminal located in Kąty Wrocławskie at ul. Fabryczna 1” forming an integral part of this Agreement.

## **§8**

### **DURATION AND TERMINATION OF THE AGREEMENT**

1. This Agreement has been concluded for an indefinite period of time from .....
2. Either party has the right to terminate the Agreement by giving 3 months' notice. In addition, the Carrier has the right to terminate the Agreement by giving 14 days' notice if the

Carrier does not accept updates to all the regulations in force, including the Facility Regulations or the “Price List of Charges for Rail Carriers for Access to the Service Facility – railway infrastructure constituting a part of the freight terminal located in Kąty Wrocławskie at ul. Fabryczna 1”, published on the website of the Operator.

3. The Operator reserves the right to suspend this Agreement in case:

- a) the Carrier's arrears of payments for a period exceeding 30 days from the date of payment,
- b) a gross violation of the provisions of the Agreement.

4. The suspension of the Agreement referred to in paragraph 3 of this section requires a written notification to the Carrier in which the Operator specifies the date and reason for the suspension in accordance with the cases mentioned in paragraph 3.

5. The suspension referred to above is revoked immediately after the Carrier has regulated the inconsistent conduct specified in paragraph 3.

6. The Parties to this Agreement undertake to maintain the confidentiality of the content of this Agreement, as well as not to disclose to third parties, without the prior written consent of the other Party, information of a commercial, technical, financial, economic, organisational, marketing or other nature concerning the other Party, which constitutes a business secret of the other Party, if such information was obtained in connection with the conclusion or implementation of the Agreement, except cases in which:

- 1) the disclosure of information is required by law or by a decision of a competent authority, including if the disclosure of information has been requested by a court, a competent public authority or other public authorities;
- 2) The Parties disclose information in order to protect their rights, assert claims, etc. in proceedings before the courts or administrative authorities;
- 3) the information concerned is publicly available.

7. The Parties agree to mutually agree on the intended amendments to this Agreement and its Appendices. Such amendments must be made in writing otherwise being null and void.

8. The Operator may not, without the Carrier's consent, transfer the claims arising from this Agreement to third parties.

9.

## **§9**

### **PERSONAL DATA**

1. Each of the Parties to the Agreement declares that it is a personal data controller within the meaning of Regulation (EU) 2019/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation), hereinafter referred to as the GDPR, with regard to the personal data of its employees and employees of the other Party indicated in the Agreement as contact persons (the so-called contact details). Personal data provided for the purpose of the Agreement are ordinary data and include in particular first name, last name, position occupied and place of work, company telephone number, company e-mail address.

2. Personal data of the persons referred to in paragraph 1 will be processed by the Parties as separate Controllers on the basis of Article 6(1)(f) of the GDPR (i.e. processing is necessary for the purposes of legitimate interests pursued by the data controllers) only for the purpose and to the extent necessary to carry out tasks related to the implementation of the concluded Agreement.

3. The Parties undertake to protect the personal data made available to each other in connection with the implementation of the Agreement, including the implementation and application of technical and organisational measures to ensure an adequate level of personal data security in accordance with the law.

4. The Parties undertake to inform natural persons not signing this Agreement of the content of this section.

## **§10**

### **FINAL PROVISIONS**

1. The Parties to the Agreement may seek damages for non-performance or improper performance of the terms of this Agreement under the general rules of the Civil Code.
2. All disputes arising or likely to arise in connection with the conclusion or implementation of the Agreement are subject to the exclusive jurisdiction of Polish courts. If it is impossible to settle such disputes amicably on their own, the Parties will refer them to the common court having jurisdiction over the Operator's registered office.
3. In matters not regulated by this Agreement, the provisions of the Civil Code, Transport Law and the Rail Transport Act as well as executive regulations issued on its basis are applicable. The mandatory provisions of the above mentioned legal acts will automatically by virtue of law replace also those provisions of this Agreement which prove to be contrary to them.

**Operator**

**Carrier**

## **APPENDIX No 2: MODEL APPLICATION**

.....  
(date and place of preparation of the application)

**Schavemaker Invest sp. z o.o.**

ul. Fabryczna 1  
55-080 Kąty Wrocławskie  
e-mail: rail@schavemaker.com

### **APPLICATION FOR ACCESS TO THE FACILITY**

I. Acting on behalf of the rail carrier ..... I hereby apply for access to the railway infrastructure that is part of the service facility which is defined in the By-laws of the Facility and these Facility Regulations on the day(s) (specify days and hours of entry and exit).....

.....

II. Technical data:

1) Data on the draft of cars:

a) Number of cars: .....



- b) Length of the draft of cars: .....
  - 2) Data on consignments to be unloaded:
    - a) Types of cargo .....
    - b) Amount of cargo to be unloaded .....
    - c) Place of sending: .....
  - 3) Data on consignments to be loaded:
    - a) Types of cargo .....
    - b) Amount of cargo to be unloaded .....
    - c) Place of sending: .....
  - 4) Information on dangerous goods carried by the carrier: .....
  - 5) Freight forwarder on whose behalf the rail carrier operates .....
- III. At the same time, I declare that I am familiar with the conditions for making the facility available, as defined in the Facility By-laws and the Facility Regulations, Regulations of the Rail Sidings, the Regulations of Terminal Services, which I accept without reservations.

### Appendix No 3:

#### **AGREEMENT ON THE TRANSMISSION OF INVOICES BY ELECTRONIC MEANS**

##### Operator's data:

Schavemaker Invest Sp. z o.o. ul. Fabryczna 1, 55-080 Kąty Wrocławskie entered in the register of entrepreneurs by the District Court in Wrocław for Wrocław-Fabryczna IX Commercial Division, National Court Register Number (KRS): 214723, Tax Identification Number (NIP): 896-137-32-90, fully paid-up share capital: PLN 100,000.00, represented by:

- 1. ....
- 2. ....

Carrier's data: ....., entered in the Register of Entrepreneurs by the District Court in ....., ..... Commercial Division, National Court Register Number (KRS): ....., National Business Registry Number (REGON): ....., Tax Identification Number (NIP): ....., fully paid-up share capital: PLN ..... represented by:

- 1. ....
- 2. ....

- 1. The Carrier consents to sending invoices, duplicates of these invoices and their corrections in electronic form by the Operator.
- 2. The Carrier undertakes to accept the invoices referred to in point 1 of this Agreement in paper form if technical or formal obstacles make it impossible to send the invoices by electronic means.
- 3. The Carrier agrees to send invoices by e-mail to the e-mail address given below:

**E-mail address:**

4. The Operator declares that invoices will be sent from the following e-mail address:

.....

5. In case of a change of e-mail address, the Parties agree to notify the new address in writing.

6. An invoice is deemed to have been delivered in a proper manner when sent by the Operator to the indicated e-mail address.

7. If the Carrier withdraws the consent referred to in point 1, the Operator loses the right to send invoices to the Carrier by electronic means, starting from the day after receiving the notification of withdrawal of consent.

The above is in accordance with Article 106n of the Act of 11 March 2004 on goods and services tax (Dz. U. [Polish Journal of Laws] of 2018, item 2174, as amended).

Date:

Signatures

.....

.....

/ Operator /

/ Carrier /

#### **APPENDIX No 4: MODEL APPLICATION**

.....

(date and place of preparation of the  
application)

**Schavemaker Invest sp. z o.o.**

ul. Fabryczna 1

55-080 Kąty Wrocławskie

e-mail: [rail@schavemaker.com](mailto:rail@schavemaker.com)

#### **APPLICATION FOR ACCESS TO THE STABLING SIDING**

Acting on behalf of the rail carrier ..... I hereby apply for access to the stabling siding which is the service facility as defined in the By-laws of the Facility and these Facility Regulations on the day(s) (specify days and hours of entry and exit).....

.....

IV. Technical data:

6) Data on the draft of cars:

c) Number of cars: .....

d) Length of the draft of cars:: .....

7) Data on consignments to be unloaded:

d) Types of cargo .....

e) Amount of cargo to be unloaded .....

f) Place of sending: .....

8) Data on consignments to be loaded:

- d) Types of cargo .....
  - e) Amount of cargo to be unloaded .....
  - f) Place of sending: .....
  - 9) Information on dangerous goods carried by the carrier:  
.....
  - 10) Freight forwarder on whose behalf the rail carrier operates .....
- V. At the same time, I declare that I am familiar with the conditions for making the facility available, as defined in the Facility By-laws and the Facility Regulations, Regulations of the Rail Sidings, the Regulations of Terminal Services, which I accept without reservations.