

TERMS AND CONDITIONS

electronic creation of CMR

This TERMS AND CONDITIONS (*hereinafter: Terms*) is a legal and binding agreement (contract) concluded between:

- **SMART CARGO, programiranje, d. o. o.**,
Letališka cesta 35, 1000 Ljubljana, Slovenia,
Tax no.: SI 24378160,
Reg. no.: 8224803000,
Bank account: SI56 0317 1100 1504 743, opened at SKB d.d. bank, opened at SKB, d. d. bank,
(*hereinafter: "SMART CARGO", "SC", "us" or "we"*)
and
- legal entity that uses the SC Products, in accordance to the provisions of these Terms, registered or not
(*hereinafter: "User" or "you"*)

by which SC and the User (*hereinafter collectively referred to as: Parties*) agree upon the following:

I. PRELIMINARY PROVISIONS

1. LEGAL IMPLICATIONS OF USE OF SC SERVICES

- 1.1. The Terms apply to access and use of **SC Services**.
- 1.2. By using the SC Products, User is confirming and consenting to be bound by the Terms.
- 1.3. In the absence of such consent, or if such consent is validly withdrawn, SC will not provide User the access to the SC Services and User should immediately discontinue to use the SC Services.
- 1.4. In the case of the preceding provision (1.3.), the contract shall be deemed not to have been concluded and SC shall have no contractual or any other obligation toward you whatsoever. Notwithstanding the foregoing, you are liable to SC for any damages resulting from misconduct or abuse of any kind of SC Services or SC Software in accordance with applicable law and the provisions of these Terms.
- 1.5. SC may modify these Terms at any time in its sole discretion and without prior notice to the User. Such changes will be posted on the Web Page and will be effective upon posting. User should review these Terms periodically to ensure familiarity with the current version.
- 1.6. Continued use of the SC Services shall constitute acceptance of these Terms and Users continued use of the SC Services following any modification of these Terms shall constitute acceptance to the Terms,

as amended. If User does not agree to the changes, he must discontinue use of the Services. User should read the entire Terms carefully before using the SC Services.

2. DEFINITIONS AND INTERPRETATIONS

2.1. Terms used in these Terms shall have the following definitions:

- **Agreement/Terms:** means a legally binding contract constituted between Parties under the provisions of these Terms.
- **Intellectual Property:** any patent, copyright and related rights, registered design, unregistered design right, trademark, domain, source code, images, corporate name, *sui generis rights*, know-how or other industrial and intellectual property or similar right (registered or not registered) owned or used by SC together with any current applications for any registrable items mentioned beforehand.
- **Parties:** refers to User and SC collectively.
- **Personal Data:** means any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
- **Platform:** interface which provides the Services to Users via SC Software on the website: smart-cargo.net;
- **Privacy Policy:** means the document that contains information about how SC collects, uses and shares Personal Data and is attached to Terms (via hyperlink) as an integral part of these Terms.
- **SC Services:** services provided by SC on the website: smart-cargo.org.
- **SC Software:** represents all mobile apps available through “app stores” or installed directly, web application on the Website (Platform), test counterparts and other software of SC.
- **SMART CARGO/SC:** means SC, its related companies and subsidiaries, affiliates and their officers, employees or agents.
- **Transport Documentation:** means the aggregate term for the following transport documents:
 - **CMR:** means the international consignment note in physical form as is defined by the CMR Convention.
 - **eCMR:** means Electronic consignment note, which is a consignment note issued by electronic communication by the carrier, the sender or any other party interested in the performance of a contract of carriage to which the Convention applies, including particulars logically associated with the electronic communication by attachments or otherwise linked to the electronic communication contemporaneously with or subsequent to its issue, so as to become part of the electronic consignment note as is defined in Article 1 of the Protocol and governed by it.
- **User:** any legal entity that uses the SC Services.
- **Website:** Website located on the following domain: <https://smart-cargo.org>, including relating sub-domains, other SC powered sites, the SC mobile applications, any available SC APIs, and all other related services, websites, applications, and similar tools which serve as a link or host the SC Software or facilitate the use of the latter.

2.2. In these Terms a reference to:

- a word importing one gender shall (where appropriate) include any other gender and a word importing the singular shall (where appropriate) include the plural and vice versa; and
- any statute or statutory provision includes, except where otherwise stated, the statute or statutory provision as amended, consolidated or re-enacted and includes any subordinate legislation made under the statute or statutory provision (as so amended, consolidated or re-enacted).

II. GENERAL

3. REGISTERED USER

- 3.1. With using the services, you agree and warrant to/that:
- be bound by these Terms,
 - promptly notify SC if any security breaches related to the User are discovered;
 - take responsibility for all activities that occur and accept all risks of any authorized or unauthorized access.

4. USER

- 4.1. This Terms shall be legally binding for every User, registered or not, that uses the SC Services unless otherwise provided for in these Terms.
- 4.2. Users, that want to use full functionality of SC software must register on the Platform, available on website: smart-cargo.net.

5. SCOPE AND NATURE OF SC SERVICES and E-CMR

- 5.1. The free version of creation of the CMR document does not represent the full version of the eCMR functionality which is on the Platform. User must create an account on the Platform to conclude contracts with other Users and use the full functionalities of eCMR documents.
- 5.2. The free version on this website only represents a digital form and creation of the CMR document for the User.
- 5.3. It is important that you note that SC is not a contracting party between users, nor does the user establish any rights, obligations or liabilities, contractual or otherwise, in relation to SC. SC is not a party to any agreement made between users via SC services. As a result, SC has no control over the performance, or any other legal aspects of relevant contracts concluded. The relevant contract is governed in accordance with the relevant national or international regulations, to applicability of which SC has no influence on.
- 5.4. SC is not responsible and shall not be held liable for any damages or claims of any kind which result from lack of entry of data and / or irregularity of the latter in the creation of the CMR document. The user must at all times carefully examine data entries and make sure the data is correct.
- 5.5. The nomination: "E-CMR" used on the website is used only for the needs of partial creation of the CMR document and is of informative nature. It does not represent the actual legal nature of the eCMR document. To obtain the functionality of SC to create eCMR document, the User must register on the

Platform. The legal nature, validity and obligations arising from the created CMR document is subject to the rules of applicable law and in each individual case and subject to the interpretation of various competent authorities. SC does not guarantee for the lawful conclusion or validity of document under applicable law. Compliance of Transport documents with applicable laws is the sole duty of each user, not SC.

- 5.6. Transport documentation generated on the Website does not warrant that the Transport documentation:
 - shall be deemed valid by competent authorities in any jurisdiction,
 - is in accordance with national laws;
 - the country whose law is applicable to each Transport documentation or which courts are competent for its interpretation;
 - that transport documentation in electronic format is deemed valid in every jurisdiction.
- 5.7. SC services are merely a tool, that assist Users in filling out the relevant transport documentation in electronic format. The input data into the transport documentation are provided by the User. The correctness of data provided by the User is User's own responsibility.
- 5.8. The User has to verify that in the specific case the transport documentation has been completed correctly with all information required by applicable law and in accordance with the relevant legislation.
- 5.9. The SC is not responsible for damages caused to the User due to unlawful creation of the CMR, such as nullity or voidability or any other kind of invalidity or violation of legal rules. The User acknowledges, that he has no claims whatsoever toward SC arising from or in connection to the creation of CMR (or E-CMR). SC is not responsible for the rights or obligations between users arising from the conclusion of contracts between them.

6. LIMITATION OF LIABILITY

- 6.1. You acknowledge that we cannot guarantee the continuous operation of or access to our SC Services. You further acknowledge that operation of and access to SC Services may be interfered with as a result of technical issues or other factors outside of our control. You agree that SC is not responsible for any failures, or temporal or permanent inability to procure the SC Services at any given time.
- 6.2. You agree that the SC Services are being provided to you on an "AS IS" basis. Hence, SC shall under no circumstances whatsoever be liable to the User, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of goodwill, profit, revenue, anticipated savings or any loss that is an indirect or secondary consequence of non-performance or disrupted performance of SC Services.
- 6.3. In addition, to the fullest extent permitted by applicable law, SC is not liable, and you agree not to hold SC responsible, for any damages or losses resulting in any way of the following:
 - Viruses or other malicious software obtained by accessing SC Services, or tools linked to SC Services;
 - Glitches, bugs, errors, or inaccuracies of any kind including information and graphics obtained from or in connection to SC Services;

- 6.4. In jurisdictions in which disclaimers listed in this provision (6.) are not fully applicable, it is to be deemed, that they must be applied to the fullest extent permitted by applicable law and to be interpreted that the common and true will of Parties is SC's limitation of liability to the fullest extent permitted by applicable law.
- 6.5. User is aware that SC Services are internet based and that SC cannot be liable for any disruption or performance failure of SC Services that are a consequence of distortion or fall-out of internet access or connection, regardless of the cause.
- 6.6. SC is not responsible and cannot be held liable for errors, missing data or misinformation resulting from User's abnormalities, defect, errors or false data input into CMR.
- 6.7. SC shall not be held liable, especially but not exclusively, for any kind of:
- damages or loss of profit resulting from use or inability to use the SC Services;
 - damages or loss of profit resulting from any technical malfunction from or in relation to the SC Products,
 - damages or loss of profit or loss of data due to viruses or other malicious software obtained by accessing SC Services, or tools linked to SC Services, if the cause of the infection is on the part of the User or due to his lack of required diligence, if the cause of infection cannot be attributed to SC or if such infection is outside SC's reasonable control, or if such infection occurs despite SC's required diligence in deterring from such infections.
 - User's or SC's required diligence in deterring from such failures,
 - expenses and costs arising from the alternative supply of services or User's duty to mitigate;
 - damages or claims of any kind which result from User's lack of entry of data and/or irregularity of the entered data into the CMR.
- 6.8. If the User makes reference to a breach of these Terms or/and the Agreement must take all reasonable measures to reduce the damage inflicted by the alleged breach (duty to mitigate); otherwise the other party - SC, may demand reduced compensation.

7. INTELLECTUAL PROPERTY

- 7.1. SC owns all Intellectual Property rights to SC Products and any other products SC developed and/or owned by SC relating thereto.
- 7.2. SC grants the User a Licence to use the SC Software, SC Services strictly in accordance with these Terms and only for purposes of performing the Users registered activity in his professional capacity, for his internal business purposes.
- 7.3. The User acknowledges the SC's rights to the Intellectual Property used on or in relation to the SC Products and the SC's business and the goodwill connected with it, as the SC's sole property. User is only permitted to use the Intellectual Property for the purposes of and during the term of this Agreement, other than to that extent, it has and shall have no right to use, or to allow others to use the Intellectual Property or any part of it, and shall not remove, alter or otherwise tamper with any trademarks, trade names, logos, numbers or other means of identification on the SC Products,

promotional material or any packaging which come into the User's possession, custody or control, and shall not place any trade mark or trade name of its own on the SC Products or any packaging or other materials used in connection with them.

- 7.4. User is not allowed to distribute or reproduce Intellectual Property in any form or by any means, without the prior written permission of SC except in cases of fair use as provided for under applicable law. User agrees that SC's intellectual property may be used only as provided in these Terms. All rights not expressly granted herein are reserved to SC.
- 7.5. Any changes, alterations, improvements, reverse engineering, or similar actions and derivative work conducted on SC Software in breach of these Terms shall be deemed to belong to SC even if they would be regarded to be subject of independent Intellectual property rights under applicable law. In such cases, when it is necessary, the User stipulates to immediately transfer all intellectual property rights constituted by his unlawful actions listed prior, to SC. The SC shall in any event be entitled to full compensation for damages caused by breach of these provisions of Terms.
- 7.6. License granted to the User under these Terms will automatically terminate if SC suspends or terminates your access to the SC Services.

8. PRIVACY, DATA PROTECTION AND STORAGE

- 8.1. Information about how SC collects, uses and shares Personal Data is described in SC's Privacy Policy.
- 8.2. SC Software does not allow SC to have insight in the User's data on the Platform that represent User's data (such as CMR data and other business data). SC can access this information only with explicit consent by the User.

V. FINAL PROVISIONS

9. INDEMNITY

- 9.1. The User undertakes and agrees at all times during the term of this agreement to indemnify the SC against any liabilities, direct or indirect damages or loss of profit incurred by the SC as a result of the User breaching these Terms or any law in force at any time or which result from or in connection with SC Services to the full extent permitted by applicable law.
- 9.2. For an (unregistered) User, the contract is deemed terminated when he ceases to use the SC services.
- 9.3. User hereby consents, that SC can, at his own discretion, without giving reason, by prior notice:
 - terminate the provision of SC Services,
 - discontinue or delay the provision of certain or all features of SC Services,
- 9.4. User hereby consents, that SC can, at his own discretion:
 - terminate the Agreement by:
 - deleting the Account of Registered User,
 - prohibit and disable the use of SC Services to (unregistered) Users,

- suspend the provision of Services to the User,

should the User:

- be in breach of provisions of these Terms and/or the Agreement,
 - use the SC Services for illegal activities of any kind,
 - access the SC Services without Authorisation,
 - be in delay with outstanding liabilities,
- terminate the Agreement or delay, remove or temporarily disable the SC Services or some of its features because of:
 - security reasons,
 - updates or maintenance work on it,
 - unexpected technical difficulties,
 - order of competent authorities, such as law enforcement, government, administrative, court or similar authorities,

9.5. In the cases from the previous provision (9.4.), the user is not entitled to any compensation or damages.

10. NOTIFICATION

10.1. Notifications relating to use and procurement of SC Services shall be made available to Users or *via* User's e-mail address.

10.2. User may contact SC by email to the address: support@smart-cargo.org If the message is sent on a work free day, it will be considered as received on the first working day at 9.00 AM according to GMT+1 and working days in Slovenia.

10.3. All communications and notices to be made or given pursuant to these Terms must be made in Slovenian or English language. Communications and notices made in other languages shall be deemed non-existent.

11. MISCELLANEOUS

11.1. If any provisions of these Terms are held null or voidable, they are replaced with the provision that is closest to the meaning and effect of such provision and is interpreted to the intent of the original provision. In any case the rest of the Terms will remain in full force and effect.

11.2. These Terms shall consist of both the provisions contained therein and all the documents annexed thereto. Such annexes form part of these Terms and shall have effect as if set out in full in the body of these Terms. Any reference to these Terms or vice versa includes the referred document as such annexes.

11.3. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with the laws of Republic of Slovenia. The courts of Republic of Slovenia in Ljubljana shall

have exclusive jurisdiction to settle any such claims or disputes arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

11.4. Use of SC Services is permitted for registered legal entities only.

SMART CARGO