

# General Terms and Conditions for the ProfiCard



This translation has been made for the convenience of the client. Only the German original is legally binding. In the event of any differences of interpretation between the English and the German version, the German shall prevail.

## Preamble

ProfiCards are subscription season tickets issued by the Hamburger Verkehrsverbund (HVV) which can be used by employees via their companies (corporate clients) as part of a Corporate Client Subscription programme (Corporate Client Subscription, GKA). The transport companies affiliated in the HVV have delegated the overall management of the GKA to S-Bahn Hamburg GmbH (S-Bahn), Hammerbrookstraße 44, 20097 Hamburg in a Business Management Contract authorizing them to carry out the management of the programme on their behalf.

The contractual relationship between S-Bahn and the Corporate Clients is regulated in GKA contracts based on the following premises:

- Section 3.5.1. of the HVV Communal Tariff (Gemeinschaftstarif) in a contract directly with S-Bahn (direct contract) or
- Section 3.5.2. of the HVV Communal Tariff (Gemeinschaftstarif) in a contract concluded by the ProfiCard sales partner of S-Bahn as their agent (inclusion agreement).

These contracts are governed by the HVV Communal Tariff (Gemeinschaftstarif), in particular section 3.5, as well as by these present General Terms and Conditions for the ProfiCard (GTC) in the currently valid version. The provisions of the HVV Communal Tariff (Gemeinschaftstarif) applicable to the ProfiCard are summarized in a separate pre-printed form "Terms and Conditions of Use for the ProfiCard in HVV Corporate Client Subscription programmes (GKA) ("Terms and Conditions of Use").

## Company master data | Disclosure

The Corporate Clients hereby declare by their signature to the GKA / by ordering ProfiCards that they agree

- to provide truthful, accurate, up to date and complete details of their company and its employees (company master data) and
- to update such company master data when reordering ProfiCards so that they remain truthful, accurate, up to date and complete, as well as
- to disclose all information described in the following sections of this agreement during the validity and after the expiry of this agreement.

## Corporate Client manager | contact person

Prior to this agreement coming into force

- S-Bahn or the ProfiCard sales partner of S-Bahn shall name a Corporate Client account manager.
- The Corporate Client shall name a person who shall be responsible for ensuring the correct application of the GKA contract and shall have the function of acting as a binding representative of the Corporate Client in dealings with S-Bahn as well as one further person to act as deputy of the person named. S-Bahn or the sales partner shall be informed in writing of any change of the persons named.

The person named as contact person by the Corporate Client will receive a guideline on the ProfiCard with a detailed and binding description of all the tasks they need to perform. The Corporate Client will be promptly informed by S-Bahn or the ProfiCard sales partner of any modifications to these guidelines. A personal instruction session for the contact person can be arranged by consultation with S-Bahn or the ProfiCard sales partner.

## Supply of ProfiCards to the Corporate Client

Following the signing of the GKA contract S-Bahn or the ProfiCard sales partner will ensure that the ProfiCards ordered are prepared as previously agreed, delivered to the Corporate Client free of postage and handed over to the contact person named by them against a receipt.

Corporate Clients who have a direct contract and ProfiCard sales partners will receive a contingent of ProfiCards with a standardized validity running normally for 12 months. Tickets will be issued from this contingent in uninterrupted ascending order of the numbers. Corporate Clients who have an inclusion agreement will receive ProfiCards issued for the designated and named holder from the contingent of the ProfiCard sales partner.

Additional ProfiCards can be ordered with a delivery time of six weeks from S-Bahn. For Corporate Clients who have a direct contract, the annual replenishment of the ProfiCard contingent will be carried out after consultation with S-Bahn. Delivery of the

new ProfiCards is in principle always two weeks before expiry of the validity of the old ProfiCards. Corporate Clients with an inclusion contract order the annual replenishment of their ProfiCard contingent as per order sheet after consultation with their ProfiCard sales partner.

## Issue of ProfiCards and collection of fare money

The Corporate Client

- will ensure that the ProfiCards are kept under secure conditions comparable with bank cash,
- issues ProfiCards to authorized persons against a signed receipt and a declaration of acceptance of the conditions of their use and checks when issuing the cards that the cardholder is in fact the person who signs for it,
- retains the proof of authorization when issuing ProfiCards to trainees/apprentices,
- collects ProfiCards again when the participation in the GKA ends,
- informs S-Bahn / the ProfiCard sales partner if and when employees who have left the company do not return their ProfiCard, furnishes S-Bahn / the ProfiCard sales partner on a monthly basis with the necessary information for initiating the court payment order procedure and will give every support to S-Bahn / the ProfiCard sales partner when they need to make enquiries in connection with the court payment order procedure,
- exchanges ProfiCards when needed, e.g. in the event of a change of name,
- supports the transition process from an individual subscription ticket to the Corporate Client Subscription ticket,
- supports advertising activities of S-Bahn to persuade his employees to participate in the Corporate Client Subscription programme,
- informs participants in the GKA about tariff changes without delay following their announcement by S-Bahn,
- issues replacement cards during the normal office hours if and when the loss of a ProfiCard has been reported and plausibly and convincingly explained,
- answers any enquiries which may be necessary in connection with ticket inspections,
- ensures that the fare money is collected each month from the cardholder's payroll account,
- separates the fare money deducted in this way from his employees by a suitable procedure from his own business assets and holds it on a separate dedicated account set up for this purpose,
- ensures that fare money is refunded in the event of illness pursuant to the Conditions of Use,
- furnishes S-Bahn / the ProfiCard sales partner monthly on the agreed date with all collected documentation (returned and invalid ProfiCards, declarations concerning loss of cards with the number of the replacement card, medical certificates in the case of fare refunds).

## Reminders, retention of documentation

The Corporate Client with a direct contract

- sends reminders to employees who have left the company to return their ProfiCards, pointing out the consequences of not doing so, passes on unanswered reminders to S-Bahn with the current address and giving the date of birth of the employee in question,
- retains the receipts for cards and the proof of authorization for trainee/apprentice cards sorted in ascending numerical or alphabetical order,
- checks the ProfiCards in the company on a monthly basis,
- documents all business transactions and the portfolio of ProfiCards in a document giving evidence of usage,
- furnishes S-Bahn with such a document on a monthly basis on the agreed date, attaching the returned documents, e.g. confirmations of receipt, cards etc.
- when the validity of the ProfiCards expires, returns any ProfiCards still left unissued together with the confirmation of their receipt in ascending order of the numbers or sorted alphabetically to S-Bahn for their records.

In the case of inclusion agreements, the ProfiCard sales partner will take over the tasks detailed in this section. The Corporate Client will support him in this to the best of his abilities.

## Payments and comparison of debit position

The Corporate Client will ensure that the fare money retained from employees is remitted each month on the agreed due date in a single sum. The due date is synchronized with the date for the payment of salaries and is to be at the latest the last working day of the month.

S-Bahn/the ProfiCard sales partner determines the debit position of the fare money according to the ProfiCards delivered and the documentation received as well as the requirements for participation in the scheme according to the tariff.

For direct contracts, S-Bahn carries out a comparison of the debit position at the end of each month. The result of this check is documented in a checklist and sent to the Corporate Client by the 10th of the following month.

In the case of inclusion agreements, the ProfiCard sales partner will debit the Corporate Client with the monthly amount of fare money each month.

## IT programs for managing the ProfiCard programme

S-Bahn can supply direct contract Corporate Clients after consultation with an IT program which performs the following functions:

- supports the management of the tickets and creates the monthly usage list and
- creates the personal data for settlement as an IT file to be sent to S-Bahn by email.

The program may only be used by the Corporate Client for the settlement of the HVV ProfiCard programme and may not be passed on to third parties. It is provided free of charge; Costs incurred for programming work, e.g. to incorporate individual requirements to the payroll account interface or in order to enable the transfer of employee data, may be invoiced by S-Bahn to the client.

When the contractual relationship terminates, the data thus collected is to be returned to S-Bahn.

## Right of inspection for S-Bahn

S-Bahn is entitled to carry out checks to monitor compliance with the contractual duties of the client.

## Validity | cancellation of the contractual relationship

GKA contracts are concluded for an indefinite period. They can be terminated by either partner giving notice of three months before the expiry of the validity of the ProfiCards entrusted to them or which they are obliged to take delivery of under these GTC.

S-Bahn has the right of extraordinary termination without notice if

- the prerequisites for concluding Corporate Client Subscription contracts pursuant to Section 3.5.1 or 3.5.2 of the HVV Communal Tariff (HVV Gemeinschaftstarif) do not exist or no longer exist or
- the due date for the monthly transfer of fare money has been repeatedly missed despite reminders or the asset position of the Corporate Client deteriorates, as well as
- when the ProfiCards entrusted to the Corporate Client have been improperly used by him or
- in the event of serious breaches of the Corporate Client's contractual obligations.

When changes to the tariff or material modifications to these GTC are made, the Corporate Client has a right of extraordinary termination at the date the tariff changes or the modifications to these GTC come into force which must be exercised within fourteen days of the announcement of such changes or modifications by S-Bahn; this right does not apply to ProfiCard sales partners.

The termination must be in writing.

In the event of a termination of the contract, whether by the Corporate Client, or by S-Bahn or the ProfiCard sales partner, the Corporate Client is obliged to collect already issued ProfiCards at the termination date of the contract and to return them to S-Bahn within three days together with the remaining stock of unissued ProfiCards,

reclaimed documentation and any further material they received in connection with this contract. In addition, they shall pass on a list containing the first and family names, ProfiCard numbers, current address and date of birth of any persons who have not returned their ProfiCard.

## Liability | Failure to comply with contractual obligations

The parties to this contract are mutually liable for the proper and prompt performance of the duties accepted by them for their part of this contract pursuant to the Terms and Conditions of Use and these GTC.

In the event that a Corporate Client fails to comply with his obligation to pay a contribution to the fare money of his employee pursuant to Paragraph 3.5.1 b) of the HVV Communal tariff (HVV Gemeinschaftstarif), he is obliged to pay to S-Bahn for each month in which he is more than one month in arrears with the payment of such contribution the difference between the price of the ProfiCard and that of a General Subscription Ticket with validity for the same fare zones. His obligation to pay a contribution to the fare money of his employee shall not be affected by this.

If the Corporate Client fails to return ProfiCards which have not been settled to S-Bahn, he shall pay the fare money for these tickets in arrears for the entire period of their validity.

## Data protection

Personal data from GKA Contracts will be stored and used by S-Bahn and the ProfiCard sales partners exclusively for the performance of the relevant contract and protected, pursuant to § 28 Par. 1 No. 1 German Data Protection Law (BDSG). If and when personal data in connection with the contract are transferred to third parties within the framework of the contract (§ 28 Par. 5 BDSG), S-Bahn or the ProfiCard sales partner undertakes to ensure that such data is processed or used exclusively for the purposes intended by the contract.

## Final provisions

If any provision of these GTC should be or be found to be invalid, this shall be without effect for the other provisions, which shall remain in full force and effect. The parties to the contract are obliged to remove the invalid provision and to replace it with a valid provision which most nearly gives effect to the purpose mutually intended by them. The same applies in the event that these GTC should prove to be incomplete.

This contract is to be governed and construed in all respects according to the Laws of the Federal Republic of Germany.

Place of performance and of jurisdiction is Hamburg.