

## Vossloh ETS B.V. General Terms & Conditions for Mobile Rail and Turnout Maintenance (milling and grinding)

Status: 03/2024

### 1. General, Scope

- 1.1 These General Terms and Conditions (hereinafter: GT&C) shall apply to all tenders and services regarding the provision of mobile rail and turnout maintenance (milling and grinding services) by Vossloh ETS B.V. (hereinafter: Vossloh). These GT&C form a component of all contracts that Vossloh signs with its contractual partners (hereinafter: Customer(s)) for the provision of milling and grinding services for the purpose of machining rails.
- 1.2 Any terms and conditions which differ from, contradict or supplement these GT&C shall not form part of a contract unless explicitly agreed to in writing by Vossloh. Vossloh explicitly rejects applicability of other terms and conditions used by a Customer, unless agreed otherwise.
- 1.3 The Uniforme Administratieve Voorwaarden voor de uitvoering van werken en van technische installatiewerken 2012 (UAV) and the Algemene Leveringsvoorwaarden Installerende Bedrijven (ALIB) shall not apply unless Vossloh has explicitly agreed to their use in writing.
- 1.4 All quotes are non-binding and subject to change unless explicitly indicated otherwise.
- 1.5 A contract has not been entered into until Vossloh has at least issued an order confirmation in text form (e.g. an email) or until Vossloh has actually provided the services.

### 2. Payment

- 2.1 The amount to be paid for the contractually agreed service shall be in accordance with the prices specified in the tender, contract and/or addendum (additionally see Section 6.1.6). The Customer is also required to pay the applicable value-added tax. Insofar as value-added tax is already disclosed in the tender, contract or addendum, the value-added tax applicable at the time of invoicing shall nevertheless apply.
- 2.2 Surcharges shall be levied for work carried out at night, on weekends or on public holidays and the Customer hereby agrees to the applicability of these surcharges. The amount of such surcharges shall be specified in detail in the tender or contract.

### 3. Terms of Payment

- 3.1 Payments are due at the times specified in the tender/contract. If no due date has been agreed on, Vossloh is entitled to invoice its services in accordance with the progress of its work. Payment must be made without delay no later than fourteen (14) calendar days after the date of the invoice.
- 3.2 If any items on an invoice are contested, the payment obligation for the uncontested items shall remain unaffected.
- 3.3 A payment shall only be deemed to have been made after it has been credited to one of the bank accounts specified by Vossloh stating the quote number or contract number.

- 3.4 If the Customer is in arrears on a payment, interest shall be charged at the statutory interest rate for commercial transactions (section 6:119a Dutch Civil Code, wettelijke handelsrente).

### 4. Non-performance of services; defective or inadequate service provision

- 4.1 Any complaints concerning the provision of services shall be reported by the Customer in the daily status report without delay (see Section 6.4.1) and at the latest in the acceptance report.
- 4.2 The contractual parties are aware that, in the event that service provision is inadequate, it may not be possible to provide repeat or subsequent services immediately after the agreed period of service provision because the track section may no longer be closed, it may not be possible to close the section, and/or Vossloh may have to take or may have already taken the machinery used to another location.
- 4.3 If Vossloh is responsible for the inadequate service provision, the Customer shall grant Vossloh a reasonable period of grace subject to Section 4.2. When determining the duration of this period, the nature of the non-performance or inadequate performance of services, the complexity of performing the supplementary services required and an appropriate number of attempts to perform these services that is commensurate with the prevailing circumstances shall be taken into consideration along with any other relevant factors that may apply. The Customer is only entitled to withdraw from the contract or reduce the payment if Vossloh again fails to fulfill or incorrectly fulfills its contractually agreed services within the new period of service provision, and if Vossloh is responsible for this. The Customer's legal rights to compensation remain unaffected. Any further claims of the Customer resulting from inadequate service provision will not be accepted.
- 4.4 In the event that inadequate service provision is not attributable to Vossloh, Vossloh shall, as far as possible, offer the Customer the contractually agreed provision of services in a separate quote.
- 4.5 The statutes of limitation for claims resulting from the non-performance of services or from defective or inadequate service provision shall be one year from the signing of the acceptance report or, if no such report exists, one year from the signing of the last daily status report (see Section 6.4). After expiry of the aforementioned period, any and all claims of the Customer resulting from the nonperformance of services or from defective or inadequate service provision shall lapse (vervallen). The legal statutes of limitation shall remain unaffected in the event of a deliberate or grossly negligent breach of obligations on the part of Vossloh, its legal representatives or subcontractors, and/or in the event of fraudulent intent or damage to life, limb or health.

## 5. Liability

- 5.1** Vossloh shall not be liable for damage, unless this has been caused by Vossloh's intent (opzet) or gross negligence (grove schuld).
- 5.2** Subject to the limitations of statutory liability and notwithstanding Section 5.1 Vossloh shall only be liable in the event of ordinary negligence (verwijtbaarheid) in the case of losses caused by death, personal injury or damage to health.
- 5.3** Vossloh's liability shall be limited to the lower of: (i) EUR 10,000 per occurrence or series of occurrences with one and the same cause of damage or (ii) the contract value of the respective tender/contract. Vossloh shall not be liable for any damage which is not a direct foreseeable consequence of a breach, such as, but not limited to, loss of profits or income, delay damage, reputational damage, and other immaterial damage.
- 5.4** The Principal must notify Vossloh in writing of the existence and amount of the damage within 6 months of the occurrence thereof. If and to the extent this requirement is not observed, the Principal's claim will be forfeited (verval van recht).

## 6. Further Provisions

### 6.1 Subject and scope of contract

- 6.1.1** The subject of the contract is the agreed service, the scope and content of which (service parameters) are specified in the quote and/or contract.
- 6.1.2** Any amendments or additions to the contract must be agreed to in text form or in writing (e.g. email).
- 6.1.3** Vossloh's obligation to provide the service is limited to the use of one machine with the specified milling/grinding capacity from the agreed machine category during the specified service period in order to achieve the desired depth of material removal on the track section to be machined. In particular, weather conditions, safety considerations, the actual condition of the rails or the quality of the preceding work may hinder or affect the provision of the service.
- 6.1.4** Insofar as Vossloh offers to perform work shifts of a certain duration, the duration of this work shift also includes the journey to and from the track section to be machined while taking into consideration the applicable speed limits. Waiting periods shall be considered part of the duration of the work shift. In any case, a shift begins from the time for which the Customer has requested Vossloh's machine(s)/personnel to be at a specified place, and insofar as the machine(s)/personnel are present as agreed.
- 6.1.5** Vossloh is only obliged to provide the service that is detailed in the tender or in the contract. If additional services are desired or necessary, Vossloh shall only be obliged to provide additional services after payment has been agreed on in text form (addendum).
- 6.1.6** In the event that Vossloh provides services for which there has been no explicit agreement on payment, the usual terms relating to payment and fees shall be deemed to have been agreed on. This applies in particular to cases where the provision of services extends beyond the scheduled end of a shift. In such cases, Vossloh is entitled to receive overtime premiums accordingly.

### 6.2 Provision of contractually agreed services

- 6.2.1** The track section on which the services shall be provided as well as the manner of service provision shall be described in detail in the tender or in the contract.
- 6.2.2** Vossloh reserves the right to select its employees and the machine from the machine category agreed on. Vossloh is entitled to use third parties (subcontractors) to provide the contractually agreed services. The Customer is not entitled to issue instructions to Vossloh employees and/or to subcontractors used by Vossloh unless this is required for safety reasons or with Vossloh's prior written consent.
- 6.2.3** The Customer is hereby informed that when providing its services Vossloh and/or its subcontractors must comply with the respective applicable labour law regulations and collective labour agreements, in particular the regulations on occupational health and safety and on working hours (the Dutch Working Conditions Act (Arbeidsomstandighedenwet) and the Dutch Working Hours Act (Arbeidstijdenwet)). Shifts cannot be extended beyond the legally permissible number of working hours, for example, and must be suspended in the event of extreme outside temperatures.
- 6.2.4** Vossloh and/or its subcontractors are not obliged to provide services if legal provisions or the internal provisions of the authorities responsible for the rail network do not permit the use of the trains or machinery planned for carrying out the contractually agreed work. In such cases, the Customer shall grant Vossloh the opportunity to reschedule its services (see Section 4.2).
- 6.3 Customer's obligation to cooperate and provide assistance**
- 6.3.1** The Customer is obliged to ensure, free of charge, that all the requirements for providing the contractually agreed service have been met on the track section to be machined, which includes, among others, access routes for this purpose. The Customer shall appoint a contact person with expertise who can give the Vossloh employees and/or subcontractors (as the case may be) the building site induction, be available for coordination purposes during the agreed period of service provision and who is authorized to make binding decisions on behalf of the Customer. Among other things, the Customer must:
- provide qualified safety staff for the period of service provision;
  - guarantee and procure uninterrupted and unlimited access free of charge to the track section to be machined, mainly by scheduling and organizing operational plans and track closures;
  - correctly secure the track section to be machined against hazards caused by third parties or resulting from external circumstances;
  - provide the necessary electricity and water connections specified in the order/contract and/or reasonably needed for the service provision;
  - guarantee sufficient warehouse/storage space for the machinery used by Vossloh (e.g. protection from theft, weather conditions).
- Any further cooperation obligations shall be defined in more detail in the tender/contract.

- 6.3.2** Free of charge and in a timely manner, the Customer shall provide Vossloh with as much correct, detailed and complete information and documentation required for the provision of the services as the Customer is aware of or is made aware of by Vossloh. In particular, the Customer shall:
- provide a specific description of the condition and specific local circumstances concerning the track section commissioned; and
  - point out the local and national regulations that are relevant for working on the track section to be machined (e.g. fire prevention regulations or speed limits on the access routes to the track section).
- 6.3.3** If the actual condition of the track does not correspond to the information provided by the Customer in accordance with Section 6.3.2, the parties shall agree on an appropriate amendment to the contract if deemed necessary by Vossloh on a case by case basis. In the event that the parties do not reach an agreement relating to the aforementioned, Vossloh is entitled to withdraw from the contract. If Vossloh withdraws from the contract, Vossloh reserves the right to demand compensation for any losses incurred (including but not limited to costs incurred, planning and resourcing of personnel and loss of profit).
- 6.3.4** In the event that the Customer fails to meet his cooperation obligation to such an extent that Vossloh cannot provide the service agreed on, and if the Customer does not meet this obligation before a reasonable deadline set by Vossloh, Vossloh shall be entitled to terminate the contract. In such cases, Vossloh may invoice any services already provided and reserves the right to claim compensation in accordance with the final sentence of Section 6.3.3.
- 6.4 Daily status reports and acceptance report**
- 6.4.1** Vossloh and/or its subcontractors shall draft daily reports of the services provided. The reports shall be checked and countersigned by the Customer's contact person (see Section 6.3.1).
- 6.4.2** By signing the report, the Customer declares that Vossloh has duly provided the contractually agreed service on the part of the track section to which the report refers, unless the Customer expresses reservations in the report.
- 6.4.3** After Vossloh completes the service, the parties and/or, on behalf of Vossloh, its subcontractors, shall together draft and sign an acceptance report. This report, together with the compiled daily status reports, measurement logs and any other relevant documentation, are handed over to the Customer. If the Customer does not express any reservations in this report, the service provided by Vossloh shall be deemed to have been provided correctly and the Customer shall be deemed to have accepted and approved the services in full. The daily status reports compiled shall be regarded as the acceptance report in the event that a separate acceptance report has not been prepared (see Section 6.4.1). If possible, the acceptance report should be drafted very shortly after the notification of completion is submitted, as some of the tracks in the machined section may be reopened very quickly after completion of the services. Insofar as the Customer recommences operations on tracks in the machined section without expressing any reservations, the Customer acknowledges that Vossloh has provided the service correctly.
- 6.5 Service scheduling**
- 6.5.1** The dates and periods for service provision are not binding unless otherwise agreed to in text form by the contracting parties. Service provision periods commence at the earliest once the contracting parties have agreed on the contract and after execution of the contract.
- 6.5.2** Any binding deadline agreed on for the provision of a service shall be subject to the Customer meeting the necessary cooperation obligations in good time and in accordance with the contract. The deadline shall further be subject to the condition of the track section to be machined not being significantly worse than Vossloh could or may have expected based on information shared by the Customer prior to the start of the service provision.
- 6.5.3** In the event of any delay to the contractually agreed service, the Customer is only entitled to withdraw from the contract if Vossloh is responsible for the delay and if the Customer has granted Vossloh a reasonable period of grace that has elapsed without result. Vossloh will not be liable for loss or damages caused by withdrawal from the contract by the Customer, unless Vossloh acted with intent (opzet) or gross negligence (grove nalatigheid).
- 6.5.4** Periods of grace must be granted in text form.
- 6.6 Fiduciary duty**
- 6.6.1** The contracting parties commit to upholding mutual loyalty. Specifically, they shall not actively recruit employees from the other contracting party during the term of the contract or within a period of twelve (12) months after the contract has ended (for any reason).
- 6.7 De-escalation clause**
- 6.7.1** The Customer shall communicate to Vossloh any dissatisfaction with or complaints regarding the proper provision of services as soon as practicable, but in any case within 5 business days after any fact or circumstance on which the dissatisfaction is based, becomes clear or should have become clear to the Customer. The parties shall initially attempt to clarify any differences of opinion at the operational level on site (Customer contact person at the worksite/machine operator or foreman from Vossloh).
- 6.7.2** If an agreement at operational level is not possible, the parties' respective commercial representatives shall be involved. Both parties shall actively work towards reaching any sensible commercial agreement that might be needed to settle any dispute.
- 6.7.3** If no agreement is reached at the commercial level, the respective management boards shall be involved. These shall also work constructively towards a solution to the dispute. The relevant court (Sections 15.2) should only be contacted if agreement at this level also proves impossible.
- 6.8 Export Control**
- 6.8.1** The performance of the contract by Vossloh is conditional upon (i) all necessary export licenses, permits, licenses and other permissions being granted to Vossloh in time by the relevant authorities for the destination and intended use of the machine; and/or (ii) such performance not being prevented by impediments on the grounds of national and international legal requirements, including but not limited to

foreign trade regulations, export control regulations, customs requirements, embargoes or other sanctions (hereinafter: State Restrictions).

**6.8.2** If, during the term of the contract, any State Restrictions shall apply to Vossloh or to the services (to be) provided, Vossloh shall be entitled at its sole and absolute discretion (i) to immediately suspend the performance of obligations affected by such State Restrictions until Vossloh may lawfully discharge the obligation; and/or (ii) to terminate the contract without cause following which Vossloh shall be relieved of its contractual obligations, except for the accrued rights and obligations which shall survive the termination of the contract.

**6.8.3** In case of any delay in the performance of its obligations under the contract by Vossloh caused by requirements to obtain any permit or license from any governmental or other regulatory authority, the time for the performance of its obligations by Vossloh is extended accordingly. For the avoidance of doubt, Vossloh shall in such a situation not be in breach of the contract in any way and not be liable.

**6.8.4** The Customer declares and certifies that the contractual performance (i) will not be used in any nuclear explosive activity or unsafeguarded nuclear fuel-cycle activity; (ii) will not be used in any activities related to the development or production of chemical or biological weapons; and (iii) will only be used for civil end-uses.

**6.8.5** The Customer shall immediately upon request support Vossloh with import and/or export of goods into and/or out of Non-EU States in the necessary and reasonable extent.

**7. Force Majeure**

**7.1** The contracting parties' contractual obligations shall be suspended in cases of force majeure, or in cases of incorrect or unpunctual service provision by a subcontractor of Vossloh for which Vossloh is not responsible. Force majeure is understood to be an incident that, despite extreme care being taken to the extent that can reasonably be expected, is unforeseeable to any of the contracting parties and, insofar as the provision of the contractually agreed service is affected, could not have been avoided specifically through the use of emergency plans and emergency measures. Force majeure may include the following specific incidents: war, riot, civil unrest, terrorist attacks, embargo, explosion, fire, forest fire, flood, severe weather, pandemics and epidemics and internal industrial labour action. In such cases, Vossloh is entitled to postpone the provision of services for the duration of such incidents (see Section 4.2). Vossloh shall inform the Customer without delay of the inability to provide the service. In the event that service provision is permanently disrupted or lasts longer than six (6) months, both contracting parties shall be entitled to withdraw from the contract in full or in part. In the event of a withdrawal, the Customer shall not be obliged to furnish consideration. The services that had been provided prior to the force majeure occurring shall be invoiced according to the contract prices. Further, those expenses that Vossloh has incurred and which are included in the contract prices of the portion of the service not provided shall be paid.

**7.2** The same shall apply in cases of incorrect or unpunctual service provision by a Vossloh subcontractor for which Vossloh is not responsible.

**7.3** Any compensation claims made by the Customer in the event of force majeure will not be accepted.

**8. Contract period and termination**

**8.1** The contract ends once the agreed contract period has expired or upon completion of provision of the services agreed on.

**8.2** In the event that the contract has been entered into for an indefinite period, each contracting party may terminate the contract on three (3) months' notice at the end of a calendar quarter.

**8.3** The contracting parties may terminate the contract for cause without observing the requirement for giving notice as provided for in the statutory regulations or contractual stipulations made for this purpose.

**8.4** Unless otherwise agreed or provided for by law, notice of termination shall only have effect when given in writing.

**9.** [Remains blank]

**10.** [Remains blank]

**11. Non-Assignment**

Claims arising from any contract are not transferable without Vossloh's prior written consent (section 3:83(2) Dutch Civil Code).

**12. Right to Offset / Suspend**

**12.1** The Customer can only offset counterclaims that (i) are undisputed by Vossloh, (ii) have been finally legally established or (iii) the parties have agreed upon in writing.

**12.2** The Customer is not entitled to suspend (sections 6:52 and/ or 6:262 Dutch Civil Code (opschorting)) any of its obligations towards Vossloh, to the extent permitted by law.

**13. Confidentiality**

**13.1** Tendered prices, documents concerning or relating to contractual negotiations, business and operating secrets and other information designated as confidential shall be treated confidentially. This obligation also applies to any information shared between the parties prior to the execution of a contract.

**13.2** The contracting parties are aware that electronic and unencrypted communication is associated with security risks. The contracting parties waive the right to assert any claims substantiated by a lack of encryption unless encryption was explicitly agreed on in advance.

#### **14. Compliance**

- 14.1** The Customer and Vossloh agree to comply with all applicable laws and regulations. The Customer shall refrain from actions or omissions that, regardless of the form of participation, may lead to administrative fines or criminal prosecution. The Customer shall be obliged to take all steps necessary to avoid respective actions or omissions.
- 14.2** In the event of a breach of one of the aforementioned obligations, the Customer shall inform Vossloh without undue delay of a breach affecting the cooperation with Vossloh but in any case within 2 business days after becoming aware of such breach, and immediately cease such actions. The Customer shall compensate Vossloh for any and all damage suffered by Vossloh due to such breach and Vossloh shall have the right to terminate in writing any contract for cause without notice. Vossloh shall have the right to demand indemnification from any third party claims or damages that have been caused by a breach of the aforementioned obligation by the Customer, its sub-contractors or their respective subcontractors.
- 14.3** Vossloh has a Code of Conduct applicable to all its legal entities and employees that can be downloaded from Vossloh's website on the internet. Vossloh is not obliged to introduce its Customers' compliance rules over and above this.

#### **15. Final Provisions**

- 15.1** The contract shall only be governed by and construed in accordance with the laws of the Netherlands, with the exception of the conflict of law regulations in International Private Law.
- 15.2** To the extent permitted by law, the competent court of Noord-Holland shall have exclusive jurisdiction over all disputes in first instance arising from or in connection with this contract.
- 15.3** Should any provision in these GT&C be or become wholly or partially invalid, or prove to be impracticable, the validity of the remaining provisions of these GT&C shall remain unaffected. The invalid or impracticable provision shall be considered replaced by an effective provision that comes as close as possible in terms of content – also with regard to the financial aspects – to the provision to be replaced.