

Rocla Concrete Tie, Inc. General Terms & Conditions

Status: 01/2022

1. General

1.1 These General Terms and Conditions shall apply to all tenders and services provided by our company (hereinafter: "Vossloh" or "Seller") for the sale of concrete rail ties (hereinafter: "Goods") by Rocla Concrete Tie, Inc. These General Terms and Conditions form a component of all contracts that Vossloh signs with its contractual partners (hereinafter: "Buyer" or "Customer"). The transaction is hereinafter referred to as the "Agreement" or "Contract".

1.2 Any terms and conditions which differ from, contradict or supplement these General Terms and Conditions shall not form part of a contract unless explicitly agreed to in writing by Vossloh. This shall apply even if Vossloh has provided its products with full knowledge of conflicting terms and conditions without raising any objections.

2. Prices

Unless otherwise agreed to by Seller in writing, Seller's prices for the Goods and Services will be the prices quoted by Seller, approved by Seller in writing or Seller's standard prices for such Goods and Services as of the date hereof; provided, however, that if Seller announces a general price increase, the purchase price shall be revised to include the price increase unless the Goods are scheduled for shipment or Services are to be performed within thirty days of the price increase.

3. Payment

Seller shall invoice the Buyer for Goods as they are manufactured and upon Seller's confirmation that the Goods meet agreed to specifications. The Goods shall be deemed to meet specifications as of the date of Seller's invoice unless Buyer notifies Seller of its rejection of any of the Goods in writing (and the reason for rejection) within thirty (30) days of the Seller's reporting of the results of its post-manufacture testing for conformity with the specifications. Seller shall provide the Buyer with reasonable access to Seller's facility and the Goods during normal business hours to enable the Buyer to perform inspections as provided in the specifications, to observe the manufacture of the Goods and Seller's post-manufacture testing of the Goods for conformity with the specifications and to observe the handling and storage of the completed Goods. Unless otherwise specified in writing by Seller, complete payment for Goods and Services is due within 30 days from the date of Seller's invoice. Seller will have the right to offset any and all amounts due and owing from Seller to Buyer under this Agreement, including, without limitation, any chargebacks or rebates, against any amounts due and owing from Buyer to Seller under this Agreement or otherwise. If Buyer defaults in payment, Buyer will be liable for all collection costs incurred by Seller including, without limitation, attorneys' and collection agency fees, and all related disbursements. If Buyer does not make payment for Goods or Services when payment is due, past due amounts are subject to service charges of one and a half percent (1 ½%) per month or the maximum percentage rate permitted by law, whichever is less. No tax imposed in respect to the sale of the Goods or Services sold hereunder is included. Any such tax shall be added and paid by Buyer.

4. Warranty

Seller warrants that upon delivery of Goods and/or the provision of Services and for one year thereafter (the "Limited Warranty Period"), the Goods and/or Services will meet the specifications agreed upon in writing by Seller and Buyer ("Specifications"). The Limited Warranty shall not cover noncompliance with the Specifications that results from use of Goods in other than their normal and customary manner or not in compliance with Seller's

instructions; neglect, abuse, or misuse; accident, fire, flood, lightening or other acts of God, war, or other events beyond Seller's reasonable control; improper handling, operation, transport, storage, or environmental conditions; (e) unauthorized alterations or repairs; improper or faulty installation, maintenance or service, including installations, service or maintenance not in compliance with standard industry practices; or damage that occurs during shipment. Except as expressly provided herein, Seller hereby expressly disclaims and excludes any and all representations and warranties, whether written or oral, whether express or implied, whether arising by contract, at law, in equity, by strict liability or otherwise, with respect to the Goods and Services, including, but not limited to, any warranty of merchantability, any warranty against defects in design, materials or workmanship, any warranty of fitness for a particular purpose, and any warranty against infringement of third party intellectual property, including, without limitation, any patents, trademarks, or copyrights. Seller hereby expressly disclaims any and all representations and warranties that Goods and Services conform to any other specifications, drawings, designs, or samples not agreed to in writing by Seller and Buyer.

5. Liability

Notwithstanding anything else contained herein to the contrary and to the maximum extent permitted by applicable law, in no event will Seller be liable to Buyer for any consequential, exemplary, incidental, indirect, liquidated, material, punitive, special, speculative or other damages, or attorneys' fees or court costs arising in any manner pursuant to or in connection with this Agreement, the goods or the services (even if Seller is made aware of the potential for such damages); and Seller's total liability related to any good or service exceed the purchase price of such good or service.

6. Further Provisions

6.1 Remedies

6.1.1 Seller will, in its sole discretion, repair or replace any Goods that fail to conform to the Specifications. The remedies provided herein will be the Buyer's sole and exclusive remedy against Seller with respect to any Good and in lieu of any other remedies available at law, in equity, or otherwise. This remedy only will be available to Buyer for one year after the Good is delivered to Buyer, and Seller's obligations hereunder will be void unless Buyer provides Seller with notice of the non-compliant Good within 30 days of the discovery of the noncompliance. The warranties and remedies for failure of Goods to comply with Specifications provided hereby are nontransferable to third persons by Buyer.

6.1.2 Buyer's sole and exclusive remedy against Seller concerning any Service provided hereunder that fails to conform to the Specifications is the re-performance of that Service or, at Seller's sole election, a refund of the purchase price for the Service, and such remedy will be in lieu of any other remedies available at law, in equity, or otherwise.. This remedy only will be available to Buyer for one year after the Service is provided to Buyer, and Seller's obligations hereunder will be void unless Buyer provides Seller with notice of the non-compliant Service within 30 days of the discovery of the noncompliance. The warranties and remedies for failure of Services to comply with Specifications provided hereby are nontransferable to third persons by Buyer.

6.2 Indemnification

Buyer will indemnify, defend and hold harmless Seller, its shareholders, officers, directors, employees, agents, representatives, and third-party subcontractors from and against all losses, damages, liabilities, costs, and expenses including,

without limitation, property damage, loss of profits or revenue, loss of use of any property, cost of capital, cost of purchased or replacement power or temporary equipment, personal or bodily injury, death or third party liability for claims ("Losses"), that may arise pursuant to or in connection with this Agreement, the Goods, or the Services (including, without limitation, Losses arising in connection with the performance of Services on Buyer's premises by Seller's employees, representatives, agents, or subcontractors), regardless of whether such Losses are suffered directly by Buyer or arise pursuant to or in connection with a third-party suit, claim, counterclaim, demand, judgment or other action (each a "Claim") and regardless of whether or not Seller or any third-party is proportionately negligent with respect to such Losses and/or Claim. For the avoidance of doubt and without limitation of the foregoing, this indemnification obligation requires Buyer to pay any judgments against Seller or any other indemnified party resulting from any Claim, any court costs of Seller or any other indemnified party in connection with any Claim, and any reasonable attorneys' fees and disbursements incurred by Seller or any other indemnified party in Seller's defense of any Claim. Seller will have the sole and exclusive right to conduct the defense of any Claim at Buyer's sole and exclusive cost and expense. Buyer's indemnification obligation does not depend on the truth or accuracy of any allegations made against Seller, Buyer or any third party.

6.3 Proprietary Rights

Seller will have and retain all right, title, and interest in and to any and all trade secrets, technical data, sales service and product plans, methodologies, techniques, designs, molds, tools, samples, systems, know-how, expertise and other proprietary information that it may use pursuant to or in connection with any Services or Goods, and Buyer will not obtain a license to, or any other property rights in, any such Seller property pursuant to or in connection with this Agreement.

6.4 Patent Infringement

Customer assumes all risk of patent infringement by reason of any use Customer makes of the Goods to be manufactured and/or supplied by Seller in combination with other material or in the operation of any process.

6.5 OFAC Lists

None of Customer or any of its officers, directors or employees is on any list of prohibited countries, individuals, organizations or entities that is administered or maintained by the U.S. Office of Foreign Assets Control ("OFAC").

7. Force Majeure

Seller will not be liable for its failure to perform under this Agreement (including, without limitation, the failure to deliver any Goods or perform any Services) due to circumstances beyond its control, including, without limitation, fire, flood, earthquake, pestilence or similar catastrophe; war, act of terrorism, or strike; lack or failure of transportation facilities, shortage of suitable parts, materials or labor; any existing or future law, rule, regulation, decree, treaty, proclamation, order of any governmental agency, or any other government act; inability to secure fuel, materials, supplies, equipment or power at reasonable prices or in sufficient amounts; act of God or the public enemy; or any other event or cause beyond Seller's reasonable control, including, without limitation, any delay caused by Buyer (each, a "Force Majeure Event"). If any Force Majeure Event prevents Seller's performance of any of its obligations under this Agreement, Seller will have the right to (a) change, terminate or cancel this Agreement, or (b) omit during the period of the Force Majeure Event all or any portion of the quantity of the Goods

deliverable during that period, whereupon the total quantity deliverable under this Agreement will be reduced by the quantity omitted. If Seller is unable to supply the total demands for any Goods to be delivered under this Agreement due to a Force Majeure Event, Seller will have the right to allocate its available supply among its customers in whatever manner Seller deems to be fair and equitable. In no event will Seller be obligated to purchase materials from other than its regular sources of supply in order to enable it to supply Goods to Buyer under this Agreement. No change, cancellation or proration by Seller will be deemed to be a breach of any clause, provision, term, condition, or covenant of this Agreement.

8. Termination

Buyer may cancel its order for Goods and/or Services, but only if Seller agrees to such cancellation in writing and only after Buyer pays reasonable charges for expenses already incurred and commitments made by Seller in connection with the placement of such order(s). Seller may cancel in whole or in part any order for Goods or Services under this Agreement at any time without cause. Until Buyer has fully and finally paid all amounts owed to Seller for any Goods, Buyer will hold such Goods in trust for Seller, and Seller may repossess them if Buyer fails to pay for them in a timely fashion. Additionally, Seller may file a UCC financing statement giving public notice of its ownership interest in any Goods for which it has not received complete payment.

9. Title

Delivery of the Goods will occur per the delivery schedule as set forth in Seller's quote or as otherwise agreed upon by Buyer and Seller in writing. Unless otherwise stated in the Seller's quote, shipment of all Goods will be made F.O.B. point of shipment at Seller's facility (Ex Works Seller's facility per INCOTERMS 2010 for international shipments).

10. Passing of Risk

Notwithstanding the foregoing, title and risk of loss to the Goods transfers to Buyer upon the Goods passing Seller's post-manufacture testing for compliance with agreed upon specifications. Any shipping dates for Goods or performance dates for Services given in advance of actual shipment of Good or performance of Services are Seller's best estimates for informational purposes only, and deliveries of Goods and performance of Services will be made subject to prior orders on file with Seller. Unless otherwise agreed to by Seller in writing, Buyer will pay any insurance costs in connection with storage and delivery of the Goods and will be responsible for filing and pursuing claims with carriers for loss of or damage to Goods while in storage or in transit. Any claims for shortages or discrepancies will be waived by Buyer unless made in writing to Seller within five days of receipt of the Goods.

11. Non-Assignment

The Customer may only assign its rights under this Contract without Vossloh's consent to (a) insurers and only to the extent that the latter bear the loss claimed by the Customer or (b) affiliated entities controlling, controlled by, or under common control with Customer.

12. Right to Offset / Withhold

The Customer may exercise a right of retention or offset only against uncontested or finally adjudged counterclaims.

13. Confidentiality

- 13.1** Tendered prices, documents concerning contractual negotiations, business and operating secrets and other information designated as confidential shall be treated confidentially. This also applies in the event that no contract between Vossloh and the customer comes into effect.
- 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 obligation, the Customer shall inform Vossloh without undue delay of a breach affecting the cooperation with Vossloh and immediately cease such actions. The Customer shall compensate Vossloh for any and all damage suffered by Vossloh due to such breach and / or 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 corporate website on the internet. Vossloh is not obliged to introduce its customers' compliance rules over and above this.

15. Final Provisions

- 15.1** The negotiation, execution, performance, termination, interpretation and construction of this Agreement will be governed by the internal laws of the State of Colorado, excluding any conflicts of laws rules and expressly excluding the United Nations Convention on Contracts for the International Sale of Goods.
- 15.2** If either Seller or Buyer brings a lawsuit or any other action arising out of this Agreement against the other party, such party must file its lawsuit or other action in a state or federal court located in Denver, Colorado. Seller and Buyer expressly submit to the exclusive jurisdiction of those courts and consent to venue in those courts.
- 15.3** Any provision of this Agreement held to be invalid, illegal or unenforceable will be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof..
- 15.4** This Agreement is the sole and exclusive agreement with respect to the matters discussed herein and the provision of Goods and Services hereunder and supersedes all prior and contemporaneous agreements and understandings, negotiations, inducements, representations or conditions, whether oral or written, whether express or implied, between Buyer and Seller with respect to such matters. The terms, conditions, and limitations set forth in this Agreement can be modified only by a subsequent written instrument signed by an authorized representative of Seller.

- 15.5** Failure or inability of either party to enforce any right hereunder shall not waive any right in respect to any other or future rights or occurrences. All notices required or permitted to be given hereunder will be deemed to be properly given if delivered in writing personally, sent by United States certified or registered mail addressed, return receipt requested, or by nationally recognized overnight courier service providing for reasonable proof of delivery to Seller or Buyer. The effective time of notice will be upon delivery, if delivered personally, or two days after the date when deposited in the mail or with a courier, if mailed or sent by courier.
- 15.6** The provisions of this Section 15 will survive indefinitely.