

Vossloh Rail Services Deutschland GmbH
General Terms and Conditions
for Logistics- Freight Forwarding Contracts, Rental Contracts and
Brokerage Contracts (formerly known as Vossloh Logistics)

Status: 07/2022

1. Scope

1.1 These General Terms and Conditions (hereinafter referred to as GT&C) shall apply exclusively to all quotations and services provided by Vossloh Rail Services Deutschland GmbH (hereinafter: Vossloh) for the segment "Logistics" and in connection with the forwarding of freight (hereinafter: freight forwarding contracts), the rental of freight wagons (hereinafter referred to as rental contracts) and with brokerage activities within the scope of construction projects (hereinafter referred to as brokerage contracts).

1.2 Any additional Principal's terms or conditions that differ from or contradict these GT&C shall not apply unless explicitly agreed to in writing by Vossloh. This also applies to any kind of verbal agreement, amendment, deviation or exclusion associated with these GT&C.

1.3 For all future contractual agreements concluded between the Principal and Vossloh with respect to the services pursuant to clause 1.1 of these GT&C, the version of these GT&C that is valid at the time the respective agreements are signed shall apply irrespective of whether new separate agreements are reached on them in future contractual agreements unless the Principal explicitly rules out in writing the applicability of the GT&C when concluding future contractual agreements.

1.4 Within the framework laid down by the conditions that follow, the latest version of the German Freight Forwarder's Standard Terms and Conditions from 2017 (ADSp 2017) shall also apply to freight forwarding contracts (in particular clause 6.1 of these GT&C) and the General Contract of Use for Wagons (GCU) shall also apply to rental contracts (in particular clause 6.2 of these GT&C). The order of precedence for applicable contractual conditions shall be as follows:

- stipulations in the respective written quotations
- these GT&C
- the latest versions of the GCU/ADSp respectively

2. Prices

2.1 The prices stated in the written quotation shall apply.

2.2 The prices quoted by Vossloh do not include value-added tax.

3. Billing, payment & default on the part of the customer

3.1 Unless otherwise specified, invoices issued by Vossloh shall be paid strictly net by the due date for payment agreed upon.

3.2 All invoices for freight forwarding services and for brokerage services are issued after services have been rendered and are subject to the provisions of clause 3.8 of these GT&C. Invoices for rental charges payable for the renting of wagons shall be issued at the beginning of each rental month for the coming rental month. If any changes to the rental arrangements occur during a rental month that affect the billing, these changes shall be taken into account in the subsequent invoice.

3.3 The Principal shall bear any additional ancillary expenses incurred in connection with the services agreed upon unless they are costs for which Vossloh is culpably liable.

3.4 Unless otherwise specified, the billing shall be based on the services requested in the order.

3.5 Unless otherwise specified, Vossloh reserves the right to provide the contractually agreed services as part performances (e.g. with individual call-off orders). The provision of the respective part performances shall entail the issuance of invoices for part performances, which shall also be paid strictly

net by the due dates for payment agreed upon.

3.6 Any queries on the part of the Principal concerning invoices shall be submitted in writing within 6 weeks of receiving the invoice.

3.7 Even if Vossloh has not issued a reminder, the Principal shall be deemed to have defaulted on a payment if the Principal is more than 10 days in arrears on that payment. The date of payment shall be the date that Vossloh receives payment. Pursuant to legal stipulations, default occurring earlier than described in sentence 1 of this clause – especially through the use of reminders – shall remain unaffected. In the event of a default, all outstanding claims owed to Vossloh by the Principal shall become due for payment with immediate effect. In such cases, the Principal shall forfeit his entitlement to claim any reductions and/or discounts granted to him. In such cases, the Principal shall also be liable to pay interest on arrears in the amount of 9 percentage points above the base interest rate. Any claims for further damages shall remain unaffected. An amount of €3.00 shall be payable for the issuance of each reminder.

3.8 Should circumstances become apparent after concluding the contract that are apt to significantly reduce the Principal's creditworthiness and that jeopardize Vossloh's claim to compensation and/or the payment of rental charges (for example suspension of payment, an application to commence insolvency proceedings or default on payment obligations arising out of other contractual agreements undertaken with Vossloh), Vossloh reserves the right to only provide any services pending or yet to be commissioned against prior payment of the provision or a security. Furthermore, in such instances the Principal shall forfeit his entitlement to claim any reduction and/or discounts granted to him.

4. Obligation on the part of the Principal and Vossloh to provide information

The Principal and Vossloh shall duly inform each other in writing of all the material factors known to them that affect the execution of the order.

5. Liability on the part of Vossloh

Unless otherwise specified in clauses 6.1 and 6.2 of these GT&C, Vossloh shall be fully liable for damages arising from wrongful death, personal injury or health impairment and for damages arising from the intentional or grossly negligent breach of duty on the part of Vossloh or Vossloh's agents. With the exception of damage claims as governed by clause 6.1.8 of these GT&C, Vossloh shall not be liable for damages that do not result from gross negligence or willful intent on the part of Vossloh or Vossloh's agents. This limitation shall not apply to the lack of assured characteristics or in the event of a breach of obligation the fulfillment of which is a prerequisite for properly rendering the services owed under the agreement and can be routinely relied upon by the Principal. In the latter instance, Vossloh's liability shall be limited to compensation for damages that are typically expected to occur.

6. Special provisions

6.1 Provisions exclusively for freight forwarding contracts

The following provisions contained in this clause 6.1 apply only to freight forwarding contracts pursuant to clause 1.1 of these GT&C. In the event that these provisions conflict with clauses 1 to 5, 6.3, 6.4 and 7 to 15 of these GT&C, the provisions of this clause 6.1 shall prevail within the scope of their application.

6.1.1 Supplementary application of ADSp 2017

Supplementary and subordinated to these GT&C, the latest version of the German Freight Forwarder's Standard Terms and Conditions from 2017 (ADSp 2017) shall also apply to the provision of freight forwarding services and to other ancillary freight forwarding services.

6.1.2 Quotations

6.1.2.1 Unless specifically stipulated otherwise, the binding nature of the quotations issued by Vossloh, particularly with regard to the cost of carriage,

- assumes unimpeded traffic conditions;
- applies only to the goods stated in the quotation;
- applies only up to the freight transport station or transfer point stated in the quotation;
- applies only if Vossloh's consignment note specifications and any other loading and freight-forwarding instructions specified by Vossloh are complied with.

6.1.2.2 Transport costs in particular do not cover customs formalities, the insurance of goods in transit, demurrage charges or the repair of damaged wagons.

6.1.3 Ordering deadline

The standard ordering deadline is 23 days prior to the date of delivery. The following charges are payable for orders placed after this date:

- For orders placed 7 – 23 days prior to date of delivery: 25 % of the price quoted
- For orders placed 3 – 6 days prior to date of delivery: 50 % of the price quoted
- For orders placed 0 – 2 days prior to date of delivery: 100 % of the price quoted

6.1.4 Cancellation

6.1.4.1 Unless otherwise agreed in the respective quotations for transport services, the following cancellation charges shall be payable in the event that a scheduled dispatch or other service is cancelled, depending on the time of cancellation. The cancellation date shall be understood as the date on which Vossloh receives the cancellation in writing.

- Cancellation 7 – 23 days prior to first day of service: 25 % of the price quoted
- Cancellation 3 – 6 days prior to first day of service: 50 % of the price quoted
- Cancellation 0 – 2 days prior to first day of service: 100 % of the price quoted

6.1.4.2 Extra charges arising from a cancellation or rebooking shall also be borne by the Principal.

6.1.4.3 DB Cargo AG's terms of cancellation shall apply for all trains consigned using DB Cargo AG.

6.1.5 Wagons

Depending on what has been agreed, Vossloh shall have the transports carried out using its own freight wagons ("Vossloh wagons") or freight wagons that Vossloh has leased and made available to the Principal after consulting the Principal ("third-party wagons") or freight wagons provided by the Principal ("customer wagons").

6.1.5.1 Vossloh wagons and third-party wagons

6.1.5.1.1 Vossloh shall ensure that the Vossloh wagons and the third-party wagons possess the required approvals and are regularly submitted for the required inspections.

6.1.5.1.2 The Vossloh wagons and third-party wagons shall be assigned to an Entity in Charge of Maintenance (ECM).

6.1.5.2 Customer wagons

6.1.5.2.1 The Principal shall guarantee Vossloh that only customer wagons belonging to keepers that are signatories to the latest version of the GCU will be provided.

6.1.5.2.2 The Principal shall ensure that the customer wagons possess the required approvals, that the wagons are assigned to an Entity in Charge of Maintenance (ECM) and that they are regularly submitted for the required inspections. Vossloh reserves the right to refuse to accept the freight wagons if this is not the case.

6.1.6 Subcontractors

Vossloh is entitled to use subcontractors to carry out the transports.

6.1.7 Loading and unloading

6.1.7.1 The Principal shall be responsible for the loading and unloading of the goods to be carried. The agreed loading or unloading times shall not be exceeded. Should this occur, the Principal shall pay Vossloh the demurrage charge specified in the written quotation, or, if the quotation contains no provision on such charges, an appropriate demurrage charge as compensation. Any further liability for loss or damage shall remain unaffected.

6.1.7.2 The Principal shall check that the freight wagons provided are suitable for the transport in question and – particularly in the case of Vossloh wagons or third-party wagons – shall inform Vossloh immediately in writing of any unsuitability with respect to the freight wagon(s).

6.1.8 Liability

6.1.8.1 Liability on the part of Vossloh

6.1.8.1.1 Vossloh shall be liable in accordance with the provisions of the ADSp 2017 unless otherwise specified hereinafter.

6.1.8.1.2 The parties agree that particularly in the following cases the criteria for applying Section 427 of the German Commercial Code in accordance with Article 22.1 of the ADSp 2017 are satisfied:

- Residual stress in the rails can cause lateral buckling in the rails during the loading and unloading procedures, particularly during disposal or relocation but also during transport. Vossloh is not liable for the consequences of lateral buckling of the rails.
- In the event of damages resulting from the Principal failing to check or incorrectly checking the suitability of the wagons (clause 6.1.7.2 of these GT&C).

6.1.8.1.3 Notifications sent to the Principal concerning regular transit times / timetables for transports shall not be understood as an agreement on a delivery period pursuant to Section 423 of the German Commercial Code.

6.1.8.1.4 For transports inside Germany's borders, the standard liability according to Section 431 of the German Commercial Code is two special drawing rights per kilogram of the gross weight of the goods.

6.1.8.1.5 Vossloh assumes no liability whatsoever for damages resulting from the loss of or damage to customer wagons, unless this loss or damage was caused by gross negligence or willful intent on the part of Vossloh. This shall not apply if the customer wagons are classified as goods to be carried.

6.1.8.2 Liability on the part of the Principal

The Principal is liable in accordance with the statutory provisions. Clause 29 of the ADSp 2017 shall not apply.

6.2 Provisions exclusively for rental contracts

The following provisions of this clause 6.2 apply exclusively to rental contracts pursuant to clause 1.1 of these GT&C. In the event that they contradict clauses 1 to 5, 6.3, 6.4 and 7 to 15 of these GT&C, the provisions of this clause 6.2 shall prevail within the scope of its application.

6.2.1 Term of the contract

6.2.1.1 The period of the rental contract shall correspond to the dates given in the written quotation.

6.2.1.2 Unless stipulated otherwise in the written quotation, the rental contract begins on the day that Vossloh delivers the wagons or on the day that Vossloh makes the wagons available.

6.2.1.3 Unless renewed in writing, fixed-term rental contracts shall end without notice of termination when the agreed rental term has expired. It shall not be possible to terminate the contract by submission of notice of termination during the fixed rental period. Unless otherwise agreed in the written quotation, either contractual partner may duly terminate open-ended rental contracts at the end of a calendar month on three months' notice to be submitted in writing. The right to terminate for cause without notice pursuant to Section 543 of the German Civil Code shall remain unaffected in the case of both fixed-term and open-ended rental contracts.

6.2.2 Rental charge and costs

6.2.2.1 The amount payable for the rental charge shall be taken from the respective written quotations. In the event of verifiable, unbudgeted cost increases that take effect after the rental contract has been concluded, particularly such charges that are the result of Vossloh's compliance with official directives issued by the authorities concerning the wagons or such charges that arise in connection with the operation and maintenance of the freight wagons, Vossloh reserves the right to request from the Principal an appropriate adjustment of the rental charge effective from the date of the cost increase.

6.2.2.2 The obligation to pay the rental charge shall also continue to apply during periods in which the Principal is temporarily unable to use the rented wagons because they are undergoing necessary repair or maintenance work, for example. This does not apply to irregularities caused by Vossloh as a result of gross negligence or willful intent. Clause 6.2.4.3 of these GT&C shall apply in such cases. Should a loss occur during the rental term, the rental charge shall continue to be paid until Vossloh has been fully compensated by the Principal. In the event that the time required to repair a rented freight wagon extends beyond the end of the rental term, the obligation to pay the rental charge shall continue to apply after the end of the rental contract until the repair work is completed.

6.2.2.3 In accordance with clause 3.3 of these GT&C, the Principal shall reimburse all the freight wagon transport costs associated with the delivering or making available of the freight wagons and with the retrieval of the freight wagons upon their return at the end of the rental term.

6.2.3 Applicability of the GCU

6.2.3.1 By signing the rental contract and/or using the freight wagons, the Principal acknowledges that the provisions in the version of the GCU that was valid when the contract was signed apply to the rental contract concluded with Vossloh irrespective of

- whether the Principal himself is a signatory to the GCU or not and
- whether he himself uses the rented wagons or hands them over for use by third parties.

If the following provisions conflict with the provisions contained in the GCU, however, these GT&C shall prevail.

6.2.3.2 The Principal shall guarantee Vossloh that the rented wagons will only be given to Railway Undertakings that are either signatories to the latest version of the GCU or with which the Principal has made individual contractual agreements that govern the extent to which the GCU shall apply with respect to the rented wagons. The Principal shall guarantee that the Railway Undertaking to which the Principal transfers the rented wagons for use complies with the provisions of the GCU.

6.2.3.3 Upon request, the Principal shall tell Vossloh in writing who the rented wagons have been handed over to and in whose custody the freight wagons are or have been during the rental term. Upon providing reasonable grounds, Vossloh reserves the right to deny the Principal permission to hand wagons over to specific Railway Undertakings. In the event that Vossloh does not exercise this right, clause 6.2.3.2 of these GT&C shall nevertheless apply unconditionally.

6.2.4 Condition of the freight wagons

6.2.4.1 Vossloh undertakes to provide freight wagons in a condition that is technically sound and complies with the terms of the contract. The condition agreed upon in the contract shall correspond to the information contained in the respective written quotations. The Principal shall satisfy himself before undertaking to load or use the wagons that their condition is technically sound and complies with the terms of the contract and that the wagons are suitable for the contractually agreed purpose. The Principal shall be solely responsible for determining whether the wagon is suitable for the Principal's intended purpose, particularly with regard to wagon type, configuration and condition. Vossloh shall be immediately notified in writing of any objections of any kind before the loading procedure and/or using the wagons commences (duty to advise of loss/damage). If an immediate written notification of loss/damage is not submitted, the wagon shall be deemed to have been accepted as technically sound and in compliance with the terms of the contract. The statutory provisions for hidden irregularities shall apply.

6.2.4.2 Vossloh shall, within a reasonable time, rectify or have a third party rectify the irregularities on the wagons of which Vossloh has been immediately notified in writing. When rectifying the irregularity, Vossloh reserves the right to choose between repairing the wagon and providing a replacement wagon. Vossloh shall bear the costs for rectifying the irregularity insofar as the irregularity is attributable to culpable conduct or omission on the part of Vossloh.

6.2.4.3 The Principal is not entitled to enforce a rent reduction by reducing the regular rental charge paid by the amount to be deducted. The Principal's right to claim back a portion of the rent deemed excessive on legitimate grounds pursuant to laws on unjustified enrichment shall remain unaffected.

6.2.4.4 In the event that the remedial action that Vossloh is obliged to undertake pursuant to clause 6.2.4.2 of these GT&C proves unsuccessful, the Principal is entitled pursuant to Section 543 Paragraph 2, Sentence 1 No. 1 of the German Civil Code to terminate without cause that part of the rental contract that pertains to the defective wagon.

6.2.4.5 The provisions in Chapter IV of the GCU shall apply to irregularities that appear after the wagons have been handed over. Clauses 6.2.4.3 and 6.2.4.4 of these GT&C shall also apply.

6.2.5 Principal's rights and obligations relating to use of wagons

6.2.5.1 Although the rented wagons are placed at the Principal's disposal, they are only permitted to be used for the purpose agreed to in the contract and/or to the extent permitted by law. This shall also apply with regard to the freight they will be carrying. The Principal shall be entitled to use the wagons internationally unless otherwise agreed in the written quotation. Before using the wagons in crisis regions, however, the Principal shall obtain Vossloh's written consent, which Vossloh is entitled to refuse on reasonable grounds.

6.2.5.2 The Principal shall carry out repairs in accordance with the provisions in Article 19 of the GCU and in the relevant appendices to the GCU. Notwithstanding Article 19.1 of the GCU, however, the Principal shall without exception obtain Vossloh's prior written consent. Modifications and/or changes to the set-up of the wagons are also only permitted with Vossloh's prior written consent.

6.2.5.3 Loading and unloading of the rented wagons shall only be carried out using approved loading equipment that is compatible with the freight wagons.

6.2.5.4 The Principal shall ensure that the loading guidelines are complied with and that the load is secured.

6.2.5.5 The Principal shall return all the wagons provided by Vossloh in the same condition in which they were provided and bear the cleaning costs. In the event that there is a delay in returning the rented wagons, the Principal's obligation to pay the rental charge shall not conclude with the end of the rental contract but instead on the date when the rented wagons are actually returned. Any further claims for damages and compensation for loss of use arising from the delay in returning the wagons shall remain unaffected.

6.2.6 Liability

6.2.6.1 Liability on the part of Vossloh

Vossloh's liability as the lessor shall be as defined in clause 5 of these GT&C.

6.2.6.2 Liability on the part of the Principal

6.2.6.2.1 In the event that rented wagons are damaged or lost, the Principal shall fully compensate Vossloh for all damages – including consequential damages– unless the Principal or the Principal's agents are not liable for the damage.

6.2.6.2.2 The Principal and the third party shall be jointly and severally liable to Vossloh for any damage for which a third party is solely or partly responsible.

6.2.6.2.3 Furthermore, Vossloh shall also be entitled to claim an administrative charge of 10% of the sum total of damages as well as reimbursement of the expenses incurred for any appropriate and necessary legal advice.

6.2.6.2.4 Compensation for loss of use pursuant to the GCU shall remain unaffected.

6.2.6.2.5 Furthermore, the Principal shall also indemnify Vossloh against all liabilities payable to and claims from third parties.

6.2.6.2.6 The Principal shall not be liable, however, if the damage, loss or the damages caused by the rented wagons are the result of gross negligence or willful intent on the part of Vossloh and Vossloh's agents.

6.3 Contingency management

6.3.1 In the event of an accident, Vossloh undertakes and is entitled to take any measures deemed necessary to avert or mitigate damages.

6.3.2 The Principal shall provide Vossloh with all the information required for this purpose and also agrees to provide Vossloh with assistance.

6.3.3 The Principal undertakes to always act in such a way that losses are avoided or minimized.

6.4 Export control

6.4.1 Vossloh's fulfillment of its contractual obligations shall be subject to (i) the customer obtaining from the relevant authorities all the export permits, concessions, licenses and any other forms of clearance required for the arrival point and for the intended use of the goods; (ii) Vossloh being duly granted a permit or license at the required time if such a permit or license from a national regulatory or other supervisory authority is required; and/or (iii) there being no legal obstacles owing to national or international laws, in particular foreign trade regulations, export control regulations, customs regulations, embargoes or any other sanctions (hereinafter referred to as "trade sanctions") impeding the fulfillment of said obligations.

6.4.2 In the event that trade sanctions affecting Vossloh are imposed during the term of the contract, Vossloh reserves the right at its own discretion (i) to immediately stop fulfilling the obligations affected by the trade sanctions until such time as Vossloh is able to lawfully fulfill the obligation and/or (ii) terminate the contract without giving any reason, whereupon Vossloh shall be released from its contractual obligations with the exception of the cumulative rights and obligations that continue to apply beyond the end of the contract.

6.4.3 In the event that Vossloh is delayed in fulfilling its contractual obligations because permits or licenses need to be obtained from national regulatory or other supervisory authorities, the period available to Vossloh in which to fulfill these obligations shall be extended accordingly.

6.4.4 The Customer hereby attests and certifies that (i) the goods will not be used for activities involving explosive nuclear material or for unsecured nuclear fuel cycle activities; (ii) the goods will not be used for activities linked to the development or manufacture of chemical or biological weapons; and (iii) the goods will only be used for civil purposes. The Customer also attests and certifies that he will not export or re-export the goods to third-party countries, specifically North Korea (Democratic People's Republic of Korea, DPRK or DPR Korea) and/or to the Crimea region and/or Sevastopol or in connection with these regions.

6.4.5 If delivering goods provided by Vossloh to a third party, the Customer shall observe all the applicable national and international export and re-export control regulations. For all such deliveries of goods, the Customer shall observe the export and re-export control regulations of the Federal Republic of Germany, the European Union and, if and to the extent applicable, the United States of America.

6.4.6 The Customer shall immediately upon request provide Vossloh with an end-user certificate detailing all the information on the end user, arrival point and intended purpose of the goods delivered by Vossloh.

7. Force majeure

Performance hindrances that do not fall within the scope of responsibility of either contracting party ("force majeure", etc.)

shall absolve said parties of their performance duties for the duration of the hindrance and the extent of its impact.

8. [Not applicable]

9. [Not applicable]

10. [Not applicable]

11. **Non-assignment**

The Customer shall not be entitled to assign claims arising from the contract to third parties without Vossloh's written consent.

12. **Offsetting / withholding payment**

It shall not be possible to offset or withhold payment on claims made by Vossloh unless the Principal's claim is undisputed or legally asserted. Vossloh and any company affiliated with Vossloh (pursuant to Section 15 of the German Stock Corporation Act) shall have the right at all times to offset claims to which the Principal or a company affiliated with the Principal (pursuant to Section 15 of the German Stock Corporation Act) is entitled against claims to which Vossloh or a company affiliated with Vossloh (pursuant to Section 15 of the German Stock Corporation Act) is entitled.

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 shall also apply 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 accompanied by security risks. The contracting parties shall waive the right to assert any claims substantiated by a lack of encryption unless encryption was explicitly agreed on in advance and in writing.

14. **Compliance**

14.1 The Customer and Vossloh agree to act in accordance with all applicable laws and guidelines. The Customer undertakes not to perpetrate – irrespective of the nature of the participation – any actions or omissions that could lead to administrative fines or criminal sanctions. The Customer shall take the appropriate measures to prevent any such actions or omissions.

14.2 In the event of a breach of the above provision, the Customer shall notify Vossloh without delay of any such contravention that concerns the contractual relationship with Vossloh and shall end the contravention immediately. The Customer shall compensate Vossloh for any and all damages incurred as a consequence and/or Vossloh reserves the right to terminate the individual agreements in writing for cause without observing a period of notice. The Customer shall indemnify Vossloh in full against all claims by third parties and liabilities payable to third parties arising out of a breach of the above obligations on the part of the Customer, the Customer's customers or any of the subcontractors that the Customer uses.

14.3 Vossloh has a code of conduct in place that is mandatory for all its subsidiaries and employees and available on the Vossloh website. Vossloh shall not be required to implement the compliance rules of its customers.

15. **Final provisions**

15.1 **Applicable law**

Freight forwarding contracts, rental contracts and brokerage contracts entered into with Vossloh shall be governed exclusively by German law. The conflict rules belonging to international private law shall not apply.

15.2 **Place of jurisdiction**

15.2.1 Subject to clause 15.2.2 of these GT&C, Hamburg shall be appointed as the sole place of jurisdiction.

15.2.2 For cross-border transports where the CIM applies, all disputes arising from or in connection with the contract into which these GT&C have been incorporated shall fall within the jurisdiction of the courts stipulated in Article 46, Paragraph 1 of the CIM and also that of the German courts.

15.3 **Whole or partial invalidation of individual contractual provisions**

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 General Terms and Conditions 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.