

Vossloh Rail Services Deutschland GmbH

General Terms & Conditions

for the provision of mobile rail and turnout maintenance (milling and grinding services – formerly known as Vossloh Rail Maintenance and Alpha Rail Team)

Status: 07/2022

1. General, scope

- 1.1 These General Terms and Conditions in the segment "mobile rail and turnout maintenance" shall apply to all tenders and services provided by Vossloh Rail Services Deutschland GmbH (hereinafter: "Vossloh") for the provision of rail machining services. These General Terms and Conditions form a component of all contracts that Vossloh signs with its contractual partners (hereinafter: "customers") 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 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 services with full knowledge of conflicting terms and conditions without raising any objections.
- 1.3 The VOB/B and VOB/C 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 or addendum. 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. These 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. After the customer has checked the invoice, payment shall be made without delay no later than thirty (30) calendar days after receipt 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, default interest shall be charged at the rate of nine percentage points above the base rate.

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. 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 bears responsibility for this. The customer's legal rights to compensation remain unaffected. Any further claims on the part 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 period of limitations 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). The legal periods 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 Unless otherwise provided for in the contractual provisions and in the subsequent provisions of these General Terms and Conditions, Vossloh shall be liable in accordance with the relevant statutory regulations in the event of a breach of contractual and non-contractual obligations.

- 5.2 In terms of fault-based liability, Vossloh shall be liable in cases of willful intent and gross negligence.

- 5.3 Subject to the limitations of legal liability, Vossloh shall only be liable in the event of ordinary negligence for
- losses caused by death, personal injury or damage to health,
 - losses caused by a breach of a material contractual obligation (material contractual obligations are obligations the fulfillment of which forms the basis for the proper execution of the contract and the observance of which the other contractual party regularly relies and may rely on). In such cases, Vossloh's liability is limited to the compensation of foreseeable and typically occurring losses.

- 5.4 The abovementioned limitations of liability also apply in the event of breaches of obligations caused by or benefiting persons for whose culpability Vossloh is responsible pursuant to legal regulations.

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 / personnel to be at a specified place, and insofar as the machine / 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 payment 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 or to subcontractors used by Vossloh unless this is required for safety reasons.
- 6.2.3** The customer is hereby informed that when providing its services Vossloh must comply with the applicable labour law regulations and collective labour agreements, in particular the regulations on occupational health and safety and on working hours (German Working Hours Act, or ArbZG). 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 is 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 Germany, these provisions include Level 4 and upwards of the Grassland Fire Index and/or the Forest Fire Hazard Index (WBI). 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 access routes for this purpose. The customer shall appoint a contact person with expertise who can give the Vossloh employees the building site induction, be available for coordination purposes during the agreed period of service provision and who can 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 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 securing 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;
 - guarantee sufficient warehouse/storage space for the machinery used by Vossloh.
- 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 he is aware of. In particular the customer shall
- provide a specific description of the condition and specific local circumstances concerning the track section commissioned
 - 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, and if the discrepancies are considerable, the parties shall agree on an appropriate amendment to the contract. In the event that the parties do not reach an agreement, Vossloh is entitled to withdraw from the contract. If Vossloh withdraws from the contract, Vossloh reserves the right to demand compensation.
- 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.

6.4 Daily status reports and acceptance report

- 6.4.1** Vossloh 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 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. 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 will be reopened very quickly. 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 all the details 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 have expected.

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.

6.5.4 Periods of grace must be granted in text form.

6.6 Fiduciary duty

The contracting parties commit to upholding mutual loyalty. Specifically, they shall not attempt to actively recruit employees from the other contracting party during the term of the contract or within twelve (12) months after the contract's conclusion.

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 in good time. 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 are required to actively work towards reaching any sensible commercial agreement that might be needed to settle the difference of opinion.

6.7.3 If no agreement can be reached at the commercial level, the respective management boards shall be involved. These are also required to work constructively towards a solution to the conflict. The relevant (arbitration) court (Sections 15.2 and 15.3) 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 that (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 shall not be 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, 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.

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.

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 period has expired or upon provision of the services agreed on.

8.2 In the event that the contract has been signed 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 take effect when given in writing.
- 9.** [Remains blank]
- 10.** [Remains blank]
- 11. Non-Assignment**
The customer is not entitled to assign any claims to third parties following from this contract without Vossloh's prior written consent.
- 12. Right to Offset / Withhold**
- 12.1** The customer can only offset counterclaims that are either undisputed or have been legally established.
- 12.2** The customer is only entitled to exercise the right of retention if its counterclaim relates to the same contractual relationship.
- 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 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 current legislation of the Federal Republic of Germany, with the exception of the conflict of law regulations in International Private Law.
- 15.2** The following applies to all customers whose place of business is registered in Germany, the European Union or the European Economic Area: To the extent permitted by law, the courts in Hamburg shall have exclusive jurisdiction over all disputes arising from or in connection with this contract.
- 15.3** The following applies to all customers whose place of business is registered outside Germany, the European Union or the European Economic Area: All disputes arising from or in connection with the contract and concerning its validity or the services agreed on shall be subject to a final decision pursuant to the rules of arbitration of the Deutsche Institution für Schiedsgerichtsbarkeit e. V. (DIS, or German Arbitration Institute) without recourse to the ordinary courts of law. The location of the arbitration procedure is Hamburg. The language of the arbitration procedure shall be the language in which the contract is concluded. There shall be one arbitrator (single arbitrator).
- 15.4** Should any provision in these General Terms and Conditions 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.