

# Vossloh Mobile Rail Services GmbH

## General Terms & Conditions

### for mobile welding work and the loading and replacement of rails

Status: 02/2022

#### 1. General Information & Scope

- 1.1 The provision of our quotations and services is based exclusively on these General Terms and Conditions (GT&C). These GT&C form a component of all contracts that our company (hereinafter referred to as Vossloh) signs with its contractual partners (Customer) for the provision of mobile welding work as well as the loading and replacement of rails. These GT&C apply only to business dealings with entrepreneurs, legal entities under public law or a special fund under public law pursuant to Section 310 (1) of the German Civil Code. An entrepreneur is a natural person, a legal entity or a partnership with legal personality who or which, when entering into a legal transaction, acts in exercise of his or its trade, business or profession (Section 14 (1) of the German Civil Code).
- 1.2 Vossloh shall not be bound by any terms and conditions which differ from, contradict or supplement these General Terms and Conditions unless explicitly agreed to in writing by Vossloh (e.g. by email). This shall apply even if Vossloh has provided its services with full knowledge of conflicting terms and conditions without raising any objections.
- 1.3 Part B of the German Construction Contract Procedures (VOB) shall not apply unless Vossloh has explicitly agreed to its 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 minimum issued an order confirmation in writing, 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 quotation, contract or addendum. The Customer is also required to pay the applicable value-added tax. Where value-added tax has already been indicated in the quotation, contract or addendum, the value-added tax applicable at the time of invoicing shall nevertheless apply.
- 2.2 Clauses 5 / 6 / 8 of Section 2 in Part B of the German Construction Contract Procedures (VOB) shall apply for any supplementary works.
- 2.3 Prices for unforeseeable additional or lower volumes of more than 10 % shall be calculated according to the actual costs required plus the appropriate surcharges.
- 2.4 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 quotation or contract.
- 2.5 Work done at an hourly rate shall be remunerated if explicitly agreed to and indicated as such prior to its commencement. For mobile welding work, Vossloh shall submit daily status reports on the number of hours worked, the work required, the provision of machines, the consumption of materials and other costs (see Section 6.4.1) and for the loading and replacement of rails Vossloh shall submit a loading/unloading log. The contractually agreed hourly rates shall apply. In the absence of an explicit agreement, a standard local rate for remuneration shall apply.

#### 3. Terms of payment

- 3.1 Payments are due at the times specified in the quotation/contract.
- 3.2 Vossloh is entitled to invoice its services in accordance with and

upon providing verification of the progress of its work (interim invoice).  
Interim invoices shall be paid immediately after the Customer has checked the invoice and no later than seven (7) calendar days after the Customer receives the invoice.

- 3.3 Final invoices shall be paid immediately after the Customer has checked the invoice and no later than thirty (30) calendar days after acceptance and receipt of the invoice.
- 3.4 In the event that individual items on an invoice are contested, the payment obligation for the uncontested items shall remain unaffected.
- 3.5 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 quotation number or contract number.
- 3.6 If the Customer is in arrears on a payment, default interest shall be charged at the rate of 9 percentage points above the base rate.

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

- 4.1 Any complaints in the case of mobile welding work concerning the proper provision of services shall be reported by the Customer in the daily status report and at the latest in the acceptance report (see Section 6.4.1). In the case of the loading and replacement of rails, complaints shall be reported at the latest in the loading/unloading log (see Section 6.4.3).
- 4.2 In the event that service provision is inadequate, the contractual parties are aware that 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 or it may not be possible to close the section and/or Vossloh may have to take or 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 in which to complete the work. This period of grace shall allow for the nature of the unprovided or inadequately provided service, the complexity of its subsequent performance and as many attempts in which to complete the work as is reasonable under the circumstances.

Where possible prior to the commencement of work, Vossloh shall inform the customer immediately and in writing of any concerns it has with regard to the manner in which the work is to be carried out (e.g. inadequate safeguarding against accident risks), the quality of the materials/components provided by the Customer or the services provided by other entrepreneurs. Vossloh shall not accept any liability for defects where these concerns have not been redressed.

- 4.4 If Vossloh delays the commencement of services or is delayed in their completion, the Customer can only claim compensation with the object of preserving the contract or grant Vossloh a reasonable period of grace in which to fulfill the terms of the contract and announce an intention to terminate the contract if no action is taken within that period. 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.
- 4.5 If the results of the services performed are damaged or destroyed wholly or in part before their acceptance as a result of force majeure, war, civil unrest or any other unavoidable circumstances objectively beyond Vossloh's control and service provision is foreseeably interrupted for a prolonged period,

Vossloh reserves the right to invoice in accordance with the contractually agreed prices that portion of the service as has been performed and to require reimbursement of the costs already incurred and which are included in the contract prices of the portion of the service not provided. Neither party is obliged to pay the other damages for any other losses incurred.

- 4.6** For mobile welding, the period of limitations for claims resulting from the non-performance of services or from defective or inadequate service provision shall be 2 years for joint welds and 1 year for insulated joints from the date of acceptance. The loading and replacement of rails are not covered by a warranty. Section 4.9 shall thereby remain unaffected.
- 4.7** In the case of mobile welding work, the Customer is obliged to carry out acceptance of the work no later than 12 working days after receiving notice of its completion, and in the case of loading and replacement of rails immediately after the end of the shift. If the Customer fails to respond within this period, the work shall be deemed to have been accepted. The work is deemed to have been accepted at the latest when the Customer puts the track section in question into service.
- 4.8** Vossloh can request the partial acceptance of self-contained track sections.
- 4.9** The legal periods of limitation and liability shall remain unaffected in the event of a deliberate or grossly negligent breach of obligations on the part of Vossloh, its legal representatives or its subcontractors. The same shall also apply 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 provisions of these GT&C, Vossloh shall be liable in accordance with statutory regulations in the event of a breach of contractual or non-contractual obligations.
- 5.2** In terms of fault-based liability, Vossloh shall be liable for 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.
- Such claims shall amount to a maximum of 100 % of the total amount that had been paid at the time the claim in question was made. Vossloh shall not be liable for lost output, the interruption of services or the loss of profits, information or data. Vossloh accepts no further liability for any other loss or damage irrespective of its cause insofar as Vossloh is not compelled to do so by force of law.

## 6. Special provisions

### 6.1 Subject and scope of the 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 quotation and/or contract.
- 6.1.2** Vossloh's obligation is limited to the provision of machines belonging to the agreed machine category. In particular,

weather conditions, safety considerations, the actual condition of the rails or the quality of the preceding work may hinder or affect service provision.

- 6.1.3** Insofar as Vossloh offers to perform work shifts of certain duration, the duration of these work shifts shall also include the journey to and from the track section on which services are to be provided subject to the applicable speed limits. Waiting periods shall be considered part of the duration of the work shift. In any event, 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. Surcharges shall be levied for services provided after the scheduled end of a shift. These surcharges shall be specified in detail in the quotation or contract.
- 6.1.4** Vossloh is only obliged to provide the service specified in the quotation or contract. In the event that additional services are desired or necessary, Vossloh's obligation shall be limited to the stipulations in Section 1, clauses 3 & 4 in Part B of the German Construction Contract Procedures (VOB) (addendum).
- 6.1.5** 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.

### 6.2 Provision of contractually agreed services

- 6.2.1** The track section for which services have been commissioned as well as the type and manner of service provision shall be specified in detail in the quotation or contract.
- 6.2.2** Vossloh reserves the right to choose its employees and the machine in 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 required to do so for safety reasons.
- 6.2.3** The Customer is hereby informed that Vossloh must comply with the applicable labour law regulations and collective labour agreements when providing its services, in particular the regulations on occupational health and safety and on working hours (German Working Hours Act, or ArbZG). Consequently, work shifts cannot exceed the legally permissible number of working hours and must be suspended in the event of extreme outside temperatures, for example. Such temperatures shall be understood as impeding Vossloh's ability to provide its services. See Section 4.2.
- 6.2.4** Vossloh is not obliged to provide services if legal provisions or internal stipulations issued by 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. Section 6.5.2 shall apply accordingly. Refer to 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 for the track section in question, including access routes. 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 secure the track section in question against hazards attributable to third parties or external circumstances;
- provide the necessary electricity and water connections specified in the order/contract;
- allow free of charge the use or joint use of the required storage, depot and working areas at the work site
- ensure in the case of mobile welding work that the temperature of the rails complies with the nationally applicable neutral rail temperature required for welding work so that Vossloh can render its contractually agreed services.

Any further cooperation obligations shall be defined in more detail in the quotation/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 work schedule and a specific description of the condition and specific local circumstances of the track section for which the work has been commissioned
- point out the local and national regulations that are relevant for working on the track section for which the work has been commissioned (e.g. speed limits on the access routes to the track section for which the work has been commissioned).

**6.3.3** If the Customer fails to meet his cooperation obligations to the extent that Vossloh cannot provide the service agreed on and if, having received a reminder and notification threatening termination, the Customer does not meet this obligation before a reasonable deadline set by Vossloh, Vossloh shall be entitled to terminate the contract. Vossloh shall also be entitled to terminate the contract if the Customer defaults on debt obligations. In such cases, Vossloh may invoice any services already provided and fully reserves the right to claim compensation and damages.

**6.4 Daily status reports, acceptance report and loading/unloading log**

**6.4.1** In order to document the services provided, Vossloh shall draft and submit a daily status report for mobile welding work and a loading/unloading log for the loading and replacement of rails. The report / loading/unloading log shall be checked and countersigned by the Customer's appropriately qualified contact person (see Section 6.3.1).

**6.4.2** By signing the daily status report / loading/unloading log, the Customer declares that Vossloh has duly provided the service specified in the report / loading/unloading log unless the Customer expresses reservations in the daily status report / loading/unloading log.

**6.4.3** After the work has been completed in the case of mobile welding work and at the end of the shift in the case of loading and replacement of rails, the parties shall together draft and sign a final acceptance report / loading/unloading log for documentation purposes. In the case of mobile welding work, the daily status reports compiled (copies), the measurement logs and any other relevant documentation shall be handed over to the Customer together with the final acceptance report. The daily status reports compiled shall be regarded as the final acceptance report in the event that a separate acceptance report has not been prepared (see Section 6.4.1).

**6.4.4** Where applicable, the final acceptance report shall be drafted very shortly after the notification of completion is submitted and the loading/unloading log shall be drafted very shortly after the end

of the shift as some of the tracks in sections on which services have been provided will be reopened very quickly. By restarting operations on tracks in sections for which services have been commissioned 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 writing 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** Binding deadlines for service provision shall be extended insofar as the provision of services is impeded:

- by circumstances for which the Customer is responsible
- by a strike or a lock-out arranged by the employer's professional representation to take place at the Vossloh premises or at the premises of a company working directly for Vossloh (subcontractor)
- by force majeure or any other circumstances beyond Vossloh's control.

Vossloh shall inform the customer of such impediments, and in each case state the cause and consequence of the impediment.

**6.5.3** Periods of grace must be granted in writing.

**6.6 Loyalty obligations**

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 in the twelve (12) months following the contract's conclusion.

**6.7 De-escalation clause**

**6.7.1** The Customer shall promptly communicate to Vossloh any dissatisfaction with or complaints regarding the proper provision of services. 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 the operational level is not possible, the parties' respective commercial representatives shall become involved. Both parties are required to actively work towards reaching any commercially reasonable agreement as can settle the difference of opinion.

**6.7.3** If no agreement can be reached at the commercial level, the respective management boards shall become 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** Vossloh's fulfillment of its contractual obligations shall be subject to (i) the timely issuance to Vossloh by the relevant authorities of all the export permits, concessions, licenses and any other forms of clearance required for the arrival point and for the intended use of the machines, and/or (ii) there being no legal obstacles resulting from national or international laws, in particular foreign trade regulations, export control regulations, customs regulations, embargoes or any other sanctions (hereinafter referred to as "governmental restrictions") impeding the fulfillment of said obligations.

- 6.8.2** In the event that governmental restrictions 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 governmental restrictions until such time as Vossloh is able to lawfully fulfill the obligation and/or (ii) terminate the contract without providing a reason, thereby releasing Vossloh from its contractual obligations with the exception of the accrued rights and obligations that continue to apply after the contract is no longer valid.
- 6.8.3** If 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 to fulfill these obligations shall be extended accordingly.
- 6.8.4** The Customer hereby attests and certifies that the contractual services (i) will not be used for activities involving explosive nuclear material or for unsecured nuclear fuel cycle activities; (ii) will not be used for activities linked to the development or manufacture of chemical or biological weapons; and (iii) will be used for civil purposes only.
- 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, could not have been foreseen by either contracting party 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, epidemics and internal industrial labour action.  
Vossloh is prevented from providing its services for the duration of such occurrences. See Section 4.2. Vossloh shall inform the Customer without delay of its inability to provide a service. In the event that service provision is permanently disrupted or the delay lasts longer than six (6) months, both contracting parties shall be entitled to completely or partially withdraw from the contract. In the event of a withdrawal, the Customer is not obliged to provide consideration. The services that had been provided prior to the force majeure occurring shall be invoiced upon providing verification and paid according to the contract prices. Further, those expenses that Vossloh has already incurred and which are included in the contract prices of the portion of the service not provided shall be paid.
- 7.2** 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 and acceptance of the services agreed on.
- 8.2** The contracting parties may terminate the contract for cause without observing the requirement for giving notice in the manner provided for by the statutory regulations or by the contractual stipulations made for this purpose.
- 8.3** Unless otherwise agreed or provided for by law, notice of termination shall only take effect when furnished in writing.
- 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**
- 12.1** The Customer can only offset claims that are either undisputed or have been legally established.
- 12.2** The Customer is only entitled to exercise the right to withhold payment 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 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 civil or criminal sanctions. The Customer is responsible for taking 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 affects its collaboration 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 any additional compliance rules originating from its customers.
- 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. Where the contract has been entered into by two traders / legal entities under public law / special funds under public law, or one of the parties to the contract does not have a place of general jurisdiction in Germany, the jurisdiction over all disputes concerning the validity of this contract, rights under this contract or a right relating to this contract, is conferred on the courts of Leipzig insofar as this does not conflict with any other sole jurisdiction.

- 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, 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 Leipzig. 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.