

General Terms and Conditions of Purchase for the Vossloh Rail Services Group

1. Area of Application

These General Terms and Conditions of Purchase (hereafter referred to as "GTCP") apply to all purchase orders and work orders made with other companies by Vossloh Rail Services GmbH, its subsidiaries Vossloh Rail Center GmbH, Vossloh High Speed Grinding GmbH, Vossloh Logistics GmbH and its tier subsidiaries Vossloh Mobile Rail Services GmbH, GTS Gesellschaft für Gleistechnik Süd mbH and Alpha Rail Team GmbH (all hereafter referred to as "VRS"). Any conflicting or divergent terms and conditions proposed by the Contractor (hereafter also referred to as the "Supplier") shall apply only if expressly agreed to in writing by VRS. These GTCP shall also apply in the event that VRS has unconditionally accepted delivery with knowledge of divergent conditions or conditions differing from these GTCP. These GTCP shall also apply without the necessity of resubmission to all subsequent business transacted with commercial business partners.

2. Order acceptance and conclusion of contract

In the event that VRS places an order with the Supplier and the Supplier does not wish to accept the order, it is obliged to inform VRS thereof within one week of receiving the order. Once this period has elapsed, the order shall be deemed to have been accepted. A contract between VRS and the supplier will thus exist.

3. Prices and payment terms

3.1 The price stated in the order is binding. Unless explicitly agreed otherwise, prices shall include any and all costs incurred by the Supplier for and in connection with transporting the goods to the place of delivery, in particular freight charges, packaging and preservation costs, transport insurance and third-party insurance. All prices shall be deemed to include the statutory VAT, unless this is shown separately. The prices are firm and preclude any and all subsequent additional charges.

3.2 The agreed price is payable within 30 days of receiving full delivery and/or provision of services (including any acceptance agreed to of the services performed) and a correctly issued invoice requesting payment. The supplier shall grant a 3% discount on payments made by VRS within 14 days. In the case of a bank transfer, payment shall be deemed to have been made on time if the bank receives the transfer order submitted by VRS before the payment period expires. VRS assumes no responsibility for any delays caused by the banks participating in the payment transaction.

3.3 VRS shall not be liable for due date interest. Statutory regulations shall apply with regard to any defaults in payment.

3.4 VRS reserves the right to offset payment, withhold payment or plead non-performance to the extent permitted by law.

In particular, VRS reserves the right to recover any payments made as long as VRS is still entitled to claims arising from incomplete or insufficient performance on the part of the Supplier.

3.5 The Supplier is not entitled to rights of offset or retention unless counterclaims exist that are established by law (res judicata) or undisputed.

3.6 The assignment of any claims made by the Supplier and originating from its business relationship with VRS shall be invalid unless approved in writing by VRS.

3.7 VRS does not accept cheques for any payments, credit notes in its favor or similar.

4. Delivery / Delivery Conditions / Delivery Periods / Delayed Delivery

4.1 The delivery time stated by VRS in its order is binding. The Supplier is obliged to notify VRS immediately if, in its estimation, the agreed delivery times can no longer be adhered to. Partial or premature provision of services is only possible with the prior written consent of VRS.

4.2 The Contractor is not entitled to have any services performed by third parties (e.g. subcontractors) without the prior written consent of VRS. Unless specifically otherwise agreed (e.g. liability limited to inventory stocks), the Contractor is liable for the procurement risk of its services.

4.3 A delivery note as well as any documents pertaining to the goods – safety data sheets in particular – must accompany every consignment of goods. VRS reserves the right to refuse to accept delivery of the consignment if these documents are not provided. The Supplier shall be informed promptly of any such refusal.

Insofar as the purchase order does not contain more detailed specifications, the supplier shall perform the contracted service in good merchantable quality, in conformity with any existing industrial norms and/or standard specifications – in particular DIN, DVGW, VDE, VDI and/or equivalent – and in compliance with the agreed inspection / approval certificates.

Any changes to the product or the organization of the Supplier's production that result in changes to specifications, drawings or quality standards, or otherwise affect the operational reliability and function of VRS products can only be accepted with the prior written consent of VRS.

4.4 In the event that the Supplier fails to provide its service, fails to provide it within the delivery time agreed or is otherwise delayed, the rights reserved by VRS – in particular to rescission and damages in lieu of performance – shall be governed by statutory provisions. The stipulations under Point 4.5 shall remain unaffected.

4.5 If the agreed delivery date or delivery period is defaulted on for reasons attributable to the Supplier, VRS is entitled to claim for each day of delay a penalty equivalent to 0.25% of the total net value of the order up to a maximum aggregate amount of 5% thereof. Notwithstanding Article 341, Paragraph 3 of the German Civil Code, VRS is entitled to claim the contractual penalty up to the final payment. This does not preclude VRS from making further claims. If the Supplier substantiates that its failure to meet the delivery date or period has resulted in either no damage or significantly less damage than the penalty stated in the first sentence, the penalty shall be waived or reduced accordingly.

4.6 If a delivery date or period is not adhered to for reasons beyond the Supplier's control (e.g. force majeure, industrial action or labor dispute), VRS can, at its discretion and without entitling the Supplier to any separate claims, either insist on the performance of the Supplier's delivery obligations at a later date or else rescind the contract upon expiry of a reasonable extension period.

4.7 Unless otherwise agreed in writing, the goods shall be delivered carriage paid to the VRS subsidiary indicated in the purchase order or, if not indicated, carriage paid to the subsidiary placing the order.

4.8 VRS reserves the right to require that the goods be delivered to an alternative address which it will specify in the event that VRS is prevented from receiving the consignment, or cannot reasonably be expected to take delivery of it at the location agreed due to an event of force majeure or for reasons beyond VRS's control, including industrial action and labor disputes.

5. Examination of Goods / Notice of Defects / Transfer of Risk

5.1 Unless otherwise agreed in writing, the Supplier shall bear the costs for appropriately preserving and packaging the goods.

5.2 VRS's obligation to inspect the goods and/or notify the Supplier of any non-conformance shall not commence before complete and full delivery of the goods. The documents specified under Point 4.3 must be provided before any shipment can be acknowledged as complete.

5.3 The Supplier accepts that the random inspection of a representative sample of a consignment is sufficient for VRS to fulfill its obligation to inspect the goods. The inspection shall take place within a reasonable period of time insofar as this is practicable in the course of correct business practice, and is limited to determining the outwardly apparent condition of the goods. This duty of inspection shall not cover functional testing or the verification of properties, quality characteristics or dimensions that are not outwardly identifiable. The supplier shall be notified of any defects found during the inspection within 14 days of their discovery. The same applies to any defects found at a later date.

5.4 The risk transfers to VRS once the product has been delivered to the designated location and accepted, before which time the Supplier shall bear all risk.

6. Warranty

6.1 VRS is entitled to claim against defects to the full extent of the law; in each case VRS reserves the right to demand that the Supplier, at the discretion of VRS, either rectify the defect or deliver new goods. VRS expressly reserves the right to claim compensation for damages, in particular compensation in lieu of performance.

The Supplier guarantees that the goods comply with official regulations and statutory requirements, particularly the relevant occupational health and safety regulations. This also applies to goods that are purpose-built items.

6.2 VRS is entitled to rectify defects itself and at the Supplier's expense insofar as urgency renders it impossible for VRS to notify the Supplier of the defect or any impending loss or damage and grant the Supplier a brief period for remedial action. The Supplier shall be promptly notified of VRS's remedial action in such cases.

6.3 The limitation period shall be 36 months calculated from the transfer of risk to VRS.

6.4 The limitation period shall be interrupted for the duration of any direct remedial action undertaken by VRS in accordance with Point 6.2.

7. Product Liability

7.1 Insofar as it is liable for any product-related loss or damage, the Supplier shall indemnify VRS against any third-party claims for damages to the extent that the cause of such loss or damage is attributed to a circumstance within the Supplier's control and organization, and insofar as the Supplier is itself liable with respect to third parties.

7.2 Within the scope of its liability for loss or damage as per Point 7.1, the Supplier is also obliged to reimburse VRS for any expenses incurred under the terms of Articles 683, 670 BGB and /or Articles 830, 870, 426 of German Civil Code for or in connection with a recall action undertaken by VRS. Insofar as practicable and reasonable, VRS will inform the Supplier of the details and scope of any recall action and offer the Supplier the opportunity to comment thereon.

7.3. In consultation with the Supplier, VRS shall undertake to inform the respective authorities in accordance with the provisions of the Product Safety Act.

7.4 The Supplier is obliged to maintain a product liability insurance policy with lump-sum coverage of no less than € 10 million for each personal injury or property damages claim for the duration of this contract, i.e. until expiry of the limitation period for defects. Insofar as VRS is entitled to any further claims for compensation, these shall remain unaffected.

8. Right of Ownership Retention by VRS

8.1 VRS shall retain ownership of any materials that VRS provides to the Supplier. The Supplier shall process or transform the goods subject to retention of title for and on behalf of VRS. If, during processing, the goods subject to the retention of title are assimilated with other products not owned by VRS, VRS shall acquire co-ownership of the new asset at the ratio that the value of the goods subject to retention of title (purchase price plus VAT) bears to the value of the other products at the time of processing.

8.2 If the asset provided by VRS is inseparably combined with other products not owned by VRS, VRS shall acquire co-ownership of the new asset at the ratio that the value of the conditional asset (purchase price plus VAT) bears to the value of the other combined products at the time of combination. If the Supplier must be considered the owner of the main item of any such combination, it is hereby understood and agreed that the Supplier shall assign to VRS proportionate co-ownership. The Supplier shall preserve sole or joint ownership for and on behalf of VRS.

8.3 VRS shall retain all title and ownership of tools. The Supplier shall use the tools exclusively for the manufacture of the goods ordered by VRS. Use of the tools on the premises of third parties shall require the prior written consent of VRS. The Supplier shall at its own expense insure the tools belonging to VRS at full replacement value against fire, water damage and theft, thereby ceding all claims for damages arising from this insurance to VRS. VRS hereby agrees to the cession. The Supplier shall carry out, promptly and at its own expense, all necessary service, inspection, maintenance and repair work on the tools. VRS is to be notified immediately of any faults. VRS reserves the right to claim damages from the Supplier in the event that the Supplier fails through willful or mere negligence to notify VRS of such matters.

8.4 Drawings, models, samples, design documents, components, etc. that are made available to the Supplier shall remain the property of VRS. The Supplier shall keep them safe and insure them against damage, fire and theft. The Supplier is permitted to use them only for the processing of VRS's order and shall return them to VRS upon first being requested by VRS to do so, or else immediately following execution of the delivery ordered and without being requested by VRS to do so. The same shall apply to any drawings that the Supplier makes according to VRS's specifications. The reproduction of contract material in any form whatsoever is not permitted. This also applies after termination of the contractual relationship with VRS.

9. Supplier's Offsetting Options and Rights of Retention

The Supplier shall not be entitled to any retaining liens, refusal of performance rights and/or equivalent claims against VRS. The Supplier may not offset any claims against VRS unless undisputed or established by law (res judicata).

10. Testimonials / Advertising

The Supplier is not entitled without the prior written consent of VRS to use information of an intended or existing collaboration for reference and marketing purposes. The photographing of VRS products or premises, or publications of any kind related thereto are not permitted without the prior written consent of VRS.

11. Confidentiality / Reproduction / Replication

11.1 The Supplier shall keep confidential any and all technical and commercial data disclosed to it by VRS insofar as such information is not public knowledge. Data of this kind shall only be used within the scope of establishing a contractual relationship with VRS or performing contractual work for VRS and shall only be disclosed to those of the Supplier's employees whose involvement is essential to the Supplier's operations. The Supplier shall oblige these employees to maintain confidentiality in accordance with the preceding two sentences. The Supplier shall at VRS's request submit to VRS written proof of confidentiality agreements made with these employees.

11.2 To the extent that the Supplier involves a subcontractor, any disclosure of the data mentioned in the first sentence of Point 11.1 shall require VRS's prior written consent. The Supplier shall oblige the subcontractor to maintain confidentiality in accordance with Point 11.1. The Supplier shall at VRS's request submit to VRS written proof of confidentiality agreements signed by the subcontractor and the latter's staff.

11.3 The reproduction or replication of any drawings, models, samples, design documentation, components or similar that are made available by VRS is not permitted. This also applies after termination of the contractual relationship with VRS.

12. Rights of Third Parties

12.1 The Supplier guarantees that no product delivered by the Supplier infringes either directly or indirectly upon any of the rights of third parties, in particular property rights such as patents, trademarks, brands, utility models, samples or copyrights. If VRS is nonetheless made liable by a third party for any such infringement in connection with goods delivered by the Supplier, the Supplier shall upon first being requested to do so indemnify VRS against such claims and reimburse VRS for any and all related expenses incurred.

12.2 The limitation period for the right of recourse and reimbursement claims in accordance with Point 12.1 shall be 10 years from the time of delivery to VRS.

13. Applicable Law, Jurisdiction and Place of Performance

13.1 The laws of the Federal Republic of Germany apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods, as well as the regulations governing conflicts of law.

13.2 The exclusive place of jurisdiction is Hamburg.

13.3 Unless otherwise stated in the purchase order, the registered place of performance is the place of business of the VRS company that places the order.

14. Written Form

Any amendments or supplements to the contract, as well as all supplier declarations, must be in writing.

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