

General terms and conditions of purchase, order and payment GTCP

**of RailMaint GmbH,
Karl-Marx-Straße 39, D-04509 Delitzsch**

As per: May 2016

Section 1 Conclusion of agreement

- (1) An agreement on the delivery or the provision of services to us, RailMaint GmbH, is only concluded on receipt of the copy of the commission or order of RailMaint GmbH, signed by our agreement partner. Additional agreements, amendments or supplements to the Agreement, in particular in oral form shall only take effect when they have been confirmed in writing by our management.
- (2) The components of the agreement are: (a) the commission or order of RailMaint GmbH; (b) the design documentation such as specifications, drawings, plans, calculations, all also in electronic form, handed over on placing the order; (c) these general terms and conditions of purchase, order and payment (GTCP); (d) – if available – further agreements, insofar as they were concluded in writing; (e) the technical and legal conditions applicable to the deliveries and services ordered.
- (3) We will not accept any opposing conditions or conditions of our agreement partner that deviate from these GTCP unless we agreed to their validity in writing on concluding the agreement. These GTCP shall also apply if we unconditionally accept the delivery or service of our agreement partner although we are aware that the conditions of our agreement partner oppose or deviate from these GTCP. Our silence shall by no means be considered an approval.
- (4) These GTCP shall only apply in respect of companies within the meaning of section 310 subsection 1, 14 BGB (German Civil Code).

Section 2 Contents of the agreement

- (1) On conclusion of the agreement, our agreement partner confirms its ability to execute or provide all services to the agreed extent, competently, in time and at the price offered and acknowledges that the documentation and information in respect of the execution of the agreement are sufficient as basis. Insofar as nothing else has been effectively agreed, the scope of services includes:
- a) Packaging (as is customary in the trade) and transport of the objects to be delivered, including unloading and transport to the point of use. Our agreement partner must take the packaging back at its own cost;
 - b) The stocking of spare parts for the term of the guarantee period and of special tools and facilities, insofar as this is required for assembly, servicing or repairs.;
 - c) Assembly/Installation of the objects to be delivered, insofar as agreed;
 - d) Handover of the entire delivery/service for acceptance, furthermore, start-up, training and briefing of the operating personnel and handover of the documentation, insofar as required;
 - e) Process on customs and import formalities.
- (2) Every delivery must be accompanied by a detailed Delivery Note stating gross and net weight, description of goods, unit numbers and measurements, as well as our order reference. If the delivery deviates from the contents of the order, this must be explicitly stated.
- (3) As a rule, all accompanying documents of the agreement partner must state the RailMaint GmbH order number.
- (4) Certificates must, as a rule, be delivered together with the relevant goods and the corresponding Delivery Note. Otherwise, the goods shall be deemed not to have been delivered and the corresponding invoices shall not be due for payment. This also applies to collective invoices in which goods are omitted from individual orders.

Goods shall be deemed not to have been delivered if the corresponding certificate is illegible.

Section 3 Prices

- (1) The price agreed in respect of the service/delivery is free to the point of delivery or site where the service is executed and includes unloading and assembly. The agreed price comprises all expenses necessary to fulfil the agreement, including packaging, assembly, acceptance, training and briefing. Sales tax shall be shown separately.
- (2) Insofar as nothing else has been effectively agreed, all additional claims are excluded.

Section 4 Delivery Time

- (1) The time of delivery/for the provision of the service mentioned in the agreement documentation is binding for our agreement partner.
- (2) Our agreement partner must immediately advise us in writing of any circumstances that have occurred or are discernible, which show that the agreed term cannot be observed. Furthermore, the agreement partner is obliged to take action to reconstitute the agreed delivery time and to inform us in writing.
- (3) If our agreement partner is behind schedule with the delivery/service, we are entitled to the unabridged legal rights. In the event of default, RailMaint GmbH is entitled to demand a contractual penalty of 0.5% of the value of the defaulted delivery/service per day, at most, however, 5% of the entire order value, without corresponding reservation of RailMaint GmbH on receipt of the delivery/service. The contractual penalty shall be offset against the total damages claimed due to the default. We reserve the right to assert the contractual penalty until the final payment.
- (4) We reserve the right to rescind from the agreement if our agreement partner defaults and to demand the payment of damages instead of provision of the service, if a set period of grace for delivery/provision of the service has elapsed unsuc-

cessfully. In such cases, Euromaint Rail reserves the right to conduct covering purchases at the expense of the agreement partner.

Section 5 Quality Management System (QMS) Requirements

(1) RailMaint GmbH demands that the Quality Management system of the agreement partner be certified by an accredited body to at least DIN EN ISO 9001:2008 standard or pursuant to IRIS (International Railway Industry Standard).

The agreement partner is required to provide RailMaint GmbH with a copy of its valid certificate free of charge.

If the agreement partner is not certified, it is required to complete the form “F-Disclosure form for uncertified agreement partners.” RailMaint GmbH reserves the right to exclude uncertified agreement partners.

Section 6 Audit

(1) RailMaint GmbH is authorised, having consulted with the agreement partner, to review, evaluate and, if applicable, approve its production sites and Quality Management system by means of systems, procedural and/or product audits. To this end, the agreement partner shall grant the persons commissioned by RailMaint GmbH, its customers and/or representatives of supervisory bodies access to its production sites. The agreement partner shall make available all relevant documents, records and other information and shall provide the requested information.

(2) If, in the course of the audit, RailMaint GmbH identifies room for improvement, corresponding improvements shall be defined and documented in writing together with the agreement partner. The agreement partner warrants that it shall implement these improvement measures without delay and inform RailMaint GmbH thereof in writing.

Section 7 Amendments

(1) The agreement partner is required to inform RailMaint GmbH in advance of any intended material amendments to its production processes, if these amendments could affect the quality of the products and/or materials. In such cases, RailMaint GmbH reserves the right to carry out new audits at the agreement partner’s

works, or, as the case may be, to demand the renewed approval of the products/materials.

Section 8 Guarantee, Elimination of Defects and Waiver

(1) Our agreement partner guarantees that:

- a) the delivery/service is provided in full correspondence with the descriptions, technical data and conditions that form the subject-matter of the agreement;
- b) the delivery/service is free of any defects at the time of the transfer of risk, that it is suited for the purpose intended and, if necessary, has been approved;
- c) the applicable technical provisions, standards and rules are observed;
- d) the documentation, insofar as they form part of the scope of delivery, is complete and factually correct at the time of acceptance.

(2) If, in the course of the performance of the Contract, the agreement partner finds that it is unable to comply with the contractually agreed quality standards, it is required to notify RailMaint GmbH immediately, in full and in writing of the nature and cause of the deviations(s), as well as the consequences thereof, in particular with regard to the agreed delivery date. In this case, RailMaint GmbH expects that an 8D-Report will be provided.

(3) The agreement partner has the opportunity to request in writing that RailMaint GmbH grants special approval for such non-conforming products. The nature and cause of the deviation, the volume concerned and the correctional measures implemented by our agreement partner must be stated in the request. Having reviewed the specific circumstances, RailMaint GmbH shall decide on the granting of such special approval for a specified volume or, as the case may be, for a limited period of time. The products concerned may be delivered only once the agreement partner has received the written special approval from RailMaint GmbH.

The agreement partner must clearly label products for which special approval was granted. On expiry of the special approval, the agreement partner is required to comply with the contractually agreed quality standards.

- (4) We will check the delivery/service for quality and quantity deviations within an appropriate period. A notice of defects by RailMaint GmbH is considered to be in time if it is issued within two weeks. With regard to obvious defects, the term commences on acceptance of the delivery/service, with regard to hidden defects, the term commences on their detection.
- (5) The acceptance of incomplete or defective deliveries/services does not represent a waiving of claims for defects or damages.
- (6) The risk is transferred to us at the time the delivery/service is accepted. Our agreement partner is obliged to take out sufficient insurance against damage or loss, which shall cover the delivery/service until it is accepted.
- (7) The period of limitation in respect of claims for defects is three years from acceptance of the delivery/service, with regard to a structure or an object that is usually used in a structure and which has caused the structure's defectiveness, the period of limitation is five years from acceptance.

If the defect is removed by means of a supplementary delivery or service, the warranty period recommences on acceptance of the supplementary delivery or service.

Section 9 Payment

- (1) Payment shall be effected within 14 days with deduction of a 4% discount; within 30 days with a deduction of a 3% discount; within 45 days with a deduction of a 2% discount and within 60 days net, subject to subsequent auditing. The payment can either be effected by means of a bank transfer or not-negotiable cheque. The decisive date with regard to timely payment is the date the bank transfer was made or the date of the outgoing mail.
- (2) The term of payment commences with receipt of the invoice by us and the complete and proper provision of the service by our agreement partner.

Section 10 Additional services

If further services become necessary, in addition to those included within the scope of the agreement, the contractor undertakes to present us with a corresponding written quote prior to providing such services. It is only through our written supplementary order that additional services become part of the agreement.

Section 11 Subcontractors

- (1) If the agreement partner wishes to outsource production or parts thereof to subcontractors, it is necessary to notify RailMaint GmbH in advance and to obtain its permission. If RailMaint GmbH agrees to the outsourcing, the agreement partner is required to carefully pass on in full to the sub-contractor all requirements set down by RailMaint GmbH, as well as all necessary paperwork and other documents and to oblige the sub-contractor to comply with the same and to monitor compliance.
- (2) In all cases, the agreement partner, even in the case of the outsourcing of activities, is responsible to RailMaint GmbH for the compliance with the agreed contractual conditions.
- (3) If the agreement partner commissions sub-contractors to fulfil its contractual duties, it must allow RailMaint GmbH to carry out corresponding audits of its sub-contractors.

Section 12 Retention of title

- (1) The ownership in the delivery/service is transferred to us on handover. Any final retention of title of our agreement partner shall, at the latest, expire through developing, processing, blending or mixing by RailMaint GmbH.
- (2) Any retentions of title of our agreement partner in the form of an extended or prolonged retention of title will not be accepted by us. In the event of a simple retention of title of our agreement partner, we are entitled to process and dispose of the goods in the course of regular business operations.

Section 13 Supplies, equipment

- (1) All materials, tools and equipment supplied by us remain our property. Our agreement partner must store these items separately and must mark them as our property. Our agreement partner may only use the items as intended, in the context of the order placed by us.
- (2) Our agreement partner must check all materials supplied by us for defects, immediately after delivery. The agreement partner undertakes to immediately inform us of any doubts regarding their use in writing. This applies correspondingly if supplied materials are not delivered to our agreement partners by our suppliers within the term provided.
- (3) If our agreement partner produces equipment for the provision of the deliveries and services, such equipment shall become our property on completion. Our agreement partner shall store these at no charge for as long as we require this and will provide us with the equipment on demand.

Section 14 Product liability

- (1) Insofar as our agreement partner is responsible for damage to the product, it must, on initial request, exempt us from third party claims for damages insofar as the cause lies within its domain and organisational area and it is itself liable externally.
- (2) In the context of liability in accordance with subsection 1 our agreement partner is also obliged to reimburse us for possible expenses arising in accordance with sections 683, 670 BGB and in accordance with section 823, 840, 426 BGB, due to a call back issued by us. We shall advise our agreement partner – insofar as possible and reasonable – of the contents and extent of the call back and will provide it with an opportunity to provide a statement.

Section 15 Confidentiality

Our agreement partner is obliged to keep the entire contents of the agreement, including the order sheet and the individual prices confidential, during and after termination of the agreement. This confidentiality obligation also extends to new technical

discoveries and information. No information may be disclosed unless it is indispensable.

The ownership and copyright in plans and documentation, which we make available to our agreement partner for the purpose of executing the agreement shall be fully maintained and may not be published or copied without the written permission of RailMaint GmbH. They may exclusively be used for the purpose of fulfilling the agreement with RailMaint GmbH.

Section 16 Third-party trademark rights

Our agreement partner shall ensure that it is the owner of all rights in connection with its delivery/service and that no third-party (in particular patents, copyrights and other ancillary copyrights) are infringed upon. Our agreement partner shall, at any rate, exempt us from any liability towards third parties due to assumed infringements of trademark rights. The exemption obligation comprises all expenses in connection with third-party claims.

Section 17 Assignment, retention, offsetting

- (1) Our agreement partner may not assign its claims against RailMaint GmbH to third parties.
- (2) Our agreement partner has no right of retention, insofar as this relates to counter-claims from other legal transactions with us.
- (3) Our agreement partner is only entitled to offset, if the claim is undisputed or has been legally recognised.

Section 18 Final provisions

- (1) The place of fulfilment for the service/delivery is the delivery address/point of use. The place of jurisdiction is Leipzig.
- (2) The contractual relationship and all disputes arising therefrom are subject to the jurisdiction of the Federal Republic of Germany, even in the event of foreign orders.