

General Terms and Conditions of Sale and Delivery (T&Cs)

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

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§1 Applicability

- (1) Our deliveries to and services for our clients ("AG") are carried out solely on the basis of these general terms and conditions of sale and delivery ("T&Cs"). Contrary terms and conditions of purchase applied by the AG are hereby rejected. These T&Cs apply as well to all similar future transactions. Deviations from the T&Cs require our express agreement, including if we carry out deliveries to and services for the AG without reservation in the knowledge of the AG's terms and conditions.
- (2) These T&Cs apply only to entrepreneurs as defined in sections 310 (1) and (14) of the German Civil Code (BGB).
- (3) The T&Cs apply to modernising, maintenance, overhauling (repairs) and other services for rail vehicles ("vehicles") including conversions thereof ("services").

§2 Offers, orders, conclusion of contract

- (1) Our offers are non-binding. They are a request to the AG to make us an offer of a contract. The documents that belong with the offer such as illustrations, drawings, plans and system descriptions are only approximate, unless we state explicitly that they are binding. They are quality agreements only and do not establish any warranty of quality.
- (2) The contract comes into force through the AG's order (offer) and our confirmation of order (acceptance). Our acceptance is carried out in writing or through provision of the services.

- (3) We reserve all rights to our expertise with regard to the services and services carried out with it ("expertise"). Without our prior written consent the AG is not entitled to disclose the expertise communicated in our offers or to make it accessible to third parties. Placing the order does not provide the AG with any rights in our expertise with the exception of the right to use the expertise in connection with the operation of the vehicles that are the object of our services.
- (4) We reserve all ownership rights and copyright in samples, quotations, drawings and other information of a tangible and intangible type – including in electronic form; they may not be made accessible to third parties. If we are not awarded a contract on the basis of our offer, our drawings and other documents must be returned to us immediately without request.
- (5) If we prepare quotations on request by the AG, our statements are based on estimates and are not binding unless otherwise agreed with us.

§3 Prices and terms of payment

- (1) Prices are net prices plus VAT at the respective rate and apply ex works without packaging.
- (2) Unless otherwise agreed, we charge the prices for our services that apply on the date of implementation. Customs duties and other charges, travel costs and the costs of accommodation for our employees where services are provided outside our business premises shall be invoiced against provision of documentation, material consumed at the respective valid prices plus our applicable surcharge as amended from time to time. Reciprocal purchases of materials must be duly receipted.
- (3) Our invoices are to be paid net within 14 days after delivery/provision of the service and date of invoice.

- (4) The AG may only set off if his counterclaim is not disputed or has been established by a final judgment. He is only entitled to claim a right of retention insofar as his counterclaim is based on the same contract and is not disputed or has been established by a final judgment.
- (5) The AN has the right to sell all claims against the AG to a third party.
- (6) Should the AG be in default of a payment, all other claims against the AG could be requested for immediate settlement by the AN.
- (7) The AG will be liable for all fees & costs incurred by the AN in regards to any legal proceedings outside of Germany.

§4 Delivery dates

- (1) We shall have the right to make part deliveries, insofar as this is reasonable for the AG.
- (2) Our statements with regard to dates in the case of repairs are based on estimates. They are only binding if the extent of the work is established and we agree a binding date with the client for the repair on this basis.
- (3) Compliance with agreed dates presupposes the receipt in time of all information and documents that are to be provided by the AG, the issue of the necessary permits or approvals, the release in time of all plans and construction drawings, as well as compliance with the agreed terms of payment and other obligations by the AG. If these preconditions are not fulfilled in time, the deadline shall be extended by an adequate period of time without this having an effect on the agreed dates for payment.
- (4) An agreed date shall be regarded as complied with when the vehicle is provided for collection by the AG. If shipping was agreed, the date is complied with when the complete consignment is shipped. If a final inspection has to take place, the contractually agreed inspection date applies for compliance with the deadline, unless the AG is entitled to refuse acceptance. If an inspection date was not agreed, the notification of readiness for acceptance shall apply.

(5) Unforeseeable events of force majeure such as war, insurrection, strikes, lock-outs, epidemics and natural disasters, government orders and court decisions, embargos and other unavoidable events outside our sphere of influence and for which we are not responsible shall release us from our obligation to deliver or provide services for their duration. We are not obliged in such cases to have the services provided by third parties. Agreed deadlines shall

be extended by the duration of the disturbance; we shall inform the AG without delay of the occurrence of the disturbance.

(6) The AG may only claim for loss caused by delay or claim compensation instead of delivery in the event of a delayed delivery, if we, our statutory representatives and vicarious agents act intentionally or with gross negligence. The AG shall only be entitled to claims for compensation for damage typically caused by delay in the case of services of the type concerned. In all cases the AG has the right to set us a reasonable extension and to withdraw from the contract if this expires without effect.

§5 Transfer of risk, insurance, acceptance inspection

(1) When services are provided, the risk is transferred to the AG on completion of the service, or with the acceptance inspection if an acceptance inspection has to take place. If components or parts are delivered, the risk of accidental loss and accidental deterioration is transferred to the AG when the components or parts are handed over to the carrier or, in the case of collection by the AG, when they are made available. If shipping of components and parts is delayed at the AG's request, the risk is transferred to him with the notification of readiness for dispatch. Subject to the provisions of section 5 subsection 2 of the T&Cs, the AG agrees to insure the components or parts at replacement value for the period between the transfer of risk in accordance with this section and the transfer of title.

(2) If shipping components or parts is agreed, without special instructions from the AG we shall insure them against transport risks including standard breakages for the account of the AG.

- (3) If the provision of services requires an acceptance inspection, this must be carried out without delay on the agreed date, otherwise without delay after our notice of completion. In the case of conversions of vehicles with a change of technical processes, the AG shall carry out an acceptance inspection, following a function test, otherwise after inspecting the services that were carried out. A report will be prepared on the acceptance inspection that took place.

§6 Liability for defects

- (1) The AG shall inspect delivered components or parts without delay after receipt. The AG shall notify the carrier of claims based on transport damage without delay after delivery with a copy to us and assess the damage together with the carrier. In the event of obvious defects the deadline starts with the handover, and with discovery in case of hidden defects. The AG's claims under guarantee are excluded on expiry of the deadline.
- (2) If our services are defective, the AG is entitled to the statutory rights accruing from defects with the following provisos:
 - a) If rectification is unsuccessful or is unreasonable for the AG, the latter may remedy the defect himself and demand reimbursement of the necessary expenditure, or, if the legal requirements are met, demand a reduction in the payment. Withdrawal from the contract concluded with us is ruled out.
 - b) Section 7 below applies to claims for damages and for reimbursement of futile expenditure arising from a defect.
- (3) If the services consist of the conversion of a vehicle, our liability for defects shall be restricted to the new components and parts that we deliver and install and to our conversion work; it does not cover the overall vehicle and its function, unless otherwise agreed.
- (4) We shall not be liable for defects that arise from specifications of the AG for the services or measures that the client expressly demanded. This shall also apply insofar as defects to parts or materials occur that the AG supplied or whose use he expressly demanded. In addition, there are no claims based on defects arising from minor deviation from the agreed quality, minor impairment of usability, natural wear or damage that occurs after the transfer of risk as a result of faulty or negligent handling, excessive load or unsuitable resources, or that occur as a result of special external influences that are not foreseen in the contract.

§7 Limitation of liability

- (1) We shall only be liable in case of intention or gross negligence in accordance with the statutory provisions for claims by the AG for damages and reimbursement of expenses. In the case of simple negligence, we shall be liable only for damage arising from the breach of a material contractual obligation (an obligation whose fulfilment enables the correct implementation of the contract in the first place and the observance of which the contract parties regularly rely on) and for damage arising from injuries to life, limb or health. Our liability is limited to foreseeable typically occurring damage in the case of gross negligence and of a breach of a material contractual obligation.
- (2) The above limitations of liability do not apply to the AG's claims for damages under the Product Liability Act or if we have fraudulently concealed a defect or agreed a quality warranty.
- (3) We do not assume any liability for damage to or the loss of the customer's property (e.g. theft, graffiti).

§8 Limitation period

- (1) The AG's claims based on defects become time-barred 12 months after the acceptance inspection; if an acceptance inspection does not have to be carried out, the limitation period starts with the completion of our services. The statutory provisions apply instead of the deadline of 12 months if we fraudulently concealed the defect or assumed a guarantee.
- (2) The above periods of limitation shall also apply to the AG's claims for damages based on a defect of the services. Claims for damages based on intention and gross liability, on damage caused by injury to life, limb or health and in accordance with the Product Liability Act become statute-barred solely pursuant to the statutory limitation periods.

§9 Reservation of title

- (1) We reserve title in all items delivered (reserved goods) until fulfilment of all claims under the delivery contract and the business relationship with the AG including any current account balance that results to the debit of the AG. We shall acquire co-ownership of the other item if components or parts are combined with other items belonging to the AG in such a way that they become an essential component of another item.
- (2) The AG is entitled to use the delivery in the framework of his usual business operations. Sale by the AG is only permitted to retailers in the usual course of business. This authority to sell shall be terminated automatically in the event of an unsuccessful attempt at enforcement against the AG and on the existence of reasons for initiating bankruptcy proceedings. Other dispositions concerning our reserved goods, in particular pledging and assigning as security, are not permitted during the existence of our reservation of title.
- (3) The AG hereby assigns to us all claims arising from the resale of the reserved goods together with all ancillary rights. In the event of a sale of combined or mixed reserved goods we shall acquire the first priority partial amount that corresponds to the share of the contract value of our reserved goods to the other combined items. The AG is entitled to collect the claims assigned to us in the course of normal business operations. The right to collect shall terminate if revoked by us, which we may do at any time, in particular in the event of a material deterioration in the AG's financial situation.
- (4) Our security rights shall not be terminated until complete fulfilment of all the AG's payment obligations. In case of payment with a cheque or remittance, fulfilment takes place when the cheque is honoured and recourse to us is excluded or when the amount was finally credited to our account.
- (5) The AG is obliged to inform us without delay of enforcement measures by third parties regarding the reserved goods and to hand over documents that are

necessary for the objection. The intervention costs incurred by us shall be for the account of the AG.

- (6) In the event of breaches of obligations by the AG we shall be entitled to withdraw and to take the reserved goods back, if a suitable deadline that we set expires without result or if setting a deadline can be dispensed with in accordance with statutory provisions.

§10 Use of software

- (1) If the scope of delivery includes software, we grant the AG a non-exclusive right to use the software supplied, including its documentation. It is handed over for use in the vehicle on which we carried out the services. Using the software in other vehicles is not permitted.
- (2) The AG may only copy, process, translate the software or convert from object code to source code to the extent permitted by law (ss. 69a ff. German Copyright Act). He agrees not to remove or alter manufacturer's information.
- (3) All other rights in the software and the documentation, including copies, remain with us.

§11 Concluding provisions

- (1) The sole venue for all disputes arising from the contractual relationship with the AG is the location of our registered office in Delitzsch. However, we reserve the right to select the AG's registered office alternatively as a venue.
- (2) The contractual relationship and all disputes arising from it – including in case of foreign orders – are subject to the laws of the Federal Republic of Germany to the exclusion of the United Nations Convention on the International Sale of Goods (CISG).
- (3) In case of doubt, the German version of these T&Cs shall prevail.