

# Vossloh Rolling Stock GmbH

## Purchasing Terms & Conditions

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### 1. Scope

- 1.1 The legal relationship between the Supplier and Vossloh Rolling Stock GmbH (hereinafter referred to as "VR") shall be governed exclusively by these Purchasing Terms & Conditions. The Supplier's terms and conditions or any alternative agreements shall not apply unless agreed to in writing by VR. Neither silence on the part of VR nor the acceptance of the service performed or payment thereof shall constitute acknowledgement of any such agreements, terms or conditions. Confirmations of any kind on the part of the Supplier referring to the Supplier's terms and conditions will not be accepted.
- 1.2 If neither these Purchasing Terms & Conditions nor the purchase order provide for a specific case, the provisions of German law shall also apply.

### 2. Requirements of form

- 2.1 Unless otherwise specified in these Terms & Conditions, the contract to supply as well as any changes, ancillary agreements, declarations of its termination and any other declarations or notifications must be completed in writing. VR reserves the right to rescind the purchase order at any time if the Supplier fails to accept the order within two weeks of receiving it.
- 2.2 All of the Supplier's documents must contain the reference number, the date of the purchase order / commissioning as well as VR's assigned or communicated material description and material number.

### 3. Order acceptance and adherence to specifications

- 3.1 The order acceptance and any other contract-related document shall duly quote VR's purchase order details (reference No., order No., article No., plant).
- 3.2 Every consignment of goods must be accompanied by a delivery note and any other documents belonging to the goods, in particular safety datasheets, otherwise VR is entitled to refuse delivery. The refusal to accept a delivery shall be declared immediately.
- 3.3 Unless specified in greater detail in the purchase order, the Supplier shall provide its services in customary commercial quality and in compliance with any existing industrial norms and/or standard specifications such as DIN, DVGW, VDE, VDI and/or equivalent, and in compliance with any agreed inspection/approval certificates.

### 4. Prices, invoices and payment

- 4.1 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 transport-proofing costs and transport insurance. All prices are firm and preclude any and all subsequent additional charges. Additional or differing deliveries and/or services will not be paid for without a prior supplementary agreement in writing.
- 4.2 The invoice must fulfill the requirements stated in Sections 14 and 14a of the German Value Added Tax Act (UstG). Any invoices submitted must include the order number, order item, accounting code, receiving office, vendor number, part number, quantity and unit price for each delivery (without carbon copy?). Any deposits / installments that have been paid are to be individually itemized in the invoice.

The prerequisites for all payments made by VR to Suppliers are as follows:

- correct and complete delivery/performance and subsequent acceptance
  - provision of the securities/sureties agreed to in each contract
  - receipt of an invoice correctly made out according to these requirements
  - receipt of documentation verifying quantity and quality insofar as such documents are part of the scope of delivery.
- 4.3 Invoices are not to be delivered together with the goods but are instead to be submitted separately. Invoices that can be sent and received electronically will be accepted.
- 4.4 Unless otherwise agreed, payment will be made
- with a 3% discount upon receipt of the correct goods and an invoice drafted in accordance with Point 4.2
    - by the 10th day of a calendar month: on the 20th of the same month;
    - by the 20th day of a calendar month: on the 30th of the same month,
    - by the 30th day of a calendar month: on the 10th of the following month;or
  - with a 2% discount by the 25th of the month following receipt of the correct goods and an invoice drafted in accordance with Point 4.2;
- or

within 90 days net after receiving the correct goods and an invoice drafted in accordance with Point 4.2.

Insofar as VR does not receive the correct goods and an invoice correctly drafted in accordance with Point 4.2 on the same day, payment shall be governed by the date on which the later of the two is received. If the parties have agreed on a specific delivery date and the Supplier delivers both the correct goods and an invoice correctly drafted in accordance with Point 4.2 earlier than the agreed date, the payment term shall nonetheless be governed by the originally agreed delivery date.

- 4.5 VR reserves the right to offset or withhold payment to the extent permitted by law.

- 4.6 The cession of any receivables due to the Supplier and originating from its business relationship with VR shall be invalid unless approved in writing by VR. Subject to the provisions of Point 10 hereof, however, such approval shall only be deemed to have been granted if any such receivable is ceded under an extended reservation of title agreement between the Supplier and one of the Supplier's upstream vendors.

### 5. Compliance with delivery terms and legal ramifications of delays

- 5.1 The delivery deadlines and delivery periods agreed to are binding and must be strictly adhered to. Partial or premature provision of services is only possible with VR's prior written consent.
- 5.2 If adherence to a delivery period or date appears to be at risk and even if the delay is beyond the Supplier's control (due to force majeure, for example, or industrial action not the fault of the Supplier), the Supplier shall nevertheless promptly notify VR accordingly, duly stating and substantiating the reason or cause and indicating the estimated duration of delay. Such notification will not relinquish the Supplier from its obligation to keep agreed delivery periods or dates.
- 5.3 Failure on the part of the Supplier to satisfy its obligation to inform VR in accordance with Point 5.2 will render the Supplier unable to claim that the delay was beyond the Supplier's control.
- 5.4 If the agreed delivery date or delivery period is defaulted on for reasons attributable to the Supplier, VR 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 10% thereof. Notwithstanding Article 341, Paragraph 3 of the German Civil Code, VR is entitled to claim the contractual penalty up to the final payment. This does not preclude VR 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 determined in accordance with the first sentence of this point, the penalty shall be waived or reduced accordingly.
- 5.5 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), VR can, at its discretion and without entitling the Supplier to any separate receivables, 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.
- 5.6 Unless otherwise agreed in writing, the goods shall be delivered carriage paid to the VR subsidiary indicated in the purchase order or, if not indicated, carriage paid to the subsidiary placing the order.
- 5.7 VR reserves the right to require that the goods be delivered to an alternative address which it will specify in the event that VR 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 VR's control, including industrial action and labor disputes.

### 6. Packaging of goods and transfer of risk

- 6.1 Unless otherwise agreed in writing, the Supplier shall bear the costs for appropriately preserving and packaging the goods.
- 6.2 No risk whatsoever transfers to VR until the product has been delivered to the designated location and accepted, before which time the Supplier shall bear all risk.

### 7. Examination of goods and notice of defects

- 7.1 VR's obligation to inspect the goods and/or notify the Supplier of any non-conformance shall not commence until complete and full delivery of the goods is made. The documents specified under Point 3.2 must be provided before any shipment can be acknowledged as complete.
- 7.2 The Supplier accepts that the random inspection of a representative sample of a consignment is sufficient for VR 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 ordinary business practice, and shall be 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.

### 8. Warranty

- 8.1 The Supplier's performance of services shall also be deemed non-compliant if any of the documents stated under Point 3.2 is not enclosed with the delivery.
- 8.2 The Supplier further 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 constitute purpose-built items.
- 8.3 VR is entitled to rectify defects itself and at the Supplier's expense insofar as urgency renders VR no longer able to notify the Supplier of the defect or

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any impending loss or damage and grant the Supplier even a brief period for remedial action. The Supplier shall be promptly notified of VR's remedial action in such cases.

8.4 Unless otherwise agreed between the parties, the limitation period shall be 36 months calculated from the transfer of risk to VR.

8.5 The limitation period shall be interrupted for the duration of any direct remedial action undertaken by VR in accordance with Point 8.3.

### 9. Product liability

9.1 Insofar as it is liable for any product-related loss or damage, the Supplier shall indemnify VR 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.

9.2 Within the scope of its liability for loss or damage as per Point 9.1, the Supplier is also obliged to reimburse VR for any expenses incurred under the terms of Articles 683 and 670 and/or Articles 830, 840, 426 of the German Civil Code for or in connection with a recall action undertaken by VR. Insofar as practicable and reasonable, VR will inform the Supplier of the details and scope of any recall action and offer the Supplier the opportunity to comment thereon.

9.3 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 VR is entitled to any further claims for compensation, these shall remain unaffected.

### 10. Right of ownership retention by the Supplier

10.1 The Supplier has the right to retain any ownership claimed of products delivered (goods subject to retention of title) if such retention of ownership expires upon payment of the agreed price and if VR is also entitled to resell the goods subject to retention of title in the ordinary course of business.

10.2 Insofar as the Supplier has effectively retained ownership of goods subject to retention of title in accordance with Point 10.1 and in order to safeguard the Supplier's rights and interests in the event that such goods undergo further processing and are resold, VR hereby cedes to the Supplier the receivable due to VR from its customer for the resale of the asset newly created through the incorporation of goods subject to retention of title to the value of the amount invoiced by the Supplier for delivery of the respective goods subject to retention of title. If VR has a current account with its customer, the amount ceded shall correspond to the equivalent portion of the current account balance (including the final current account balance).

10.3 The Supplier hereby cedes the receivables ceded in accordance with Point 10.2 back to VR on the condition precedent that VR pays the Supplier the amount agreed for the respective goods subject to retention of title.

10.4 A cession of receivables to the Supplier in accordance with Point 10.2 shall not affect VR's right to collect such receivables. This right to collect can only be effectively revoked if and for as long as VR defaults on its payment obligations from the transaction underlying the delivery of the respective goods subject to retention of title. Any such default will also entitle the Supplier to require that VR disclose to the Supplier the receivables ceded and the corresponding debtor and notify the debtor of such cession.

### 11. Right of ownership retention by VR

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

11.2 If the asset provided by VR is inseparably combined with other products not owned by VR, VR shall acquire co-ownership of the new asset proportionate to the value that the goods subject to retention of title have (purchase price plus VAT) with respect 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 VR proportionate co-ownership. The Supplier shall preserve sole or joint ownership for and on behalf of VR.

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

11.4 At the Supplier's request, VR shall relinquish any security interests assigned to VR under Points 11.1 and 11.2 that exceed the cost price of all unpaid goods subject to retention of title by more than 10%.

### 12. 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 VR. The Supplier may not offset any claims against VR unless such claims are undisputed or established by law (res judicata).

### 13. Treatment of documentation, models, samples etc.

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

13.2 Although the Supplier is bound by the drawings, models, samples, design documents, components etc. relating to an order, the Supplier shall duly examine this material for any deficiencies and promptly notify VR in writing of any identified or suspected errors. Failure to do so will render the Supplier unable to subsequently attribute responsibility to identifiable deficiencies (errors).

### 14. Testimonials / advertising

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

### 15. Confidentiality

15.1 The Supplier shall keep confidential any and all technical and commercial data disclosed to it by VR 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 VR or performing contractual work for VR 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 first two sentences of this Point. The Supplier shall at VR's request submit to VR written proof of confidentiality agreements made with these employees.

15.2 To the extent that the Supplier involves a subcontractor, any disclosure of the data mentioned in the first sentence of Point 15.1 shall require VR's prior written consent. The Supplier shall oblige the subcontractor to maintain confidentiality in accordance with Point 15.1. The Supplier shall at VR's request submit to VR written proof of confidentiality agreements signed by the subcontractor and the subcontractor's staff.

### 16. Rights of third parties

16.1 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 VR 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 VR against such claims and reimburse VR for any and all related expenses incurred.

16.2 The limitation period for the right of recourse and reimbursement claims in accordance with Point 16.1 shall be 10 years from the time of delivery to VR.

### 17. Applicable law, jurisdiction and place of performance

17.1 All supply relationships between the Supplier and VR shall be governed by the substantive law as applicable in the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) from 11.04.80 as amended. Delivery clauses shall be interpreted in accordance with the 2010 Incoterms.

17.2 If the Supplier is a trader, VR's place of business shall have exclusive jurisdiction over all disputes arising from or in connection with the agreement between VR and the Supplier. However, VR is also entitled to bring any action against the Supplier before a court with jurisdiction in the Supplier's place of business.

17.3 Unless otherwise stated in the purchase order, the delivery location specified at Point 5.6 is also the place at which the Supplier shall meet its obligations.

### 18. Data protection

VR reserves the right to collect, process and use the data that accrues in connection with the contractual relationship subject to the terms of the Federal Data Protection Act (BDSG) as amended. Furthermore, VR reserves the right to forward this data to enterprises affiliated with VR as defined under Section 15 et seq. of the Stock Corporation Act.

### 19. Primacy of the German version when using these Purchasing Terms & Conditions in different languages

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To the extent that these Purchasing Terms & Conditions are available in different languages, the German version shall apply when resolving any questions of interpretation that may arise.