



## General Terms and Conditions of Purchase of DB AG and its Affiliated Companies (hereinafter referred to as the "Client")

### - General Terms and Conditions of Purchase as at May 1, 2020 -

#### 1 General provisions and integrity clause

1.1 These Terms and Conditions of Purchase of the Client apply exclusively. They form an integral part of the contract and any supplements. Any contradictory, supplementary or divergent terms and conditions specified by the Contractor shall form a part of the contract only if expressly accepted in writing by the Client. This shall also apply to any terms and conditions that are specified in order confirmations or other confirmations of the Contractor. Acceptance of goods/services shall not constitute acceptance of the terms and conditions of the Contractor. The Terms and Conditions of Purchase of the Client shall also apply if the contract with the Contractor is executed without reservation, despite knowledge of contradictory terms and conditions, supplementary terms and conditions or terms and conditions that diverge from these Terms and Conditions of Purchase of the Client.

1.2 Within the framework of the contractual relationship, the contracting parties undertake to take all necessary measures to prevent corruption, other criminal offenses and other forms of gross misconduct. They undertake, in particular, to take all necessary precautionary measures to avoid gross misconduct in Germany and abroad. Irrespective of the form of participation in committing, inciting or aiding and abetting an offense, gross misconduct includes

- a) serious offenses that have been committed in the course of business dealings. These include criminal offenses that involve, in particular, fraud, abuse of trust, document forgery or similar offenses,
- b) offering, promising or granting undue benefits to any civil servant, public official or other office holder or person specifically bound to carry out public service duties (bribery or granting an undue advantage), or members of the Management Board, managing directors or other employees of Deutsche Bahn AG or its Group companies (bribery in business conduct),
- c) offering, promising or granting undue benefits to any person engaged in a freelance capacity by Deutsche Bahn AG or its Group companies who is active in the award or execution of a contract, e.g. technical designers, consultants and project control officers,
- d) in connection with the activity of the Contractor for Deutsche Bahn AG or its Group companies, offering, promising or granting undue benefits to any other German or foreign civil servant, public official or other office holder or person specifically bound to carry out public service duties in relation to the initiation, award or execution of a contract by third parties,
- e) any unauthorized procurement, securing, use or communication of commercial or business secrets for competitive purposes, for personal gain, for the benefit of a third party or with the intention of inflicting damage or loss on the business owner, or any unauthorized use or communication, for competitive purposes or for personal gain, of documents or technical instructions entrusted in the course of business dealings, and any unauthorized use or transmission, for competitive purposes or for personal gain, of documents, technical instructions or commercial information of the Client entrusted in the course of business dealings, including any such material supplied on data storage media,
- f) any infringement of provisions designed to protect unimpeded competition; in particular, violations of hardcore antitrust restrictions in accordance with Article 101 of the Treaty on the Functioning of the European Union, section 1 of the German Act Against Restraints of Competition (GWB) (price, bidding, quantity, quota, customer allocation and territorial agreements),
- g) any infringement of economic sanctions or the circumvention of European Union sanctions, especially an infringement of European Council Regulation No. 2580/2001 or European Council Regulation No. 881/2002 and 753/2011 (anti-terror regulations) or of other applicable national, European and international embargo or trade-control regulations, and

- h) other serious offenses or gross misconduct. These include criminal acts; in particular, terrorist offenses, involvement in a criminal organization, money laundering and the financing of terrorism, child labor and other forms of human trafficking or similar offenses.

Gross misconduct in the aforementioned sense shall also be deemed to have been committed if persons who are associated with the employees, managing directors or Management Board members of the Deutsche Bahn Group are offered, promised or granted undue benefits and if specific planning and tendering assistance is provided in order to subvert competition.

1.3 If, at the time of awarding the contract, the Contractor or persons appointed by it or acting on its behalf are shown to have come to an agreement that represents an unlawful restriction of competition, the Contractor shall pay compensation in the amount of 15% of the net contract value, unless it is not responsible for the infringement. The right to prove and claim damages of different value shall remain unaffected. Furthermore, other contractual or legal claims of the Client shall remain unaffected.

1.4 If, in the context of awarding or providing services, an employee, a managing director or a member of the board of the Contractor, or any subContractor working under the direction of the Contractor, commits gross misconduct within the meaning of section 1.2 to the detriment of the Client, the Contractor shall pay the Client a contractual penalty, unless it is not responsible for the infringement. The penalty shall amount to

- a) 7% of the net contract value if the gross misconduct is committed by a managing director or member of the board of the Contractor, or
- b) 5% of the net contract value if the gross misconduct is committed by an agent holding full power of attorney or authorized representative, or
- c) 2% of the net contract value if the gross misconduct is committed by other employees of the Contractor or by subContractors,

but the minimum contractual penalty shall amount to €5,000. This contractual penalty shall not affect the rights of the Client to claim damages for misconduct. However, in this case, the contractual penalty shall be offset against any such claims for damages.

A contractual penalty in accordance with this provision shall be inapplicable if an act of gross misconduct within the meaning of section 1.2 is committed by a subContractor of the Contractor and the choice of this subContractor was made obligatory by the Client, and/or if the Contractor or its employees, board members or managing directors, or other third parties working under its instruction, did not participate in committing this act of gross misconduct.

Cases of unlawful restriction of competition according to section 1.3 and concurrent acts of gross misconduct according to section 1.2 (whereby the same offender commits several separate acts of gross misconduct punishable under criminal law or whereby one and the same act of gross misconduct is an offense against several different statutory provisions) shall not be subject to the contractual penalty. Section 1.3 shall apply conclusively in this respect.

1.5 If an act of gross misconduct within the meaning of section 1.2 is committed by an employee, managing director or member of the board of the Contractor,

- a) the Client shall be entitled to invoke extraordinary termination of the contract without notice,
- b) the Contractor shall be debarred from competing for orders awarded by Deutsche Bahn AG and its Group companies for a period of up to five years, unless otherwise specified by law. If the Contractor can provide evidence of appropriate and sufficient self-corrective actions, the ban may not be implemented. The severity and the circumstances of the misconduct shall be taken into account.

The extent of the ban and the readmission to the competitive tendering process are governed by the Deutsche Bahn AG guidelines on barring contractors and suppliers. These guidelines may be inspected at any time at the Client's premises.



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- 1.6 The Contractor undertakes to actively contribute towards preventing gross misconduct within the meaning of section 1.2 and investigating suspected misconduct as well as to cooperate with the Client in this respect.
- If the Contractor gains knowledge of facts that constitute a suspicion of gross misconduct within the meaning of section 1.2 and impact on the Client, the Contractor is obliged to immediately notify the Client of such in writing. Furthermore, if such gross misconduct lies within the sphere of the Contractor, the Contractor is obliged to investigate the circumstances of the case. If the suspicion is confirmed, the Contractor is obliged to take appropriate specific technical, organizational and personnel measures to terminate the misconduct without delay and to prevent such misconduct in the future. The Contractor shall promptly inform the Client in writing on the progress and outcome of the investigation of the circumstances of the case and on any measures taken.
- 1.7 To make it possible to establish and organize legally compliant business relations, the Client and the Contractor shall each give their consent to the other party for regular mutual checks of their information against the latest versions of the sanctions lists based on European Council Regulations No. (EC) 2580/2001, (EC) 881/2002 and (EU) 753/2011 (anti-terror regulations) and other applicable national, European and international embargo and trade-control regulations. When doing so, they shall observe all relevant provisions based on data protection law, especially with regard to data economy and data security.
- The Contractor declares that its company and employees are not included on any of the aforementioned sanctions lists. The Contractor undertakes to use appropriate measures to ensure that the anti-terror regulations and other national, European and international embargo and trade-control regulations are implemented in its company's business operations. The Contractor also undertakes to promptly notify the Client in writing of any matches found during checks against the aforementioned sanctions lists.
- The assertion of claims for damages of any type (in particular due to default or non-performance) and the assertion of other rights by the Contractor are excluded if these are associated with compliance with applicable national, European and international embargo and trade-control regulations. This does not apply in the event that the Client is accused of intent or gross negligence. The Client is entitled to invoke extraordinary termination of the contract if any matches are found during the aforementioned checks.
- 2 Execution documents**
- 2.1 The documents transferred to the Contractor may not be made accessible to third parties, duplicated or used for a purpose other than that agreed without the consent of the Client. They must be returned on request.
- 2.2 The Client may retain the documents transferred to it by the Contractor. The Client is entitled to duplicate and use documents for training and maintenance purposes, and for other purposes agreed in specific cases.
- 2.3 If the contract or the award documents specify both Client and Contractor drawing numbers or Client and Contractor item numbers, only the Client numbers shall be deemed binding.
- 3 Service execution, provisions**
- 3.1 The Client may find out information about contractually executing the goods/services within business or operating hours. The documents that relate to executing the contract and are required in order to find out this information must be provided for inspection on request. The confidentiality interests of the Contractor must be taken into account.
- 3.2 The Contractor may transfer the execution of the goods/services or material parts thereof to third parties only with the prior written consent of the Client. The Client must not refuse to grant this consent without good reason.
- 3.3 The Contractor shall ensure that all materials used that fall under the EU chemicals regulation REACH are registered and allowed in accordance with this regulation and having taken into consideration the use of the materials by the Client according to the subject of the contract. This shall also apply to contractors outside of the European Union. Upon request by the Client, the Contractor shall provide suitable proof of fulfillment of this obligation.
- 3.4 Provisions shall remain the property of the Client and must be stored separately, labeled and managed at no charge. They may only be used for the purposes of the contract in question.
- 4 Notification of reservations, notification of obstructions, force majeure**
- 4.1 The Contractor shall notify the Client in writing immediately of any reservations it may have about executing the goods/services in the manner requested by the Client, or if the Contractor believes that it is being obstructed by a third party or by the Client from executing the goods/services.
- 4.2 If the execution deadline is exceeded as a result of force majeure, the Client may request that the Contractor execute the goods/services at a later point under the terms and conditions originally agreed, or the Client may withdraw from or terminate the contract in whole or in part after a reasonable grace period has elapsed.
- 5 Delay**
- 5.1 The lead time specified in the contract is binding. The Contractor shall inform the Client immediately in writing of any circumstances that arise or are identified and prevent the specified lead time from being adhered to.
- 5.2 In the event of a delay by the Contractor, the Client shall be entitled to its full statutory rights. In the event of a delay by the Contractor, the Client shall be entitled to claim a contractual penalty amounting to 0.3% of the order value of the delayed goods/services, for each calendar day, but no more than a maximum of 10%. The contractual penalty shall be set off against the total amount of damages claimed in respect of the delay. The Client reserves the right to claim the contractual penalty until final payment.
- 6 Place of performance, transport, packaging**
- 6.1 The place of performance shall be the Client's receiving location specified in the contract.
- 6.2 The costs of transport and packaging are included in the fixed price. At the request of the Client, the Contractor shall pick up the packaging materials from the receiving location, and dispose of the packaging materials, at its own expense.
- 6.3 Where it is financially viable for the Contractor to do so, it must use rail-based means of transportation for the logistics services and goods transportation required for the purpose of executing the goods and services. The Contractor is free to choose the transport company that it wishes to use. Before the contract is awarded, however, it must ask at least one DB Group company to provide a quotation.
- 7 Termination or withdrawal for cause**
- 7.1 The right to termination without notice for cause remains unaffected. In particular, cause exists in cases where a contracting party violates the contract so severely that the other contracting party is unable to reasonably engage in any further cooperation. This may involve, for instance, a significant infringement of the principles and requirements set out in the agreed code of conduct for business partners, or multiple individual contractual violations that exceed the limits of what is considered reasonable. Termination without notice requires a previous unsuccessful written warning.
- 7.2 The Client is also entitled to terminate the contract without notice and without any further preconditions if the ability to fulfill the contract correctly is put at risk due to the Contractor's financial situation significantly worsening. This applies in particular if (i) the Contractor ceases to pay its creditors on more than just a temporary basis, or (ii) no contractually agreed suretyships have been issued, or (iii) insolvency proceedings have been rejected due to a lack of assets.
- 8 Acceptance, complaint period, transfer of risk, transfer of ownership**
- 8.1 In each case where the Contractor provides goods/services, confirmation of receipt must be provided at the point of handover at the Client's receiving location, unless a separate agreement for accepting goods/services has been made. Quality checks, technical acceptance and official acceptance (by the German Federal Railway



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- Authority, for example) replaces neither confirmation of receipt at the point of handover nor acceptance.
- 8.2 The Client shall check the goods/services for defects within a reasonable period. Delivery of a different item or of too low a quantity is considered to be a defect. A complaint shall be considered to have been submitted on time if it is submitted within two weeks. In the case of obvious deviations in quality and quantity, this period shall begin at the point when the goods/services are handed over at the receiving location. In the case of concealed deviations in quality and quantity, the period shall begin at the point when they are discovered.
- 8.3 Risk shall transfer to the Client when confirmation of receipt is provided at the point of handover, or upon acceptance.
- 8.4 Ownership shall transfer to the Client when confirmation of receipt is provided at the point of handover, or upon acceptance.
- 8.5 If, following confirmation of receipt at the point of handover or on the acceptance date, the contractual service or parts of the contractual service is/are rejected as not having been executed in line with the contract, the Contractor shall undertake to take back the service/part of the service at its own expense. Once a reasonable grace period has elapsed, the Client shall be entitled to return the contractual service/part of the service to the Contractor at the Contractor's expense. In such cases, risk shall not transfer to the Client before either confirmation of receipt at the point of handover or acceptance takes place once again.
- 8.6 The contractual service or parts of the contractual service that is/are to be handed over at the receiving location in return for confirmation of receipt, or accepted, or the items that are to be supplied as replacements, must be supplied by the Contractor to the Client's receiving location once again at the Contractor's own expense and risk.
- 9 Defect claims, liability of the Contractor**
- 9.1 The statutory provisions apply to defect claims asserted by the Client, with the following stipulations:
- The Contractor shall remain responsible for its goods/services and providing them without defects even in cases where the Client has signed, approved, stamped or labeled as "seen" or similar the plans, drawings, calculations and other execution documents provided by the Contractor.
  - In cases of particular urgency and/or where there is a risk of delay, the Client may, if it deems the deadline set for supplementary performance to be unreasonable, undertake self-performance in order to rectify the defect and demand compensation of the necessary expenses. The Client shall immediately inform the Contractor of any such defect claims and of the nature and scope of the urgent measures taken.
  - The Client may grant the Contractor a reasonable deadline for removing a defective item. Once this deadline has elapsed, the Client may use the contractual service at the Contractor's expense and while protecting the economic interests of the Contractor; for example, through purchase.
  - The limitation period for defect claims is two years from the point of acceptance or handover in return for confirmation of receipt, unless a longer period has been agreed on a case-by-case basis or legal provisions stipulate a longer period. This period shall be extended by the time during which the defective goods/services cannot be used as intended due to the defect.
  - The limitation on defect claims shall also be suspended if the Contractor checks for the presence of a defect itself. The suspension on the limitation shall not end until the Contractor notifies the Client in writing that negotiations have ended or the result of the check is sent to the Client or the Contractor refuses in writing to continue rectifying the defect. If negotiations, checks or attempts to rectify the defect are resumed, the limitation shall be suspended once again.
- 9.2 The Contractor is liable in accordance with statutory provisions.
- 10 Confidentiality**
- 10.1 The contracting parties shall ensure that any persons they entrust with processing, fulfilling or handling the contract comply with statutory data protection regulations and the German Federal Trade Secrets Act.
- 10.2 The Contractor may provide information about (partial) order values or (partial) prices to external parties only in cases that are strictly prescribed by law. Press releases and other publications on orders that have been issued are only permitted in consultation with the Client. The same applies to any communication of rounded or approximate values, and to figures comparing percentages with previous orders.
- 11 Property rights**
- If a third party asserts a claim against the Client due to alleged infringements of property rights, the Contractor shall undertake to indemnify the Client against these third-party claims upon the Client's first written request to do so, unless the Contractor is not responsible for the infringements. This obligation to indemnify shall cover all expenses that the Client incurs in relation to the third-party claims.
- The right of indemnity shall be limited to a period of two years from the date on which the circumstances establishing this right become known to the Client or would have become known to it had it not acted in a grossly negligent manner. Otherwise, the right of indemnity shall lapse after a period of ten years from the date of establishment of this right irrespective of the Client's knowledge or grossly negligent ignorance.
- 12 Invoices, prices, supplements**
- 12.1 Each contract (plus any supplements) shall be settled by means of an invoice. Invoices on account, partial invoices, partial final invoices and final invoices must be labeled as such and numbered consecutively. Invoices with no specific labeling shall be treated as final invoices.
- 12.2 Subject to value-added tax (VAT) regulations, the invoice must specify the ordering party, the day, the contract reference, the contract number, the Contractor's tax number assigned by the tax office or its VAT identity number, the forwarding station, the receiving location, the order item numbers in ascending order and the material numbers. The goods/services documents to be handed over at the receiving location must contain the contract number and the order item numbers in ascending order.
- 12.3 The price specified in the contract is a fixed price and excludes any subsequent claims. The fixed price does not include the Contractor's statutory value added tax (VAT). A VAT refund presupposes that the Contractor is entitled and obliged, pursuant to the relevant legal regulations, to charge the tax separately and that the tax is indicated separately in the invoice.
- 12.4 Remuneration shall only be provided for additional goods/services and/or changes to the goods/services if a supplemental agreement was made in writing before the execution of the goods/services.
- 13 Payment, discount**
- 13.1 Payment shall be made by bank transfer to the Contractor's account specified in the invoice.
- 13.2 The payment period is 21 days with a 3% discount or 30 days net.
- 13.3 The payment period shall begin when the verifiable final invoice (as specified in section 12.2) arrives at the location specified in the contract, but not before the day on which the contractual service is handed over in return for confirmation of receipt or is accepted.
- 13.4 In the case of agreed payments on account, the payment period shall start on the day when a verifiable invoice on account is received, but not before collateral is provided as agreed.
- 13.5 The point at which the transfer instruction is submitted to the bank/credit institute shall be decisive in determining whether the Client has made the payment on time.
- 14 Assignment of claims, right of lien, set-off**



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- 14.1 The Contractor shall not be permitted to assign its claims against the Client to a third party. Section 354a of the German Commercial Code (HGB) shall remain unaffected.
  - 14.2 The Contractor shall not be entitled to exercise any lien or other right of retention if this is based on counterclaims from other legal transactions with the Client.
  - 14.3 The Contractor shall be entitled to offset its claims only against claims (including claims arising from other legal relationships) that are undisputed or that have been established as final and absolute by a court of law.
  - 14.4 The Client shall be entitled to full rights of lien and set-off.
- 15 Jurisdiction, applicable law, written form**
- 15.1 The place of jurisdiction shall be the location of the Client's registered office. In the case of framework contracts, this jurisdiction shall also apply to disputes relating to individual orders, regardless of the seat of the ordering party. However, the Client is also entitled to invoke the courts at the place where the Contractor has its registered office.
  - 15.2 German law applies exclusively, to the exclusion of the UN Convention on Contracts for the International Sale of Goods. Only the German version of this contract is valid and legally enforceable.
  - 15.3 In order to preserve evidence, changes or additions to this contract - including this clause - must be agreed in the form of the contract of which the General Terms and Conditions of Purchase are an integral part.

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