



General Conditions for Purchases by WINDHOFF Bahn- und Anlagentechnik GmbH
from hereon referred to as Buyer

November 2016

1. Scope of application

- 1.1. These general conditions constitute an inherent part of any purchase order unless differing terms are agreed upon in other sections of the contract with the supplier.
- 1.2. Terms of business from others shall not be part of the contract. This also applies to situations where a supplier (AN) has enclosed or included such terms with other statements and even if we have not explicitly objected to the validity of such terms, or when a delivery/service is accepted without reservations.

2. Offers

- 2.1. Offers shall not be binding for us, and they shall be submitted without incurring any cost for us. The supplier shall indicate any deviation of the offer as to his inquiry.
- 2.2. Drawings, models, samples, or other documents provided by us or created by the Supplier shall be solely used for the purpose of offer processing and execution of order. Upon request by us, these items shall be handed over to the buyer after processing of the inquiry or after the execution of the delivery without undue delay and with no cost incurred for us.

3. Contract of Agreement

- 3.1. To be valid, orders and other statements shall be in a written form (e.g. letter, telefax, e-mail). This also applies to amendments, changes, and special terms which are agreed upon before, during or after the contract of agreement.
- 3.2. Confirmation of an order shall fully comply with the order and shall be submitted within 10 days after placing the order.
- 3.3. Where the supplier confirms the buyer's written order by including deviating terms or conditions, the supplier's lack of a response does not imply an acceptance by us, but rather it indicates that the contract shall be considered as not concluded.
- 3.4. Statements by the supplier regarding basic retention or title shall not be considered as a deviation from the supplier's order, and they will be honored.

4. Code of conduct by Deutsche Bahn (Deutsche Bahn AG), Minimum wage legislation

- 4.1. The buyer expressly points out the current code of conduct by Deutsche Bahn AG and the rules and principles contained therein. The supplier accepts the responsibility to comply with this code of conduct and to assure this also on behalf of his sub-suppliers.
- 4.2. In the context of business relations with the buyer, the supplier assures his compliance with the provisions of the minimum wage law. To check this compliance, the buyer shall be entitled to request – among other measures – anonymised wage documents for employees active with the supplier. The supplier shall indemnify the buyer from any claims which may originate from the supplier's and/or sub-suppliers violation of minimum wage legislation or of other legal directives or tariff agreements, for which the buyer is liable according to §14 Arbeitnehmerentsendegesetz (Law on the Posting of Workers) and/or other comparable directives. This also applies when the buyer's liability would be called for owing to further sub-contracting or outsourcing by recruiting companies.



5. Prices

- 5.1. Prices stated by the supplier shall be fixed and including the VAT. They include all reimbursements for all deliveries and services which are allocated to the supplier as part of the particular order.
- 5.2. We shall accept any payments for packaging only when this was specifically agreed.
- 5.3. Where no other provisions were agreed, deliveries shall be effected "delivered duty paid" (DDP) according to INCOTERMS 2010 and including packaging free destination WINDHOFF works at Hovestr. 10, 48431 Rheine, Germany.

6. Delivered items

- 6.1. The buyer's order shall be the sole basis for the scope, type, and details on the delivery.
- 6.2. Drawings, descriptions, etc. which are part of the order shall be binding for the supplier. However, he shall check them as to possible irregularities, and in such cases, he shall inform the buyer about the discrepancies in writing and with no undue delay. Drawings, calculation, plans, etc. originated by the supplier shall be the responsibility of the supplier also after the buyer has accepted these documents.
- 6.3. The supplier shall provide a complete service, free from any material or legal discrepancies. Even without it being expressly requested, this includes the handover of the technical documentation, test certificates and attestations.

7. Delivery schedule

- 7.1. Dates and times stipulated by the ordering party are binding. Deliveries ahead of the schedule or partial deliveries require prior approval by the buyer.
- 7.2. The buyer reserves the right to change such delivery dates and times as far as this is necessary for the Buyer's interest and as far as the supplier can be expected to comply.
- 7.3. The day of delivery shall be the day of arrival of the agreed items including the documentation and shipping documents at the address specified by the buyer.
- 7.4. Where the supplier foresees that the delivery date will be exceeded, he shall notify the Buyer in writing immediately and inform the buyer about the planned date of delivery. This notification does not affect any possible legal proceedings as a result of the delay.
- 7.5. When the delivery date was exceeded, the Buyer shall be entitled, following the unsuccessful stating of a deadline, to rescind the contract. Where the supplier has realized a partial delivery, the supplier may still rescind the contract when he is not interested in this partial delivery. In case of a delay on behalf of the supplier, the buyer can rescind the contract following a defined period of time, although the timely service has been an essential factor and although the buyer has stipulated this when closing the contract or when other circumstances have necessitated a delivery on time. Rescinding the contract shall not affect the buyer's right to request pertinent compensation.

8. Packaging, shipment, acceptance

- 8.1. The supplier is responsible for suitable packaging.
- 8.2. The buyer's order number shall be shown in all transport and shipping papers. Where shipping or delivery documents are not correct, the buyer shall be entitled to refuse the delivery, and the resultant cost will be allocated to the supplier.



- 8.3. Where specific reimbursement for packaging was agreed upon, the buyer reserves the right to return valuable and reusable packaging material to the supplier and to withhold two-thirds of the respective packaging cost.
- 8.4. Shipment and delivery shall be effected to the buyer's designated shipping address. Goods are accepted at the goods delivery location in the buyer's plant only from Monday through Thursday from 07:00 hrs to 15:00 hrs and on Friday from 07:00 hrs to 11:30 hrs. Deliveries for which the buyer bears the cost of freight in toto or partially shall be effected by the cheapest mode and at the most favorable freight tariffs. Where the buyer should note of a deviation from this provision, the supplier shall take over the extra cost.
- 8.5. Unloading by the buyer shall be at the supplier's risk and expense. Piece loads > 2.5 tons shall be unloaded by crane.

9. Transfer of risk

Except for the provisions in item 8.5, the buyer accepts the transfer of risks at the time of delivery of the goods at the address Hovestr. 10, 48431, Rheine, Germany. Where the delivery includes assembly and erection, the transfer of risk is timed after the completion of such work and after the acceptance by the buyer.

10. Tests/checks during production

- 10.1. The buyer reserves the right to check and inspect the material being used as well as the dimensional tolerance and pertinent volumes and general quality criteria of the goods during the production and before the delivery at the supplier's or one of his suppliers' facilities. The cost for the production checks and final checks are born by the supplier, except for the expenses for the buyer's dispatched personnel.
- 10.2. Inspection certificates and checks according to item 10.1 do not relieve the supplier from his responsibilities and they do not exclude liability claims for faults or discrepancies.

11. Invoicing, terms of payment

- 11.1. Unless the ordering party requests otherwise, the supplier shall issue invoices in compliance with applicable legal directives and submit them separate from the goods. An original bill of lading plus two copies shall be included with each shipment. Invoices and bill of lading must show sufficient information for identification and orderly bookkeeping. This includes the order number and date of order, material number, the number of items with each shipment, weights, etc.
- 11.2. Invoices not in compliance with legal directives or lacking any of the above information shall not be considered.
- 11.3. Payment shall be effected at the buyer's option within 14 days and with 3% discount or net amount within 30 days after receipt of the invoice, however, not before receiving of goods and documentation. Day of payment is the date of the financial transfer.
- 11.4. Payments are effected under the provision of correct invoices for a service in compliance with the contract, and this does not imply any acceptance of the correctness of supply and service and as such no waiver of any claims by the buyer.
- 11.5. The buyer shall be entitled to set off demands of the buyer towards the supplier against any demands to which the supplier may be entitled towards the buyer.
- 11.6. The supplier's right for such set-off or retention shall be limited to legally determined claims or undisputed counterclaims.



12. Warranty, claims

- 12.1. The supplier is responsible for delivering the goods in compliance with the agreed order specifications, made from the designated material, free from material, design or production faults, made to the current state-of-the-art as well as free from faults and deficiencies which may render the goods unusable or unsuitable for the designated use or which may jeopardise or negate the value of the delivered goods, and the goods shall comply with all legal and statutory directives and approvals.
- 12.2. The buyer reserves all rights in case of a supply of deficient goods. This includes the right for optional fault correction or supply of new fault-free goods instead.
- 12.3. The supplier shall correct faults and deficiencies, which occur within the warranty period, at his expense, whereby the buyer may exercise the option to request the corrective measures to be effected on-site or to provide relevant new parts or the appropriate service. The buyer shall be entitled to request from the supplier the reimbursement of all cost incurred with the corrective measures, such as dismantling and installation cost. This also applies to reworking measures by the buyer or by others contracted by the buyer where time is an essential criterion or in the case of imminent danger, in particular in situations where owing to anticipated or unusual damages there is no time to discuss the situation and necessary measures with the supplier. The buyer shall be reimbursed for the cost of inspections if the inspection has revealed faults or deficiencies.
- 12.4. Unless stated otherwise, the right for claims by the ordering party are valid for three years after the transfer of risk. Where the delivered product in compliance with its normal scope of application was used as part of a structure and where it has caused the latter's deficiency, the warranty claims shall be valid for five years after the transfer of risk.
- 12.5. Claims shall be considered as being filed in time when apparent deficiencies are reported to the supplier within 10 days after receipt of the goods.

13. Design/patent rights of third parties, guarantee

- 13.1. The supplier shall ensure that the supply or use of the goods does not infringe the rights of third persons, design and patent rights or trademark rights in particular. The supplier shall be responsible for indemnifying the buyer from any infringement of pertinent laws or directives and he shall be liable for any expenditures along this line. This does not apply to situations where the violation of such rights is based on the buyer's provisions as drawings, samples or other specifications from the buyer.
- 13.2. Where the supplier or a third party assumes the guarantee for specific goods for a specific period of time (work life guarantee), the buyer - in a warranty case - is entitled to the legal claims from the guarantee according to the warranty statement and to the statements in advertisements against the party which has provided such warranty. Where the supplier has assumed the work life guarantee, it is assumed that a deficiency during the validity period will substantiate the right for claims from this guarantee.

14. Assignments, transfer of contract execution

- 14.1. Unless specifically authorized by the buyer in writing, the supplier must not transfer or delegate the execution of the contractual service partially to third parties. However, the supplier shall be entitled to cooperate with sub-suppliers to realize the required service. The supplier shall be liable for any damage caused by parts from sub-supplier in the same manner as for own parts.
- 14.2. The buyer shall not decline or disagree to the assignment of claims unless there is sufficient reason to do so or as long as the buyer does not submit any claims on his behalf.



15. Contractual fines, compensation, reimbursement of expenditures

- 15.1. Where the supplier is responsible for non-compliance with the timely delivery, the buyer shall be entitled to reimbursement of damages of 0.5 % of the gross contractual value for every started calendar week. The maximum amount shall be limited to 5 % of this volume.
- 15.2. The supplier shall also pay contractual fines in the amount described in section 15.1 for the period from the indication of a quality deficiency until the correction is completed. The basis for the calculation, in this case, is the part of the contracted goods which are affected by the breach quality standards.
- 15.3. The buyer shall not be responsible for reserving the right for such contractual fines at the time of the acceptance. He shall be entitled to make such claims until the time of the final contractual payment.

16. Place of litigation and applicable law

- 16.1. Any dispute arising from the contract shall be filed with the court where the buyer is domiciled, no matter whether the supplier is a businessman, a corporation or authority under the public law. The buyer shall also be entitled to file a suit at the supplier's domicile. This does not apply to disputes regarding non-material claims which are allocated to district courts without prior consideration of the disputed values or to disputes for which a specific court has been specified.
- 16.2. The contract is subject to the law of the Federal Republic of Germany.
- 16.3. The UN Convention for international purchase shall not apply.

17. Non-effectiveness of clauses

If specific clauses of the above listed should be non-effective, other rules which best meet the economic purposes of the contract and the interest of the party concerned shall be applied. Where any clause in these business terms or a clause of related agreements should be invalid, the validity of the other clauses or agreements shall not be affected.