



Please note: In case of inconsistencies or doubts as to meaning, solely the German text shall be binding.

General Contract Terms and Conditions of Deutsche Bahn AG and its Affiliated Companies for the Maintenance of Software and/or Hardware

- (GTC IT Maintenance), Edition 01.01.2022 -

1 General obligations of the contractor, integrity clause

- 1.1 These contractual terms and conditions of the Client apply exclusively. Any contradictory, supplementary, or divergent 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 contractual terms and conditions 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 the contractual terms and conditions of the Client.
- 1.2 The services must comply with the Client's standards and norms as agreed upon in the contract, as well as the recognized rules of technology applicable at the time of the performance of the services. The Contractor shall notify the Client in writing immediately of any reservations it may have about executing 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 these services. The Client's existing hardware and software environment at the time of the conclusion of the contract is known to the Contractor, and it does not speak against undertaken maintenance services.
- 1.3 The Contractor shall ensure that the services meet the objective of the contract and that they are carried out with the required profitability.
- 1.4 The Contractor shall abide by the contractual remuneration agreements. Subject to clause 13.4, any entitlement to amended remuneration requires agreement on the amount of this remuneration prior to execution of the service and must be recorded in writing for evidentiary purposes.
- 1.5 When fulfilling the contract, the Contractor shall consider technological development and inform the Client of reasonable changes in a timely manner.
- 1.6 As a general rule, the Contractor's services must be carried out personally by the Contractor or by its employees. The Contractor guarantees that only reliable employees with the requisite technical skills will be deployed and that these employees will be committed to exercising the utmost care and attention to detail. If the Contractor performs its services at the Client's premises, the Contractor shall employ personnel who are proficient in the German language. If the Contractor engages subcontractors, they must also have suitable technical qualifications. In addition, the engagement of subcontractors shall require the prior written consent of the Client, which may not be refused without legitimate grounds. If any personal data is processed, consent can be refused due to the lack of data protection measures.
- 1.7 The Contractor and its employees shall not be integrated into the business organization of the Client. To this extent, they are not subject to the authority of the Client. Any legal right to issue instructions (e.g. in accordance with procurement law, data protection law or railway law, or to comply with occupational health and safety and accident prevention) shall remain unaffected by this. The Contractor must ensure that it or persons appointed by it actively exercise instruction and supervision authority towards its employees.
- 1.8 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 agree, in particular, to take all necessary precautions within their companies to prevent gross misconduct in Germany and abroad. Irrespective of the form of participation in committing, inciting, or aiding and abetting an offense, gross misconduct includes
- serious offenses that have been committed in the course of business. These include criminal offenses that involve, in particular, fraud, abuse of trust, document forgery, or similar offenses,
 - 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 board members, managing directors, or other employees of Deutsche Bahn AG or its Group companies (bribery in business conduct),
 - 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 award or execution of a contract, e.g., technical designers, consultants, and project control officers,

- 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 or to any employee or appointee of any other businesses in relation to the initiation, award, or execution of a contract by third parties,
- 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 carriers,
- any violation of regulations designed to protect unimpeded competition; in particular, violations of hardcore 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)
- any infringement of economic sanctions or the circumvention of European Union sanctions, especially an infringement of Council Regulation (EC) No. 2580/2001 or Council Regulation (EC) No. 881/2002 and Council Regulation (EU) No. 753/2011 (anti-terror regulations) or of other applicable national, European, and international embargo or trade-control regulations, and
- other serious offenses or gross misconduct. These include criminal offenses; in particular, terrorist offenses, involvement in a criminal organization, money laundering, terrorism financing, child labor, and other forms of human trafficking or similar offenses.

Gross misconduct in a sense mentioned above shall also be deemed to have been committed if persons who are associated with the employees, managing directors, or Management Board of the DB Group are offered, promised, or granted undue advantage and where specific assistance with design and tendering is provided to subvert competition.

- 1.9 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.
- 1.10 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 clause 1.8 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
- 7% of the net contract value if the gross misconduct is committed by a managing director or member of the Management Board of the Contractor, or
 - 5% of the net contract value if the gross misconduct is committed by an agent holding full power of attorney or authorized representative, or
 - 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 EUR 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. The above claims can be asserted until the final payment is made.



A contractual penalty in accordance with this provision shall be inapplicable if an act of gross misconduct within the meaning of clause 1.8 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 anticompetitive practices according to clause 1.9 and concurrent offenses according to clause 1.8 (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. clause 1.9 shall apply conclusively in this respect.

1.11 If an act of gross misconduct within the meaning of clause 1.8 is verifiably 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 debarment and the readmission to the competitive tendering process are governed by the "DB AG Policy on the debarment of contractors or suppliers." These guidelines may be inspected at any time at the Client's premises.

1.12 The Contractor undertakes to actively contribute towards preventing gross misconduct within the meaning of clause 1.8 and investigating suspected misconduct, as well as cooperate with the Client in this respect.

1.13 If the Contractor gains knowledge of facts that constitute a suspicion of gross misconduct within the meaning of clause 1.8 and that impact 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 immediately. 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.

1.14 To make it possible to establish and organize legally compliant business relations and in the scope of their contractual relationships, 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 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 minimization and data security.

1.15 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.

1.16 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 foreign trade regulations on the part of the Client. 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 Cooperation

2.1 Where required for the purposes of executing the contract, the Contractor shall agree on the key work steps of its services with the Client's contact person before execution begins and before final provision; the Contractor's responsibility for its services shall remain unaffected. The Contractor shall provide the Client with the required information about the status of contract fulfillment without special remuneration and shall, upon request,

grant the Client access to its premises to view the documents relating to contract performance. Furthermore, it shall inform the Client about all circumstances relating to contract fulfillment which it is essential for the Client to know about. The confidentiality interests of the Contractor must be taken into account.

2.2 The Contractor shall inform the Client of all details relating to contract fulfillment where knowledge of these details is necessary for the Client.

2.3 The contact person nominated by the Client for execution of the contract is authorized exclusively for functional collaboration with the Contractor. The contact person shall not be entitled to make any declarations relating to the composition of the Contract (e.g., amendments, supplements, rescission, or termination).

3 Troubleshooting, hotline

3.1 If the Contractor has assumed responsibility for the elimination of errors within the scope of software maintenance or hardware maintenance, it is obliged to determine the causes of errors (hereinafter: to react) and to eliminate them after receiving the error message from the Client. If the Contractor is unable to eliminate the causes of the errors, it must take measures to circumvent or bypass the errors. Troubleshooting also includes adapting the documentation.

The Contractor shall process reported errors within the following deadlines:

▪ Error class 1:

A class 1 defect shall be present if economically reasonable use of the software or the hardware to be maintained is not possible or unreasonably restricted or if the software or the hardware to be maintained is the cause of a production stoppage. In this case, the Contractor shall react immediately upon receipt of the error message and then rectify the error without delay.

▪ Error class 2:

Error class 2 applies if an appropriate, economically reasonable use of the software or hardware to be maintained is possible only with restrictions or if the software is the cause of considerable production restrictions. In this case, the Contractor shall react immediately no later than two hours after receiving the error message and then rectify the error without delay.

▪ Error class 3:

Error class 3 applies if the software or hardware to be maintained is essentially usable despite the error. In this case, the Contractor shall react immediately no later than two working days after receiving the error message and then rectify the error without delay.

The immediate elimination of errors must be carried out without interruption and with sufficient personnel.

3.2 If the contract includes software maintenance services, the Contractor shall provide updates or releases free of viruses known according to the latest state of technology. In addition to the delivery of updates or releases, the Contractor shall deliver or adapt the associated software documentation. If the usage of releases by the Client requires adjustments to the Customer's existing hardware/software environment, the Contractor shall notify the Customer of this at when making the release offer.

3.3 If the contract includes hardware maintenance services, the Contractor shall document the maintenance services performed and provide the Client with the documentation. Damaged parts of the hardware that the Contractor has removed and replaced with new or faultless parts shall become the property of the Contractor upon removal. The Contractor shall be responsible for removal transport of the removed parts if this service was not performed at the Contractor's headquarters.

3.4 As part of the hotline service, the Contractor shall advise and support the Client by telephone in the event of application problems, as well as during troubleshooting and when the Client must temporarily bypass minor errors.

4 Obligations of the client

4.1 If the Client changes its hardware or software during the contract term, it shall inform the Contractor of this in text form if the change impacts the contractual services of the Contractor. The Contractor shall inform the Client in text form of any adverse effects of the change which are known to or recognizable to the Contractor. The obligation of the Client to inform shall not exist if the Client has coordinated the changes with the Contractor.

4.2 The Client shall provide all necessary documents and information that the Contractor requires for error diagnosis and elimination to the usual extent, and it shall also grant the necessary access to the rooms, machines, and the hardware or software. In addition, the Client must provide the Contractor with the necessary machine/computer capacities and data. The services mentioned above shall be provided by the Client free of charge. However,



- the Client is not obliged to participate in the error diagnosis and elimination.
- 5 Acceptance**
- 5.1 The Client shall test the updates, releases, replacement programs, etc. supplied to it within the scope of software maintenance and shall declare acceptance or refuse acceptance with reason within one month. The software and the documentation shall be deemed accepted if the Client has not refused acceptance within one month after delivery or if the Client uses the software productively without reservation.
- 5.2 If the Contractor has performed other acceptance-ready services, it shall offer them to the Client and send a written request to have these services accepted. Unless otherwise agreed in the contract, clause 5.1 shall apply accordingly.
- 6 Assignment of claims, set-off**
- 6.1 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.
- 6.2 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.
- 6.3 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.
- 6.4 The Client shall be entitled to full rights of lien and offsetting.
- 7 Transfer of documents, usage rights, industrial property rights**
- 7.1 The Contractor shall make the work results it shall produce during contract performance directly available to the Client. If work results are owed in electronic form, the Contractor shall transmit them in a digital format that is customary in the industry.
- 7.2 If the Contractor maintains standard software, the Client shall receive the irrevocable, non-exclusive, locally unrestricted right of use in rem of the software (replacement programs, releases, updates, etc.) and documentation supplied by the Contractor within the scope of software maintenance without special remuneration at the time of their transfer for all copyrighted work results (software, documentation, source code, etc.) of the Contractor. The Client shall be entitled to transfer the right of use to the Group companies affiliated with it. The Client shall be entitled to copy the software delivered within the scope of the maintenance, including documentation, to the extent necessary for the purposes of the contract. The legal regulations concerning the right of the Client to reproduce the software remain unaffected. Apart from that, the Client shall be forbidden from reproducing the software.
- 7.3 If the Contractor maintains custom software of the Client, the Client shall receive the irrevocable, exclusive, locally unrestricted and transferable right in rem to use the software and documentation supplied by the Contractor within the scope of software maintenance (replacement programs, releases, updates, etc.) without special remuneration - at the time of their creation and on a permanent basis - for all types of use - including those not yet known - and in particular to reproduce, further develop, or change them, make them accessible on the Internet and publish them.
- 7.4 If the Contractor maintains hardware, the Client shall receive the irrevocable, exclusive, locally unrestricted, and freely transferable right of use in rem to the delivered documentation for the maintenance services and other documents at the time of their handover and on a permanent basis. The Client may use the documentation for all types of use, including those not yet known, and may reproduce and change it, make it accessible on the Internet, and publish it in particular.
- 7.5 Insofar as the work results contain preexisting rights belonging to the Contractor or third parties, the Contractor shall warrant that the Client may use these rights and industrial data as elucidated above. The Contractor shall grant the Client a non-exclusive usage right to these rights, including all materials, techniques, working methods, and expertise. Otherwise, however, the Contractor shall grant the Client this right in accordance with the aforementioned provisions, insofar as this is necessary for the usage of work results elucidated above and insofar as this is not already part of the agreed scope of services.
- 7.6 The above provisions shall continue to apply beyond the termination of the contractual relationship, even in the event of premature termination.
- 8 Claims for defects**
- 8.1 The Contractor is responsible for the faultless provision of services and for their suitability for the contractually agreed purpose.
- 8.2 The Client shall report any defects detected to the Contractor within a reasonable period.
- 8.3 The Contractor shall remedy reported defects in accordance with clause 3.1. If the Contractor falls behind with the rectification of the defects, clause 14.3 shall apply accordingly.
- 8.4 The limitation period in which rights and claims arising from defects may be asserted shall be 24 months, unless the law specifies a longer period. This period begins upon acceptance. In the case of acceptance of partial services, the limitation period begins with the acceptance of the respective partial service. Unless otherwise agreed, the limitation period for the interaction of all partial services (overall service) begins with acceptance of the final partial service. If a partial service is used productively by the Client, the limitation period shall commence on the first day of productive use without reservations.
- 8.5 In the case of defects, the Client shall be entitled to all statutory claims and rights. From an agreed guarantee, the Client has at least all claims and rights to which it is legally entitled in the event of defects in the service.
- 8.6 Rectification of the defects also includes correction of the documentation if this is affected by the breach of duty of the Contractor.
- 8.7 If the Contractor delivers updates, upgrades, or a new version of the software or if it provisions repaired or new hardware to rectify material defects, it shall demonstrate their functional capability to the Client at its own expense and shall deliver the associated documentation in the German language in both printed and electronic form.
- 8.8 The limitation period pursuant to clause 8.4 for all justified defect notices shall be extended by the period during which the software or hardware cannot be used for their intended purpose due to the defect; this applies to the entire maintenance service. Statutory regulations concerning the suspension of the period of limitation shall remain unaffected.
- 8.9 The costs of searching for the defects for all justified defect notices shall be borne by the Contractor. If, following consultation, the Client supports the Contractor in searching for the defects that have justifiably been reported, the Contractor shall reimburse the Client for all verified expenses that the Client has incurred in connection with searching for the defects.
- 8.10 The Contractor shall reimburse the Client for all verified necessary expenses that the Client has incurred in connection with subsequent performance.
- 9 Infringements of intellectual property rights**
- 9.1 The service provided by the Contractor must be free of third-party rights. If use in accordance with the contract is restricted or forbidden due to the infringement of third-party property rights, the Contractor is obliged, at its own choice, to either change the service or replace it so that the property right infringement is eliminated but still complies with the contractual terms and conditions, or to obtain the right of use so that the service can be used by the Client in accordance with the contract and without restriction or additional costs.
- 9.2 If the Contractor delivers updates, upgrades, or a new version of the software to rectify defects of title, it shall demonstrate its functional capability to the Client at its own expense and shall deliver the associated documentation in the German language in electronic form.
- 9.3 At the first request, the Contractor shall release the Client from the claims that a third party asserts against the Client due to an infringement of property rights and, from the time of the first request, the Contractor shall handle the dispute with the third party, unless the Contractor is not responsible for the infringement of property rights. The Client shall support the Contractor here to the extent necessary. Any associated necessary and verified expenses shall be reimbursed by the Contractor. The Client is obliged to notify the Contractor in writing without undue delay if claims are asserted against the Client due to the infringement of intellectual property rights. The period of limitation for 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 to indemnity shall lapse after ten years from the date of establishment, irrespective of the Client's knowledge or grossly negligent ignorance.
- 9.4 The statutory regulations regarding liability for defects shall apply in all other instances.
- 10 Liability insurance**
- 10.1 The Contractor shall be obliged to take out liability insurance to cover its risks under the contract and must provide the Client with proof of this insurance cover at any time upon request. The Contractor's liability insurance must include, as a minimum, the following insured sums per damage event:



- For personal injury and damage to property, plus any consequential damage EUR 2,500,000.00
 - For financial losses EUR 500,000.00
- 10.2 The above-mentioned coverage must be provided at least twice per insurance year.
- 11 **Protection of trade secrets, confidentiality, data protection, return of documents**
- 11.1 The contracting parties shall ensure that any persons they entrust with processing, performance, or handling the contract comply with statutory privacy regulations and the German Trade Secrets Law (Gesetz zum Schutz von Geschäftsgeheimnissen, "GeschGehG").
- Additionally, the contracting parties shall keep confidential any information, documents, or items concerning personal data, operating secrets, or trade secrets obtained from the other contracting party's sphere and information that is labeled as confidential or is to be assessed as confidential for any other reason, regardless of whether the information has been communicated verbally, in writing, or, for example, digitally.
- This obligation applies regardless of whether the information to be assessed as confidential has been labeled accordingly or is subject to technical or organizational protective measures. If the information to be exchanged does not meet the criteria of a trade secret in individual non-disclosure agreement according to the German Trade Secrets Law (GeschGehG), it shall still be subject to the duty of confidentiality in line with the intentions of the contracting parties, provided that it recognizably constitutes confidential information as far as the other contracting party is concerned.
- 11.2 The contracting parties shall refrain from disclosing the confidential information, take appropriate confidentiality measures to protect against unauthorized access, and refrain from passing information on to third parties without authorization or using it for purposes other than what has been contractually agreed. Appropriate measures for ensuring confidentiality include using technical security measures that are in line with the state of the art (Article 32 GDPR) and obligating employees to maintain confidentiality and observe data protection measures in accordance with the GDPR. If the contracting party transferring the information has provided specifications for maintaining the confidentiality of particularly sensitive information based on different confidentiality levels, the other contracting party must maintain the information in line with these specifications. Each contracting party may request that the other contracting party provide information about or evidence of the nature and scope of its security measures. The duty of confidentiality does not apply to information or items that the receiving contracting party can prove (1) was/were generally known or readily available without violations, either wholly or in the format and combination provided, to persons who normally handle such information; (2) is/are becoming publicly accessible at a later point without any breaches of the obligation to maintain confidentiality; or (3) was/were verifiably obtained by the receiving contracting party itself without the use of or reference to the confidential information of the other contracting party; or (4) was/were made known to the receiving contracting party from an authorized third party in a legal manner, without any violations of this obligation of secrecy.
- If a contracting party is obliged to disclose some or all confidential information due to applicable legislation, court orders or official orders, the contracting party shall notify the owner of the confidential information of this immediately in writing and make all reasonable efforts to reduce the extent to which the information is disclosed to a minimum and, where necessary, provide the owner of the confidential information with any reasonable support required to obtain a protection order against the disclosure of all confidential information or parts thereof.
- 11.3 The contracting parties shall impose the same obligations on all persons – whether employees or third parties – that are entrusted with processing, performing, or handling the contract at the time of the contract being formed or are entrusted with this occasionally as part of the collaboration. The contracting parties shall also provide evidence of this obligation on request to the other contracting party. Additionally, the contracting parties shall only disclose confidential information to those who rely on knowing the information for the contractually agreed purpose.
- 11.4 Transferring the information does not transfer any rights or licenses to the other contracting party, unless otherwise expressly specified in other contractual provisions. The Contractor shall in no way commercially use or imitate (particularly by means of reverse engineering) the confidential information for purposes outside of this agreement, nor shall it have the confidential information used or imitated by third parties for purposes outside of this agreement. Furthermore, it shall not register any commercial intellectual property rights in relation to the confidential information – particularly brands, designs, patents, or utility models – where using the confidential information in this way does not conform to the intended purpose of the contract.
- 11.5 Each contracting party may terminate the contract without notice if the other contracting party is in breach of its obligations mentioned above. Claims for damages and any other claims or rights (according to the German Trade Secrets Law (GeschGehG), for example) shall remain unaffected. The obligations to maintain confidentiality shall remain in place for 5 (five) years after the contract has ended or been terminated.
- 11.6 The Contractor undertakes to treat all documents handed over to it by the Client confidentially and, after completion of the contract, to return them without undue delay or securely delete or destroy them if requested. The Contractor is not entitled to the right of lien in respect of these documents. Legal retention obligations shall remain unaffected.
- 11.7 If execution of a service by the Contractor is associated with activities for which, in the opinion of the Client, the conclusion of a commissioned data processing agreement within the meaning of Article 28 of the GDPR or any other privacy agreement is required, the Contractor is obliged to negotiate and conclude such a contract or agreement based on the standard sample contract of the Client or one of its affiliated enterprises without undue delay and with the required specific amendments in each case. In the case of services with a foreign element, the Contractor is obliged, at the request of the Client, to conclude an order data processing contract or any other privacy agreement based on a sample contract specified by the Client.
- 11.8 Without prejudice to the provisions above, 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 figures, and to percentage comparisons with previous orders.
- 12 **Termination**
- 12.1 For all contracts regarding the on-going obligations, the parties may terminate the contract with a notice period of three months, unless a specific contract term or a different notice period have been agreed.
- 12.2 If the contract includes software maintenance services, the Client shall be entitled to terminate the contract with three months' notice towards the end of a quarter provided that the use of the software under maintenance is permanently discontinued.
- 12.3 The right to terminate for cause without notice period remains unaffected. In particular, cause exists, if a contracting party violates the contract so severely that the other contracting party cannot reasonably engage in further collaboration. This may involve, for instance, a significant violation of the principles and requirements set out in the agreed code of conduct for business partners or multiple individual defaults that exceed the limits of what is considered reasonable. If it is possible to remedy the breach of contract, the right to terminate for cause may only be exercised if a grace period lapses without rectification of the contractual breach.
- 12.4 The Client is also entitled to terminate the contract without notice and without any further requirements if the ability to fulfill the contract properly is put at risk due to the Contractor's financial situation significantly worsening. This applies in particular if (i) the Contractor repeatedly fails to pay its subcontractors on time, or (ii) no contractually agreed sureties have been issued, or (iii) insolvency proceedings have been rejected due to a lack of assets.
- 12.5 Notice of termination must be given in text form.
- 13 **Changes to the performance, additional performance**
- 13.1 When concluding the contract, the Contractor shall have already taken into account the changes and difficulties that are usual for such performance. As a result, the Client shall be entitled to demand the changes or additions resulting from a concretization without this changing the conditions of the contract.
- 13.2 Until acceptance, the Client shall be entitled to demand a change in performance or additional performance from the Contractor in writing. The Contractor shall be obliged to execute the change in performance or any additionally assigned performance as long as it does not deem them to be unacceptable. The effects on contract deadlines and on remuneration shall be agreed in writing in the form of a supplement to the contract. Unless amendments to the remuneration or deadlines are agreed in the supplement to the contract, the changed or additional performance is to be carried out in the framework of the existing remuneration agreement or deadline agreement.



- 13.3 If, during the execution of amendments or additional performance, it becomes apparent that the requirement for changes or the requirement for additional performance is due to an error on the part of the Contractor during execution of the contract, the agreements on any changes to remuneration or deadlines shall become void.
- 13.4 If the contract includes hardware maintenance services and the Customer's inventory of the hardware specified in the contract increases or decreases, the Customer shall notify the Contractor of the change in inventory immediately in text form. Once the Contractor receives the notification, the inventory shall be deemed to have changed accordingly. If the Contractor's scope of services changes by at least 5% due to the change in inventory, the parties shall undertake to adjust the flat-rate remuneration. The provisions of the contract shall apply to the change; otherwise, the law shall apply.
- 14 Performance time, penalty for delay**
- 14.1 The performance dates and deadlines specified for the Contractor in the contract are binding.
- 14.2 If the Contractor is in default with a delivery or performance, or the performance cannot be accepted on schedule due to defects, the Customer shall be entitled to demand a contractual penalty from the Contractor in the amount of 0.3% of the order value of the delayed service per calendar day, but not more than 10% in total. The Contractor shall not be in default if the delivery/service is not provided due to a circumstance for which it is not responsible. A paid contractual penalty shall be offset against damage claims for delay. The Client reserves the right to claim the contractual penalty until final payment. These provisions also apply if a work produced on time is not accepted due to defects.
- 14.3 The Contractor is obliged to notify the Client in text form without undue delay if circumstances that could lead to non-compliance with the agreed dates and deadlines arise or become apparent. Furthermore, the Contractor is obliged to notify the Client of any hindrance regarding proper performance of the contract due to the failure of the Client to perform at all or to perform in conformity with the contract.
- 15 Remuneration, invoice, payment**
- 15.1 Unless otherwise agreed and subject to clause 13.4, the remuneration defined in the contract is a fixed price and includes packaging and delivery. This remuneration covers the entire performance to be rendered by the Contractor under the contract – including usage rights, ancillary services, travel expenses, costs for transport, other expenses and insurance, etc. Section 313 of the German Civil Code shall remain unaffected.
- 15.2 The price does not include the Contractor's statutory value added tax (VAT). VAT shall only be paid if the Contractor is entitled and obliged by the relevant statutory regulations to charge VAT separately and only if the tax is itemized separately in the invoice.
- 15.3 The Contractor shall comply with the specifications of Deutsche Bahn AG when invoicing. They can be found in the supplier portal (under Supplier Portal/Info/Invoicing) <http://deutschebahn.com/rechnungsstellung> or can be requested from the Client at any time.
- 15.4 The remuneration due shall be paid within 21 calendar days (subject to a 3% discount) or 30 days net after receipt of a verifiable invoice by the Client's invoice receipt office. Generally, payment must be made by bank transfer. Compliance with the payment period by the Client shall be determined by the date of receipt of the transfer order by the Client's bank.
- 15.5 If advance payments or installment payments have been agreed, the period allowed for payment shall begin on the agreed payment date if the invoice has been received on time by the contractually specified invoice recipient and the agreed collateral has been provided.
- 16 Form, severability clause, applicable law, place of jurisdiction, language**
- 16.1 There are no additional agreements to the contract unless the individual contract makes explicit reference to additional agreements. To preserve evidence, changes or additions to this contract – including this clause – must be agreed in the form of the contract of which these General Contractual Terms and Conditions are an integral part.
- 16.2 Should any individual provisions of this contract be or become void, the remainder of the contract shall remain unaffected. The void provision shall be replaced by the relevant statutory regulation.
- 16.3 The contract and any claims resulting from it shall be subject to German law only, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG, 1980).
- 16.4 The place of jurisdiction shall be the Client's registered office. In the case of framework contracts, this jurisdiction shall also apply to disputes relating to individual orders, irrespective of the seat of the entity placing the order.
- However, the Client is also entitled to invoke the courts at the place where the Contractor has its registered office.
- 16.5 Only the German version of this contract is valid and legally enforceable. Unless otherwise expressly agreed in the contract, all documents shall be created in the German language, and all statements shall be issued in the German language.
- 17 Transfer clause**
- The Client is entitled to transfer its rights and duties under the contract to its affiliated group companies without requiring the consent of the Contractor. The regulations concerning the transferability of usage rights, the legal provisions for the transfer of claims and the obligation in accordance with clause 11.4 of this contract shall remain unaffected.
- 18 Upper limit for contractual penalties**
- Unless otherwise agreed, the total of all contractual penalties claimed from an individual contract may not exceed 10% of the agreed remuneration. The assertion of a contractual penalty in accordance with clause 1.9 and clause 1.10 (Integrity Clause) and of claims for damages, independent of the legal basis, shall remain unaffected.

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