



# General Contract Terms and Conditions of Deutsche Bahn AG and its Affiliated Enterprises for Consultancy and Other Services

(General Contract Terms and Conditions – Consultancy and Other Services) dated May 1, 2022 -

## 1 General provisions, integrity clause

- 1.1 These and any supplementary contractual terms and conditions of the Client shall apply exclusively. Any contradictory, supplementary or divergent terms and conditions specified by the Contractor shall form a component 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 these contractual terms and conditions of the Client.
- 1.2 The services must comply with the Client's standards and norms as agreed in the contract. 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 Contractor shall ensure that the services meet the objective of the contract and that they are carried out with the required profitability.
- 1.3 If it is necessary to revise any of the documentation created prior to acceptance, this shall be performed by the Contractor without entitlement to separate remuneration.
- 1.4 The Contractor shall abide by the contractual remuneration agreements. Any entitlement to amended remuneration requires agreement on the amount of this remuneration prior to execution of the service, and must be in writing for evidentiary purposes.
- 1.5 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 and interpersonal skills will be deployed and that these employees will be committed to exercising the utmost care and attention to detail. Similarly, if the Contractor engages subContractors, they must also have suitable technical qualifications; in addition, this requires the prior written consent of the Client, which may not be refused without good reason. If any personal data is processed, consent can be refused due to the lack of data protection measures.
- 1.6 The Contractor shall not replace the employees it has engaged to fulfill the contract or the contractually agreed employees without good reason. To replace these employees, the Contractor must acquire the prior written consent of the Client, which may not be refused without good reason. In justified cases, the Client has the right at any time to demand the replacement of employees deployed by the Contractor, if fulfillment of the contract would otherwise be jeopardized. Before commencing tasks, the Contractor shall supply the Client in relation to the employees deployed for contract performance with a list of all deployed persons that, according to the legal provisions, require a work permit or a permit for the purpose of self-employment, with the assurance that the deployed persons have documentary proof of eligibility to work (e.g. residence permit with work permit or permit for the purpose of self-employment). The list of persons shall include the following information: first and last name, nationality, issuing authority and associated validity (end date) with requisite residence and work permits. The Contractor shall notify the Client without undue delay of any changes by stating the relevant information in writing. The Client has a right to verify the information at any time as required. For the purposes of verification, the Contractor shall upon request of the Client submit proof without undue delay for identification purposes and, where necessary, any requisite residence permits with a work permit or permit for the purpose of self-employment for the affected employees. The aforementioned provisions apply equally to subContractors of the Contractor; the Contractor shall obtain contractual commitments from its subContractors accordingly.
- 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 The Contractor may not attend to its own or external company or supplier interests where there is a relationship to the commissioned service.
- 1.9 Interim and final reports and presentation documents – each in copy quality – shall be provided to the Client without special remuneration. Additionally, at the request of the Client, all reports in the form of electronic files (Word, Excel, PowerPoint, Access) are to be provided to the Client in a format specified by the Client without special remuneration. The Contractor or person appointed by it in writing shall sign the reports or other documents as author and shall include the date. At the request of the Client, the Contractor shall make its results available to the Client in the form of a presentation without any entitlement to additional remuneration.
- 1.10 Within the framework of the contractual relationship, the contracting parties agree 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 members of the Management Board, 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 the 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 trade 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 trade 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)
  - violations 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 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



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employees, managing directors, or Management Board members of the Deutsche Bahn Group are offered, promised or granted undue advantage and where specific assistance with design and tendering is provided in order to subvert competition.

- 1.11 If, at the time of the contract award, 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 violation. The right to prove loss or damage of a different value and claim damages accordingly shall remain unaffected. Furthermore, other contractual or legal claims of the Client shall remain unaffected.
- 1.12 If, in the context of a contract award or providing services, an employee, a Managing Director or a Board Member of the Contractor, or any subContractor working under the direction of the Contractor, commits gross misconduct within the meaning of Item 1.10 to the detriment of the Client, the Contractor shall pay the Client a contractual penalty, unless it is not responsible for the violation. 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 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.

A contractual penalty in accordance with this provision shall be inapplicable if an act of gross misconduct within the meaning of section 1.10 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 Item 1.11 and concurrent acts of gross misconduct according to Item 1.10 (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. Item 1.11 shall apply conclusively in this regard.

- 1.13 If an act of gross misconduct within the meaning of section 1.10 is committed by an employee, managing director or member of the board of the Contractor,
- the Client shall be entitled to invoke extraordinary termination of the contract without notice,
  - 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 location.

- 1.14 The Contractor undertakes to actively contribute towards preventing gross misconduct within the meaning of Item 1.10 and investigating suspected misconduct as well as to cooperate with the Client in this respect in the scope of the contractual relationship.

If the Contractor gains knowledge of facts that constitute a suspicion of gross misconduct within the meaning of Item 1.10 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 without undue delay. 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.

- 1.15 To make it possible to establish and organize legally compliant business relations, in the scope of their contractual relationship, 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.

The Contractor declares that its enterprise 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 enterprise'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 Agreement if any matches are found during the aforementioned checks.

### 2 Safeguarding the interests of the Client by the Contractor

- 2.1 The Contractor shall protect the rights and interests of the Client within the scope of the services it provides.
- 2.2 The Contractor is not permitted to represent the Client unless it receives special authorization from the Client in writing.

### 3 Execution of the service, collaboration

- 3.1 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 remains unaffected. The Contractor shall provide the Client with the required information on the status of contract performance without special remuneration and shall, upon request, grant the Client access to its premises to view the documents relating to execution of the contract. The confidentiality interests of the Contractor must be taken into account.
- 3.2 The Contractor shall inform the Client of all details relating to contract fulfillment where knowledge of these details is necessary for the Client.
- 3.3 In the case of services under a contract for services, the responsibility for the work results lies solely with the Contractor. This shall also apply if the contracting parties form a project team. If the contracting parties form a project team for services under a contract for services, all meetings undertaken by the project team must be documented. The Contractor is responsible for such documentation; it shall make the minutes of each meeting available to the Client without undue delay. If there is no objection to the content of the minutes of a meeting within a period of two weeks, the content shall be deemed to be correct.
- 3.4 The contact person nominated by the Client for execution of the contract is authorized exclusively for functional collaboration with the Contractor. The contact person is not authorized to issue contract-forming statements (e.g., amendments or supplements to the contract or suspension or termination of the contract).
- 3.5 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.



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## 4 Entering railroad facilities

If the Contractor needs to perform services where entry to the railroad operations danger zone within railroad facilities cannot be prevented, it must inform the Client in good time so that the Client can ensure its protection. The Client shall inform the Contractor of the dangers within the railroad operation danger zone and the necessary safety precautions; the Contractor is responsible for providing the relevant safety information to its employees. The Contractor must confirm receipt of the relevant safety information and documentation.

## 5 Acceptance

5.1 If the Contractor has performed acceptance-ready services in accordance with the contract, it shall offer these to the Client and send a written request to have these services accepted. Unless otherwise agreed in the contract, the Client shall declare acceptance or justifiably refuse it within 14 calendar days. If the Client neither confirms nor refuses acceptance within the aforementioned period, the service shall be deemed to have been accepted. The service shall also be deemed to have been accepted if it is used productively by the Client.

5.2 If agreed items of work are accepted, acceptance shall be restricted to the relevant partial service. Upon acceptance of the final partial service, the overall service shall be accepted by testing the ability of all partial services to interact with one another.

## 6 Assignment of claims, setting off

6.1 The Contractor shall not be permitted to assign its claims against the Client to third parties. Section 354a of the German Commercial Code (*Handelsgesetzbuch*, "HGB") remains 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 setting off.

## 7 Rights to work results, right to data

7.1 The Contractor shall make the work results it shall produce during contract performance (Item 7.2) 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 All material and immaterial results, including all existing commercial intellectual property rights and copyrights, as well as legal positions similar to intellectual property rights, that come into existence during contract performance on the part of the Contractor ("work results") belong to the Client at the moment of their creation, regardless of their form. Work results are in particular, but not limited to, programs, program lists, utility software, documentation, documents (for training purposes in particular), protocols, drawings and source code, trade and business names, domain names, as well as legal positions existing in each instance, such as copyrights (including rights to computer software) and usage rights developed based on the above, supplementary neighboring rights, including database protection rights, trademarks and business designations, designs and Community designs, patents and utility models, registered designs and semiconductor protection rights, supplementary protection certificates, rights to trade secrets and expertise; in each case, this shall include any applications and entitlements worldwide. The Contractor transfers all work results to the Client for this purpose. The client shall accept this transfer. Insofar as a transfer of work results to the Client is not possible for legal reasons, the Contractor grants the Client the exclusive right unlimited in time, space and content, to use the work results for all types of usage, including types of usage that are currently unknown, and in particular to reproduce them, publish them, to make them publicly accessible, to edit, or to change them. The Contractor shall do so without receiving special remuneration. The Client shall be entitled to transfer the rights granted to it in whole or in part to third parties or to grant third parties rights of use through sublicensing. The Client accepts the granting of rights Section 14 of the Copyright Act [Urhebergesetz - UrhG] shall remain unaffected by the above terms.

7.3 Insofar as the work results contain preexisting rights and/or industrial data (Item 7.8) belonging to the Contractor or third parties, the Contractor warrants that the Client may use these rights and non-

industrial data as elucidated above. The Contractor grants the Client a non-exclusive usage right to these rights and industrial data, including all materials, techniques, working methods, and expertise. Otherwise, however, the Contractor shall grant the Client this right in accordance with the aforementioned granting of rights (Item 7.2), insofar as this is necessary for the usage of work results.

7.4 The Client shall have the right to publish the work results and all related documents. The Client shall be required to specify the names of the Contractor and any third parties involved only if doing so is customary in the industry. The Contractor warrants that all third parties involved have declared a corresponding waiver of their right to be named, and it shall indemnify the Client against any claims asserted in this respect. The Contractor shall require consent from the Client prior to publishing work results.

7.5 The Contractor must not use any open source components that trigger a so-called copyleft effect during contract performance. Any usage of open source software by the Contractor to provision the contractual services shall require prior written consent from the Client, and it shall relate specifically to certain open source license conditions.

7.6 The Client shall have sole authorization to file applications for intellectual property rights regarding work results that are eligible for intellectual property rights, unless it expressly waives this right in writing vis-à-vis the Contractor. The Contractor shall inform the Client about the creation of such work results without undue delay. Insofar as the Employee Inventions Act (*Arbeitnehmererfindungen*, "ArbnErfG") is applicable to work results, the Contractor shall do the following:

- make use of the work results without restrictions according to the ArbnErfG and
- provide the Client with these work results in return for reimbursement of the employee inventor remuneration according to Section 9 of the ArbnErfG; otherwise, it shall make these work results available without special remuneration according to Item 7.2.

Preparing applications for intellectual property rights shall be the responsibility of the Client.

7.7 In addition to Item 11, the Contractor shall treat all work results according to the obligations specified therein, unless an exceptional case as per Item 11.2 exists.

7.8 All values that have been recorded as a result of contract performance, as well as data and analyses directly based on these values, including all results of measurements and output of sensor devices and statistics, raw data, analysis data, electronic and/or written data, geodata, evaluation data, machine-generated data, such as operational and diagnostic data and statistics ("Industrial Data") - regardless of whether they have been collected by equipment (in particular, measuring devices) belonging to the Contractor or the Client - belong to the Client and may be used exclusively by the Client. "Industrial data" refers to business secrets that are to be handled confidentially according to Item 11. All rights to industrial data belong exclusively to the Client. The Contractor may collect, process, and use industrial data only to the extent to which the Client granted its consent in writing in advance or to the extent necessary to perform the contractually owed services. Any further usage of industrial data or of knowledge developed based on industrial data on the part of the Contractor or the transfer of such to third parties shall require prior written consent from the Client.

7.9 The above provisions shall continue to apply after termination of the contractual relationship.

## 8 Material defect claims for services under a contract for services

8.1 The Contractor is responsible for the faultless provision of services and work results and for their suitability for the contractually agreed purpose.

8.2 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. If a partial service has already been used by the Client, however, the limitation period for this partial service begins on the first calendar day of use.



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Unless otherwise agreed, the limitation period for the interaction of all partial services (overall service) begins with acceptance of the final partial service.

- 8.3 In the case of defects, the Client is entitled to all statutory claims and rights. The Client is entitled to any rights resulting from an agreed guarantee, which may not reduce the statutory claims of the Client.
- 8.4 The Client shall notify the Contractor, within an appropriate time period, of any defects ascertained.
- 8.5 Due to legal liability, the Contractor is obliged to rectify any reported defects without undue delay. If the Contractor falls behind with rectification of the defects, Item 15.2 shall apply accordingly.
- 8.6 Rectification of the defects also includes correction of the documentation if this is affected by the breach of duty or subsequent performance.
- 8.7 If the notification of defects is justified, the limitation period in accordance with Section 8.2 is extended by the period during which the work results cannot be used for their intended purpose due to the defect; this applies to the work result as a whole. Statutory regulations concerning the suspension of the period of limitation shall remain unaffected.
- 8.8 Where the notification of defects is justified, the costs of tracking the defects shall be borne by the Contractor. If, following consultation, the Client supports the Contractor in tracking 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 tracking the defects.
- 8.9 The Contractor shall reimburse the Client for all verified necessary expenses that the Client has incurred in connection with subsequent performance.

### 9 Intellectual property right infringements

- 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 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 intellectual 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 intellectual property rights. The Client shall support the Contractor here to the extent necessary. Any associated necessary and verified expenses shall be reimbursed. 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 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.
- 9.3 Furthermore, the statutory regulations regarding the liability for defects shall apply.

### 10 Liability for damages

The contracting parties shall be mutually liable for damages

- in case of intent or gross negligence, in the full amount, irrespective of the type of damage,
- in case of infringement of duties essential to the contract, in the full amount,
- in case of minor negligence, as long as no material contractual duties are breached, to the amount of the typical foreseeable damage; this does not apply, however, to personal injuries and injuries to third parties for which liability is the full amount.

### 11 Protection against the misappropriation of trade secrets, confidentiality, data protection, return of documents

- 11.1 The contracting parties shall ensure that any persons they entrust with processing, performance of or handling the contract comply with statutory privacy regulations and the German Federal Trade Secrets Act (*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, as well as any 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 in any other way, such as digitally. This obligation applies regardless of whether the information that is 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 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 non-disclosure 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 of the General Data Protection Regulation (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 is able to 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 duty of confidentiality; or (3) was/were verifiably obtained by the receiving contracting party itself without 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 they are employees or third parties – that were entrusted with processing, performance of or handling the contract at the time of the contract being formed or are entrusted with this occasionally as part of collaboration. The contracting parties shall also provide evidence of this obligation to the other contracting party on request. Additionally, the contracting parties shall only disclose confidential information to those persons who are reliant 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,



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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 aforementioned obligations. Claims for damage compensation and any other claims or rights (according to the *GeschGehG*, for example) shall remain unaffected. The obligations to maintain confidentiality shall remain in place for a further 5 (five) years after the contract has come to an end or has 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 requirements shall remain unaffected hereby.
  - 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 round or approximate figures, and to percentage comparisons with previous orders.
- ## 12 Security of the information systems of the Client
- 12.1 Direct or covert access to the information systems (operational systems, networks, programs, datasets) of the Client and its affiliated enterprises is only permitted to the Contractor upon conclusion of a supplementary contract within the meaning of Item 11.7 if it has received express access authorization in writing from the Client; such access permission is restricted to the expressly approved and deployed employees of the Contractor or its subContractors. Access permissions cannot be transferred to third parties. Any access permission granted may be used only in the context of the contractually assumed services.
  - 12.2 If conditions of use exist for the connection of devices to data networks of Deutsche Bahn (hereinafter "conditions of use"), the Contractor shall comply with these when using the information systems of the Client and its affiliated enterprises. The Contractor shall not establish a connection to the data network unless these regulations are complied with. Upon written request, the Client shall make the conditions of use available to the Contractor.
  - 12.3 The Contractor undertakes to make proper use of its deployed IT/OT systems (e.g. notebooks, etc.) in the data networks of the Client and its affiliated enterprises. The Contractor may only use IT/OT systems that conform to the current state of the art at the time of use and shall use effective protective measures to prevent the penetration of viruses or other damaging code. These protective measures include a state-of-the-art virus scanner and current security patches, updates, and service packs.
  - 12.4 The use of hacking tools, sniffer software, etc. is forbidden unless this has been expressly approved. The Contractor is responsible for ensuring that the data networks of the Client and its affiliated companies are not coupled with other data networks.
  - 12.5 After termination of the contractual relationship, the Contractor undertakes without undue delay, at all the Contractor's and its subContractors' primary and secondary locations, to securely and sustainably delete, destroy or return to the Client all data connected to the contractual relationship, unless it is legally obliged to retain the data. Upon request, the Contractor shall provide evidence of this to the Client.
  - 12.6 The Client reserves the right to carry out blocks or monitoring as a result of government agency orders or in line with the conditions of

use. Also, interruption of network access shall be possible at any time if the devices of the Contractor that are connected to the network in any way affect the operating security or the operating behavior of the network or of other devices or software connected to the network.

- 12.7 The aforementioned applies subject to differing regulations concerning the handling of personal data in the contractual relationship in accordance with Item 11.7.

## 13 Termination

- 13.1 The Client is entitled to terminate work contracts in accordance with Section 648 of the German Civil Code (*Bürgerliches Gesetzbuch*, "BGB") at any time without observing a period of notice.
- 13.2 If, in the case of service contracts, no specified scope of services (e.g. the number of days worked or the term of the contract) has been agreed, the contracting parties are entitled to terminate the contract subject to a period of notice of 14 calendar days before the end of the month.
- 13.3 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 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 without notice may only be exercised if the grace period lapses without rectification of the contractual breach.
- 13.4 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 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.
- 13.5 Notice of termination must be given in text form.

## 14 Amendment in service, additional service

- 14.1 The Client is entitled to demand from the Contractor details of any amendments or additions that result from specifying the order, and this does not change the terms and conditions of the contract subject to Item 14.2, Sentence 3.
- 14.2 The Client is entitled to request from the Contractor, in writing, details of any amendments in service or any additional services; in the case of work, this applies until acceptance; in the case of services, this applies until termination of the contract. The Contractor is obliged to execute the amendment in service or any additional services transferred 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 amended or additional service is to be carried out in the framework of the existing remuneration agreement or deadline agreement.
- 14.3 If, during the execution of amendments or additional services, it emerges that the requirement for amendments or the requirement for additional services is due to an error on the part of the Contractor when executing the contract, the agreements on any changes to remuneration or deadlines shall become void.

## 15 Delivery/performance time, penalty for delay

- 15.1 The delivery/performance dates and deadlines specified for the Contractor in the contract are binding.
- 15.2 In case of delay on the part of the Contractor with regard to a goods or obligation to render services, or if the service cannot be accepted on time due to defects, the Client shall be entitled to impose a contractual penalty amounting to 0.3% of the contract value of the delayed service for each calendar day, but not exceeding a total of 10%. 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 the on-time work is not accepted due to defects.
- 15.3 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.



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Furthermore, the Contractor is obliged to notify the Client of any circumstances preventing proper performance of the contract due to the failure of the Client to execute services or to execute them in conformity with the contract.

### 16 Remuneration, invoice, payment

- 16.1 Unless otherwise agreed, the remuneration defined in the contract is a fixed price and includes packaging and delivery. This remuneration covers all services to be performed by the Contractor in accordance with the contract – including usage rights, ancillary services, travel expenses, costs for transport, other expenses and insurance, etc. Section 313 of the BGB shall remain unaffected.
- 16.2 The 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.
- 16.3 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)) <http://deutschebahn.com/rechnungsstellung> or can be requested from the Client at any time.
- 16.4 The remuneration due is to 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. Payment shall generally 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. 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.

### 17 Written form, severability clause, applicable law, place of jurisdiction, language

- 17.1 There are no additional agreements to the contract unless the individual contract makes explicit reference to additional agreements. 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 these General Contractual Terms and Conditions are an integral part.
- 17.2 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.
- 17.3 The contract and any claims resulting from it shall be subject to German law only.
- 17.4 The place of jurisdiction is the place where the Client has its registered office. In the case of framework contracts, this responsibility shall also apply to disputes relating to individual requisitions, regardless of which place is making the requisition. However, the Client is also entitled to invoke the courts at the place where the Contractor has its registered office.
- 17.5 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.

### 18 Transfer clause

The Client is entitled to transfer its rights and duties under the Agreement 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 Item 11.7 of this contract shall remain unaffected.

### 19 Overall limit of contractual penalty

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 sections 1.11 and 1.12 (integrity clause) and of claims for damages, independent of the legal basis, shall remain unaffected.

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