



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

- General Terms and Conditions of Purchase as of May 1, 2022 -

1 General provisions and integrity clause

- 1.1 These Terms and Conditions of Acquisition of the Client shall apply exclusively. They form a component of the contract and any supplements. Any contradictory, supplementary or divergent terms and conditions specified by the Contractor shall form a component of the contract only if expressly accepted in writing by the Client. This shall also apply to any terms and conditions that are specified in order confirmations or other confirmations of the Contractor. Acceptance of goods/services shall not constitute acceptance of the terms and conditions of the Contractor. The Terms and Conditions of Purchase of the Client shall also apply if the contract with the Contractor is executed without reservation, despite knowledge of contradictory terms and conditions, supplementary terms and conditions or terms, and conditions that diverge from these Terms and Conditions of Purchase of the Client.
- 1.2 Within the framework of the contractual relationship, the Contracting Parties undertake to implement all necessary measures to prevent corruption, other criminal offenses and any 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 business information of the Client entrusted in the course of business dealings, including any such material supplied on data storage media,
 - 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 offenses; in particular, terrorist offenses, involvement in a criminal organization, money laundering, and terrorism financing,
- child labor, and other forms of human trafficking or similar offenses.
- Gross misconduct in the aforementioned sense shall also be deemed to have been committed if persons who are associated with the employees, managing directors, or board member of the Deutsche Bahn Group are offered, promised, or granted undue benefits and if specific planning and tendering assistance is provided in order to subvert competition.
- 1.3 If, at the time of 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 infringement. 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.
- 1.4 If, in the context of a contract award procedure 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 1.2 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 was committed by a managing director or board member of the Contractor, or
 - 5% of the net contract value if the gross misconduct was committed by an agent holding full power of attorney or an authorized representative, or
 - 2% of the net contract value if the gross misconduct was committed by other employees or subcontractors of the Contractor,
- 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 Item 1.2 is committed by a subcontractor of the Contractor and the choice of this subcontractor was made obligatory by the Client, and/or if the Contractor or its employees, board members or managing directors, or other third parties working under its instruction, did not participate in committing this act of gross misconduct.
- Cases of unlawful restriction of competition according to Item 1.3 and concurrent acts of gross misconduct according to Item 1.2 (whereby the same offender commits several separate acts of gross misconduct punishable under criminal law or whereby one and the same act of gross misconduct is an offense against several different statutory provisions) shall not be subject to the contractual penalty. Item 1.3 shall apply conclusively in this regard.
- 1.5 If an act of gross misconduct within the meaning of Item 1.2 is verifiably committed by an employee, managing director, or member of the Managing 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 premises.
- 1.6 The Contractor undertakes to actively contribute towards preventing gross misconduct within the meaning of Item 1.2 and investigating



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suspected misconduct, as well as to cooperate with the Client in this respect.

If the Contractor gains knowledge of facts that constitute a suspicion of gross misconduct within the meaning of Item 1.2 and impact on the Client, the Contractor is obliged to notify the Client of such in writing without undue delay. Furthermore, if such gross misconduct lies within the sphere of the Contractor, the Contractor is obliged to investigate the circumstances of the case. If the suspicion is confirmed, the Contractor is obliged to take appropriate specific technical, organizational and personnel measures to terminate the misconduct without undue delay and to prevent such misconduct in the future. The Contractor shall promptly inform the Client in writing on the progress and outcome of the investigation of the circumstances of the case and on any measures taken.

- 1.7 To make it possible to establish and organize legally compliant business relations 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 data 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 foreign trade regulations. When doing so, they shall observe all relevant provisions based on data protection law, especially with regard to data economy and data security.

The Contractor declares that its 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 foreign trade regulations on the part of the Client. This does not apply wherever 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 Construction documents

- 2.1 The documents transferred to the Contractor may not be made accessible to third parties, duplicated, or used for a purpose other than that agreed without the consent of the Client. They must be returned on request. Legal retention requirements shall remain unaffected hereby.
- 2.2 The Client may retain the documents transferred to it by the Contractor. The Client is entitled to duplicate and use documents for training and maintenance purposes and for other purposes agreed in specific cases.
- 2.3 If the contract or the tender documents specify both Client and Contractor drawing numbers or Client and Contractor item numbers, only the Client numbers shall be deemed binding.

3 Service execution, provisions

- 3.1 The Client may find out information about contractually executing the goods/services within business or operating hours. The documents that relate to contract performance and are required in order to find out this information must be provided for inspection on request. The confidentiality interests of the Contractor must be taken into account.
- 3.2 The Contractor may transfer the execution of the goods/services or material parts thereof to third parties only with the prior written consent of the Client. The Client must not refuse to grant this consent without good reason.
- 3.3 The Contractor shall ensure that all materials used that fall under the EU chemicals regulation REACH are registered and allowed in accordance with this regulation and having taken into consideration the use of the materials by the Client according to the subject of the contract. This shall also apply to contractors outside of the European

Union. Upon request by the Client, the Contractor shall provide suitable proof of fulfillment of this obligation.

- 3.4 Provisions shall remain the property of the Client and must be stored separately, labeled, and managed at no charge. They may be used only for the purposes of the contract in question.

4 Notification of reservations, notification of obstructions, force majeure

- 4.1 The Contractor shall notify the Client in writing immediately of any reservations it may have about executing the goods/services in the manner requested by the Client or if the Contractor believes that it is being obstructed by a third party or by the Client from executing the goods/services.
- 4.2 If the execution deadline is exceeded as a result of force majeure, the Client may request that the Contractor execute the goods/services at a later point under the terms and conditions originally agreed, or the Client may withdraw from or terminate the contract in whole or in part after a reasonable grace period has elapsed.

5 Delay

- 5.1 The lead time specified in the contract is binding. The Contractor shall notify the Client in text form without delay if circumstances arise or become apparent as a result of which the specified delivery and performance time cannot be met.
- 5.2 In the event of a delay by the Contractor, the Client shall be entitled to its full statutory rights. In the event of a delay by the Contractor, the Client shall be entitled to claim a contractual penalty amounting to 0.3% of the order value of the delayed goods/services for each calendar day but no more than a maximum of 10%. The contractual penalty shall be set off against the total amount of damages claimed in respect of the delay. The Client reserves the right to claim the contractual penalty until final payment.

6 Place of performance, transport, packaging

- 6.1 The place of performance shall be the Client's receiving location specified in the contract.
- 6.2 The costs of transport and packaging are included in the fixed price. At the request of the Client, the Contractor shall pick up the packaging materials from the receiving location and dispose of the packaging materials at its own expense.
- 6.3 Where it is financially viable for the Contractor to do so, it must use rail-borne means of transportation for the logistics services and freight transport required for the purpose of providing the goods and services. The Contractor is free to choose the carrier that it wishes to use. Before the contract award, however, it must ask at least one DB Group transport company to submit a tender.

7 Termination for cause

- 7.1 The right to termination for cause without notice 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 infringement of the principles and requirements set out in the agreed code of conduct for business partners, or multiple individual contractual violations that exceed the limits of what is considered reasonable. 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.
- 7.2 The Client is also entitled to terminate the contract without notice and without any further requirements if the ability to fulfill the contract correctly is put at risk due to the Contractor's financial situation significantly worsening. This applies in particular if (i) the Contractor ceases to pay its creditors on more than just a temporary basis, or (ii) no contractually agreed sureties have been issued, or (iii) insolvency proceedings have been rejected due to a lack of assets.



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- 8 Acceptance, complaint period, passage of risk, transfer of ownership**
- 8.1 In each case where the Contractor provides goods/services, confirmation of the acceptance must be provided at the point of handover at the Client's receiving location, unless a separate agreement for accepting goods/services has been made. Quality checks, technical acceptance, and official acceptance (by the German Federal Railway Authority, for example) replaces neither confirmation of receipt at the point of handover nor acceptance.
- 8.2 The Client shall check the goods/services for defects within a reasonable period. Delivery of a different item or of too low a quantity is considered to be a defect. A complaint shall be considered to have been submitted on time if it is submitted within two weeks. In the case of obvious deviations in quality and quantity, this period shall begin at the point when the goods/services are accepted at the receiving location. In the case of concealed deviations in quality and quantity, the period shall begin at the point when they are discovered.
- 8.3 Risk shall transfer to the Client when confirmation of receipt is provided at the point of handover or upon acceptance.
- 8.4 Ownership shall transfer to the Client when confirmation of receipt is provided at the point of handover or upon acceptance.
- 8.5 If, following confirmation of receipt at the point of handover or on the acceptance date, the contractual service or parts of the contractual service is/are rejected as not having been executed in line with the contract, the Contractor shall undertake to take back the service/part of the service at its own expense. Once a reasonable grace period has elapsed, the Client shall be entitled to return the contractual service/part of the service to the Contractor at the Contractor's expense. In such cases, risk shall not transfer to the Client before either confirmation of receipt at the point of handover or acceptance takes place once again.
- 8.6 The contractual service or parts of the contractual service that is/are to be handed over at the receiving location in return for confirmation of receipt, or accepted, or the items that are to be supplied as replacements, must be supplied by the Contractor to the Client's receiving location once again at the Contractor's own expense and risk.
- 9 Defect claims, liability of the Contractor**
- 9.1 The statutory provisions apply to defect claims asserted by the Client, with the following stipulations:
- a) The Contractor shall remain responsible for its goods/services and providing them without defects even in cases where the Client has signed, approved, stamped or labeled as "seen" or similar the plans, drawings, calculations and other execution documents provided by the Contractor.
 - b) In cases of particular urgency and/or where there is a risk of delay, the Client may, if it deems the deadline set for cure to be unreasonable, undertake self-performance in order to rectify the defect and demand compensation of the necessary expenses. The Client shall inform the Contractor of any such defect claims and of the nature and scope of the urgent measures taken without undue delay.
 - c) The Client may grant the Contractor a reasonable deadline for removing a defective item. Once this deadline has elapsed, the Client may use the contractual service at the Contractor's expense and while protecting the economic interests of the Contractor; for example, through purchase.
 - d) The limitation period for defect claims is two years from the point of acceptance or handover in return for confirmation of receipt, unless a longer period has been agreed on a case-by-case basis or legal provisions stipulate a longer period. This period shall be extended by the time during which the defective goods/services cannot be used as intended due to the defect.
 - e) The limitation on defect claims shall also be suspended if the Contractor checks for the presence of a defect itself. The suspension on the limitation shall not end until the Contractor notifies the Client in writing that negotiations have ended, or the result of the check is sent to the Client, or the Contractor refuses in writing to continue rectifying the defect. If negotiations, checks, or attempts to rectify the defect are resumed, the limitation shall be suspended once again.
- 9.2 The Contractor is liable in accordance with statutory provisions.
- 10 Confidentiality**
- 10.1 The contracting parties shall ensure that any persons they entrust with processing, performance of or handling the contract comply with statutory privacy regulations and the German Federal Trade Secrets Act (*Gesetz zum Schutz von Geschäftsgeheimnissen*).
- 10.2 The Contractor may provide information about (partial) order values or (partial) prices to external parties only in cases that are strictly prescribed by law. Press releases and other publications on orders that have been issued are only permitted in consultation with the Client. The same applies to any communication of round or approximate figures, and to percentage comparisons with previous orders.
- 11 Intellectual property right infringements**
- 11.1 The goods/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 intellectual property rights, the Contractor is obliged, at its own choice, to either change the goods/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 usage right so that the goods/service can be used by the Client in accordance with the contract and without restriction or additional costs.
- 11.2 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.
- 11.3 Furthermore, the statutory regulations regarding the liability for defects shall apply.
- 12 Invoices, prices, supplements**
- 12.1 Each contract (plus any supplements) shall be settled by means of an invoice. Invoices on account, partial invoices, partial final invoices, and final invoices must be labeled as such and numbered consecutively. Invoices with no specific labeling shall be treated as final invoices.
- 12.2 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.
- 12.3 The price specified in the contract is a fixed price and excludes any subsequent claims. Section 313 of the BGB shall remain unaffected. The fixed price does not include the Contractor's statutory value added tax (VAT). A VAT refund presupposes that the Contractor is entitled and obliged, pursuant to the relevant legal regulations, to charge the tax separately and that the tax is indicated separately in the invoice.



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12.4 Remuneration shall only be provided for additional goods/services and/or changes to the goods/services if a supplemental agreement was made in writing before the execution of the goods/services.

13 Payment, discount

13.1 Payment shall be made by bank transfer to the Contractor's account specified in the invoice.

13.2 The payment period is 21 days with a 3% discount or 30 days net.

13.3 The payment period shall begin when the verifiable final invoice (as specified in section 12.2) arrives at the location specified in the contract, but not before the day on which the contractual service is handed over in return for confirmation of receipt or is accepted.

13.4 In the case of agreed payments on account, the payment period shall start on the day when a verifiable invoice on account is received, but not before collateral is provided as agreed.

13.5 The point at which the transfer instruction is submitted to the bank/credit institute shall be decisive in determining whether the Client has made the payment on time.

14 Assignment of claims, right of lien, offsetting

14.1 The Contractor shall not be permitted to assign its claims against the Client to third parties. Section 354a of the HGB shall remain unaffected.

14.2 The Contractor shall not be entitled to exercise any lien or other right of retention if this is based on counterclaims from other legal transactions with the Client.

14.3 The Contractor shall be entitled to offset its claims only against claims (including claims arising from other legal relationships) that are undisputed or that have been established as final and absolute by a court of law.

14.4 The Client shall be entitled to full rights of lien and offsetting.

15 Jurisdiction, applicable law, written form

15.1 The place of jurisdiction shall be the location of the Client's registered office. In the case of framework contracts, this 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.

15.2 German law applies exclusively, to the exclusion of the UN Convention on Contracts for the International Sale of Goods. Only the German version of this contract is valid and legally enforceable.

15.3 For purposes of evidence collection, changes or additions to this contract - including this clause - must be agreed in the form of the contract of which the General Terms and Conditions of Purchase are a component part.

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