



General Terms and Conditions of Purchase (AEB) of WINDHOFF Bahn- und Anlagentechnik GmbH

– hereinafter referred to as “The CLIENT” –

Version: August 2021

1. Scope of Application

- 1.1. These General Terms and Conditions of Purchase shall apply to all business relationships with our CONTRACTORS and will serve as the basis of all future orders placed by The CLIENT, in so far as they have not been expressly amended by written agreement between The CLIENT and The CONTRACTOR. Provided that nothing has been otherwise agreed, these General Terms and Conditions of Purchase shall apply in the version which was valid at the time of the order placed by The CLIENT, and in any case in the version last communicated to The CONTRACTOR in the form of written text, and shall also serve as an outline agreement for future contracts of a similar kind, without the need for The CLIENT to have to refer to this repeatedly in each individual case.
- 1.2. These General Terms and Conditions of Purchase shall apply exclusively. Any General Conditions of Business of The CONTRACTOR which otherwise deviate from, oppose or complement these shall only become constituent parts of the contract when we have expressly agreed to their validity in writing. Any Conditions of Business of The CONTRACTOR which so deviate and/or complement these shall also not be included in the contract where The CLIENT does not expressly contradict them in each individual case, or, as the case may be, where a delivery or service is accepted unreservedly.

2. Tenders, Documents, Non-Disclosure

- 2.1. Tenders from The CONTRACTOR are non-binding on The CLIENT and shall be submitted free of charge. The CONTRACTOR shall point out any ways in which his tender deviates from the request for quotation (RFQ) of The CLIENT.
- 2.2. Any drawings, models, exemplars and other documents produced by The CLIENT and placed at the disposal of The CONTRACTOR, or made available for his information, may only be used when working on the tender and for carrying out the delivery of same. The CLIENT exclusively reserves all proprietary rights and copyright. All such materials are to be returned to The CLIENT immediately and without charge at his request after any work on the request for quotation (RFQ) or after completion of the delivery as ordered; any and all copies shall be irretrievably destroyed or deleted, or their use restricted to keeping them in line with any legal obligations to do so.
- 2.3. No documents shall be disclosed to Third Parties, and this shall continue to be the case even after the end of the contract. This non-disclosure obligation ceases to exist only when and in so far as the knowledge contained in the documents handed over enters the public domain.

3. Completion of the Contract

- 3.1. Orders need to be in the form of text documents (e.g. letter, Fax, e-mail) to be able to come into effect. The same applies to any amplifications, amendments and secondary agreements agreed between The CLIENT and The CONTRACTOR before, during or after the completion of the contract.
- 3.2. An order from The CLIENT becomes binding when confirmation of instructions takes place which corresponds to the content of the order, and where this takes place at the latest within 10 days from the date of the order, or within 7 working days from the receipt of the order (“Acceptance Period”)
- 3.3. Should The CONTRACTOR include in his confirmation of the written order of The CLIENT conditions which deviate from this, or fail to confirm within the Acceptance Period, this confirmation shall be deemed to be a new tender and shall require acceptance by The CLIENT.
- 3.4. A simple reservation of proprietary rights is acknowledged by The CLIENT, however continuing controls are not.



4. Code of Conduct for Deutsche Bahn, Adherence to Legal Regulations, Minimum Wage Law

- 4.1. The CLIENT draws attention expressly to the Code of Conduct („Code of Conduct“) for Deutsche Bahn AG (<https://www.deutschebahn.com/resource/blob/4101824/dc704fc97626c4f5a08c79555328220f/deutsch-data.pdf>) and the rules and principles contained therein. The CONTRACTOR undertakes to adhere to the Code of Conduct and to oblige any employees and subcontractors engaged by him to adhere in a corresponding way to these same rules and principles.
- 4.2. The CONTRACTOR (regardless of whether he has his Head Office within the EU or outside) shall ensure and shall take responsibility for the fact that all deliveries and products comply with all applicable laws and regulations relating to chemicals (in particular the Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals (“REACH”) 1907/2006/EC; EU Directive 2011/65 “Directive on the Restriction of Hazardous Substances” (“RoHS-Directive”), and EU Directive 2019/1021/ relating to Persistent Organic Pollutants (“POP-Regulation”) for the limitation and Transport of dangerous substances (in particular EC 1272/2008 Regulation on Classification, Labelling and Packaging (“CLP-Regulation”); regulations on health protection, on safety and on the protection of the environment (e.g. the applicable EU Regulations on Harmonisation Rights (in particular directives on machinery EC 2006/42; on electromagnetic compliance (EMC) EU 2014/30; the Low Voltage Directive EU 2014/35; the Simple Pressure Vessels Directive EU 2014/29 and Directive on Pressure Equipment EU 2014/68 or General Product Safety Directive EC 2001/95; and with all obligations corresponding to information and communication relating to dangerous substances in the versions which pertained at the time, or which are registered and / or permitted and / or reported. Where the circumstances surrounding the Directives require the drawing up of an EU Certificate of Compliance, The CONTRACTOR shall hand over a corresponding EU Certificate of Compliance without a separate request to do so from The CLIENT, and shall also provide suitable evidence of this at the request of The CLIENT.
- 4.3. Within the context of his business relationship with The CLIENT, The CONTRACTOR shall give an assurance that he will adhere to the guidelines of the law on minimum wages. In order to check this adherence to the payment of the minimum wage, The CLIENT can, among other things, request anonymised payment documents from any Contractors employed by The CONTRACTOR. The CONTRACTOR shall exempt The CLIENT from any and all claims which may arise in the event of a contravention on the part of The CONTRACTOR, and / or of his Subcontractors, of the guidelines of the law on minimum wages, or those of other legal regulations or wage agreements for which The CLIENT may be liable to adhere to under § 14 Posting of Workers Directive and / or other comparable regulations which may become applicable to The CLIENT. This shall also apply in cases where liability of The CLIENT may arise out of further sub-commissions, or the commissioning of hiring agents.

5. Prices

- 5.1. The price quoted in the order is binding. All prices are fixed prices and are exclusive of turnover tax at the statutory rate. They include the remuneration for all goods and services to be provided by The CONTRACTOR as transferred to him with the order, and secondary services (e.g. assembly, installation) as well as all additional costs (packing, transport costs including insurance and personal liability insurance in accordance with the regulations).
- 5.2. In the absence of any express agreement to the contrary, all deliveries shall be made “Delivered Duty Paid” (DDP) to the reception centre D-48431 Rheine, Hovestraße 10, in accordance with International Commercial Terms (INCOTERMS 2010) and including all packing.



6. Deliverables

- 6.1. The order from The CLIENT shall be the definitive document for the scope, type and content of the delivery.
- 6.2. All drawings, descriptions and other documents pertaining to the order shall be binding on The CONTRACTOR. The CONTRACTOR must check these for possible discrepancies before carrying out the order and where any are found must inform The CLIENT of this in writing without delay. The CONTRACTOR shall remain solely responsible for any drawings, calculations, plans and other documents produced by him where these are confirmed or approved by The CLIENT.
- 6.3. Even where this is not expressly agreed, the handing over of technical documentation, as well as test certificates and all other relevant certification is a requirement for the fulfilment of the contract.

7. Delivery Dates

- 7.1. The delivery dates and delivery deadlines stipulated by The CLIENT shall be binding. Deliveries and part deliveries to be made ahead of schedule shall require prior agreement from The CLIENT.
- 7.2. The CLIENT reserves the right to alter agreed delivery dates and delivery deadlines unilaterally, in so far as this is required when taking account of the interests of The CLIENT and where this is reasonable for The CONTRACTOR.
- 7.3. The day of delivery shall be the day upon which the deliverables stipulated, together with the stipulated documentation and the dispatch papers, arrive at the point of reception prescribed by The CLIENT.
- 7.4. Where The CONTRACTOR becomes aware that he will not meet a delivery date, he must inform The CLIENT in writing without delay of the foreseeable new delivery date and of any remedial action he intends to take. The notification has no impact on the start of the delay.
- 7.5. Where the delivery deadline has been exceeded, and after a reasonable time period has elapsed without successful developments, The CLIENT has the right to withdraw from the contract without further consideration. Where The CONTRACTOR has completed a part of the contracted service, The CLIENT may still withdraw from the whole contract if he has no interest in that part already completed. In addition to this, The CLIENT reserves the right to withdraw from the contract with immediate effect should The CONTRACTOR fail to provide a service on a date specified in the contract, or within a precisely specified fixed period of time, this in spite of the date-related or deadline-related service being essential to The CLIENT and after communication to this effect from The CLIENT before the conclusion of the contract or because of other circumstances surrounding the conclusion of the contract. The right to demand compensation shall not be excluded by any such withdrawal from the contract.



8. Packing, Dispatch, Receipt

- 8.1. The CONTRACTOR shall be responsible for providing suitable packing.
- 8.2. The order number allocated by The CLIENT shall be quoted on all transport documents and any other accompanying documentation. In the event that any dispatch paperwork or delivery documentation is found to be not in accordance with regulations, it shall be within the rights of The CLIENT to refuse to accept the delivery at the expense of The CONTRACTOR.
- 8.3. In so far as a separate remuneration for any packing material has been expressly agreed, The CLIENT reserves the right to return to the address of The CONTRACTOR any such packing material of value which has been used for a consignment, but which may be suitable for re-use in consideration of a reversal of two-thirds of the value of the packing material.
- 8.4. Any goods shall be dispatched to the point of receipt prescribed by The CLIENT. Receipt of the goods can only take place at the Goods Inbound point at the works from Mondays to Thursdays between the hours of 07:00 and 15:00, and on Fridays between the hours of 07:00 and 11:30. The CONTRACTOR shall ensure, in respect of any deliveries for which, under the terms of the agreement, The CLIENT shall bear the transport costs either in whole or in part, that he selects the method of dispatch which is most favourable to The CLIENT. Should The CLIENT establish that there has been a deviation from this rule after the goods have been transported, any additional costs which can be proven to have resulted shall be borne by The CONTRACTOR.
- 8.5. The goods shall be unloaded by The CLIENT at the expense and at the risk of The CONTRACTOR. Attention is drawn to the fact that where individual consignment weights exceed 2.5 tonnes, unloading by crane is possible.

9. Transfer of Risk

With the exception of the provisions outlined under 8.5. above, risk shall only be transferred to The CLIENT when goods delivered are handed over at the Reception Centre D-48431 Rheine, Hovestraße 10. Where the delivery is inclusive of assembly, the risk shall only be transferred after completion of the assembly, inspection and approval.

10. Production checks / Monitoring

- 10.1. The CLIENT shall reserve the right to check the quality of materials used, the precision of measurements and quantities, and other aspects of the quality of manufactured parts and the works of The CONTRACTOR and of his pre-suppliers both during the production process and prior to delivery. The costs of these production checks and final monitoring shall be borne by The CONTRACTOR with the exception of any costs for personnel sent out for these purposes by The CLIENT.
- 10.2. Documents relating to production checks and monitoring according to 10.1. above shall not relieve The CONTRACTOR of his responsibility and the performance of his contractual duties, and nor shall they exclude any claims arising from deficiencies.



11. Invoicing, Conditions of Payment, Lien, Off-Setting

- 11.1. Unless otherwise requested by The CLIENT, The CONTRACTOR shall make out all invoices according to the legal requirements pertaining at the time, and shall submit these to The CLIENT separately from any goods. An original delivery note, and two copies thereof, shall be attached to every delivery. Invoices and delivery notes must include the information necessary to enable accounting processes in line with regulations. This shall include in particular the order number and date, the material number (MN), the number of units belonging to each shipment and information concerning weight.
- 11.2. Any invoices which do not comply with the legal regulations, or which do not include the details listed above, or which cannot be verified, shall be deemed not to have been issued. The CLIENT pays invoices within fourteen (14) days after deduction of three (3) % discount, or within thirty (30) days net invoice value after receipt of an invoice which complies with the legal regulations, but not before receipt of the contractually agreed scope of delivery, or scope of services provided as may be the case. The date of payment of the invoice shall be deemed to be the date when the payment leaves the account of The CLIENT.
- 11.3. Payment shall take place with the reservation that invoice calculations are correct and that the services thus paid for are in accordance with the contract; payment shall not mean any acknowledgement of the compliance of the goods and services delivered with the regulations and as such shall not mean any renunciation of claims regarding fulfilment or deficiencies to which The CLIENT may be entitled.
- 11.4. The CLIENT shall be entitled to all rights to off-setting and lien, and to put in any plea against the non-fulfilment of the contract within the extent of the law. In particular The CLIENT shall be authorised to withhold any payments which are due in instances where he is entitled to make claims against The CONTRACTOR because of incomplete or defective services.
- 11.5. The CONTRACTOR shall only have the rights to off-set or to lien as a result of any counterclaims established in law, or which are not disputed.

12. Warranty, Serial Defect, Guarantee, Notice of Defects (NOD)

- 12.1. The CONTRACTOR shall guarantee without limitation that the goods delivered correspond to the specification agreed in the order, that they are made from the agreed materials, and that they are free from defect in materials, design and manufacture according to the level of technology available at the time of the delivery, and that they are free from any such defects as may negate or reduce their suitability for their normal use or that use contractually agreed, or that may negate or reduce the value of the goods delivered, and that they comply with all legal and official regulations of the Federal Republic of Germany and of the European Union.
- 12.2. The CLIENT shall reserve all existing rights which apply in the case of the delivery of defective goods. In particular The CLIENT shall have the option, in the case of material defects and defects of title, either to demand the rectification of the defect, or the delivery of a good free of defect.



- 12.3. In accordance with the choice made by The CLIENT at 12.2 above, The CONTRACTOR shall either put right any defects which may arise within the period of guarantee (12.4 below) without delay and at his own cost "at point of use", or shall deliver or provide the same goods and/or services again within a set period of time. The CLIENT is also entitled to demand from The CONTRACTOR this replacement together with all costs associated with actions taken to remedy the fault, such as, for example, removal and installation costs. This shall also apply to subsequent work required to remedy faults which The CLIENT may carry out, or may cause to be carried out, where a prior agreement to do so with The CONTRACTOR was not possible because of particular requirement for prompt action or where to delay may prove dangerous, most particularly where the damage is a threat or where the level of damage is unusually high. Any costs of investigation shall be repaid to The CLIENT where the investigation has found evidence of defects. The liability to pay compensation remains unaffected where a demand to remedy defects cannot be justified; in this regard The CLIENT shall be liable only where he acknowledged, or as a result of gross negligence did not acknowledge, that no defect was present.
- 12.4. Serial defects shall be defined as follows: a serial defect is present when in more than 5% of the contracted products a fault occurs in the same component and with the same cause. A serial defect is also present where the defect rate of 5% is not reached, but The CLIENT may justifiably make the assumption based on a defect in design, material or manufacture that this defect will appear in more than 5% of contracted products of a similar kind. If this is the case The CONTRACTOR shall make good the defect in all contracted products of the batches concerned free of charge. Furthermore, The CONTRACTOR shall reimburse The CLIENT for all associated costs that may be incurred by The CLIENT or by any Consumer of The CLIENT in exchanging the defective contracted products.
- 12.5. In the absence of any agreement to the contrary, any warranty-related claims by The CLIENT shall come under the statute of limitation within a period of three years after the delivery of the goods by The CONTRACTOR. Where the product delivered has been used for a construction project in accordance with its usual application and has caused deficiencies in this project, any guarantee-related claims by The CLIENT shall come under the statute of limitations within five years from the date of transfer of risk.
- 12.6. Should The CONTRACTOR or a Third Party adopt a guarantee for the quality of construction of the item delivered, or for the fact that the item delivered shall retain a specified quality for a specified period of time (a guarantee of durability), in the event of a claim The CLIENT shall be entitled, without prejudice to any claims offered in law, to all rights contained in the guarantee to those conditions stated in the warrant and in the associated promotional material for the same in respect of those protections afforded by the said guarantee. In those cases where The CONTRACTOR has assumed a guarantee of durability, the assumption shall be made that any material defect which comes to light during its period of validity shall give rise to those rights contained within the guarantee.
- 12.7. Notice of Defects (NOD) shall be considered to have been registered in time when notice of obvious defects has been communicated to The CONTRACTOR within a period of 10 days after receipt of the goods. As long as the removal of the goods is agreed, there shall be no obligation to examine these.

13. Recourse against Suppliers

- 13.1 The legally defined rights of recourse within a supply chain (Recourse against Suppliers according to §§ 445a, 445b, 478 of the German Civil Code (**Bürgerliches Gesetzbuch [BGB]**) shall be at the unreserved disposal of The CLIENT, alongside any claims against defects. In particular, The CLIENT shall have the right to demand of The CONTRACTOR the exact same recourse in which The CLIENT owes his Customer in each individual case (remedial action or replacement delivery). The legal right of The CLIENT to choose (§ 439 para. 1 of the German Civil Code (**Bürgerliches Gesetzbuch [BGB]**) shall, however, not be restricted by this decision.



- 13.2 Before The CLIENT shall acknowledge or meet a valid claim against a defect made by his Customer (including reimbursement of expenses according to §§ 445a para. 1, 439 paras. 2 and 3 of the German Civil Code [**Bürgerliches Gesetzbuch BGB**]), he shall inform The CONTRACTOR and shall request in a brief explanation of the circumstances a written response from him. Where no substantiated written response is received from The CONTRACTOR within an appropriate period of time, and where also no mutually agreed solution is forthcoming, then the claim against the defect actually allowed by The CLIENT shall be deemed to be owing to his Customer. In this case it shall be the responsibility of The CONTRACTOR to provide proof to the contrary.
- 13.3 Any claims for Recourse against Suppliers made by The CLIENT shall also be valid where the defective good was subject to further work from The CLIENT or another Subcontractor (for example, where it was installed into another product.)

14. Trademark Rights of Third Parties

- 14.1. The CONTRACTOR shall guarantee that no rights of Third Parties are infringed by the supply, or the use of the goods supplied, most particular those trademark rights such as patents, trademarks or utility patents. The CONTRACTOR shall undertake to indemnify The CLIENT from all claims by any Third Parties which may result from any alleged infringement of rights that may arise at the point submission of the first written request. This shall not apply in cases where The CONTRACTOR cannot be held accountable for the infringement of the trademark rights. This is particularly the case where and as long as the infringement of the trademark rights is based on standards given by The CLIENT in drawings, exemplars or other specifications. The obligation to indemnify shall also cover other expenditure which may be incurred by The CLIENT as a result of claims by Third Parties.
- 14.2. The limitation period for the claim for indemnification shall be two (2) years from the time where The CLIENT gains knowledge of, or due to his gross negligence is not aware of, the circumstances which form the basis of the claim. The claim for indemnification shall otherwise come under the statute of limitations without consideration of knowledge or grossly negligent ignorance ten (10) years from its inception.

15. Contractual Penalties

- 15.1. Should The CONTRACTOR culpably fail to fulfil his obligations to supply in accordance with the stated deadlines, The CLIENT shall be able to demand a contractual penalty amounting to 0.5% of the total net value of the contract per calendar day, limited to a maximum penalty of 5% of the total net value of the contract, alongside the fulfilment of the contract itself. The CLIENT shall also reserve the right to be able to prove that higher losses have arisen. In such a case the contractual penalty shall take into account the ongoing losses.
- 15.2. A contractual penalty equal in value to that cited above at 15.1 shall be paid by The CONTRACTOR in the case of culpable reduction in quality for the period from the reporting of the defect up until the time of the rectification thereof. The basis for the calculation here shall be the part of the contractual item affected by the reduction in quality.
- 15.3. The CLIENT shall not be under any obligation to reserve the enforcement of the contractual penalty to the point of acceptance, but shall rather continue to have the right to apply any such penalty at any time up to the final payment.

16. CONTRACTOR's Liability

Provided that there is no agreement otherwise in these General Terms and Conditions of Purchase or in the Contract based on these conditions, The CONTRACTOR shall be liable in accordance with all legal requirements.



17. Producer Liability

- 17.1 Where The CONTRACTOR is responsible for damage to a product, he shall have to indemnify The CLIENT from any and all claims from Third Parties in so far as the cause of the damage resides in his territory and within the scope of his organisation, and where he himself is liable in relation to Third Parties.
- 17.2 Within the framework of his obligation to indemnify at 17.1 above, The CONTRACTOR shall have to reimburse any expenses which may arise out of, or in connection with, claims from Third Parties, including any product recalls made by The CLIENT (or his Customers) in accordance with §§ 683, 670 of the German Civil Code [**Bürgerliches Gesetzbuch BGB**]. The CLIENT shall inform The CONTRACTOR of the content and the scope of any recall measures – in so far as is possible and reasonable – and shall give The CONTRACTOR the opportunity to provide a written response. Any ongoing legal claims shall remain unaffected.
- 17.3 In so far as it is not agreed otherwise, The CONTRACTOR shall have to arrange and maintain product liability insurance with a blanket cover of 5 million Euros, double maximised for personal injury and material damage. The CONTRACTOR shall have to provide proof of such to The CLIENT immediately upon his request by presenting him with a convincing written confirmation of insurance.

18. Assignments, Transfer of the Execution of the Contract

- 18.1. The CONTRACTOR must not transfer the execution of the Contract, or the contractual demands made on him, either in whole or in part, to Third Parties without the express written consent of The CLIENT. The CONTRACTOR shall, however, reserve the right to call in vicarious agents to complete the required work. The CONTRACTOR shall be liable to The CLIENT for any damage caused to parts by any and all subcontractors, suppliers or manufacturers used by The CONTRACTOR in the same way as he shall be liable if it is his own fault.
- 18.2. The CLIENT shall not deny his agreement to the assignment of interests without compelling reason, where there are no conflicting interests on the part of The CLIENT.

19. Place of Jurisdiction and Applicable Law, Severability Clause

- 19.1. For all disputes which may arise in relation to this Contract the proceedings should be brought in the court of law with responsibility for the head office of The CLIENT, this where The CONTRACTOR is a trader, a corporate body under public law, or a public separate estate. The CLIENT shall also have the right to sue at the head office of The CONTRACTOR. Excluded from this agreement on the place of jurisdiction shall be any disputes over nonpecuniary claims which may be referred to the courts without consideration of the value of the subject of the dispute, or any disputes which an exclusive place of jurisdiction has been established to deal with.
- 19.2. The law of the Federal Republic of Germany shall apply to this Contract to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
- 19.3. Should a clause in these General Terms and Conditions of Purchase, or in other Agreements, be void or should become so, the effectiveness of the other clauses of these General Terms and Conditions of Purchase or of the other Agreements shall remain unaffected thereby. The place of the void clause shall be taken by a provision which most closely resembles the economic aim of the Contract in fairly preserving the interests of The CLIENT and The CONTRACTOR. This shall apply correspondingly to a case where the Contract may prove to have any omissions.