

## **General Terms and Conditions for Workshop Services (Rail Vehicles) of BLG RailTec GmbH**

for use with commercially operating contractual partners as well as legal persons  
under public law or special funds under public law  
(**"Client"**)

### **I. General**

1. The following General Terms and Conditions ("**GTC**") shall apply to all contracts for maintenance and servicing of rail vehicles ("**Service Contracts**") at facilities of BLG RailTec GmbH ("**Contractor**").
2. Unless otherwise agreed, the GTC, in the version valid at the time the order is placed, shall also apply to similar future contracts without the Contractor having to refer to them again in each individual case.
3. These GTC shall apply exclusively. Deviating, conflicting or supplementary General Terms and Conditions of the Client shall only become part of the contract if and to the extent that the Contractor has expressly agreed to their validity in writing. This consent requirement shall apply in any case, for example even if the Contractor accepts the placement of the order without reservation in the knowledge of the Client's General Terms and Conditions of Business.
4. Separate agreements made with the Client in individual cases (including ancillary agreements, supplements and amendments) shall in any case take precedence over these GTC. Subject to proof to the contrary, a written contract or the written confirmation of the Contractor shall be authoritative for the content of such agreements.
5. Legally relevant declarations and notifications to be made by the Client to the Contractor after conclusion of the contract (e.g. setting of deadlines, reminders, declaration of withdrawal) must be made in writing in order to become effective.

### **II. Placement of order and scope of services**

1. As a rule, the placement of an order requires a written enquiry from the Client, which must at least include:
  - specification of series/types for which the services are to be provided,
  - details of which services are to be provided and to what extent,
  - indication of the time or date of performance,
  - the operational and technical information required for the performance (in particular maintenance plans and maintenance instructions),
  - information on the condition of the vehicle, insofar as this has not already been requested by the Contractor

In the event of the conclusion of a contract, the enquiry shall become an integral part of the contract.

2. The conclusion of a written Service Contract is required for the placement of an order. On the basis of the enquiry, the Contractor shall submit a written offer to the Client, which shall include at least the services to be provided, the expected completion date, a cost estimate as well as a reference to these GTC.
3. The order shall be placed by written declaration of acceptance or countersignature of the offer by the Client.
4. If the Contractor deems it necessary to carry out additional work during the repair/maintenance, the Client's consent shall be obtained, unless the parties have agreed otherwise in this respect.
5. The performance order authorises the Contractor to subcontract and to engage subcontractors for this purpose.
6. The Contractor shall provide maintenance and servicing services within the scope of the profile of his facility and to the contractually agreed extent in accordance with these Conditions.

### **III. Non-feasible repair**

1. Troubleshooting periods are working time and shall be charged to the Client if the repair/maintenance cannot be carried out for reasons for which the Contractor is not responsible, in particular if the defect to be repaired did not occur/is not detectable during the inspection/performance of the work, subject to all further claims of the Contractor.
2. The object of repair/maintenance need then only be restored to its original condition at the express request of the Client against reimbursement of the costs, unless the work carried out was not necessary.
3. Insofar as the repair/maintenance cannot be carried out for the aforementioned reasons, the Contractor shall not be liable for damage to the object of repair/maintenance, the breach of ancillary contractual obligations and for any damage that has not occurred to the object of repair/maintenance itself, irrespective of the legal grounds on which the Client relies.
4. In contrast, the Contractor shall be liable in these cases in the event of intent, gross negligence and culpable breach of material contractual obligations.

In the event of culpable breach of essential contractual obligations, the Contractor shall be liable – except in cases of intent and gross negligence – only for the reasonably foreseeable damage typical for the contract.

### **IV. Remuneration, invoicing and payment**

1. The Contractor shall be entitled to demand a reasonable advance payment upon conclusion of the contract.

2. When calculating the maintenance/repair work, the prices for parts used, materials and special services as well as the prices for the labour services shall be detailed separately in each case, unless stipulated otherwise in the Service Contract. If the maintenance/repair work is carried out on the basis of an offer/binding cost estimate/lump-sum contract, a reference to the offer/the cost estimate/lump-sum contract shall suffice, whereby only deviations in the scope of services shall be listed specifically.
3. If, in individual cases, the Contractor provides work that goes beyond the service order and which the Client has agreed to or which is within agreed value limits, this shall be invoiced on a time and material basis. Required materials are not included in this. They shall be invoiced separately by the Contractor.
4. The remuneration shall be paid in euros and shall be charged plus the statutory value-added tax at the respective applicable rate.
5. Unless otherwise agreed separately, payment shall be made immediately upon acceptance and handover or sending of the invoice without any discount. Default of payment shall occur, without the need for a reminder or other requirements, at the latest 4 weeks after the date of the invoice, unless it has already occurred before in accordance with the law. A flat-rate reminder fee of € 8.00 shall be charged for each written reminder.
6. The Client shall notify the Contractor in writing of any objections to the invoice within four weeks of receipt of the invoice. Failure to raise objections in good time shall be deemed to constitute approval. Legal claims of the Client in the event of justified objections after expiry of the deadline shall remain unaffected.
7. In the case of expressly declared binding offers of prices and services, either party may demand an appropriate adjustment of the monetary payment owed by means of a written declaration if the consumer price index for Germany, officially determined by the Federal Statistical Office, has changed by more than 5% upwards or downwards since the conclusion of the contract or the date of the last adjustment. The amount of the adjustment must be at least half of the change in the CPI referred to in Sentence 1 and may in no case exceed the change in the CPI. The adjustment may be demanded at the earliest with effect from the first day of the month following receipt of the request for adjustment. Should the CPI determined by the Federal Statistical Office no longer be continued and be replaced by another such index, this index shall be used accordingly for the question of security of value. In this case, the contracting parties undertake to agree on a new economically corresponding clause.
8. The Client may only set off or assert a right of retention against claims of the Contractor if his claims are undisputed or have been finally determined by a court of law.

## **V. Place of performance and fulfilment**

1. The services shall be performed by the Contractor at the facility specified in the Service Contract. Any deviations may be agreed between the contracting parties at short notice and informally.
2. The place of performance is the facility where the service is performed.

3. In individual cases, the services may also be provided by the Contractor outside his facilities at home and abroad ("**mobile repair**"). The mobile repair requires a separate express commissioning.

## **VI. Execution deadline**

1. The service times and the dates of handover/takeover of the vehicles are to be agreed between the contracting parties in the respective Service Contract.
2. The information on the maintenance/repair periods is based on estimates and is therefore not binding.
3. The agreement of a binding repair period, which must be designated as binding, can only be demanded by the Client once the scope of the work has been determined exactly.
4. The binding repair period shall be deemed to have been complied with if the object of repair is ready to be taken over by the Client or, in the case of a contractually agreed trial run, to be tested, by the expiry of the repair period.
5. In the case of additional and extension orders placed at a later date or in the case of necessary additional maintenance/repair work, the agreed maintenance/repair period shall be extended accordingly.
6. If the maintenance/repair is delayed due to measures within the scope of industrial disputes, in particular strikes and lockouts, as well as the occurrence of circumstances for which the Contractor is not responsible, an appropriate extension of the maintenance/repair period shall take effect insofar as such obstacles can be proven to have a significant influence on the completion of the maintenance/repair. The same shall apply to force majeure. Force majeure shall be deemed to be any unforeseeable events or events that are beyond the control of the contracting parties and whose effects on the performance of the contract cannot be prevented by reasonable efforts. These include, but are not limited to war (declared or not), warlike condition, disturbances, revolution, rebellion, military or civil coup, insurrection, tumult, riot, blockade, embargo, government order, unannounced government action, shortage of raw materials, damage in transit, machinery damage, sabotage, strikes, slowdowns, lockouts, epidemics, pandemics, fires, floods, storm surges, typhoons, hurricanes or other catastrophic weather, earthquakes, landslides, lightning strikes as well as disruptions of traffic and operations.
7. The contracting parties shall inform each other without delay of any deviations from agreed dates, in particular those that occur as a result of circumstances pursuant to Section VI.6. of these GTC.
8. If the Client suffers damage as a result of the Contractor's delay, he shall be entitled to demand lump-sum compensation for the delay. This shall amount to 0.5% in total for each full week of delay or a maximum of 5% of the repair price for that part of the object to be repaired by the Contractor that cannot be used in time due to the delay.

If the Client sets the Contractor a reasonable deadline for performance after the due date – taking into account the statutory exceptions – and if the deadline is not met, the Client shall be entitled to withdraw from the contract within the framework of the statutory provisions. At the request of the Contractor, he undertakes to

declare within a reasonable period of time whether he will make use of his right of withdrawal.

Further claims due to default shall be determined exclusively in accordance with Section XI. 2 of these GTC.

## **VII. Duties of the Client**

1. The Client shall provide the Contractor with all documents required for the execution of the order in good time before the start of the commissioned services.
2. The Client shall ensure the delivery of the vehicle during the Contractor's normal business hours. The Client is aware of the fact that Falkenberg station is not a Deutsche Bahn AG tariff point. The Client must therefore organise his wagon deliveries himself as a rule. However, he has the option of commissioning the Contractor separately in writing to take over the delivery and the subsequent return delivery.
3. The Client shall, at his own expense, instruct the Contractor's employees in special matters relating to the maintenance and operation of the Client's vehicles.

## **VIII. Acceptance/partial acceptance; default of the Client**

1. The Client shall be obliged to accept the maintenance/repair work as soon as he has been notified of its completion and any contractually stipulated testing of the object of maintenance/repair has been carried out. Upon request, self-contained parts of the service performance shall also be accepted separately.

If the maintenance/repair proves not to be in accordance with the contract, the Contractor shall be obliged to remedy the defect. This shall not apply if the defect is insignificant for the interests of the Client or is due to a circumstance attributable to the Client. If there is a non-essential defect, the Client may not refuse acceptance.

2. If acceptance is delayed through no fault of the Contractor, acceptance shall be deemed to have taken place after the expiry of 2 weeks from notification of the completion of the maintenance/repairs.
3. Upon acceptance, the Contractor's liability for identifiable defects shall cease, unless the Client has reserved the right to assert a specific defect.
4. If the Client is in default with an obligation to cooperate and/or take delivery of the object of the order, the Contractor may charge storage fees and track rental in accordance with the Contractor's current price list for storage of the object of the order and/or the use of tracks at his works/premises, subject to further claims.
5. The object of maintenance/repair may, at the Contractor's discretion, also be stored elsewhere in the event of default by the Client.
6. The costs and risk of storage/use of track facilities shall be borne by the Client in the event of default on the part of the Client, without prejudice to the other provisions.

### **IX. Retention of title, extended right of lien**

1. The Contractor retains ownership of all accessories, spare parts and replacement units used until receipt of all payments under the maintenance/repair contract.  
Further agreements on security may be concluded.
2. The Contractor shall be entitled to a lien on the Client's vehicles that have come into his possession on the basis of the contract on account of his claim arising from the Service Contract. The right of lien can also be asserted on account of claims from work carried out earlier, spare parts deliveries and other services, insofar as they are connected with the object of repair. The right of lien shall only apply to other claims arising from the business relationship insofar as these are undisputed or have become res judicata.

### **X. Claims for defects**

1. The Client shall inform the Contractor of any recognisable defects in the work to be performed under the contract at the time of acceptance. These shall be noted in the acceptance report. If concealed defects become apparent after acceptance, the Client shall notify the Contractor of these in writing without delay.
2. The warranty shall extend exclusively to the services ordered by the Client.
3. The Contractor shall not assume any warranty for material provided by the Client. The same applies if and insofar as consequential damage occurs due to a replacement part released for use by the Client. In this case, the Contractor shall assign any claims for compensation against the manufacturers to the Client. Also excluded from the warranty are any defects caused by faulty operation and intervention as well as faulty instructions by the Client, as well as defects caused by unusual wear and tear or by deviations from the specific operational profile of the vehicles.
4. The Contractor shall not be liable if the defect is insignificant for the interests of the Client or is due to a circumstance attributable to the Client. This applies in particular with regard to the parts provided by the Client.
5. Defects in the performance to be rendered under the contract shall be remedied by the Contractor by way of rectification. If the rectification fails, the Client is entitled to reduce the remuneration to be paid for the service or to withdraw from the contract.
6. In the event of any improper modifications or repair work carried out by the Client or by third parties without the Contractor's prior consent, the Contractor shall not be liable for the resulting consequences.
7. If the Contractor allows a reasonable deadline set for him for the rectification of defects to expire fruitlessly – taking into account the statutory exceptions – the Client shall have a right of reduction within the framework of the statutory provisions. Only if the repair/maintenance is demonstrably of no interest to the Client despite the reduction, the Client may withdraw from the contract.

Further claims shall be determined exclusively in accordance with the following paragraph and Section XI. 2. of these GTC.

8. Further warranty rights as well as claims for damages, in particular for indirect and consequential damages such as loss of profit or loss of use, are excluded.

This shall not apply if the damage has been caused by intent or gross negligence on the part of the Contractor or by a breach of material contractual obligations, whereby claims for compensation in the latter case – provided there is no intent or gross negligence – shall be limited to the foreseeable, typical damage.

## **XI. Liability of the Contractor, exclusion of liability**

1. If parts of the object of maintenance/repair are damaged through the fault of the Contractor, the Contractor shall, at his own discretion, repair them or deliver new ones at his own expense. The obligation to provide compensation shall be limited to the amount of the contractual maintenance/repair price.
2. For damage that has not occurred to the maintenance/repair object itself, the Contractor shall be liable – for whatever legal reasons – only
  - a) in case of intent
  - b) in case of gross negligence on the part of the owner/the corporate bodies or executive employees
  - c) in case of culpable injury to life, body, health
  - d) in the case of defects that he has concealed fraudulently
  - e) within the scope of a possible guarantee promise
  - f) in so far as liability exists under the Product Liability Act for personal injury or property damage to privately used objects.

In the event of culpable breach of material contractual obligations, the Contractor shall also be liable in the event of gross negligence on the part of non-executive employees and in the event of slight negligence, in the latter case limited to the reasonably foreseeable damage typical for the contract.

Any further claims are excluded.

## **XII. Statute of limitations**

Any claims of the Client – on whatever legal grounds – shall become statute-barred after 12 months. For claims for damages according to Section XI. 2 a) - d) and f), the statutory time limits shall apply.

### **XIII. Applicable law, legal venue**

1. The law of the Federal Republic of Germany shall apply exclusively to all legal relationships between the Contractor and the Client.
2. The legal venue shall be the court responsible for the Contractor's registered office. However, the Contractor shall be entitled to file an action at the Client's principal place of business.