

General terms and conditions for deliveries and services

(as of October 2020)

- 1. Validity**
 - 1.1. All deliveries, services and offers by RAIL.ONE are subject to these general terms and conditions. These form part of all contracts which RAIL.ONE concludes with its contractual partners (hereinafter referred to as "Clients") regarding the deliveries and services offered by RAIL.ONE. They also apply to all future deliveries, services and offers to the Client, even if they are not agreed separately elsewhere.
 - 1.2. Terms and conditions of the Client or of third parties shall not apply, even if RAIL.ONE does not separately contradict their validity in individual cases. Even if RAIL.ONE makes reference to a written document containing the terms and conditions of the Client or of a third party, or otherwise refers to them, this shall not constitute agreement to the validity of such terms and conditions. These terms and conditions also apply if we provide the delivery or service to the Client without reservation, despite being aware of Client terms which conflict or deviate from these terms and conditions.
 - 1.3. These general terms and conditions apply only to companies, legal entities under public law or special assets under public law within the meaning of Section 310(1) of the German Civil Code (German acronym: BGB).
- 2. Offers and contract conclusion**
 - 2.1. All RAIL.ONE offers are non-binding and without obligation, unless they are expressly identified as binding or contain specific terms of acceptance.
 - 2.2. The ordering of goods or services by the Client is deemed to be a binding contractual offer. Unless the order provides otherwise, RAIL.ONE is entitled to accept this contractual offer within 14 days of its receipt. Acceptance may be given either in writing (e.g. by order confirmation) or through delivering the goods to the Client or through the performance of the service.
 - 2.3. The only decisive element for the legal relationships between RAIL.ONE and the Client is the written contract (in a legal sense: i.e. even if the contract comes into effect as a result of a separate offer and acceptance), inclusive of these general terms and conditions. The contract reflects all agreements made by the contracting parties in full. Verbal commitments by RAIL.ONE before the conclusion of the contract are not legally binding and oral agreements between the parties are superseded by the written contract, unless it expressly arises that they shall remain in force.
 - 2.4. In individual cases, individual agreements with the Client (including collateral agreements, supplements and amendments) will in any case take precedence over these general terms and conditions. A written contract or our written confirmation is decisive in terms of the content of such agreements.
 - 2.5. Legally binding declarations and notifications that are to be issued by the Client to RAIL.ONE after conclusion of the contract (e.g. the setting of deadlines, defect reports, reminders, notice of cancellation or abatement) will be effective only if in writing.
 - 2.6. Disclosures made by RAIL.ONE regarding the object of delivery or service (e.g. weights, dimensions, utility values, load, tolerances and technical data) and our representations of the same (e.g. drawings and illustrations) are only approximate insofar as their usability for the contractually agreed purpose requires exact conformance. They are not warranted characteristics: rather they are descriptions or identifications of the delivery or service. Customary variations and deviations which occur due to legal provisions or which are technical improvements – as well as the substitutability of components by equivalent parts – are permissible, provided they do not impair usability for the contractually intended purpose.
 - 2.7. RAIL.ONE reserves the right of ownership to or copyright on all RAIL.ONE offers made and cost estimates as well as to/on drawings, diagrams, calculations, brochures, catalogues, models, tools, and other documents and aids provided for the Client. The Client may not make these items – either as they are or in terms of their content – accessible to third parties without RAIL.ONE's express permission, nor disclose them, use them itself or through third parties or reproduce them. At RAIL.ONE's request, the Client must return these items in full to RAIL.ONE and destroy any copies when they are no longer needed in the ordinary course of business or if negotiations do not lead to the conclusion of a contract.
- 3. Prices and payment**
 - 3.1. The prices apply for the scope of service and delivery stated on the order confirmation and/or contract. Additional or special services will be charged separately.
 - 3.2. Prices are, unless expressly agreed otherwise, given in EURO and include VAT as well as fees and other public taxes and duties. If goods are delivered, this is done ex works, "free in", exclusive of packing and customs.
 - 3.3. In the case of sale by delivery to a place other than the place of performance, the Client shall bear the actual cost of transportation from the factory/warehouse and the cost of any transport insurance requested by the Client.
 - 3.4. RAIL.ONE reserves the right to change its prices accordingly if costs increase after conclusion of the contract, especially as a result of collective agreements or material price changes or as a result of an occurrence of force majeure in the supply chain. RAIL.ONE is obliged to proceed in the same manner in the event of with cost reductions. RAIL.ONE shall provide the customer upon request with evidence of both cost reductions and cost increases, where and when they occur.
 - 3.5. Invoices are due and payable within 30 days from the date of invoice, unless otherwise agreed. The date of payment is deemed to be the date on which RAIL.ONE receives the funds. Cheques are only deemed to have been paid upon encashment. Upon expiry of the aforementioned payment deadline, the Client is deemed to be in default. The invoice amount will be subject to the applicable statutory default interest rate during the delay in payment. We reserve the right to claim further damages. With regard to merchants, our entitlement to commercial maturity interest (Section 353 of the German Commercial Code (German acronym: HGB)) remains unaffected.
 - 3.6. The deduction of any discount requires express written agreement.
 - 3.7. Offsetting against counterclaims of the Client or the withholding of payments due to such claims shall be admissible only if the counterclaims are undisputed or legally binding. In the event of defects to the delivery or service, the Client's counterclaims remain unaffected in particular in accordance with Section 6.6 of these general terms and conditions.
 - 3.8. If, after conclusion of the contract, it is apparent that our claim for the price agreed is endangered by the Client's inability to pay (e.g. through an application to open insolvency proceedings), we are entitled to refuse performance under statutory provisions and to withdraw from the contract – if applicable after the unsuccessful setting of a deadline for performance or provision of security (Section 321 BGB). In the case of contracts for the manufacture of non-fungible items (custom-made), we may withdraw immediately; this does not affect the legal provisions regarding the dispensability of setting a deadline.
 - 3.9. Part deliveries will be invoiced immediately and the invoice amounts are to be paid regardless of the completion date of the entire delivery, unless otherwise agreed.
- 4. Delivery and lead time**
 - 4.1. Deliveries are made from the respective factory. The delivery time is agreed individually or indicated by RAIL.ONE upon acceptance of the order.
 - 4.2. The deadlines and dates proposed by RAIL.ONE for deliveries and services are always merely approximate, unless a fixed period or a fixed date has been expressly promised or agreed. If shipment has been agreed, delivery times and dates refer to the time of delivery to the carrier, freight forwarder or other third parties responsible for the transportation.
 - 4.3. RAIL.ONE shall not be charged if the Client fails to fulfil its obligations to cooperate or not does not comply in good time, especially when the former must provide for regulatory approvals, execution plans, specification documents for the subject matter hereof and/or the clarification of all technical details and advance payments.
 - 4.4. RAIL.ONE may – without prejudice to its rights arising from the Client defaulting – demand an extension of the delivery and performance deadlines or a postponement of delivery and performance dates, where such extension or postponement is equal in duration to the period in which the Client does not fulfil its contractual obligations vis-à-vis RAIL.ONE.
 - 4.5. RAIL.ONE is not liable for any inability to deliver or for delays in delivery caused by force majeure or other events which were

- unforeseeable at the time of contract conclusion, and for which RAIL.ONE is not responsible. The latter are e.g. operational disruptions of all kinds, difficulties in procuring materials and energy, transport delays, strikes, lawful lockouts, lack of labour, energy or raw materials, difficulties in obtaining necessary regulatory approvals, governmental actions, etc. Force majeure is an unforeseeable external event that cannot be avoided in an economically reasonable manner, even with utmost care. This includes, but is not limited to, wars, armed conflicts, terrorism, sabotage, official orders, natural disasters, pandemics or epidemics. If such events complicate RAIL.ONE's delivery or performance or render it impossible and the difficulty is not merely of temporary duration, RAIL.ONE is entitled to withdraw from the contract. With regard to temporary hindrances, the delivery or performance deadlines will be extended or the delivery and performance dates postponed, where such extension or postponement is equal in duration to the period of hindrance plus a reasonable start-up period. If the Client cannot be expected to accept the delivery or service as a result of the delay, it may withdraw from the contract by sending immediate written notification to RAIL.ONE, but not before a period of 60 days after notification by RAIL.ONE regarding the occurrence of an event defined in this Section 4.5.
- 4.6. If RAIL.ONE cannot meet binding delivery deadlines for reasons for which RAIL.ONE is not responsible (non-availability of service), RAIL.ONE will inform the Client thereof immediately and simultaneously give notice of the new expected delivery date. If the service is not available by the new delivery deadline, RAIL.ONE is entitled to withdraw from the contract wholly or partially; RAIL.ONE will immediately refund any payment made by the Client. "Non-availability of service" in this sense refers in particular to delayed delivery by our suppliers – if we have concluded a congruent covering order – where neither we nor our suppliers are at fault or where, in a particular case, we are not obliged to undertake procurement.
- 4.7. RAIL.ONE is only entitled to make partial deliveries if the partial delivery can be used by the Client within the scope of the contractually intended purpose, if the delivery of the remaining ordered goods is ensured and if the Client does not incur any significant additional expenses or costs (unless RAIL.ONE agrees to assume these costs).
- 4.8. The occurrence of delayed delivery by RAIL.ONE is governed by statutory provisions. Nevertheless a reminder must be sent by the Client in all cases.
- 4.9. If RAIL.ONE is delayed in the performance of a delivery or service or if RAIL.ONE cannot perform a delivery or service for whatever reason, then RAIL.ONE's liability shall be limited to compensation for damages in accordance with Section 8 of these general terms and conditions.
- 4.10. The rights of the Client pursuant to Section 8 of these general terms and conditions and our legal rights remain unaffected, especially in the event of an exclusion of liability (e.g. due to impossibility or unreasonableness of the performance and/or supplementary performance).
- 5. Place of performance, shipping, packaging, transfer of risk, acceptance**
- 5.1. Unless otherwise arising from the order confirmation or the contract, delivery is "ex works" and the place of delivery and service is our respective factory from which the delivery or service is performed. If RAIL.ONE is due to also perform the installation, the place of performance is the place where the installation is to be made.
- 5.2. The shipping method and packaging are subject to RAIL.ONE's reasonable discretion.
- 5.3. With regard to the delivery of concrete sleepers, delivery is on loading timber beams which are to be returned to RAIL.ONE – usually in the course of a future delivery. If this does not occur and a reasonable period return (set by RAIL.ONE) elapses unsuccessfully, the Client will be charged 1.50 EURO per beam. In addition, any packaging is charged at cost and assigned, or will be taken back if this is expressly agreed or required by legal regulations.
- 5.4. The risk of accidental loss and accidental deterioration of the goods shall pass to the Client upon handover. In the case of sale by delivery to a place other than the place of performance, the risk of accidental loss and accidental deterioration of the goods and the risk of delay are transferred to the Client when the delivery item is handed over to the forwarding agent, carrier or other third party identified to execute shipment (whereby the start of the loading process is decisive). This also applies if partial deliveries are made or if RAIL.ONE has assumed other services (for example shipping or installation). If shipping or the handover is delayed as a result of circumstances for which the Client is responsible, the risk shall pass to the Client on the day on which the delivery item is ready for dispatch and RAIL.ONE has notified the Client thereof.
- 5.5. The consignment will be insured by RAIL.ONE against theft, breakage, transport, fire and water damage or any other similar risks only at the express request of the Client and at the latter's expense.
- 5.6. If acceptance has been agreed, this will govern the transfer of risk. In addition, the statutory provisions of the law applicable to work and services shall also apply mutatis mutandis to an agreed acceptance. The acceptance is likewise deemed valid if the buyer is late in accepting.
- 5.7. If acceptance is to take place, the delivery item is deemed to have been accepted if the delivery and (if RAIL.ONE is also due to perform the installation) the installation is complete, if RAIL.ONE has informed the Client of this with reference to the deemed acceptance according to this Section 5 (5.7) and has prompted the Client to accept, if twelve working days have passed since delivery and installation or if the Client has begun to use the delivery item (e.g. it has commissioned the delivered system) and, in this case, six working days have passed since delivery or installation and the Client has failed to perform acceptance within this period for any reason other than because of an identified RAIL.ONE fault which makes the use of the delivery item impossible or significantly impairs it.
- 5.8. If the Client is late with its acceptance, or if it fails to cooperate or if our delivery is delayed for other reasons for which the Client is responsible, then RAIL.ONE is entitled to demand compensation for the resulting damage, including additional expenses (e.g. storage costs pursuant to Section 5.9). We charge flat-rate compensation in the amount of 0.5% of the price of the affected delivery per calendar week, up to a maximum of 5% of the total price of the contract, beginning with the delivery deadline or – in the absence of a delivery deadline – upon notification of readiness for dispatch of the delivery item. Proof of higher damages and our legal claims (in particular: compensation for additional expenses, reasonable compensation and termination) remain unaffected; the flat rate, however, is to be offset against further monetary claims. The Client is entitled to prove that RAIL.ONE has suffered no or considerably lower damages than the aforementioned flat rate. If, due to force majeure, acceptance is impossible or only possible with delay, the customer shall only bear the additional expenses arising therefrom (storage, freight and freight forwarding costs, etc.).
- 5.9. Storage costs incurred after the transfer of risk are to be borne by the Client. If storage is by RAIL.ONE, the storage costs are 0.5% of the invoice amount for the stored delivery items per full week. The possibility of asserting and proving additional or lower storage costs remains unaffected.
- 6. Warranty, defects**
- 6.1. The statutory provisions apply with regard to the rights of the Client in the event of material and legal defects (including wrong and short deliveries as well as improper installation or inadequate installation instructions), unless otherwise specified in these general terms and conditions. In all cases, the special statutory provisions remain unaffected in the case of the final delivery of the goods to a consumer ("recourse of the entrepreneur" pursuant to Sections 478, 479 BGB).
- 6.2. The basis of RAIL.ONE's liability for defects is predominantly the performance agreement made regarding the nature of the contractual object or service. The thus-identified product and service descriptions (including those of the manufacturer) are deemed to form an agreement as to the properties and condition of the goods or services; these descriptions are submitted by RAIL.ONE to the Client before ordering or assignment have taken place, or are included in the contract. If the properties and condition have not been agreed, it will be assessed under the statutory scheme as to whether a defect is present or not. However, RAIL.ONE assumes no liability for official statements made by the manufacturer or by other third parties (e.g. advertising messages).
- 6.3. The Client's warranty claims assume that it has complied with its statutory inspection and notification obligations (Sections 377, 381 HGB). If a defect becomes apparent upon inspection or at a later date, RAIL.ONE must immediately send written notification thereof. "Immediately" in this sense means that the notification must be sent off within two weeks. Irrespective of these inspection and notification obligations, the Client must notify RAIL.ONE of obvious defects (including wrong and short deliveries) in writing within two weeks after delivery, whereby the notification must be sent off within this time for it to be valid. If the Client fails to undertake proper inspection and/or notification of defects, RAIL.ONE's liability for non-notified defects is excluded.

- 6.4. The Client must give RAIL.ONE and the latter's representative the opportunity to view and test the subject matter of the contract and to grant them access to the storage location for this purpose during normal business hours.
- 6.5. If the delivered goods are defective, then RAIL.ONE may first choose whether RAIL.ONE will remedy the defect (rectification) or deliver non-defective goods (replacement). RAIL.ONE's right to refuse supplementary performance pursuant to statutory requirements remains unaffected.
- 6.6. RAIL.ONE is entitled to undertake supplementary performance on the condition that the Client pays the purchase price due. The Client is, however, entitled to withhold a proportion of the purchase price corresponding to the defective part.
- 6.7. The Client must give RAIL.ONE the time and opportunity for supplementary performance, and must in particular hand over the impugned goods for testing purposes. In the case of replacement, the Client must return the defective item to RAIL.ONE under the statutory provisions. Supplementary performance does not include the removal of the defective goods or its reinstallation if RAIL.ONE was not originally contracted to install it.
- 6.8. The expenditure required for the purpose of testing and supplementary performance, in particular transport, travel, labour and material costs (and not: removal and installation costs), shall be borne by RAIL.ONE if there is indeed a defect. However, if it is a rectification request by the Client that proves to be unjustified, RAIL.ONE may demand compensation from the Client for related expenses.
- 6.9. In urgent cases, such as in the case of danger to operational safety or prevention of excessive damage, the Client has the right to remedy the defect itself and demand that RAIL.ONE refund it for the associated, objectively necessary expenses. RAIL.ONE is to be immediately notified – if possible in advance – of self-performance of this type. The right of self-performance does not exist if RAIL.ONE would be entitled to refuse supplementary performance under statutory provisions.
- 6.10. If supplementary performance fails or if a reasonable deadline set by the Client for supplementary performance reasonable time expires without success, or if supplementary performance is legally superfluous, the Client may withdraw from the contract or reduce the agreed price. In the case of a minor defect, however, there is no right of withdrawal.
- 6.11. Client claims for damages or compensation for futile expenses exist only in accordance with Section 8 and will otherwise be excluded.
- 6.12. In the case of defects of other manufacturers' components which RAIL.ONE cannot rectify for licensing or legal reasons, RAIL.ONE decide whether to assert its warranty claims against the manufacturers and suppliers on behalf of the Client, or to assign such claims to the Client. Warranty claims against RAIL.ONE exist in the event of such defects under conditions other than these and in accordance with these general terms and conditions only if the enforcement of the aforementioned claims against the manufacturers and suppliers was unsuccessful or is futile, for example, due to insolvency. For the duration of the legal dispute, the limitation period of the Client's relevant warranty claims against RAIL.ONE is suspended.
- 6.13. The warranty is void if the Client amends the delivery item without RAIL.ONE's consent or if the Client has it amended by third parties and rectification is thereby made impossible or unreasonable. In any case, the Client must bear the additional costs of rectification incurred as a result of the amendment.
- 6.14. If, as agreed in individual cases with the Client, used items are delivered, this shall be put into effect without any warranty for material defects.
- 7. Property rights**
- 7.1. RAIL.ONE, in accordance with this Section 7, guarantees that the delivery item is free of industrial property rights or copyrights. Each party will notify the other immediately in writing if any claims of infringement of such rights are asserted against it.
- 7.2. In the case that the delivery item violates a third party's industrial property right or copyright, RAIL.ONE will – at its own discretion and expense – modify or replace the delivery item such that no third-party rights are violated, whilst ensuring that the delivery item continues to meet the agreed functions, or will provide the Client with a licence to use it. If the Client does not manage to do so within a reasonable time, the Client is entitled to withdraw from the contract or reduce the purchase price accordingly. Any claims for damages of the Client are subject to the restrictions of Section 8 of these general terms and conditions.
- 7.3. In the event that other manufacturers' products delivered by RAIL.ONE violate any rights, RAIL.ONE – at its discretion – will

either assert its claims against the manufacturers and suppliers on behalf of the Client or assign them to the Client. Claims against RAIL.ONE exist in such cases in accordance with Section 7 only if the enforcement of the aforementioned claims against the manufacturers and suppliers was unsuccessful or is futile, for example, due to insolvency.

8. Liability

- 8.1. Unless these terms and conditions, including the following provisions, provide otherwise, RAIL.ONE is liable under the relevant statutory provisions. RAIL.ONE's liability for damages, regardless of the legal reason, in particular due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of obligations in contract negotiations and in tort, and insofar as it is a matter of fault in each case, is however restricted in accordance with this Section 8.
- 8.2. RAIL.ONE is not liable in cases of ordinary negligence of its bodies, legal representatives, employees or other vicarious agents, unless it is in breach of essential contractual obligations. "Essential contractual obligations" are deemed to be: the timely delivery and installation of the delivery item, its freedom from defects which impair its functionality or usability more than merely insignificantly, as well as consultancy, protection and care duties that enable the Client to properly use the delivery item or which aims to protect the lives and health of the Client's personnel or its property from significant damage.
- 8.3. Insofar as RAIL.ONE adheres to the compensation provisions under the merits of 8.2, this liability is limited to damages that RAIL.ONE foresaw when concluding the contract as a possible consequence of a breach of contract, or which RAIL.ONE should have foreseen in applying customary due diligence. Indirect or consequential damages resulting from defects in the delivery item are also reimbursable only to the extent that such damage is typically to be expected following the normal use of the delivery item.
- 8.4. In the case of liability for ordinary negligence, RAIL.ONE's liability for property damage and the resulting further losses is limited to € 2 million per event, even if it is a breach of contractual obligations.
- 8.5. The above exclusions and limitations apply to the same extent in favour of RAIL.ONE's bodies, legal representatives, employees and other vicarious agents.
- 8.6. Insofar as RAIL.ONE provides technical information or advice and such information or advice is not within RAIL.ONE's contractually agreed remit, this is done free of charge and without any liability accepted.
- 8.7. The limitations of this Section 8 do not apply to RAIL.ONE's liability for wilful intent, for guaranteed characteristics, to injury to life, body or health or under the German Product Liability Act.
- 8.8. Following a breach of obligations which is not a defect, the Client may only withdraw from or terminate the contract if RAIL.ONE is responsible for the breach of obligations. An unrestricted right of termination by the Client is excluded. Statutory requirements and legal consequences otherwise apply.

9. Limitation period

- 9.1. Unless otherwise agreed, the general limitation period for claims arising from legal and material defects is one year from delivery. If acceptance procedures have been agreed, the period of limitation begins upon acceptance.
- 9.2. However, if the good is a building or an item used in accordance with its normal use for a structure and has caused its defectiveness (building material), the limitation period is 5 years after delivery, in accordance with legal provisions (Section 438(1) No. 2 BGB). In addition, this does not affect special statutory provisions for collateral rights of third parties (Section 438(1) No. 1 BGB), nor in the event of fraudulent intent by the seller (Section 438(2) BGB) or in the event of claims for recourse of the entrepreneur for final delivery to a consumer.
- 9.3. The foregoing limitation period regarding sales law also apply to the Client's contractual and non-contractual claims for damages, based on a defect of the goods, unless the application of the normal statutory limitation period (Sections 195, 199 BGB) would result in a shorter limitation period in a particular case. The limitation period of the German Product Liability Act shall remain unaffected in any case. The statutory limitation periods alone shall otherwise apply to the Client's claims for damages in accordance with Section 8 above.

10. Retention of title

- 10.1. Until the full payment of all present and future RAIL.ONE claims arising from the contract and from any ongoing business relationship (secured claims) RAIL.ONE reserves the ownership of the goods sold.

- 10.2. The Client will store the goods which are subject to retention of title free of charge for RAIL.ONE; proper storage is to be effected at the Client's expense and separately from the other items; at the request of RAIL.ONE, the goods are to be specially marked and insured against damage, destruction and loss.
- 10.3. The goods subject to retention of title may neither be pledged to third parties before full payment of the secured claims, nor transferred as a form of security. The Client must inform RAIL.ONE immediately in writing if and insofar as third parties access goods belonging to us.
- 10.4. In the event of the Client breaching the contract, in particular in the event of non-payment of the purchase price due, RAIL.ONE is entitled, under statutory provisions, to withdraw from the contract and reclaim the goods on the grounds of retention of title and withdrawal. If the Client fails to pay the amount due, RAIL.ONE may assert these rights only if RAIL.ONE has previously set the Client a reasonable deadline for payment (which has not been met) or if the setting of such a deadline is unnecessary according to statutory provisions.
- 10.5. The Client is entitled to sell on and/or process the goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply in addition.
- 10.6. The retention of title extends to products resulting from the processing, mixing or combining of the goods from RAIL.ONE at their full value, whereby RAIL.ONE is deemed to be the manufacturer. If processing, mixing or combining with third parties' goods which are subject to retention of title, RAIL.ONE will acquire joint ownership thereof in proportion to the invoice value of the processed, mixed or combined goods. In other respects, the same applies with regard to the resulting product as for the goods delivered which are subject to retention of title.
- 10.7. The Client hereby assigns to RAIL.ONE, by way of security, any debt claims against third parties resulting from the resale of the goods or products, or those which amount to the value of any joint ownership by RAIL.ONE as per the preceding paragraph. RAIL.ONE accepts this assignment. The Client's obligations referred in Section 10.3 also apply in respect of the assigned claims.
- 10.8. The Client remains authorised to collect the debt claim, in addition to RAIL.ONE. RAIL.ONE undertakes not to collect the debt claim as long as the Client meets its payment obligations vis-à-vis RAIL.ONE, does not fall into arrears, no application for the opening of insolvency proceedings has been made and no other defect is present in its performance. If this is the case, then RAIL.ONE may demand that the Client inform RAIL.ONE of the assigned claims and the relevant debtors, provide all information necessary for collection, hand over the relevant documents and inform the debtors (third parties) of the assignment.
- 10.9. If the realisable value of the securities exceeds our claims by more than 10%, RAIL.ONE will release securities (as chosen by RAIL.ONE) upon the Client's request.
- 11. Confidentiality and compliance**
- 11.1. The client is obliged to keep the conditions of the offer and the contract as well as all information and documents provided for this purpose (with the exception of publicly accessible information) secret for a period of 5 years after conclusion of the contract and to use them only for the execution of the contract. He shall return them to RAIL.ONE immediately upon request after completion of offers or after settlement.
- 11.2. Without prior written consent of RAIL.ONE, the client may not refer to the business relationship in advertising material, brochures, etc.
- 11.3. The client shall bind his business partners involved in the project in accordance with this § 11.
- 11.4. Within the framework of the contractual relationship and within their company and affiliated companies at home and abroad, the contracting parties undertake to take all necessary measures to prevent corruption and other criminal acts (in particular: fraud, embezzlement, falsification of documents, offering, promising or granting of undue advantages, unauthorised procurement, securing, exploitation or communication of business and trade secrets, breaches of regulations which serve to protect unrestricted competition, breaches of economic sanction measures or circumvention of sanction measures of the European Union). Violations of this obligation entitle RAIL.ONE to terminate the contract. Notwithstanding this, RAIL.ONE is entitled to claim damages, including any contractual penalties. RAIL.ONE is obliged to pay to its own client as a result of the misconduct.
- 12. Miscellaneous provisions**
- 12.1. The assignment of claims of RAIL.ONE customers arising from the business relationship with RAIL.ONE is excluded unless they are monetary claims.
- 12.2. If the contract or these general terms and conditions contain loopholes, other legally effective provisions will be deemed as agreed, where the latter close these loopholes and where the parties would have agreed on such provisions pursuant to the economic objectives of the contract and the purpose of these general terms and conditions had they been aware of the loophole.
- 12.3. RAIL.ONE is entitled to unilaterally amend these General Terms and Conditions of Business if the amendment serves to bring the General Terms and Conditions of Business into conformity with the applicable law or to comply with mandatory court or official decisions, if the amendment is merely advantageous for the Client or if new services are introduced.
- RAIL.ONE shall inform the Client in good time in writing or text form about other changes to the General Terms and Conditions of Business which do not fall under the conditions stated in the previous sentence. The amendment shall become part of the contract if the Client does not object to the inclusion in the contractual relationship in writing or text form within six weeks of receipt of the notification of amendment
- 12.4. With regard to these general terms and conditions and to all legal relationships between RAIL.ONE and the Client, the law of the Federal Republic of Germany applies, excluding international uniform law; in particular the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) does not apply. The requirements and effects of retention of title pursuant to Section 10 are subject to the law of the respective location of the matter, insofar as that the preference for German law is inadmissible or ineffective.
- 12.5. If the Client is a merchant according to the German Commercial Code, a legal entity under public law or a special asset under public law, or if the Client has no general jurisdiction in Federal Republic of Germany, the place of jurisdiction for any disputes arising from the business relationship between RAIL.ONE and the Client will either be – at RAIL.ONE's discretion – Nuremberg or the headquarters of the Client. However, Nuremberg is the exclusive place of jurisdiction in cases of complaint against RAIL.ONE. Mandatory statutory provisions on exclusive jurisdiction remain unaffected by this provision.
- 12.6. The Client hereby notes that RAIL.ONE stores data from the contractual relationship according to the German Federal Data Protection Act for the purpose of data processing and reserves the right to transmit such data to third parties to the extent necessary to fulfil the contract (e.g. insurance).
- 12.7. References to the validity of statutory provisions are only given for clarification purposes. Even without such clarification, the statutory provisions apply insofar as they are not directly modified or expressly excluded in these general terms and conditions.