

General Terms and Conditions of 3rd Rail Engineering GmbH

1. Scope of Application

- 1.1 Unless otherwise expressly agreed these General Terms and Conditions as amended from time to time, which are provided to the contracting party of 3rd Rail Engineering GmbH (hereinafter referred to as the "Contracting Party") on the homepage of 3rd Rail Engineering GmbH (hereinafter referred to as "3rd Rail"), shall exclusively apply to delivery of goods and, mutatis mutandis, to provision of services by 3rd Rail and its agents.
- 1.2 These General Terms and Conditions of 3rd Rail shall be in each case an integral part of the corresponding contract. They shall also apply to all future contractual relationships of 3rd Rail with a Contracting Party.
- 1.3 General terms and conditions of the Contracting Party shall not become part of a contract, even if they are not expressly objected to by 3rd Rail. By placing an order, accepting an order from 3rd Rail or concluding a contract with 3rd Rail the Contracting Party waives application of its own general terms and conditions, in particular of the clause providing for exclusive application of the same.
- 1.4 Deviations from these General Terms and Conditions shall only be effective if confirmed and/or acknowledged by 3rd Rail in writing. Agreements to change this formal requirement must be made in writing.
- 1.5 These General Terms and Conditions apply to contracts between 3rd Rail and customers who enter into the legal relationship in the course of their business pursuant to Section 1 (2) of the Austrian Consumer Protection Act (KSchG).

2. Offers

- 2.1 Offers made by 3rd Rail shall be subject to change until conclusion of contract. Unless otherwise expressly agreed offers for services by 3rd Rail shall be valid for a maximum of two months and offers regarding a project shall be valid for a maximum of six months. Costs estimates of 3rd Rail shall be non-binding and shall not oblige 3rd Rail to execute an order for the rendering of services that were stated in a cost estimate.
- 2.2 No documents relating to offers or projects must be copied or made accessible to third parties without the consent of 3rd Rail. 3rd Rail may, at any time, ask that they be returned, and they shall be returned to 3rd Rail without delay if the order is placed with someone else.

3. Conclusion of Contract

- 3.1 The contract shall be deemed concluded once 3rd Rail, upon receipt of the order, has issued a written acknowledgement of order or has dispatched a shipment.
- 3.2 References and links to general terms and conditions or specific requirements of the Contracting Party, which are quoted on orders, shall be considered as not accepted and such terms and conditions or specific requirements shall not become part of the contract, even if they are not expressly objected to by 3rd Rail. Those links or documents shall only be effective if confirmed and/or acknowledged by 3rd Rail in writing.
- 3.3 Also customer specifications of the Contracting Party shall only be valid if confirmed and/or acknowledged by 3rd Rail in writing. Any customer specifications of the Contracting Party which are not confirmed and/or acknowledged shall not be applicable.
- 3.4 Subsequent modifications of or amendments to the contract shall be acknowledged in writing in order to be valid.

4. Prices

- 4.1 Prices apply exclusive of VAT and other taxes, if any; which shall always be payable in the statutory amount. Cash discounts, discounts, credit notes for goods, etc. granted shall be calculated on the basis of selling prices exclusive of VAT and other taxes.
- 4.2 The prices shall be ex works or ex warehouse of 3rd Rail, inclusive of 3rd Rail standard packaging and exclusive of VAT and other taxes. If fees, taxes or other charges are levied in connection with the delivery, they shall be borne by the Contracting Party. If delivery including shipment has been agreed, the cost of shipment as well as the cost of the transport insurance requested by Customer, if any, shall be charged separately but shall not include unloading and distribution. Packaging shall only be taken back if this was explicitly agreed.

4.3 The prices are based on the costs applicable at the time of the first price offer made by 3rd Rail. If costs increase by the time of delivery, 3rd Rail shall be entitled to adjust the prices accordingly.

5. Delivery

5.1 The delivery period shall commence as of the latest of the following points in time: (a) date of acknowledgement of order or (b) date at which all technical, commercial and other prerequisites for which the Contracting Party is responsible have been fulfilled.

5.2 3rd Rail shall be entitled to make and invoice partial or advance deliveries.

5.3 If unforeseeable events or circumstances occur that are beyond the will of the parties, such as, e.g., all events of force majeure as defined in clause 12, and which prevent observance of the agreed delivery period, the same shall in any case be extended by the time such circumstances prevailed.

5.4 If it was agreed that the goods are to be called by the Contracting Party within a certain period of time, 3rd Rail shall be entitled, in case Contracting Party fails to do so, to rescind the contract in whole or in part without granting a grace period. In any event 3rd Rail shall be entitled to invoice the costs of storage for the additional time.

6. Passing of Risk and Place of Performance

6.1 Benefit and risk shall pass to the Contracting Party as of dispatch of the shipment (delivery to carrier) ex works or ex warehouse of 3rd Rail, respectively, and in case of a delay in acceptance of goods by the Contracting Party as of the time 3rd Rail is ready to ship the goods, irrespective of the pricing agreed for such shipment (such as, e.g., charges prepaid, CIF or the like). This shall also apply if delivery is made in connection with an assembly or if transport is carried out or organized and managed by 3rd Rail.

6.2 The place of performance for services shall be the place where the service is provided. The risk of a service or of an agreed partial service shall pass to the Contracting Party upon provision of the service.

7. Payment

7.1 Unless special terms of payment have been agreed in writing, the invoice amount (net price plus VAT) shall be due for payment not later than 14 days after the invoice date.

7.2 If partial invoices are issued the respective partial payments shall be due upon receipt of the respective invoice. This shall also apply to amounts resulting from subsequent delivery or other agreements which exceed the original contract sum, irrespective of the terms of payment agreed with respect to the main delivery.

7.3 Payments shall be made without any deduction.

7.4 Acceptance of cheques or bills of exchange shall in each case only be effected on account of payment. All interest and expenses (as, e.g., charges of direct debiting or discount charges) in connection therewith shall be borne by the Contracting Party. Partial payments of the Contracting Party shall be first credited against ancillary charges and subsequently against the oldest of the existing liabilities.

7.5 The Contracting Party shall not be entitled to retain or offset payments against counter-claims on grounds of warranty claims or other claims of whatsoever nature.

7.6 Payment shall be deemed effected on the date on which 3rd Rail is able to dispose of the amount.

7.7 If the Contracting Party is in delay of an agreed payment or other service to be effected on the basis of this transaction or other transactions, 3rd Rail shall be entitled, without prejudice to its other rights (a) to suspend fulfillment of its own obligations until the payment or other service has been obtained and make use of a reasonable extension of the delivery period and/or (b) to demand immediate payment of all accounts receivable outstanding which are to be paid on the basis of this transaction or other transactions and to charge default interest and/or (c) to rescind the contract in case a reasonable grace period is not complied with. In any case 3rd Rail shall be entitled to charge pre-procedural costs, in particular dunning and collection charges and costs of legal counsel.

7.8 Discounts and bonuses granted shall be subject to punctual and full payment.

7.9 3rd Rail retains title to all goods delivered by it until full payment of the amounts invoiced plus interest and costs. For the purpose of securing the purchase price claim of 3rd Rail the Contracting Party hereby assigns to 3rd Rail its claim under a resale of goods to which title is retained even if the goods were processed, redesigned or mixed, and undertakes to include a respective accounting note in its list of out-standing receivables or on its invoices. Upon request the Contracting Party

shall inform 3rd Rail about the assigned claim including the debtor and shall make available all information and documents required for collection of the claim by 3rd Rail and notify the third-party debtor of the assignment. In the case of an attachment or other seizure the Contracting Party shall be obliged to indicate that 3rd Rail holds title to the goods and to notify 3rd Rail immediately.

8. Warranty and Liability for Defects

- 8.1 Subject to the provisions set forth below and upon compliance with the agreed terms of payment, 3rd Rail shall be obliged to repair any defect impairing functionality which exists at the time of delivery and is the result of an error in the construction, of the material or of workmanship. No warranty claims may be deduced from information contained in catalogues, brochures or other written or oral statements that have not been expressly included in the contract.
- 8.2 Only the Contracting Party shall be entitled to assert claims for defects and such claims shall not be assignable. Claims for defects prescribe 12 (twelve) months commencing of the date on which the risk passes according to clause 6. This period of time shall also apply to claims for compensation of consequential damage, as far as no claim in tort is asserted. The legal provisions concerning suspension and restart of time limits remain unaffected.
- 8.3 A warranty claim may only be asserted if (a) the Contracting Party immediately, but not later than two weeks upon receipt of the goods or services at the place of destination, notifies the defects that have occurred in writing and exactly describes the type of defect, and (b) the Contracting Party proves that a defect existed at the time the risk passed (according to clause 6). Defects which could not be detected despite a careful inspection within the period stated above shall be excluded. Such defects shall be deemed accepted if they are not notified immediately after they are detected in the way described above.
- 8.4 Assertion of a defect shall not release the Contracting Party from its payment obligation.
- 8.5 If a defect subject to warranty according to clause 8.1 exists, 3rd Rail shall, at its option, subsequently improve the defective goods or the defective part at the place of performance or have the defective goods or in full or in part returned for subsequent improvement or offer the goods at a reasonably reduced price.
- 8.6 Defects resulting from arrangement and assembly not effected by 3rd Rail, insufficient set-up, non-observance of installation requirements and conditions of use, excessive use of parts beyond the performance advised by 3rd Rail, negligent or improper treatment or use of unsuitable operating materials shall be excluded from warranty; this shall also apply to defects attributable to material provided by the Contracting Party. Warranty shall not apply to re-placement of parts which are subject to natural wear and tear.
- 8.7 Warranty shall forfeit immediately if the Contracting Party itself or a third party who has not expressly been authorized by 3rd Rail alters or repairs the delivered items without the written consent of 3rd Rail.
- 8.8 Claims under Section 933b ABGB [Austrian General Civil Code] shall in any case become statute-barred upon expiration of the period stated under clause 8.2.
- 8.9 The provisions of clauses 8.1 to 8.8 shall apply mutatis mutandis also to responsibility for defects on the basis of other legal grounds.

9. Rescission of Contract

- 9.1 Unless a more specific regulation has been provided for, the Contracting Party may rescind the contract on the condition that a delay in delivery is due to gross negligence of 3rd Rail and that a reasonable grace period granted by the Contracting Party has fruitlessly expired. Rescission shall be declared by the Contracting Party by registered letter.
- 9.2 Irrespective of its other rights 3rd Rail shall be entitled to rescind the contract (a) if execution of the delivery, or commencement or continuing of the service becomes impossible or is further delayed for reasons for which the Contracting Party is responsible even though a reasonable grace period was granted, (b) if doubts regarding the solvency of the Contracting Party have arisen and the Contracting Party fails to make an advance payment or provide appropriate security prior to delivery upon the request of 3rd Rail, or (c) if, due to the circumstances listed in clause 5.3, the delivery period is, in total, extended by more than half of the delivery period originally agreed but is at least 6 (six) months.
- 9.3 Rescission of contract for the above reasons may also be declared with respect to a part of the delivery or service still outstanding.

- 9.4 If insolvency proceedings are opened over the assets of the Contracting Party or a petition for opening of bankruptcy proceedings is dismissed for lack of sufficient assets, 3rd Rail shall be entitled to rescind the contract without having to grant a grace period.
- 9.5 Without prejudice to claims for damages of 3rd Rail, including pre-procedural costs, services or partial services already provided shall be accounted for and paid according to contract in case of a rescission of contract. This shall also apply to the extent the delivery or service has not yet been taken over by Customer as well as to preparatory work carried out by 3rd Rail. As an alternative 3rd Rail may also demand that items already delivered be returned.
- 9.6 Other legal consequences of rescission shall be excluded.

10. Liability

- 10.1 Within the scope of statutory provisions 3rd Rail shall be liable for damage beyond the scope of application of the Product Liability Act only if it can be proven that it acted with willful intent or gross negligence. Liability for slight negligence, consequential damages (in particular, expected savings which were not made, lost data, loss caused by a business interruption), pecuniary damage, lost interest and damages on grounds of claims of third parties vis-à-vis the Contracting Party shall be excluded.
- 10.2 Any damages shall be excluded if conditions, if any, for assembly, putting into operation or use (such as conditions contained, e.g., in operating instructions) or of official admission requirements are not complied with.
- 10.3 If contractual penalties have been agreed, any additional claims on grounds of the respective violation shall in any case be excluded.
- 10.4 Compensation claims shall become statute-barred 12 (twelve) months after discovery of the damage and the damaging party, however, in any case 3 (three) years after the risk has passed according to clause 6.
- 10.5 Claims of recourse, if any, that the Contracting Party or third parties assert against 3rd Rail under product liability pursuant to the Product Liability Act [Produkthaftungsgesetz, PHG] shall be excluded unless the party claiming recourse proves that the mistake was caused within the sphere of 3rd Rail or at least was caused by gross negligence.
- 10.6 The limitations, exclusions, and disclaimers set forth in these General Terms and Conditions shall apply to the maximum extent permitted by law in the applicable jurisdiction.

11. Assertion of claims

Unless provisions separately stipulated or statutory provisions provide for shorter periods, any and all claims of the Contracting Party shall have to be asserted in court within 3 (three) years of passing of the risk; otherwise such claims shall be forfeited.

12. Force Majeure

- 12.1 Events of force majeure which affect 3rd Rail or any of its suppliers shall entitle 3rd Rail to suspend deliveries for the time of the impairment and a reasonable start-up period, or to rescind the contract in whole or in part according to their consequences. The Contracting Party shall, in such a case, not be entitled to claim damages or subsequent delivery. If delivery is delayed for more than 6 (six) months due to consequences of force majeure, the Contracting Party shall be entitled to rescind the contract with respect to the part of the delivery affected with-in 8 (eight) weeks.
- 12.2 Events of force majeure shall include but not be limited to all kinds of acts of God, such as, e.g., earth-quake, lightning, frost, storm, floods; as well as war, laws, official interventions, seizure, transport problems, restrictions on import, export and transit, exchange restrictions on international payments, shortage in raw materials and energy; as well as breakdown of operations, such as, e.g., explosion, fire, strikes, sabotage and any other events which it would only be possible to prevent at disproportionately high costs and with commercially unreasonable means.

13. Industrial Property Rights and Copyright

- 13.1 If goods are produced by 3rd Rail on the basis of design specifications, drawings, models or other specifications of the Contracting Party, the Contracting Party shall indemnify and hold 3rd Rail harmless in case of an infringement, if any, of copyrights, intellectual property rights or other industrial property rights or personal rights.
- 13.2 Execution documents, such as, e.g., plans, sketches or other technical documents as well as samples, catalogues, brochures, illustrations and the like shall always remain the intellectual property of 3rd

Rail and shall be subject to the relevant statutory provisions on reproduction, imitation, competition, etc.

14. Other Provisions

- 14.1 If individual provisions of the contract or of these terms and conditions are or become ineffective, in-valid and/or unenforceable, the effectiveness, validity and/or enforceability of the remaining provisions shall not be affected. The ineffective provision shall be replaced by an effective, valid or enforceable provision which comes as close as possible to the economic purpose intended.
- 14.2 The Contracting Party shall maintain secrecy about the fact that a contract has been concluded and in advertising materials or reference lists, shall only refer to its business relationship with 3rd Rail after 3rd Rail has agreed thereto in writing. The contracting parties undertake to treat all commercial and technical details which are not publicly known and of which they obtain knowledge in the course of the business relationship as a trade secret. Suppliers shall be obliged accordingly by the Contracting Party.
- 14.3 The Contracting Party shall maintain secrecy about personal data of which it has obtained knowledge. The Contracting Party shall be obliged to protect the data against access by third parties.
- 14.4 Unless stipulated otherwise, continuous obligations may be terminated by 3rd Rail by giving 6 (six) months' notice. 3rd Rail may terminate contracts with immediate effect for important reason.
- 14.5 The Contracting Party shall not be entitled to assign its rights and duties or its accounts receivable from 3rd Rail to third parties without the prior written consent of 3rd Rail.
- 14.6 The Contracting Party shall not offset its own receivables against receivables of 3rd Rail, except for sums which have been awarded by court and debts which 3rd Rail has expressly recognized in writing.
- 14.7 3rd Rail shall be entitled to transfer its rights and duties under the contract concluded with the Contracting Party to companies in which 3rd Rail holds an interest of more than 25% (twenty-five percent) or to companies which hold an interest in 3rd Rail of more than 25% (twenty-five percent). The Contracting Party shall not be entitled to terminate the contract on the basis of such a transfer.
- 14.8 Any declarations, notifications, etc. addressed to 3rd Rail shall be made in writing and shall bear an original signature in order to have legal effect. Agreements which provide for deviation from such formal requirement shall be made in writing.
- 14.9 Place of performance shall be the business seat of 3rd Rail. All disputes directly or indirectly arising from the contract shall exclusively be referred to the Austrian court with subject-matter jurisdiction and local jurisdiction for the corporate seat of 3rd Rail. The contract shall be subject to Austrian law to the exclusion of the conflict of law rules of international private law and the UN Sales Convention.

Version dated with March 1st, 2017