

General terms and conditions of sale and delivery (GTCS)

**of EuroMaint Rail GmbH,
Werkstättenstraße 4, 04319 Leipzig**

As per: January 2010

Section 1 Area of application

- (1) All offers and agreements of EuroMaint Rail GmbH with our clients are exclusively based on these General terms and conditions of sale and delivery. Deviating purchase conditions of the client are not accepted and will not become part of the agreement, even through the unconditional confirmation and execution of the order.
- (2) These GTCS shall only apply in respect of companies within the meaning of section 310 subsections 1, 14 BGB (German Civil Code).

Section 2 Prices and terms of payment

- (1) The prices are net prices plus the respective statutory sales tax and apply ex works without packaging.
- (2) Our invoices are payable within 14 days after provision of the delivery/service and receipt of the invoice, without any deductions.
- (3) Payment shall be effected to the bank account stated by EuroMaint Rail GmbH. Bills of exchange will not be accepted.
- (4) If the client is in default of payment, EuroMaint Rail GmbH is entitled to claim default interest of 8% above the base interest rate (section 247 BGB). Furthermore, EuroMaint Rail GmbH will claim a flat fee of EUR 10.00 for every further reminder.
- (5) The client may only offset monies against claims that have been acknowledged by us, legally recognised or that are undisputed. The client has no right to decline services or right of retention, unless we have already received that part of the client's return service in respect of a defective delivery/service we provided, which corresponds with the value of our delivery/service. This shall also apply to a right

of retention due to supposed defects of the delivery prior to execution of liability for defects and to the commercial right of retention in accordance with section 369 HGB (Commercial law).

Section 3 Terms of delivery, acceptance, transfer of risk

- (1) EuroMaint Rail GmbH is entitled to execute partial deliveries, insofar as these are reasonable to the client.
- (2) The observance of agreed terms requires the timely access to information and documentation to be supplied by the client, the timely release of all plans and construction drawings as well as adherence to the agreed terms of payment and other obligations by the client; if the above is not observed, the terms are extended in accordance with the delay caused by the client.
- (3) An agreed term of delivery is considered observed on provision for collection by the client. If shipping was agreed, the term is considered observed when the full shipment is dispatched. Insofar as an acceptance must be executed, the acceptance date or alternatively the fruitless expiry of an acceptance date, due to the client, is decisive in respect of the acceptance.
- (4) The term of delivery also extends correspondingly if it cannot be observed due to force majeure, namely war, rebellion, strike, lock-out, epidemics and natural catastrophes. This shall also apply to circumstances not due to EuroMaint Rail GmbH, including delays caused by subsuppliers of EuroMaint Rail GmbH.
- (5) The client can only claim default damage or damages instead of delivery in the event of a delayed delivery, if EuroMaint Rail GmbH, its legal representatives and agents act deliberately or grossly negligent. The client can only claim damages for the typical default damage arising in respect of the deliveries in question. The client, however, retains the right to provide EuroMaint Rail GmbH with an appropriate period of grace and to rescind from the agreement following its fruitless expiry.
- (6) If the client delays in respect of the acceptance of the delivery/service, we are entitled to withdraw from the agreement without having to offer a period of grace, to dispose of the supplied goods otherwise and to demand the payment of damages by the client. If collection or dispatch is delayed for reasons due to the client, the risk is transferred to the client on provision for collection or on commencement of shipment.

Section 4 Liability for defects

- (1) Insofar as nothing else has been agreed, EuroMaint Rail GmbH shall not assure a specific quality of the delivery/service.
- (2) The client must check our delivery/service immediately and inform us of any defects in detail, within an exclusion period of three days by registered mail. With regard to obvious defects the term commences on handover, with regard to hidden defects the term commences with their detection. On expiry of this period all warranty claims of the client are excluded.
- (3) Claims for defects do not exist in the event of only minor deviations from the agreed quality or in the event of only minor impact with regard to use.

Section 5 Restriction of liability

- (1) We will only accept liability in cases of deliberation or gross negligence or in cases of death, injury or damage to health. If important contractual obligations are negligently infringed upon we are liable in accordance with legal provisions, however, restricted to the typical, reasonably foreseeable damage, insofar as we are not imputed for deliberation or gross negligence.
- (2) Any claims for damages exceeding the above are excluded, irrespective of the legal nature of the claim asserted, unless we, our legal representatives or managing agents are imputed for deliberation or gross negligence. This shall apply, in particular to claims for damages in respect of the reimbursement of consequential harm caused by a defect, due to faults on conclusion of the agreement, due to the infringement of other obligations or due to tort claims for the reimbursement of material damage in accordance with section 823 BGB and with regard to the personal liability for damages of our staff, representatives and agents.

Section 6 Retention of title

- (1) All items (reserved goods) delivered by EuroMaint Rail GmbH shall remain the property of EuroMaint Rail GmbH until all claims from the business relationship with the client are met. The client is, however, also entitled to make use of the delivery in the context of its regular business operations. The client is only entitled to dispose of the goods to resellers within normal business transactions. This disposal authorisation shall automatically expire in the event of an unsuccessful foreclosure attempt against the client and if a reason for the opening of insolvency proceedings against the client exists. All other disposal of our reserved goods, in particular pledging and assignment as security are not permitted while our retention of title exists.
- (2) The client shall already assign to EuroMaint Rail GmbH all claims and ancillary rights arising from the resale of the reserved goods. In the event of the sale of combined or mixed reserved goods, we shall acquire the primary partial amount, which corresponds with the share of the order value of our reserved goods over the other combined objects. The client is entitled to collect the claims assigned to us in ordinary business operations. The authority to collect shall expire on cancellation by EuroMaint Rail GmbH; this authority can be exercised at any time, in particular in the event of a significant deterioration of the client's asset situation.
- (3) EuroMaint Rail GmbH' liens shall only expire when all payment obligations of the client are completely fulfilled. On payment via cheque or bank transfer, fulfilment is given when the cheque has been finally redeemed and recourse against EuroMaint Rail GmbH is excluded or when the amount is finally credited to the account of EuroMaint Rail GmbH.
- (4) The client undertakes to immediately advise us of any foreclosure measures of third parties in respect of the reserved goods while providing us with the documentation necessary for the appeal. The intervention expenses shall be borne by the client.
- (5) In the event that the client breaches obligations we are entitled to rescind from the agreement and redeem the reserved goods, if an appropriate period for execution of the service provided by us has expired fruitlessly or the provision of such period is not required in accordance with legal provisions.

Section 7 Copyrights

EuroMaint Rail GmbH reserves to itself all proprietary rights and copyright in cost estimates, drawings, documents and all other information – including in electronic form – concerning the goods to be delivered, regardless of whether of a physical or non-physical nature. The information may only be made available to third parties following the prior consent of EuroMaint Rail GmbH, and is to be returned to the EuroMaint Rail GmbH in the event of non-acceptance of our offer, or following the performance of the contract. The Client shall not be entitled to use it for the purpose of reproducing the goods to be delivered or constructing goods similar to the same. We shall be entitled to make information provided by the Client available to such third parties as are instructed by us as sub-contractors.

Section 8 Final provisions

- (1) Place of fulfilment for delivery and payment is Leipzig.
- (2) The contractual relationship and all disputes arising there from are subject to the jurisdiction of the Federal Republic of Germany under exclusion of CISG. This applies also to foreign orders.