

General Terms and Conditions of DB Fahrzeuginstandhaltung GmbH for the maintenance of rail vehicles

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1. General provisions

- 1.1. These General Terms and Conditions govern the contractual terms and conditions for providing maintenance services on rail vehicles (hereinafter vehicles) at DB Fahrzeuginstandhaltung GmbH facilities or third-party facilities as well as for mobile maintenance. In the following, DB Fahrzeuginstandhaltung GmbH will be referred to as the Contractor, and the contracting party as the Client.
- 1.2. The Contractor shall notify the Client, with whom it is contractually associated at the time when the changes are intended to take effect, of any changes to these General Terms and Conditions for maintaining vehicles. They are deemed to have been approved unless the Client objects to them in writing within one month of receipt of the notification of change. Changes shall take effect as of the first day of the second month following the month in which the Client receives the notification of change. Where the Client objects on time, the Parties shall have the right to terminate the contract in question within one month of receipt of the objection, subject to three months' notice to the end of the month. The Contractor shall indicate the right to object and terminate the contract in the change notification.

2. Service content

- 2.1. The Parties undertake to enter into negotiations if and to the extent that the Client's maintenance regulations or other specifications for maintenance change after conclusion of the contract and, as a result, also the content of the scope of services and the service description. If no agreement is reached, the Parties are free to terminate the contract in question extraordinarily by giving four weeks' notice at the end of the month.
- 2.2. The Client shall only commission authorised services. Accordingly, the Contractor shall only offer services which it has been authorised to perform by the Client. Should the Client request an unauthorised service, the Contractor shall draw attention to the fact that no authorisation has been given.
- 2.3. Services shall be defined as follows:
 - Heavy maintenance services
According to Section 1 (22) of the German Railway Regulation Act (Eisenbahnregulierungsgesetz, ERegG), *heavy maintenance services* are work that is not routinely carried out as part of everyday operation and for which the vehicle must be taken out of service (e.g. overhaul) and which is not covered by light maintenance because it ensures the long-term usability of the vehicle and requires significant investment.
 - Light maintenance that is also performed on a mobile basis ("full service")
Light maintenance includes:
 - Preventive maintenance and Nachschau in-service inspections (all frequently recurring mileage and time-dependent maintenance activities described in the maintenance plan for the vehicle concerned)
 - Corrective maintenance (minor repairs to rectify malfunctions and faults that occur during normal operation of the vehicle)
 - Mobile maintenance performed by a mobile maintenance team at the vehicle location without delivery of the vehicle to a depot selected by the contractor, whereby the location may also be a place selected by the Client outside a depot, e.g. on the open line.
 - Unforeseeable (heavy or light) maintenance
Corrective maintenance is *unforeseeable* if it does not arise during normal operation but is the result of an unforeseen event (e.g. defects/damage caused by operating errors, improper or incompetent handling/use/operation, accidents, vandalism, sabotage, damage caused by natural disasters, derailment or poor condition of the infrastructure) as well as repairs of the following types: painting work, basic design, final design and series errors.
If the content of the maintenance service is light maintenance:
Light maintenance services not provided on a mobile basis are always performed by third parties at their plants.
- 2.4. The Contractor shall, no later than at the commencement of work, provide the Client with a valid certificate or certificate of conformity that includes the maintenance delivery function (ECM 4) in accordance with Implementing Regulation (EU) 2019/779 and undertakes to maintain such a certificate for the duration of the Contract. The valid certificate or certificate of conformity itself shall be presented whenever requested during the term of the Contract. Should the certificate or conformity be withdrawn from the Contractor or should it lose its validity or not be renewed for other reasons, the Contractor undertakes to inform the Client immediately in text form.

3. Remuneration

- 3.1. The amount of remuneration has been agreed upon in advance based on the requirements submitted by the Client and, as a rule, without previous inspection of the vehicle. The Contractor has assumed normal wear and tear of the vehicle for the calculation. This means that the vehicle does not show any excessive damage on arrival at the Contractor's premises that was not notified before the contract was concluded.
- 3.2. If a quotation for a change order submitted by the Contractor does not contain any information on the change of the remuneration, in case of doubt the depot prices customary at the place of performance shall apply, unless the Client could not assume that the change in the scope of services would lead to a price increase.
- 3.3. All prices are quoted net in euros and do not include taxes. VAT must be indicated separately at the end of each invoice in one amount.

- 3.4. The Contractor shall issue an invoice in paper or e-mail form on an order-related basis once the service has been provided. Section 632a BGB (payments on account) shall remain unaffected.
- 3.5. Invoices shall be due for payment twenty (20) days after the invoice date.
- 3.6. The Contractor is entitled to demand interest-free advance payments, down payments, payments on account or part payments, particularly if it has to procure cost-intensive materials. If the Client fails to comply with the request for the provision of security within ten (10) calendar days, the Contractor may refuse to perform the services without further notice until security has been provided. Advance payments, down payments, payments on account or part payments must be made at least five (5) bank working days before the relevant consideration is due and shall be accounted for in the next invoice.
- 3.7. Should the Client have objections to an invoice, the Client must make such objections known to the Contractor within six (6) weeks of receipt of the applicable invoice. Where no objections are made by the relevant deadline, the Client shall be deemed to have approved the invoice. This does not preclude mandatory legal claims of the Client in case of justified objections after the expiry of the said deadline.
- 3.8. The Client may only declare compensation against claims of the Contractor, or make use of a retention right, if the Client's claims are undisputed or have been found justified in a court of law.
- 3.9. The Contractor may refuse to provide the services if the Client is late in settling a claim in respect of maintenance services already performed; this shall apply until the invoice is proven to have been paid. The same shall apply if the Client is in default with a payment in respect of a claim assigned to the Contractor.

4. Contact persons

The Contractor's contact person at its maintenance depots is not authorised to modify, supplement, cancel or terminate this Contract. Conclusion of supplementary agreements is excluded.

5. Subsequent change/modification of the service content (additional services)

- 5.1. If the Contractor discovers after the commencement of the work that the scope of services has changed, and for this reason it is necessary to change the content and/or the timeframe of the service, the Contractor shall immediately send the Client a written quotation for a change order (e.g. by e-mail). The Contractor shall inform the Client if the Contractor is not authorised to perform the necessary additional work. The Contractor is then not obliged to submit a corresponding quotation for a change order or claim. The Contractor shall point out to the Client any additional services that are recognised as necessary, in particular those relevant to safety, even if the Contractor is not authorised to perform them. In such a case, the Contractor shall also draw attention to the fact that it does not possess the required authorisation.
- 5.2. The Contractor shall submit a quotation for a change order for additional services if the expenditure for the services to fulfil the purpose of the contract is greater than assumed or the Contractor determines that the scope of services needs to be expanded to achieve the purpose of the services, insofar as a quotation for a change order is not deemed unnecessary because the parties have agreed on value limits.
- 5.3. If the Contractor is unable to submit a quote, it shall send the Client a written notification for the additional services.
- 5.4. The amendment shall be deemed agreed when the Client confirms the quotation for a change order by email or by sending its order form.
- 5.5. Additional services have an impact on agreed deadlines and performance periods; in this context, the availability of the required spare parts is particularly important. They are accordingly subject to remuneration.
- 5.6. If the Client does not come to a prompt decision regarding the quotation for a change order within five (5) working days, the Contractor shall only perform such services as have been expressly ordered, and - as far as possible - shall continue the remaining work, even if the additional services cannot be performed anymore. When performing light maintenance services, the response period is reduced to 24 hours.
- 5.7. If it is not conducive to perform the services that have been ordered without the additional service, the Contractor shall be entitled, as an alternative, to suspend performance of the services that have been ordered until the Client comes to a decision. If the Client does not make its decision within four (4) weeks following receipt of the quotation for a change order, the Parties are free to terminate the contract extraordinarily by giving four weeks' notice at the end of the month, provided that the commissioned service is not useful without the additional services. Upon Contract termination, the Client shall be obliged to collect the vehicle and any disassembled components and any materials provided without delay. The Contractor is not obliged to reassemble disassembled vehicles at its own expense.
- 5.8. If there is a disagreement between the Parties as to whether the service is additional or already covered by the statement of work of the Individual Contract, doubts in the interpretation of the statement of work shall be interpreted at the Client's expense since the Client is responsible for specifying the content or scope of the service to be provided. This shall also apply if the contractual performance is remunerated with a fixed price, unless the Client can demonstrate and prove that the disputed performance is usually to be rendered within the agreed scope of performance.

6. Performance periods

- 6.1. If time periods are described in working days, the working days are deemed to be Monday to Friday, excluding public holidays in the German federal state in which the service is provided.
- 6.2. Appointments for the delivery and return of the vehicle shall be made in text form directly with the named contact persons at the maintenance depot carrying out the work.
- 6.3. Performance periods and deadline commitments which are designated as "expected" are not binding.
- 6.4. Agreed performance periods shall no longer be deemed binding if the Client has not sufficiently authorised the Contractor to perform all commissioned services prior to commencement of performance. Nor shall the performance time be postponed accordingly. The same shall apply to additional services whose performance is agreed after the Contract has been signed. If authorisation is not forthcoming within four weeks after the agreed start of performance, both Parties shall have the right to terminate the individual contract concerned without notice at any time.

- 6.5. If the Contractor determines after the commencement of the services that the performance period needs to be changed, it shall inform the Client immediately in writing (e.g., by email, if required with a quotation for a change order) about this and communicate the new performance period. This shall be deemed to have been agreed upon after 2 working days if the Client does not object or if the Parties do not agree on a different performance period. This shall also apply if the Contractor only communicates a non-binding performance period.
- 6.6. If the Client fails to meet its agreed obligations on time, without fault, or in full, any performance periods of the Contractor shall be extended as needed, including a reasonable lead time, and taking into account the already binding performance times, so that the Contractor is not in default and the agreed performance times and the time spent in depot no longer apply.
- 6.7. The Parties are aware that in the event of a pandemic, delays in performance may occur at any time after commencement of service due to disease-related staff absences, material delivery difficulties, and possible closure of the depot, which the Parties can neither avoid nor foresee. The affected Party shall immediately notify the other Party of any delay, and shall state the specific pandemic-related reasons.
- 6.8. If the service covered by the individual contract is the performance of a general inspection/overhaul, the following shall apply: The performance time agreed in the individual contract shall only apply to the services agreed upon conclusion of the contract (planned service according to the service description) of the general inspection or the overhaul. Experience has shown that unpredictable findings (additional services) occur during the vehicle inspection after the conclusion of the individual contract. Often, they cannot be handled within the agreed service period. If the Client commissions the additional work, the previously agreed performance times shall no longer be binding unless the Contractor expressly confirms this in writing.

7. Materials

- 7.1. All standard, spare and wear parts required to perform the service shall be provided by the Contractor. The Parties agree that the Client is solely responsible for deciding on the technical specification and target quality of the materials. The Parties shall comply with their obligations under Regulation 2019/779 with regard to the materials and components used. In particular, the Client shall hand over to the Contractor a list of materials, including a sufficiently detailed description of their use and the necessary health and safety information.
- 7.2. The Contractor shall not be obliged to comply with the material specifications from the maintenance regulations or other documents from the Client if and to the extent that it uses a substitute that is at least of the same quality and specification as the specifications in the documents. The Contractor must inform the Client upon request whether a substitute is or has been used. Furthermore, the Contractor shall also be required to provide proof of an equivalent level of safety in the form of a risk assessment (CSM) for equivalent suitability and specification at the Client's request. Upon delivery of ordered materials, the Contractor shall exercise due diligence in inspecting such materials in accordance with its own standards and the requirements of Regulation 2019/779. A functional test of the material shall not be required. The Contractor shall be entitled to use reconditioned functioning spare and wearing parts from its stock without informing the Client separately.
New parts shall be subject exclusively to the Contractor's agreements with the relevant manufacturer or supplier. The Contractor shall retain title or joint title to the items used until the remuneration has been paid in full.
- 7.3. The Contractor shall not initiate an order for materials until the Client has accepted the offer to conclude an individual contract, or until a supplementary agreement has been concluded. Performance deadlines always depend on the delivery times of the suppliers and shall be postponed according to these delivery times without the Contractor being deemed in default. This shall always apply unless it can be demonstrated that the Contractor caused the purchase order to be placed late.
- 7.4. For materials manufactured or supplied by third parties or services passed on from third parties that are explicitly identified as such in the Individual Contract, these rights shall be based on the agreements of the Contractor with said third parties in the case of a defect. The Contractor shall disclose the relevant conditions to the Client upon request.
- 7.5. Should materials belonging to the Client be removed in order to perform a replacement, the Contractor shall be entitled to retain said materials without issuing a credit note, to dispose of them or to return them at the Client's expense.

8. Termination of the Contract

- 8.1. Ordinary termination is excluded, as is Section 648 sentence 1 of the German Civil Code (BGB).
- 8.2. This shall not affect the right of the Parties to terminate an Individual Contract without notice for cause.
- 8.3. In order to exercise a right to extraordinary termination of this Individual Contract, a Party must make a complaint in writing to the other Party first, where termination is threatened and a reasonable period to provide remedy offered to the other Party, unless this cannot reasonably be expected from the Party taking such action, or this Individual Contract provides otherwise.
- 8.4. The Contractor may terminate the Individual Contract in particular if the Client fails to comply with its obligations to cooperate, in particular its obligation to provide the complete set of maintenance regulations and other documents required for the performance of the service.
- 8.5. Notice of termination must always be given in writing.

9. Handover, visual inspection, and transfer of risk

- 9.1. As a rule, the Client shall hand the vehicle over after it has been powered down. In this context, 'powered down' specifically means the following:
 - a. The wastewater tank has been emptied, if it exists
 - b. The freshwater tank has been emptied, if it exists
 - c. The ticket machine has been emptied, if it exists
 - d. Hot drinks or snack vending machines have been emptied, if they exist
 - e. The vehicle has been powered down to reflect the weather conditions
 - f. The vehicle has been locked and parked with windows and doors closed.
- 9.2. The Parties can arrange for another party to represent them during the visual inspection or briefing (e.g. the shunter).

- 9.3. The actual condition as verified by inspection is recorded in a visual report. If the Client or its representative is not present at the visual inspection, the Contractor may perform and document a visual inspection. It shall send the Client the documentation from the visual inspection by e-mail. The visual report shall be deemed approved if the Client does not object to it within a period of two calendar days.
- 9.4. The risk of deterioration and accidental loss shall be transferred at the agreed place of transfer on the agreed delivery date at the earliest with the actual delivery, whichever is later.
- 9.5. If the Client delivers the vehicle outside of the maintenance depot's opening hours by parking the vehicle in front of the maintenance depot and the Contractor is unable to take delivery of the vehicle at that time, the following shall apply: The risk of deterioration and accidental loss shall only pass to the Contractor when the maintenance depot is subsequently opened, but no earlier than at the agreed supply time. The Contractor shall transfer the parked vehicle to its maintenance depot at the expense of the Client.
- 9.6. The Client shall bear the burden of proof that any damage to the vehicle was not present at the time of transfer of risk.
- 9.7. The cost of shunting the vehicle from a possible transfer track to the maintenance depot shall be borne by the Client.
- 9.8. The risk of damage and accidental loss shall be transferred from the Contractor to the Client upon collection of the vehicle at the agreed delivery time, whichever is earlier. This shall also apply if the Contractor has already completed and provided the vehicle at an earlier time, but the Client does not collect the vehicle until the agreed time.

10. Obligations of the Contractor

- 10.1. The Contractor undertakes to perform the agreed services for the Client.
- 10.2. The Contractor undertakes to provide its services exclusively in accordance with the maintenance regulations and other documentation and specifications issued by the Client. It is neither entitled nor obliged to supplement them. The ECM 2 responsibility towards the Contractor remains with the Client or the ECM 2. The Contractor must implement changes of the maintenance regulations at the latest three weeks after they have been sent.
- 10.3. If the Contractor discovers after the start of the service provision that maintenance regulations or operational documents are missing, it shall inform the Client immediately.
- 10.4. The Contractor undertakes to take risk mitigation measures specified by the Client to comply with its obligations under the EU Regulation 2019/779 and disclose such measures at the request of the European Union Agency for Railways or the national safety authorities.
- 10.5. If, for operational or other reasons, it is not possible to carry out the services in the agreed maintenance depot, the Contractor undertakes to inform the Client of this without undue delay and to provide the name of the new maintenance depot. The Contractor shall remain obliged to perform the agreed service. If the Client has well-founded reservations against the newly selected maintenance depot, it shall inform the Contractor of this without undue delay, stating the reasons.
The additional costs incurred as a result shall be borne by the Contractor.
- 10.6. The place of performance is the location at which the service is provided.
- 10.7. The Contractor undertakes to make the following information available not only to the Client but also to the ECM 2 designated by the Client if this role is not filled by the Client:
 - a. Works performed in accordance with the maintenance orders
 - b. Any possible fault or defect regarding safety which is identified by the organisation
 - c. The release to service
- 10.8. The Contractor undertakes to engage subcontractors only with the express consent of the Client. The Client shall only refuse consent for a good cause. Good cause shall be deemed to exist in particular if the subcontractor's workshop is not sufficiently certified in accordance with (EU) 2019/779 or the ECM 3 raises other, proven and justified concerns about the subcontractor.
The approval requirement shall not apply if the subcontractor belongs to the DB Group.
- 10.9. The Contractor shall allow representatives of the Client to have access to the Client's own vehicle and inspect the procedures and documents for this vehicle, provided that this is agreed in good time in advance with the Contractor.

11. Client's Obligations

- 11.1. The Client shall provide the Contractor with its maintenance regulations in good time, usually before concluding an individual contract, at least four weeks before starting maintenance. The period shall be shortened to 2 weeks in the case of light maintenance.
- 11.2. In addition, the Client shall undertake to hand over to the Contractor all additionally required operational documents (e.g. operating instructions, manuals and specifications for troubleshooting, list of safety-critical components (SCC) pursuant to Regulation (EU) 2019/779), as well as the Client's operational regulations, at least 4 weeks before the start of the service.
- 11.3. In the case of orders involving non-destructive testing, the Client is obliged to provide a written test instruction for components to be tested in accordance with DIN 27201-7, which the Client has brought into force. In individual cases, the Parties may agree that the Contractor shall provide the test instructions. The remuneration for making this available shall be agreed in an individual contract.
- 11.4. The Client shall make available all maintenance regulations and other documents in accordance with points 1 - 3, in a well organised manner and in a universal file format; an open document format in German is the minimum requirement.
- 11.5. If the Client does not send missing maintenance regulations or other necessary documents 4 weeks after the Contractor has reported their absence at the latest, the Contractor shall have the right to extraordinary termination of the Individual Contract unless the Client has provided the Contractor with a binding deadline for sending the documents within the 4 weeks. The right of termination shall then apply if the Client does not deliver the missing documents until the agreed date. The period shall be shortened to 2 weeks in the case of light maintenance.
- 11.6. The Client shall provide the software required to provide the services free of charge and at least 2 weeks before the commencement of the service. The Contractor shall notify the Client of any amendments without request. Where necessary, the Client shall provide the Contractor with the necessary documents in German for the use and handling of changes to the software.
- 11.7. If required, the Client undertakes to provide the Contractor with an overview of the required equipment and, for example, the

specifics for the vehicle type, along with the equipment listed in the overview, at the latest when the vehicle is transferred. The Contractor shall notify the Client without delay if the necessary equipment is missing. The Client is obliged to provide the missing equipment. The Contractor may suspend the services for which the missing equipment is required without being in default until it has received the missing equipment. If the absence of equipment or an overview of the equipment results in the Contractor being unable to perform the service owed under the Individual Contract, the Contractor shall be entitled to terminate the Individual Contract without notice.

- 11.8. Upon conclusion of this contract, the Client undertakes to instruct the Contractor using the railway operations manager within 3 weeks, at the latest upon handover of the vehicle, in the vehicle operation for driving authorisation, in particular for moving (shifting, workshop drives, and test drives on the DB Netz AG network). The Client shall commission the Contractor in writing and confirm which employees have been instructed in the vehicle operation. In doing so, the Client must certify whether and which protection vehicles (stating the vehicle type) are suitable and must be used for shunting its vehicles. Once the training has been completed, the Client shall provide the Contractor with a certificate.
- 11.9. If the Parties agree that the Contractor shall independently prepare the recommissioning declaration before a necessary workshop drive, the Client shall provide the Contractor with all relevant information at the latest upon delivery of the vehicle and shall send this to the Contractor via the sample form agreed upon in advance. If the details change during the vehicle's stay, the Client shall inform the Contractor of this immediately by email and shall resend a fully completed form to the Contractor for this purpose. If the Client fails to provide the Contractor with the necessary information on time and in full, the Client shall be liable for any consequences. The Client is entitled and obliged to ensure that the Contractor has a procedure for issuing the recommissioning certificate.
- 11.10. The Client shall deliver the vehicle to the maintenance depot of the Contractor, in which the latter is to perform the services, at the agreed time and at its own expense. The Client shall ensure that the vehicle is in a functional, usable, and fundamentally safe operating condition at the time of delivery, and that it only has performance-related, rather than extraordinary wear and tear. The above sentence shall not apply to vehicles involved in an accident. The condition may vary when repairing an accident vehicle.
- 11.11. Before transferring the vehicle, the Client shall send the Contractor an email with the following content:
- Designation/type of the vehicle, in particular for the preparation of shunting services
 - Planned date and time of arrival at the agreed maintenance depot
 - Name of the supplying RU including contact details (name, email, phone) of the RU's rail safety manager (EBL).
- The Client shall mark the vehicle clearly with the name of the Client and the point of receipt at the Contractor's premises.
- 11.12. The Client warrants that no hazardous substances within the meaning of the Chemicals Act (Chemikaliengesetz, ChemG) or the Chemicals Prohibition Ordinance (Chemikalienverbotsverordnung, ChemVerbotsVor) or any other substances which are harmful to health (e.g. asbestos, old man-made mineral fibres (old MMMF), heavy metals, mould, etc.) are adhering to the vehicle concerned or the materials provided by Client, with the exception of regularly used operating materials and that they are also not contaminated by such hazardous substances. Furthermore, the Client also warrants that hazardous substances (e.g. dusts) cannot develop during the processing of the vehicle and its components or when using the materials and components provided.
- The Client shall prove this to the Contractor in a suitable form no later than four weeks before delivery of the vehicle to the maintenance depot by submitting suitable documents (e.g. analyses to examine for substances containing asbestos and MMMF, current asbestos register, analyses with regard to substances containing heavy metals, e.g. in paints, examinations for coatings containing chromium VI, etc.).
- If the Client fails to send suitable proof in due time and/or if the Contractor has indications or empirical values at the time of delivery to the maintenance depot or performance of work that this assurance does not correspond to the actual condition of the vehicle and that such substances may be present or that harmful dusts may occur, the Contractor may only commence the performance of work if it can assess or exclude the risk to the protection of the health of its employees in accordance with the statutory requirements.
- If there are such indications or empirical values contrary to the assurance, the Contractor shall be entitled in particular to:
- Postpone the commencement of work or to interrupt the work. Agreed performance times shall then lose their validity.
 - Demand the immediate removal of the object from its establishment or other safety measures
 - Take these actions itself or to arrange for these actions to be taken at the Client's expense in the event of imminent danger.
- The Contractor may also decide to examine the vehicle for the presence or absence of such substances.
- The Contractor shall inform the Client of the result of the appraisal. The Parties shall then agree on how to proceed.
- If the Contractor determines during the appraisal that such hazardous substances are clearly present, it can submit a quotation to the Client for removal of the hazardous substances by the Contractor itself or by a qualified specialist company subcontracted for the job, but is not obliged to do so. Removal of the substances shall be paid for separately and is not included in the aforementioned costs of the appraisal. If the Client fails to accept any quotation within 5 working days or if the Contractor refuses to remove the hazardous substances, both Parties shall be entitled to terminate this Contract for cause at any time. The Client's obligation to remove the object without delay (see above) remains unaffected.
- Both Parties shall also have the right to terminate the Contract if the appraisal does not produce a clear result and the presence or absence of hazardous substances can only be determined by further analyses by a third party (e.g. laboratory) and the Parties cannot reach a corresponding agreement.
- 11.13. The Client shall give the Contractor at least seven (7) working days' advance notice in written form of any audit dates and times, including the audit plan. The Client is not entitled to carry out random, unannounced checks at the Contractor's premises. This shall not affect audit rights under EU Regulation 2019/779.
- 11.14. The Client shall, at its own expense, instruct the Contractor's employees on particular issues relating to the maintenance and handling of the Client's vehicles.
- 11.15. The Client is obliged to accept the vehicle after completion and collect it at its own expense.

12. Obligations of the Client for mobile maintenance

Insofar as the services to be provided by the Contractor include mobile maintenance services, the Client shall have the following additional obligations:

- 12.1. At its own expense, the Client shall create all necessary conditions in good time to ensure that the Contractor's personnel can commence with the performance of the services and perform them without interruption.
- 12.2. The Client shall support the Contractor in problem analysis, e.g., provision of error messages and incident reports.
- 12.3. The Client shall ensure that a competent contact person is available during the performance of the mobile maintenance services who can make necessary decisions regarding the mobile maintenance services.
- 12.4. The Client shall bear the costs for manoeuvring the vehicle or transporting the components.
- 12.5. The Client shall ensure at its own expense unrestricted access to the vehicles and components, timely performance of the necessary preparatory work, and creation of the necessary infrastructural conditions (e.g., electricity, water, internet).
- 12.6. The Client shall ensure and monitor the condition of the machines so that there are no risks to people or machines during the provision of the mobile maintenance services. The Client shall ensure that vehicles are disconnected from the grid during the provision of the services.

13. ECM

The provisions of Regulations 2019/779 and 402/2013 shall apply. This results in particular in the following:

- 13.1. The Parties shall exchange information regularly in accordance with Art. 4 and 5 of Regulation 2019/779. In particular, the Parties shall inform each other immediately upon becoming aware of safety-relevant malfunctions, accidents, near-misses, and other dangerous incidents involving the vehicles and their safety-critical components. The Contractor shall inform the Client of any faults or defects found concerning the vehicle's safety and any other findings insofar as they are the result of commissioned inspection services. The Contractor shall provide the information immediately after becoming aware of it as part of the coordination between the Parties during the processing of the current maintenance order. The responsibility to regulate, manage and document this exchange of information or to initiate it accordingly lies with the management function of the ECM.
- 13.2. The Client shall have procedures for the composition of the work package and the issue and release of the maintenance order to the Contractor, and procedures to determine the necessary verification measures regarding the maintenance and release of vehicles for operation by the Contractor. The Client shall have a procedure to manage the removal of vehicles from service for maintenance or when safe operation is impaired or when needs of maintenance affect the normal operation.
- 13.3. The Contractor shall have procedures for risk identification and documentation within the scope of the ECM 4 function it has assumed and shall inform the Client about its findings which the Client must then assess on its own in compliance with Regulation (EU) 402/2013.
- 13.4. In particular, the Client or its EMC 2 shall carry out risk management ECM 2 or commission it from a certified body. The documentation of the procedure and, if applicable, corresponding certificates by NoBo, DeBo and AsBo shall be the responsibility of the Client. The Client's risk management includes a risk assessment of changes in procedures of the Contractor's suppliers and service providers. The Contractor is obliged to cooperate within the scope of its ECM-4 responsibility.
- 13.5. For using the vehicle on the public rail network, a certificate of return to service from the ECM (Client) is required, which is issued on the basis of a notice of release to service.
- 13.6. The Client shall have a procedure to issue a notice of return to operation, including the definition of use restrictions to ensure safe running (e.g. for test runs) by considering the release to service documentation.
In its capacity as ECM 4, the Contractor shall prepare the notice of release to service. For this purpose, the Parties shall use the sample notice of release to service agreed upon between the Parties. The use of the form "Release to service" of the VPI, document VPI-EMG 01-4.01, Appendix 15, is explicitly ruled out by the Contractor. The Contractor is neither entitled nor obliged to declare the recommissioning upon handover and collection of the vehicle. The Client shall always remain responsible for this recommissioning declaration.
- 13.7. If the commissioned maintenance service includes the performance of a test run on the public rail network (e.g. in the case of an overhaul of traction vehicles), the notice of release to service and the certificate of return to service are also required.
- 13.8. The Parties shall determine which rail company shall carry out any necessary test runs as part of the contracted maintenance service and who shall be responsible for the recommissioning declaration before carrying out the required test run. In the absence of an explicit rule, the Client or a body appointed by it for this purpose shall draw up the recommissioning certificate for the test run.
- 13.9. The Client shall be responsible vis-à-vis the Contractor for the timely dispatch of the recommissioning certificate in particular in the following cases:
 - Carrying out a test run as part of the commissioned maintenance service, if and insofar as the Contractor does not provide this
 - Return of the vehicle after execution of the maintenance order to the Client by the Contractor as RU
 - Participation of the Contractor in returning the vehicle to the Client, e.g., by assisting in forming the transfer trainThe Contractor shall not be in default if the Client fails to comply with this obligation on time.

14. Acceptance, rights in the event of defects

- 14.1. The warranty period for services performed by the Contractor is twelve (12) months after the service has been accepted. A warranty for durability, or durability guarantee, does not form part of this Contract. Acceptance shall take place at the time of handover in all cases. In any event, the services shall be deemed to have been accepted three (3) days after handover or when the vehicle starts to be used productively, whichever comes first. Minor defects that do not interfere with proper operation do not entitle the Client to refuse acceptance or refuse to sign an acceptance report. Any retests necessary through no fault of the Contractor shall be performed at the Client's expense.
- 14.2. The Client must notify the Contractor of any identifiable defects during the acceptance or handover. These must be recorded in a log. If concealed defects become apparent only after acceptance or handover, the Client must notify the Contractor of these

in writing without undue delay. Section 377 of the German Commercial Code (HGB) shall apply accordingly. The notification must contain a sufficiently specific description of the defect to allow the Contractor to identify and rectify such defect. The Client shall support the Contractor to the best of its ability with the rectification of the defect.

- 14.3. Where a defect has rightly been identified, the Contractor shall, at the Contractor's option, either repair the defect or replace the item. Parties shall jointly agree on an appropriate period in which to remedy the defect as soon as the defect is notified.
- 14.4. In the event of a warranty claim, the Client shall demonstrate that it or its operator duly complies with the operational regulations, as well as operating and maintenance regulations.
- 14.5. Where the Contractor is unable to remedy defects within a reasonable period and for reasons attributable to the Contractor, the Client shall be entitled to reduce the remuneration due for such defective performance, after notifying the Contractor of such a step in writing and setting a reasonable period of time to remedy the defect.
- 14.6. Further claims in the event of defects are excluded, except where a mandatory liability exists by law. The Client may not rescind the Contract if services have already been accepted. This is without prejudice to the right to terminate the affected service or the affected Contract in whole or in part for good cause.
- 14.7. Where defects are attributable to the Contractor, said defects shall be remedied during the warranty period without reciprocal offsetting of the costs incurred.
- 14.8. Defects that are the consequence of incorrect operation, non-observance of operating and maintenance regulations, interventions by the Client, use of operating fluids and lubricants other than those prescribed in the operating materials specification and faults that have been caused by wear or by deviations from the typical operating profile of the rail vehicle taken as the basis for this Contract are excluded from the warranty.
- 14.9. The Contractor shall not be responsible for defects caused by components that have not been ordered, parts of components, of parts of the rail vehicle, or for defects that are due to work performed by third parties commissioned by the Client.
- 14.10. The Contractor shall not provide a warranty against defects due to faulty construction or defects covered by a warranty of the manufacturer of the rail vehicle or a component.
- 14.11. If, in agreement with the Client, the Contractor submits to an inspection to determine whether the defect exists or has been remedied, the limitation period shall be suspended until the Contractor informs the Client of the result of the inspection, declares to the Client that the defect has been remedied, or refuses to continue with the remedial measures. In the event of a replacement delivery, the warranty shall not have a longer term than the remaining original warranty.
- 14.12. If the Contractor refuses to remedy a defect under warranty after acceptance of the performance because the claim does not fall under the warranty, the Contractor shall be entitled, without express agreement with the Client, to remedy the defect nonetheless, unless the Client expressly refuses to remedy the defect within 3 working days of the Contractor's refusal of the warranty or announces within this period that the Contractor will collect the vehicle without delay. If the Contractor remedies the defect, this shall be done under the terms of the existing Contract.
- 14.13. The inspection and elimination of a defect for which the Contractor is not liable shall be subject to remuneration. Insofar as the Parties do not reach a separate agreement before elimination of the defect, the Client shall reimburse the cost per hour.
- 14.14. The Contractor shall not be obliged to remedy the defect if the Client explicitly refuses to pay for the performance of the service (at least subject to clarification of whether a warranty case exists).
- 14.15. In the event that the Contractor agrees, as a gesture of goodwill, to remedy a defect for which it is not obliged to offer a warranty, the following shall apply unless expressly agreed otherwise:
 - The Contractor shall not bear any of the Client's costs, in particular for delivery and return
 - Downtimes shall not be at the expense of the Contractor
 - The Contractor shall not be expected to produce a successful outcome and may discontinue the repair of the defect at any time
 - Agreed warranty periods do not restart.

15. Default and liability

- 15.1. If the Contractor is in default with the performance it should provide, the Client shall be entitled, without prejudice to the claim to performance and any statutory right of termination, to demand a flat-rate compensation without providing evidence of any damage actually incurred. This shall amount to 1/2% for each completed week, limited to a total of 5% of the value of the part of the performance for which the Contractor is in default. No further damage caused by the default can be claimed. The above restriction shall not apply if the default is due to intent or gross negligence.
- 15.2. The Contractor shall not be in default if a delay is caused by the Client not making a necessary decision in good time, if further findings or additional services lead to a delay, if the Client does not provide the requisite materials or does not provide them in good time or in sufficient quantity, if the Contractor has to procure parts itself in accordance with the Contract, or if larger quantities or materials other than those agreed are required.
- 15.3. Further claims, such as claims for damages due to the hindrance of the Contractor in the performance of other contracts, shall remain unaffected.
- 15.4. If the Client is in default with a performance it owes because:
 - It has delivered the vehicle at a later date than agreed
 - It refuses to carry out maintenance services after the appraisal has been made within the agreed response period
 - Materials it should provide are delivered late
 - The Client does not submit the recommissioning declaration for a maintenance depot trip within 24 hours after receipt of the notification of the maintenance depot trip date by the Contractor from the following day, or the form "Information from the ECM for recommissioning" is not available or not up to date when the maintenance depot trip is carried out until receipt of the information by the Contractor
 - It fails to notify acceptance or rejection of a quotation for a change order in due time, or the Parties have not agreed on an extended acceptance period within the response period from the day following the expiry of the deadline
 - The Client does not collect the vehicle provided by the Contractor at the agreed time

- In the event of a justified rejection of the warranty, the Client fails to collect the vehicle provided by the Contractor within a reasonable period of time, from the day after the set deadline to a maximum of seven working days
Then the Contractor shall be entitled, without prejudice to any statutory right of termination, to demand a flat-rate compensation for the blocking of the infrastructure or reserving resources without proof of actual damage. This amounts to EUR 350.00 for each completed working day, unless otherwise stipulated in the individual contract. No further damage caused by the default can be claimed. The above restriction shall not apply if the default is due to intent or gross negligence. The Client shall also be required pay this lump sum if the Client delivers the vehicle at an earlier time than agreed.
- 15.5. The following shall also apply: the Contractor shall be liable without limitation for:
- Losses arising from death, personal injury or damage to health
 - Losses caused by intent or gross negligence on the part of the Contractor, its legal representatives or performing agents
 - Losses caused by fraudulent conduct
 - Losses for which liability can neither be excluded nor limited by law, e.g. in cases of statutory product liability.
- 15.6. In the event of simple negligence, the Contractor's liability for damage to property and economic loss shall be limited to foreseeable, typical losses resulting from the violation of obligations material to the Contract. If the losses in a case of damage exceed EUR 500,000, the previous upper limit shall not apply if and insofar as the loss is covered by an insurance policy.
- 15.7. The Contractor shall not be liable for loss of profit, lost savings, production downtimes, loss of use or disruption of operations, unless liability exists pursuant to item 15.5.
- 15.8. In the relationship between the Contractor and Client, compensation for damage to own property up to and including EUR 10,000 shall be excluded per loss event, unless liability exists pursuant to item 15.5. This shall not apply if compensation for damage to third-party property is due in addition to damage to the Party's own property.
- 15.9. The Party liable for compensation shall indemnify the other Party and its employees against claims by third parties.

16. Insurance

The Contractor is insured in the scope and to the extent provided by the Liability Insurance of Deutsche Bahn AG.

17. Third-party rights/ rights of use

- 17.1. The Parties to the Contract assume that the respective ECM specifications or ECM regulations (maintenance regulations) are fully or partially protected by copyright. Insofar as the Client is the owner of an industrial property right and/or copyright in respect of the maintenance regulations provided to the Contractor, the Client shall grant the Contractor an irrevocable, yet non-transferable and non-sublicensable simple right of use with no restrictions as to location and content. This right of use shall be granted for the duration of this Individual Contract without special remuneration. The Contractor is, however, permitted to transfer the maintenance regulations to any subcontractors or affiliated companies as defined by Sections 15 et seq. of the German Stock Corporation Act (AktG) that are commissioned by the Contractor to fulfil the Contract.
- 17.2. The Client gives its assurance that all maintenance regulations and documents handed over to the Contractor are free from third-party rights and indemnifies the Contractor in full against any third-party claims, especially due to any alleged infringement of industrial property rights and/or copyrights. The Client also guarantees the accuracy of the information contained in the documents.
- 17.3. Insofar as the Contractor is the owner of an industrial property right and/or copyright, it shall grant the Client at customary market terms and conditions an irrevocable, but non-transferable and non-sublicensable simple right of use with no restrictions as to location and content.
- 17.4. Should third parties bring claims against the Client due to the infringement of patents, copyrights or other rights as a result of the services of the Contractor, the Contractor shall be liable only for violations of third-party rights within the European Union and the European Economic Area. In such a case, the Contractor shall, at the Contractor's own expense, take over the judicial and extrajudicial defence against such claims if and to the extent that the Client immediately informs the Contractor about the existence of such claims in writing. The Client must provide the Contractor with all information required to mount a defence and must conduct judicial proceedings in consultation with the Contractor. The decision about an extrajudicial solution by way of settlement shall remain reserved for the Contractor. The Contractor shall indemnify and hold harmless the Client against all legally binding claims, or those that result from an extrajudicial settlement between the third party and the Contractor. In this context, the Contractor shall also reimburse the Client for all reasonable expenses incurred in the defence against such claims. If the claimant reimburses costs to the Client, the Client shall return them to the Contractor.
- 17.5. Where protected rights of third parties impede the contractually agreed usage of the service through no fault of the Contractor, the Contractor shall be entitled to refuse to provide the services affected by this and cancel the Contract. The Contractor shall immediately inform the Client of this fact. In such a case, the Client shall not be required to pay the remuneration due for the affected performance, nor shall the Contractor be required to indemnify or to compensate for damage.
- 17.6. In the case of a violation of a protected right, the Contractor can change or modify the performance concerned as the Contractor sees fit so that no rights of third parties are violated while still ensuring the requirements of the Client will be met in full, or come to an agreement with the owner of said rights and thereby obtain a privilege for further use of those rights. If the aforementioned measures cannot be undertaken by the Contractor within a reasonable time, either Party may terminate the Individual Contracts concerned on extraordinary grounds.
- 17.7. The limitation of liability under this section shall apply with respect to the liability under these general terms and conditions, with the exception of liability due to intent. The above constitutes the full extent of all rights and remedies of the Client, and the full extent of the Contractor's liability, in case of a violation of intellectual property rights, save in those cases where a mandatory liability of the Contractor exists by law.
- 17.8. According to the statutory regulations, safe operations management during the test run includes, among other things, monitoring the company's own train drivers, in particular in accordance with the Train Driving Licences and Certificates Regulation. The Client agrees that, for this purpose, the Contractor shall export the train event data in the electronic train event recording system from the vehicle during the test run performed by the Contractor, store such data and forward it to the relevant office in accordance with internal processes in the DB Group. The Contractor gives its assurance that the data will only be stored for the purpose

of implementing the requirements specified in the safety management system. In the event that train event data from previous journeys are transferred to the Contractor's system, the Contractor shall not be entitled to use such data. Furthermore, Article 9 of Directive (EU) 2016/798 in conjunction with Annex I of Regulation (EU) 2018/762 and No. 4.2.3.5 of Implementing Regulation (EU) 2019/773 shall apply to the storage, export and archiving of train event data.

18. Confidentiality

- 18.1. Subject to the exclusions defined below, each Party shall keep confidential and not disclose (without the prior written consent of the other Party) to any third party this Agreement, any further agreement based thereon, any related documents and any information and data obtained in connection therewith and any information or data relating to any design, operational, contractual, commercial or financial matter or affairs of the other Party which has come or may come to its knowledge under or in connection with this Agreement, except to the extent necessary for the proper execution of this Agreement or operation of the vehicles. Affiliated companies of the Client and the Contractor shall not be deemed to be third parties within the meaning of this paragraph. Furthermore, the Client and the Contractor shall be permitted to disclose the documents and information to their financing institutions to the extent required under the respective financing terms. In addition, information that must be communicated to third parties in order to achieve the contractual objectives is not subject to the obligation of confidentiality; in particular, information on operational matters and the obligations to be fulfilled by the operator (RU) in order to be able to carry out maintenance and repairs on the vehicle may be communicated to the operator (RU).
- 18.2. The duties of confidentiality do not apply to information:
- (a) that was already in the lawful possession of the recipient prior to its first receipt from the disclosing party (before, on or after the date of this Agreement); or
 - (b) communicated or given to the recipient after receipt from the disclosing party outside this Agreement by a third party authorised to disclose it; or
 - (c) that (through no fault of the recipient) is or becomes public knowledge; or
 - (d) that is independently acquired by the recipient.
- 18.3. All documents concerning the work carried out on the vehicle or its components received by the Client from the Contractor may be passed on to the operators (RUs) and future contractors for the locomotive in question.
- 18.4. The Parties are authorised to disclose the information and documents received to the party to whom the rights and/or obligations are transferred. Subject to statutory, contractual or professional duties of confidentiality, statutory disclosure obligations towards the authorities and disclosure to advisors and banks shall remain unaffected by the above.
- 18.5. Any marketing and publications that mention the name of the respective other party require the prior consent of the other party in text form. Simply naming the Client as a reference, stating an approximate order value and the object of performance, shall not require consent.

19. Compliance

The Contractor and the Client undertake, as part of their business relationship, to comply with all applicable laws, regulations, directives and other legal provisions, including but not limited to anti-corruption laws.

20. Sanctions lists, export control

- 20.1. Within the framework of their contractual relationship, the Contractor and the Client mutually consent to the regular review of their data in accordance with the respective current sanctions lists, including the Consolidated Financial Sanctions List of the European Union, of the United Nations Security Council, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), the Office of Financial Sanctions Implementation ("OFSI") of the United Kingdom and the Swiss State Secretariat for Economic Affairs (SECO). In respect of these checks, all applicable data protection regulations, in particular those concerning data minimisation and data security, shall be observed.
- 20.2. Both Parties declares that neither their companies, nor any natural or legal persons who hold direct or indirect majority ownership (50% and more) of the Parties or that control the Parties in any other way, de jure or de facto, alone or jointly, are named on any of the aforementioned sanction lists.
- 20.3. Both Parties undertake to ensure, by way of suitable measures, that the requirements of current sanctions, in particular the financial sanctions, embargoes and foreign trade regulations of the European Union and its Member States, of the United Nations, of the USA, of the United Kingdom and of Switzerland are implemented in the business operations of their companies.
- 20.4. Fulfilling the contractual obligations (goods and services) is subject to the resolute or suspensive condition that no requirements of the applicable sanctions prevent fulfilment.
- 20.5. The assertion of damages of any kind (in particular due to delay or non-fulfilment) and of other rights by the Client is excluded insofar as this is connected to the Contractor's compliance with applicable sanctions. This shall not apply if the Contractor is charged with deliberate intent or gross negligence.
- 20.6. In the event of a violation of the applicable sanctions by the Client or in the event that the Client or natural persons, companies or organisations that own or control the client become a sanctioned person, the Contractor has a right to terminate the framework agreement and associated individual contract or contracts concerned at any time, without notice, with immediate effect and without prior warning. This shall not affect the Contractor's right to enforce further claims. The same applies in the case of a match (list hit).
- 20.7. Delays due to checking and approval procedures relating to export control and sanction regulations may have a negative effect on delivery times and deadlines. If required approvals are not granted or if the contractual performance does not qualify for approval, either Party shall be entitled at any time to terminate the individual contract concerned without notice, with immediate effect and without prior warning. Where this is the case, assertion of claims for compensation of any kind, particularly due to delay or non-fulfilment, or of other rights, shall be precluded.
- 20.8. In the event of a transfer to third parties of the goods (products, software or technology including associated documentation) delivered, processed in fulfilment of this order or introduced to the process by the Contractor, applicable sanctions shall be observed by the Client.

- 20.9. The Client undertakes to provide any information and documentation required for the export.
- 20.10. The provisions and obligations set out in this clause shall only apply if agreement thereof or the submission or solicitation of a declaration based thereon does not result in the Client or the Contractor violating Article 5(1) of Council Regulation (EC) No 2271/96, Sec. 7 of the German Foreign Trade and Payments Ordinance (Außenwirtschaftsverordnung, AWV) or against similar anti-boycott or non-discrimination regulations.