

General Terms and Conditions of Sale

§ 1 General information

1. All business relations concerning deliveries, services and offers ("deliveries and services") between CG Rail as seller ("CG Rail") and the customers ("customer") shall be governed by the General Terms of Delivery ("GTC"). The GTC only apply if the customer is an entrepreneur within the meaning of §§ 310 Para. 1, 14 BGB (German Civil Code), a legal entity under public law or a special fund under public law.
2. Unless otherwise agreed, the GTC in the version valid at the time of the customer's order or in any case in the version last communicated to him in text form shall also apply as framework agreement for similar future contracts without CG Rail having to refer to them again in each individual case.
3. The GTC shall apply exclusively. Differing, contrary or additional terms shall not apply unless CG Rail expressly agreed upon in writing. This requirement of consent shall apply in any case, for example also if CG Rail carries out the delivery or services to the customer without reservation in full knowledge of the customers general terms and conditions.
4. Individual agreements made with the customer in individual cases (including additions and amendments) shall take precedence over the GTC. A written contract or the written confirmation of CG Rail is decisive for the content of such agreements.
5. Legally relevant declarations and notifications of the customer in relation to the contract (e.g. setting of a deadline, notification of defects, withdrawal or reduction) must be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Statutory formal requirements and further evidence, in particular in the event of doubts about the legitimacy of the person making the declaration, remain unaffected.
6. References to the validity of legal regulations have only clarifying meaning. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in the GTC.

§ 2 Conclusion of contract

1. The offers of CG Rail are subject to change and non-binding. This is also valid if catalogues, technical documentations (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents - also in electronic form - are handed over to the customer to which CG Rail reserves property rights and copyrights.
2. The order of the goods by the customer is considered a binding offer of contract. Unless otherwise stated in the order, CG Rail is entitled to accept this contract offer within two (2) weeks after receipt.
3. Acceptance by CG Rail shall be declared in writing by order confirmation. The contract shall be deemed to have been concluded upon written order confirmation.

§ 3 Delivery and Performance Period

1. Deadlines and dates for deliveries and services stated by CG Rail in the offer shall always be approximate only, unless a fixed deadline or date has been expressly promised

or agreed. If shipment has been agreed, delivery periods and delivery dates refer to the time of handover to the forwarding agent, carrier or other third party commissioned with the transport.

2. CG Rail may - without prejudice to its rights arising from default on the part of the customer - demand from the customer an extension of delivery and performance deadlines or a postponement of delivery and performance dates by the period if the customer fails to comply with its contractual agreements vis-à-vis CG Rail.
3. If binding delivery and performance periods cannot be adhered to for reasons for which CG Rail is not responsible (non-availability of performance), the customer will be informed immediately and at the same time be informed of the expected new delivery period. If the service is also not available within the new delivery period, CG Rail is entitled to withdraw from the contract in whole or in part; any consideration already rendered by the customer will be refunded immediately.
4. The occurrence of a delay in delivery or service is determined by the statutory provisions. In any case, however, a reminder from the customer is required. If CG Rail is in default of delivery or service, the customer can demand a lump-sum compensation of his damage caused by default. The lump-sum compensation amounts to 0.5% of the net price (delivery or service value) for each completed calendar week of the delay, however, in total no more than 5% of the delivery or service value of the delayed delivery or service. CG Rail reserves the right to prove that the customer did not suffer any damage at all or only a considerably lower damage than the aforementioned lump-sum. However, the lump sum shall be credited against further monetary claims of the customer due to the delay in delivery or service of CG Rail (claims for compensation for additional expenses, claims for compensation).
5. The rights of the customer according to § 8 of these GTC and the legal rights of CG Rail, in particular in case of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), remain unaffected.

§ 4 Delivery, transfer of risk, acceptance, default of acceptance

1. Delivery is ex warehouse, which is also the place of performance for the delivery and any subsequent performance. At the request and expense of the customer, the goods will be shipped to another destination (sales shipment). Unless otherwise agreed, CG Rail is entitled to determine the type of dispatch (in particular transport company, dispatch route, packaging) itself.
2. The risk of accidental loss and accidental deterioration of the goods shall pass to the customer at the latest upon delivery. In the case of sales shipment, however, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall pass to the customer upon delivery of the goods to the forwarding agent, carrier or other person or institution designated to carry out the shipment. If approval has been agreed, this is decisive for the transfer of risk. The statutory provisions of the law on contracts for work and services also apply accordingly to an agreed approval. If the customer is in default of approval, this shall be deemed equivalent to handover or approval.

3. If the customer is in default of acceptance, if he omits an act of cooperation or if the delivery or service is delayed for other reasons for which the customer is responsible, CG R is entitled to demand compensation for the resulting damage including additional expenses (e.g. storage costs). The lump sum for damages amounts to 0.5% of the net price (delivery or service value) for each completed calendar week of delay, however, in total not more than 5% of the delivery or service value of the delayed delivered goods or services or 10% in case of final non-approval.

The proof of a higher damage and the legal claims of CG Rail (especially compensation of additional expenses, appropriate compensation, termination) remain unaffected; however, the lump sum is to be credited against further monetary claims of CG Rail due to the customer's default of acceptance (Compensation claims for additional expenses, indemnity claims). The customer is allowed to prove that CG Rail has not incurred any damage at all or only a considerably lower damage than the above lump sum.

§ 5 Prices and terms of payment

1. The price stated in the order confirmation is binding and applies to all deliveries and services agreed according to § 2 of these GTC. All prices are net prices plus the value added tax legally owed by the customer. This will be additionally stated and invoiced in the invoice. Storage fees are not included and will be charged separately.
2. The prices are calculated on the basis of the order for all deliveries and services agreed according to § 2 of these GTC including the equipment and technical conditions. In the case of partial orders or orders for only individual components as well as technical changes, CG Rail is entitled to make price adjustments. Any necessary non-contractual services will be remunerated separately.
3. In the case of sales shipment to a place other than the place of performance (§ 4, 1. of these GTC), the customer shall bear the transport costs ex warehouse and the costs of any transport insurance requested by the customer. Any customs duties, fees, taxes and other public charges are paid by the customer.
4. Invoice amounts are due for payment within 30 calendar days after receipt of a proper invoice, unless otherwise agreed in writing. In case of bank transfer, the credit entry on the account of the recipient shall be decisive for the timeliness of the payment. The invoice shall be deemed received within three days after dispatch by CG Rail at the latest.
5. Upon expiry of the above payment period, the customer shall be in default. During the period of default, the purchase price shall bear interest at the statutory default interest rate applicable at the time. CG Rail reserves the right to assert further damages caused by default. The claim to the commercial due date interest (§ 353 HGB (German Commercial Code)) towards merchants remains unaffected.
6. CG Rail is, also within the scope of an ongoing business relationship, entitled at any time to carry out a delivery or service in whole or in part only against prepayment. CG Rail declares a corresponding reservation at the latest with the order confirmation.
7. The customer is only entitled to compensation or retention rights insofar as his claim has been legally established or is undisputed. In the event of defects in the delivery or service, the customer's counter rights shall remain unaffected, in particular in accordance with § 7 para. 6 sentence 2 of these GTC.

8. If it becomes apparent after conclusion of the contract (e.g. by application for opening of insolvency proceedings) that the claim to the purchase price is endangered by lack of the customer's ability to pay, CG Rail is entitled to refuse performance according to the legal regulations and - if necessary after setting a deadline - to withdraw from the contract (§ 321 BGB). In case of contracts concerning the production of unacceptable goods (individual productions) CG Rail may declare the withdrawal immediately; the legal regulations concerning the dispensability of setting a deadline remain unaffected.

§ 6 Retention of title

1. Until complete payment of all present and future claims from the contract and an ongoing business relationship (secured claims) CG Rail reserves the retention of title of the sold goods and services. The retention of title also includes, in particular, any intellectual property rights and know-how that may arise if such rights are to be transferred from CG Rail to the customer under the contract.
2. The goods, services and rights subject to retention of title may not be pledged to third parties or transferred by way of security before full payment of the secured claims. The customer shall immediately notify CG Rail in writing if an application for the opening of insolvency proceedings is filed or if third parties (e.g. attachments) seize goods belonging to CG Rail.
3. In case of behaviour of the customer contrary to the contract, especially in case of non-payment of the due purchase price, CG Rail is entitled to withdraw from the contract according to the legal regulations or/and to demand return of the goods on the basis of the retention of title. The demand for return does not include the declaration of withdrawal; CG Rail is rather entitled to demand only the goods and to reserve the right of withdrawal. If the customer does not pay the due purchase price, CG Rail may only assert these rights if CG Rail has previously set the customer a reasonable deadline for payment without success or if such a deadline is dispensable according to the statutory provisions.
4. Until revocation, the customer is authorised according to below c) to resell and/or process the goods subject to retention of title in the ordinary course of business. In this case the following provisions shall apply in addition.
5. The retention of title extends to the full value of the products resulting from the processing, mixing or combination of the goods, whereby CG Rail is considered the manufacturer. If the right of ownership of a third party remains in force after processing, mixing or combination with goods of a third party, CG Rail acquires co-ownership in proportion to the invoice values of the processed, mixed or combined goods. Otherwise the same applies to the resulting product as to the goods delivered under retention of title.
6. The customer already now assigns the claims against third parties arising from the resale of the goods or the product to CG Rail in total or in the amount of the possible co-ownership share according to the above paragraph as security. CG Rail accepts the assignment. The duties of the customer mentioned in paragraph 2 of this clause are also valid in consideration of the assigned claims.
7. In addition to CG Rail, the customer remains authorised to collect the claim. CG Rail commits itself not to collect the claim as long as the customer fulfils his payment obligations

towards CG Rail, no deficiency of his efficiency exist and CG Rail does not assert the retention of title by exercising a right according to paragraph 3 of this clause. However, if this is the case, CG Rail may demand that the purchaser discloses the assigned claims and their debtors, provides all information required for collection, hands over the corresponding documents and informs the debtors (third parties) of the assignment. Furthermore, in this case CG Rail is entitled to revoke the customer's authority for further sale and processing of the goods subject to retention of title.

8. If the achievable value of the securities exceeds the claims of CG Rail by more than 10%, CG Rail will release securities of own choice on demand of the customer.

§ 7 Customer's warranty claims

1. The statutory provisions shall apply to the rights of the customer in the event of material defects and defects of title, unless otherwise stipulated below.
2. The following applies to the purchase of goods: CG Rail is basically not liable for defects which the customer knows at conclusion of contract or which he does not know due to gross negligence (§ 442 BGB). Furthermore, the customer's claims for defects require that he has fulfilled his legal obligations of examination and notification of defects (§§ 377, 381 HGB). In the case of goods intended for installation or other further processing, an inspection must in any case take place immediately before processing. If a defect is revealed during delivery, inspection or at any later time, CG Rail is to be notified immediately in writing. In any case, obvious defects are to be reported in writing within seven working days from delivery and defects not detectable during inspection within the same period from discovery. If the customer neglects the proper examination and/or notification of defects, the liability for the not or not in time or not properly notified defect is excluded according to the legal regulations.
3. Even in the case of defects, the customer's claims for damages or compensation for futile expenditure shall only exist in accordance with § 8 and shall otherwise be excluded.
4. Liability for consequential damages of a defect, such as loss of production or loss of profit, is excluded. This does not apply in cases of intent and gross negligence. In the case of gross negligence, the consequential damages of a defect are only eligible for compensation if such damages are typically to be expected when the delivery item is used as intended.

§ 8 Liability

1. As far as not otherwise stated in these GTC including the following provisions, CG Rail shall be liable in case of a violation of contractual and non-contractual obligations according to the statutory provisions.
2. CG Rail is liable for damages - no matter for which legal reason - within the scope of fault-based liability in case of intent and gross negligence. In case of simple negligence CG Rail is liable, subject to legal limitations of liability (e.g. care in own affairs; insignificant breach of duty), only
 - a) for damages resulting from injury to life, body or health,
 - b) for damages resulting from the violation of an essential contractual obligation (obligation whose fulfilment is essential for the proper execution of the contract and on whose compliance the contractual partner regularly relies and may rely); in this case, however, the liability is limited to the compensation of the foreseeable, typically occurring damage.

3. The limitations of liability resulting from paragraph 2 are also valid towards third parties as well as in case of breaches of duty by persons (also in their favor) whose fault CG Rail is responsible for according to legal regulations. They do not apply if a defect was fraudulently concealed or a guarantee for the quality of the goods was assumed and for claims of the customer according to the product liability law.

4. Due to a breach of duty which does not consist of a defect, the customer may only withdraw or terminate if CG Rail is responsible for the breach of duty. A free right of termination of the customer (especially according to §§ 650, 648 BGB) is excluded. Otherwise the legal requirements and legal consequences apply.

§ 9 Third party property rights

CG Rail assumes no liability that deliveries and services do not infringe third party property rights. However, CG Rail shall notify the customer without delay if such third party property rights become known.

§ 10 Limitation period

1. In deviation from the statutory provisions, the general limitation period shall be one year from delivery and performance. Insofar as acceptance has been agreed, the limitation period shall commence upon acceptance.
2. This limitation period shall not apply to claims for damages of the customer arising from injury to life, body or health or from intentional or grossly negligent breaches of duty by CG Rail or its vicarious agents, which shall in each case be time-barred in accordance with the statutory provisions.

§ 11 Secrecy

1. The parties shall not disclose to third parties any information of a technical or commercial nature which has been mutually communicated and declared to be confidential for the duration and for a period of five years after termination of the order. This shall not apply to information which was known or generally accessible to the other contracting party or the public prior to the notification or which became known or generally accessible to the public after the notification without the involvement or fault of the other contracting party or information which was disclosed or made accessible to the other contracting party by an authorized third party or which was independently developed by an employee of the other contracting party who had no knowledge of the information disclosed.
2. Any breach of the duty of secrecy may give rise to the obligation to pay damages. Special reference is made to the statutory provisions of the German Business Secrets Protection Act (GeschGehG) as well as the criminal liability for the violation of business secrets pursuant to Section 23 GeschGehG.

§ 12 Data Security

CG Rail and the AG are obliged to observe data protection and to maintain confidentiality. Accordingly, they are prohibited from processing or using personal data outside the legitimate performance of the contractual relationship.

§ 13 Applicable Law, Jurisdiction

1. Any contracts entered into between CG Rail and the customer shall be governed by the laws of the Federal Republic of Germany under exclusion of the UN Convention on the International Sale of Goods (CISG).

2. If the customer is a corporation, limited liability company or commercial partnership or otherwise operates a commercial business ("Kaufmann" within the meaning of para 1 (1) of the German Commercial Code) or is a legal entity or special fund organized under public law or has no general place of jurisdiction in the Federal Republic of Germany the courts in Dresden shall have exclusive jurisdiction in respect of all disputes arising out of or in connection with the relevant contract. In all other cases, CG Rail or the customer may file suit before any court of competent jurisdiction under applicable law. Mandatory legal provisions concerning the exclusive place of jurisdiction for disputes shall not be affected by this provision.

§ 14 Final provisions

1. The contract language is German. All technical documents will be handed over in German language unless otherwise expressly agreed.
2. Should one of the provisions of these GTC be ineffective, the validity of the remaining contract shall remain unaffected.
3. Insofar as the contract or these GTC contain loopholes, those legal provisions shall be deemed to have been agreed for filling these loopholes which the contracting parties would have agreed in accordance with the economic objectives of this contract and the purpose of these GTC if they had identified the loophole.
4. In the event of any inconsistency between the German and the English version of the GTC, the German version shall prevail.