

**Contractual Provisions  
and  
Terms of Use  
of the workshops of**

**Waggonbau Altenburg GmbH,  
Fahrzeugwerk Niedersachswerfen GmbH,  
Fahrzeugwerk Brandenburg and  
Fahrzeug- und Entwicklungswerk GmbH**

**Hereafter referred to as „the Company“.**

The Company operates workshops for electric or diesel locomotives and cargo cars at each of its locations at Blankenburg, Brandenburg, Altenburg and Niedersachswerfen. At these locations repair and maintenance work is done. With the following contractual provisions and terms of use the Company guarantees every Access Party the non-discriminating delivery of their repair and maintenance services they have on offer for all locomotives and cargo cars and for components of locomotives and cargo cars. The following terms of use are valid for the whole business relationship between the Company and the Access Parties/purchasers.

The contractual provisions and terms of use are published on the internet on the website [www.Villmann-gruppe.de](http://www.Villmann-gruppe.de). Their content will be a contractual part and need not be mentioned again in the text of the final contract.

1. Permits

With their offer to conclude a contract to obtain any of the Company's performances, the purchaser also assures that they possess all the required permits to operate the railway vehicle being the subject of the contract, and that an insurance against damage to third parties along the lines of the regulation on liability insurances of the railways EBHaftpflV of 21 December, 1995 [German: Federal Law Gazette 1, p. 2101] has been taken out. As far as cargo cars are

concerned the purchaser assures that the subject of the contract has been assigned to a certified ECM (Entity in Charge of Maintenance) or has been assigned via an ECM self-declaration.

Should there be any doubt from an objective point of view pertaining to the above evidence the Company will be allowed to request written prove. In the event the purchaser is an EVU the evidence must be delivered as an original copy or a certified copy of their authorization/license to deliver railway services along the lines of § 6 paragraph 3 of no 1 AEG [German for "General Railway Act"].

In the event that the purchaser is an owner of railway vehicles, the evidence will be rendered by submission of the original or a certified copy proving that they are an independent member of railway operation as an owner of railway vehicles along the lines of § 6 paragraph 3 no 2 AEG [German for "General Railway Act"]. Evidence can also be given by authorization/approval by another member state of the EU or any other member state approved of by the Agreement of May 2, 1992 which lists all evidence to be rendered within the EEA (European Economic Area) in order to gain a permit for the delivery of railway services or the independent operation of railway vehicles within the railway environment.

Evidence of liability insurance must be provided by submitting the original copy or a certified copy of the insurance policy.

## 2. Infrastructure of railway lines

The rails on our company premises regardless of whether they belong to the railway net or the Company exclusively serve for doing the maintenance and repairs at railway vehicles (locomotives, cargo cars) or at components of railway vehicles, plus they enable transportation of repair materials and spare parts for delivering these services

within the Company's responsibility. The use of this infrastructure of railway tracks for any other purposes or by any third party that is not an assigned subcontractor of the Company is non-permissible.

Handing over the railway vehicles that are to be repaired will be done in such a way - with the exception of those that the Company has been ordered to pick up or those components of railway vehicles which are delivered by truck - that the purchaser's staff will be moving the railway vehicle on the tracks of the railway net to the border of the Company's track system.

On the Company's premises and the Company's track system the purchaser's vehicle will be taken to the repair hall by either the Company's staff themselves or by the purchaser's staff. In the latter case this can be done under the monitoring and with the instructions of the Company's staff only. Shunting between various repair stations will be solely done by the Company themselves without any co-operation of the purchaser. For the necessary test rides the same rules apply as for the delivery of a vehicle.

### 3. Conclusion of Contract

The conclusion of a contract is the precondition to use the performances of the Company. The conclusion of a contract postulates that the purchaser confirms the written quotation of the Company by a written order confirmation, or that the Company confirms in writing the oral order by a purchaser, or that the Company starts with the execution of the work ordered by a written purchase order. Amendments, modifications or oral side-agreements require a written confirmation.

The Company carries out the orders within the range and scope of their capacity yet as a basic principle always according to the sequence of the awarded orders and their reception date. The Company reserves the right to deny the

conclusion of a contract, if the company does not see fit to carry out the work for technical reasons, or the railway vehicle/vehicle component does not correspond to state-of-the-art technology and the purchaser cannot provide written maintenance/repair instructions or technical specifications of the vehicle/component type, or if the purchaser does not heed the Company's technical advice but wishes a deviating execution despite of it, or that the purchaser's account of liabilities from former invoices for work compensation has not been balanced yet, or if other weighty reasons exist.

Delivery dates are generally without any commitment on the Company's part. This does not apply if the delivery date has expressly been confirmed in the Company's order confirmation.

#### 4. Calculation base for work compensation

The purchaser has to pay the contractual price for the repair and maintenance work done by the Company. The base for the calculation of any work compensation is the corresponding quotation. The quotation takes into account the projected material for the repair/maintenance and the necessary work hours. Concerning the amount of the material cost and the work hours § 632 paragraph 2 of BGB (German Civil Code) applies. Should during the execution of the work additional work arise which proves to be technically necessary or at least advantageous the Company will immediately notify the purchaser and will make an additional quotation by taking into account the base of calculation in compliance with the initial quotation of the main order.

Only the actual expenditure for material and work hours will be invoiced. With any overrun of the quotation § 650 BGB (German Civil Code) applies.

Diagnoses for failure location will be invoiced according to the actual expenditure of time. The Company is authorized to

evidence the work hours by submitting their internal records and to invoice for their services accordingly.

Quotations are free as long as they result in a purchase or maintenance/repair order. They will be invoiced to the purchaser if they do not result in an order and if making that specific quotation will cause the Company to exceed the expenditure of work and time which is generally needed. The same applies for all diagnoses for failure location.

Invoices will be made out including VAT.

Prices are excluding transport cost, postage and insurance. They need to be paid by the purchaser and will be charged at cost.

Should any price factor change between the placement of the order and the execution of the order, such as material prices, wages, salaries and energy cost, the Company will be authorized to negotiate new prices with the purchaser.

#### 5. Shipping, freight and transfer of risk

Delivery usually means the handing over of the vehicle for which a service has been done by the Company themselves or by assignment of a forwarding agency or a shipping company. If the vehicles/products are shipped to the purchaser on their request, risk transfer against accidental worsening or perishing of the goods will commence with the delivery of the vehicle/product to the shipping agent, or at the latest with the vehicle/product leaving the Company's premises. The risk will have to be carried by the purchaser with the commencement of risk transfer. The purchaser will also pay for the shipping cost. If the products/vehicles are ready for shipment and if shipping or handing over is delayed for reasons which have been caused by the purchaser, risk transfer will commence with reception of the Company's notification that the goods are ready for shipment.

#### 6. Delivery time

The Company is authorized to render partial services as far as they are reasonable. In order to be able to keep the agreed deadlines the Company requires the purchaser's cooperation to provide them in due time with any required information/documentation for the execution of the order, the required approvals and releases of the quotations, the required concepts and drawings to do the work as well as the required payments within the agreed terms of payment or other commitments from the purchaser's side.

Failing this the agreed deadlines will be extended by the amount of delay caused by the purchaser. An agreed delivery time is met with the goods' readiness for being picked up by the purchaser and the notification thereof. Delivery times are only committal, if they have been confirmed in writing by the Company.

As far as an inspection needs to be done, the due date will be met by the inspection date, or if the purchaser fails to keep this date, with the expiration of the inspection date.

#### 7. Complaint, Warranty, Liability

If maintenance/repair is done faultily or if any features which were guaranteed are missing the Company has the right to correct the fault. In order to establish or report a fault § 377 HGB (German „Commercial Code”) applies. The purchaser has to check the railway vehicle/component of a railway vehicle immediately after receipt of delivery and to report any fault as soon as possible and as it is compatible with their own business processes and procedures. Any complaint needs to be delivered in writing. If the fault is not reported, work performance in this case will be deemed accepted. Should a fault or defect show later it is to be reported immediately on discovery, or else the work performance will also be considered to have been accepted. With the cleaning of tank cars the purchaser has to check

the work performance immediately on receipt of delivery of the car. Any faulty work performance is to be reported within one week's time and before the car is filled again.

In the event of a legitimate complaint the Company will pay for the cost of the backhaul of the vehicle/the product. In the event of an unjustified complaint the Company claims to be freed from the complete cost of backhaul and the cost of the examination of the vehicle/product.

Warranty period is one (1) year.

The purchaser reserves the right to cancel the contract and to claim a cost reduction, if the Company's corrective action fails, or the Company denies any corrective action, or the Company has failed using a reasonable period of grace to take corrective action.

Damages due to a delay or reimbursement instead of a service can only be claimed by the purchaser if the Company has been responsible for the delay. Circumstances which are not the Company's fault including delays which have been caused by suppliers or subcontractors of the Company exclude any responsibility for damages from the Company's side and do not qualify for any damage claims or reimbursement.

#### 8. Contractual lien

The Company has a right to a contractual lien of all objects come into their possession by a purchase order/service order. The contractual lien can also be claimed based on receivables from earlier unpaid invoices for work or services done, or from the delivery of spare parts or other services as far as they are connected with the subject of the order. For any other claims from a business relationship the contractual lien is only valid as far as it is uncontested or a legally enforceable title exists, provided the purchaser is the owner of the object.

The regulations of § 647 BGB and § 321 BGB (German Civil Code) stay unaffected by the contractual lien.

9. Set-off prohibition

The purchaser is only authorized to set off amounts against the Company's receivables if their counter claim is uncontested and has been declared to be legally enforceable.

10. Validity of BGB (German Civil Code)

Further to the above the regulations of §§ 631 to 651 BGB apply for the legal relationship between the purchaser and the Company.

11. Place of performance, place of jurisdiction, governing law

The place of performance for this contractual obligation is the headquarters of the Company. The place of jurisdiction for all disputes arising is Landgericht Gera. For commercial customers from outside Germany the sole international legal responsibility of Landgericht Gera has been agreed.

12. Ineffectiveness of provisions

In the event that single provisions of these terms of use should become ineffective, for whatever reason, the remaining terms of use continue to be fully valid. Instead of the ineffective provision a permissible provision which will come closest to the former's economical intent will apply. The Company is authorized to upgrade the existing rails for technical improvement and better operational standards. The Access Parties are not to be informed about these measures as they will be internal measures of the Company.

01 June, 2011