



GENERAL TERMS AND CONDITIONS OF OFFER, DELIVERY AND EXECUTION OF VOLKERRAIL NEDERLAND B.V. - Version: 1.0 Date: 20 April 2020

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Article 1 Definitions

In these terms and conditions, the following terms will have the following meanings:

VolkerRail: VolkerRail Nederland B.V. and its affiliated companies;

Client: the natural person or legal entity who gives VolkerRail an assignment for the execution of Work;

Work: the delivery of goods, the provision of services and/or the execution of work by VolkerRail for the Client;

Agreement: the agreement entered into by VolkerRail and the Client with all related documents and schedules;

General Terms and Conditions: these general terms and conditions of offer, delivery, and execution of VolkerRail;

Offer: a proposal from VolkerRail to the Client for carrying out the Work;

DNR 2011: The New Rules 2011;

UAV 2012: Uniform Administrative Conditions for the Execution of Works 2012.

Article 2 - Applicability of General Terms and Conditions

2.1

The General Terms and Conditions apply to all Offers from VolkerRail and to all Agreements between the Client and VolkerRail unless expressly deviated from in the Offer or the Agreement.

2.2

Unless expressly agreed otherwise in writing between the parties, the Client's general and special terms and conditions do not apply to the Agreement entered into with VolkerRail and are hereby expressly rejected by VolkerRail.

2.3

In addition to the General Terms and Conditions, the UAV 2012 applies insofar as it does not contradict these General Terms and Conditions and the Agreement unless VolkerRail and its Client expressly agree that a different set of conditions applies to the Agreement. In addition to these General Terms and Conditions, the DNR 2011 and expressly not the UAV 2012 applies to all design work that VolkerRail carries out.

2.4

In the event of any conflict between the aforementioned documents, the Agreement will take precedence over the General Terms and Conditions and the General Terms and Conditions will take precedence over the UAV 2012 or the DNR 2011.

Article 3 Offer and formation of agreement

3.1

All Offers from VolkerRail are without obligation unless stated otherwise in the Offer from VolkerRail.

3.2

All Offers from VolkerRail are based on the information that the Client has provided or has had provided regarding the Work and the departure points expressed by VolkerRail in its Offer. If the measurements, drawings, or other data provided by or on behalf

of the Client prove to be incomplete or incorrect at any time or are not provided on time and/or not in a suitable manner to VolkerRail, then all costs and/or loss arising from this, by whatever name, are for the Client's account.

3.3

VolkerRail's Offers are based on good and timely accessibility to the work site so that VolkerRail does not need to make provisions in this regard. If additional facilities are necessary in VolkerRail's opinion, the costs are for the Client's account and risk. The Client will also be charged for additional costs that cannot be attributed to VolkerRail and that increase the costs of the Work, for example, if there are costs resulting from travel, transport and other costs incurred to no purpose because the execution of the Work cannot be started on the agreed date, or because the Work cannot be carried out regularly or without interruption due to a cause that is for the Client's account and risk.

3.4

The Agreement is deemed to have been entered into:

a. at the time that both the Client and VolkerRail have signed the Agreement; or

b. at the time that VolkerRail has started carrying out the Work without having received the copy of the agreement signed by the Client and/or without having signed and/or returned the copy of the agreement; or

c. at the time that an oral or other agreement is confirmed in writing by VolkerRail or on the date on which VolkerRail notifies in writing that it will perform the oral agreements.

3.5

Changes and additions to the Agreement by the Client are only binding if they have been expressly accepted in writing by VolkerRail.

3.6

Oral undertakings by and agreements with VolkerRail employees are not binding until and insofar as they have been confirmed in writing by VolkerRail's authorised representatives.

Article 4 - Price

4.1

Each Offer is based on the performance of the Agreement by VolkerRail under normal circumstances and performance during normal working hours as provided for in the Rail Infrastructure Collective Labour Agreement applicable at the time of execution of the assignment unless stated otherwise in VolkerRail's Offer.

4.2

The prices quoted by VolkerRail are exclusive of sales tax and exclusive of costs that are payable by the Client based on the Agreement and/or these General Terms and Conditions.

4.3

If one or more of the cost price factors increase after the date of the Offer and/or after the Agreement has been entered into, VolkerRail is entitled to increase the price accordingly.

4.4

The Agreement includes VolkerRail's authority to charge

separately for additional work carried out by VolkerRail as soon as it is aware of the amount to be charged for this. The provisions of paragraphs 2 and 3 of this article will apply *mutatis mutandis* to the calculation of additional work.

4.5

Costs of loading, unloading, and transporting raw materials, semi-finished products, models, tools, and other items made available by VolkerRail are not included in the price and will be charged separately.

Article 5 - Drawings, calculations, descriptions, models, tools, etc.

5.1

If VolkerRail has to produce drawings, calculations, descriptions, models, or tools, etc., as part of the Work, the costs incurred are payable by the Client.

5.2

Information given in catalogues, images, drawings, size, and weight statements, etc., is only binding if and insofar as it is expressly included in the Agreement, or an order confirmation signed by VolkerRail.

5.3

Drawings, calculations, descriptions and/or models made by VolkerRail are submitted to the Client for approval. After approval, the Client is fully responsible for these approved drawings, calculations, descriptions and/or models.

5.4

The Offer issued by VolkerRail, as well as drawings, calculations, software, descriptions and/or models, etc., manufactured or provided by VolkerRail, remain its property, regardless of whether costs have been charged for this. The Client guarantees that, except for the performance of the Agreement, the information referred to will not be copied, shown to third parties, disclosed, or used other than with VolkerRail's prior written permission.

Article 6 - Client's obligations

6.1

The Client is obliged to pay VolkerRail the contract price – i.e. the price agreed between VolkerRail and the Client and reduced by the costs and/or increases and/or additional costs payable by the Client, plus VAT – and the costs for any additional work carried out by VolkerRail in a timely manner.

6.2

Notwithstanding the provisions of paragraph 5 UAV 2012, the Client also ensures that VolkerRail has access to all relevant information regarding the performance of the Agreement in a timely manner. The Client guarantees that all such information, including designs, drawings, and calculations, is correct. VolkerRail is not obliged to check the accuracy of the information provided by the Client. The Client also ensures that:

- a. the location where the work takes place is suitable for the execution of the Work and is accessible for the transport of all items required for the execution of the Work;
- b. the work site is properly secured during the execution and is fenced off properly and safely in order to prevent unsafe situations.

6.3

The Client will take all necessary measures to prevent damage to adjacent areas and the environment. Any damage to adjacent areas and/or to the environment is entirely at the Client's account and risk.

6.4

The Client is responsible for the structures and working methods

prescribed by it or on its behalf, including how they affect the soil conditions, the indicated order of the Work to be carried out, the condition and location of pipes and structures or obstacles in the surface, any contamination, information not provided or incorrectly provided, as well as for orders and instructions given by it or on its behalf.

6.5

The Client indemnifies VolkerRail, its employees and third parties engaged by it against any claim from third parties with regard to components, materials, data, ideas, designs, know-how, working methods or usage techniques, experience or knowledge supplied by or with the knowledge and approval of the Client that infringes on or misappropriates any patent, copyright, trade secret or any other intellectual, industrial, or other proprietary right.

6.6

The Client indemnifies VolkerRail, its employees and third parties engaged by it against any claim from third parties arising from or in connection with the execution of the Work by VolkerRail.

6.7

The Client is liable for damage to completed Work caused by it and/or by persons for whom it is liable and/or by third parties.

6.8

The Client must ensure that, during the execution of the Work, VolkerRail is not hindered by work to be carried out by the Client, its staff, or persons for whom it is responsible, and/or third parties.

6.9

The Client must apply for and obtain all permits, exemptions and/or private law permissions required for the execution of the Work, as well as for the design, maintenance, and demolition of the work site unless the parties expressly agree otherwise. Paragraph 6(10) UAV 2012 does not apply.

Article 7 - VolkerRail's obligations

7.1

VolkerRail is required to carry out the Work in accordance with the provisions of the Agreement.

7.2

Before the completion of the Work, damage to the Work, with the exception of consequential damage, will be for VolkerRail's account unless the damage is caused by the Client, subcontractors, suppliers and/or other third parties, or the damage is the result of extraordinary circumstances against the harmful effects of which VolkerRail did not have to take appropriate measures in connection with the nature of the Work and/or where it would be unreasonable for it to pay for the damage.

7.3

Notwithstanding the provisions of Article 7.4, VolkerRail's liability in connection with the Work is limited to 10% of VolkerRail's contract price. Design liability can only arise if the Agreement expressly shows that VolkerRail is responsible for the entire design or that part in which the error has occurred and if it has been established that VolkerRail has failed in the execution of the Work in a manner that a good, professionally-equipped and diligent party could and should have avoided. Any advice from VolkerRail about a design prepared by or on behalf of the Client does not affect the Client's responsibility for its design. VolkerRail is never liable for this advice.

7.4

Any claim by the Client against VolkerRail regarding consequential damage, business interruption loss and/or other

indirect damage, however named or arising, is ruled out.

Article 8 - Commencement and progress of work

8.1

The time of commencement of the Work is recorded in the Agreement. The agreed terms are not deadlines unless VolkerRail and the Client have expressly agreed otherwise. An agreed term will only commence after the Agreement has been entered into and all information necessary for the execution of the Work is in VolkerRail's possession. If no starting time is specified in the Agreement, the later of the following times will apply as the starting time:

- a. the day of formation of the Agreement;
- b. the day on which VolkerRail receives the necessary information, permits, exemptions or similar decisions for the performance of the Agreement that are required for the set-up of the Work;
- c. the day on which the formalities necessary for the commencement of the Work have been completed;
- d. the day on which VolkerRail can have access to the site or building on or in which the Work is to be carried out;
- e. the day on which VolkerRail has all necessary drawings and other information;
- f. the day of receipt by VolkerRail of the amount to be paid in advance according to the Agreement.

8.2

If a change in the agreed time of commencement and/or in the execution of the Work is not communicated to VolkerRail within a reasonable period, VolkerRail will be entitled to compensation for the resulting damage and other costs, including consequential damage.

8.3

The Client must enable VolkerRail to commence the Work on time and without restrictions, during regular working hours, and, moreover, if VolkerRail deems this necessary, also outside regular working hours, provided that the Client has been informed of this.

8.4

The Client is obliged to ensure that work and/or deliveries to be carried out by third parties are carried out in such a way and in such a timely manner that the execution of the Work by VolkerRail is not delayed and that VolkerRail can carry out the Work in accordance with the Agreement.

8.5

The Client will compensate VolkerRail for all damage on the part of VolkerRail, including consequential damage, that VolkerRail suffers as a result of the non-performance, late performance, or inadequate performance of the Work and/or deliveries by the Client, the failure to decommission the relevant railway line or similar circumstances.

8.6

If VolkerRail is prevented from performing or fully performing the Agreement, it has the right, in consultation and at the Client's account and risk, to reasonably adapt the performance of the Agreement to the circumstances. In that case, VolkerRail is entitled to an extension of the term and to payment by the Client for all damage suffered and to be suffered by VolkerRail, including consequential damage.

8.7

In addition to the provisions of Section 6:75 of the Dutch Civil Code, force majeure is understood to mean any cause beyond the will and/or control of VolkerRail, which is not for its account, as a result of which VolkerRail is prevented from fulfilling its obligations. In any case, force majeure is understood to mean

impractical weather, work strikes, fire, transport difficulties, obstructed or closed shipping, accidents, riots, epidemics, acts of war, and vandalism. Any discount or penalty based on delay is not owed if the delay is the result of force majeure.

8.8

Execution or amended execution as a result of force majeure and/or circumstances for the Client's account will be settled as contract variations or additional payment and gives the right to a reasonable extension of the agreed term(s).

8.9

Notwithstanding paragraph 14(8) UAV 2012, if the execution of the Work is delayed for more than one month due to circumstances for the Client's account, or if suspension of the Work lasts longer than one month, VolkerRail is entitled to terminate the Work in an unfinished state. In that case, the Client is entitled to take over the Work immediately after termination of the Work.

8.10

The Client is obliged to ensure a safe working environment in accordance with the applicable regulations and suitable accommodation for VolkerRail employees with adequate facilities. If, due to the actions of the Client, an unsafe situation and/or a risk to the environment arise as a result of which VolkerRail cannot guarantee the safety and/or health of its employees and/or environment, VolkerRail has the right to suspend the Work without any obligation to pay compensation for as long as the unsafe situation and/or the risk to the environment continues. In that case, the provisions of Article 8.8 of these General Terms and Conditions apply.

Article 9 - Delivery or delivery time

9.1

A submitted final instalment or final invoice is considered to be notification of the completion of the Work. If VolkerRail does not receive a substantiated written rejection from the Client within two weeks after the written notification of completion, the Work - being the work within the meaning of the UAV 2012 - is considered approved and delivered.

9.2

The Client will, in any case, allow VolkerRail to be present when the Work is inspected.

9.3

If the Agreement includes a discount or penalty due to exceeding the delivery date or due to another reason set forth in the Agreement, this discount or penalty will apply as a fixed compensation or fixed penalty clause as referred to in Section 6:91 of the Dutch Civil Code et seq.

Article 10 - Title

10.1

The title of the goods delivered by VolkerRail, and the items delivered during the Work will only be transferred to the Client when the Client has fulfilled all payment obligations towards VolkerRail.

10.2

As long as the Client has not fulfilled its payment obligations, the Client is obliged to treat the delivered goods with due care, to keep them insured and not to pledge, process, transfer, or hand them over to third parties. If this obligation is not met, the full price associated with the Agreement is immediately due and payable. The Client must report any attachments or other legal measures encumbering the delivered goods to VolkerRail in writing and by registered post without delay but no later than within seven working days. Costs and/or losses resulting from

failure to report are payable by the Client.

Article 11 - Delivery of goods

11.1

Unless otherwise agreed, delivery in connection with the Work will be made by VolkerRail 'ex-factory'/ex-Works within the meaning of the Incoterms 2020. 'Ex-factory' also includes the VolkerRail premises or workshop.

11.2

The Client is obliged to check immediately upon receipt of the Work or deliveries pursuant to the Work whether they comply with what the Client and VolkerRail have agreed. If the Work or a separate delivery pursuant to the Work is not satisfactory, the Client must notify VolkerRail in writing within eight calendar days of delivery, failing which the Work or the separate delivery will be deemed to have been approved.

11.3

The packaging is not included in the price of the Offer and will be charged separately. Packaging will not be taken back.

Article 12 - Payment

12.1

Unless expressly agreed otherwise in writing, VolkerRail is entitled to payment of the agreed contract price plus VAT in four-weekly instalments, starting on the fourth Monday after the start of the Work. The instalment amount is determined pro rata the progress of the Work and the Work carried out within the term.

12.2

Unless expressly agreed otherwise between the parties, payment must be made within 30 calendar days after the invoice date.

12.3

If VolkerRail receives indications concerning reduced creditworthiness of the Client during the performance of the Agreement, VolkerRail has the right to suspend the Work and/or part of the execution of the Work, and the sum of what has already been delivered and performed is due immediately and in full. VolkerRail will not exercise this right to suspend the delivery and/or the performance if the Client furnishes security within a period to be set by VolkerRail in the form of an irrevocable bank guarantee which can be called in on first demand to the value of the part of the contract price not yet paid by the Client, the balance of the commissioned additional and less work, and the costs and damage resulting from the circumstances described in this paragraph. As soon as the Client has furnished the security requested by VolkerRail, VolkerRail will resume the execution of the Work.

12.4

If the Client misses a payment term, VolkerRail has the right to suspend the Work. The Client owes VolkerRail the statutory commercial interest pursuant to Section 6:119a BW for the period by which the payment term has been exceeded without a written notice of default being required. The statutory commercial interest owed by the Client will be increased by two percentage points in accordance with paragraph 45(2) UAV 2012 in the circumstances described in the aforementioned paragraph. All costs, both judicial and extrajudicial costs, related to collection of late payment are payable by the Client.

12.5

VolkerRail is entitled to compensation for the unexecuted part of the Work or Agreement in the situations described in Article 12.3 and 12.4.

Article 13 - Guarantee

13.1

From the date of delivery as referred to in Article 9 and taking the provisions of this article into account, VolkerRail will provide the Client with a guarantee for the duration of two (2) months for the Work performed by VolkerRail, subject to the proviso that only defects that become apparent during normal use and which can be demonstrably attributed to VolkerRail as being unsound work performed by VolkerRail or use of defective materials by VolkerRail will be repaired by VolkerRail free of charge. By free repair, VolkerRail is discharged for all damage that the Client may suffer or has suffered.

13.2

Claims under the guarantee described in the previous paragraph cannot be made if:

- a. more stringent requirements are made of the work performed and/or the Work than were known of when the Agreement was entered into;
- b. repairs or activities on the Work have been carried out by third parties without VolkerRail's written permission;
- c. the materials supplied and the activities carried out for the Work are not used in the intended manner and/or are not used normally and/or have not been maintained;
- d. it concerns items that VolkerRail has purchased from third parties for the Work, and the amount claimed by the Client exceeds the guarantees that VolkerRail has received from its suppliers and/or subcontractors. The amount of VolkerRail's guarantees will not exceed the amount of the guarantees provided to VolkerRail by suppliers and/or third parties;
- e. it concerns errors in the design of the Work if the Client and/or third parties made the design. In this context, third parties include companies belonging to the Koninklijke VolkerWessels group;
- f. there is no question of unsound Work performed by VolkerRail and/or defective materials used by VolkerRail.

13.3

Any consequential damage suffered or to be suffered by the Client and/or third parties is not for VolkerRail's account and risk. VolkerRail is never obliged to pay replacement, supplementary or other compensation. VolkerRail's liability under the guarantee obligation will never exceed the net contract price.

13.4

If the Client does not fulfil any obligation arising from the Agreement or does not do so properly or promptly and this may affect the guarantee, VolkerRail is not obliged to provide any kind of guarantee.

13.5

If the date of commissioning of the Work is earlier than the date of delivery, the guarantee period as provided for in Article 13.1 will commence on the date of commissioning.

13.6

A new guarantee period will not start after the repair work has been carried out.

13.7

VolkerRail's alleged failure to fulfil obligations does not release the Client from its obligations under the Agreement and/or under any other agreement(s) entered into with VolkerRail.

Article 14 - Failure to comply

14.1

VolkerRail reserves the right to suspend compliance with the Agreement in whole or in part for the part that has not yet been performed if:

- a. the Client's bankruptcy or suspension of payments has/will be applied for;
- b. the Client ceases business operations or transfers control of them to another party;
- c. the Client loses its corporate personality or shuts down its business in whole or in part or terminates its activities;
- d. strikes take place within the VolkerRail company and these strikes are part of actions in the industry in which VolkerRail operates;
- e. force majeure occurs on the part of VolkerRail as referred to in Article 8;
- f. the Client attributable fails to fulfil its obligations under the Agreement or if it is plausible for VolkerRail that the Client is temporarily or permanently unable to fulfil its obligations under the Agreement.

14.2

Suspension takes place by means of a written notification from VolkerRail to the Client.

14.3

VolkerRail reserves the right to terminate the Agreement by a written statement and without prior notice of default if one of the events described in Article 14.1 occurs with regard to the Client. The parties hereby expressly exclude the effect of Section 6:271 of the Dutch Civil Code. In the event of cancellation, the Client is obliged to pay VolkerRail the agreed price for the Work assigned to VolkerRail (including price increases and additional work), plus the costs it has had to incur as a result of the non-completion and reduced by the costs directly saved by the termination. This is always subject to VolkerRail's right to compensation for costs, damage suffered and to be suffered, and interest.

14.4

If a suspension, as provided for in Article 14.1, has lasted longer than three months, VolkerRail has the right to request the Client, in writing and stating the reasons provided here, to cancel the Agreement. The Client will agree to this request within seven working days of receipt of the request. In that case, the Client is not entitled to payment of any amount and/or compensation.

Article 15 – Set-off

VolkerRail is authorised to deduct the amounts that VolkerRail has to claim from the Client and/or companies affiliated with the Client for whatever reason from the amounts that it owes to the Client and/or companies affiliated with the Client for whatever reason. This provision does not affect any claim that VolkerRail can make for set-off.

Article 16 - Disputes

Unless otherwise determined in the Agreement, all disputes between the Client and VolkerRail which ensue from the Agreement or any agreements ensuing from it, including those which are only considered as such by one of the parties, will be settled by arbitration in accordance with the rules described in the by-laws of the Court of Arbitration for the Building Industry, as they read three months prior to the date of formation of the Agreement.

Article 17 - Prohibition on assignment and pledging

The Client is not permitted to encumber or transfer any rights and/or obligations arising from the Agreement without VolkerRail's prior written permission.

Article 18 - Applicable law

The Agreement - and any agreements arising from it - is exclusively governed by Dutch law.

Article 19 - Partial nullity

If any part of these General Terms and Conditions should be invalid for any reason, the General Terms and Conditions will remain in force for the remainder, and the parties will mutually agree on an arrangement to replace the invalid provision while preserving its purport as far as possible.