DB Cargo

GENERAL TERMS AND CONDITIONS (hereinafter "GTC") of DB Cargo France (hereinafter "DBCFR")

1- SCOPE

Unless otherwise agreed in writing by DBCFR's Purchasing Department, these General Terms and Conditions apply to all purchases by DBCFR, whether of equipment, parts, raw materials, work or performance of work (the "Supply(s)"). The Vendor's General Terms and Conditions and/or special terms of sale shall under no circumstances apply to the performance of the Contract.

2- ORDER

2.1 Order form

The Supplies must be covered by a purchase order (the "Order") for an indefinite period (the "Open Order") or for a fixed period (the "Closed Order"). The Order shall be sent by email, post or any other agreed electronic means.

2.2. Acceptance of the GTC

The Vendor is deemed to have accepted the Order and the GTC without restriction and in their entirety, if it does not make known its disagreement within five (5) calendar days of receipt of the Order. The Vendor undertakes, upon receipt of the Order, to notify DBCFR of any change likely to alter the characteristics of the Order, it being specified that no change to the financial terms of the Order will be tolerated. DBCFR may then unilaterally either cancel the Order or notify the Vendor in writing that it accepts the changes. It is understood that in the absence of a specific contract between DBCFR and the Vendor, the Order together with any documents referred to in the Order and the GTC shall constitute the contract (the "Contract").

2.3. Specific obligations of the Vendor

2.3.1 The Vendor, a professional in his field, is perfectly familiar with the constraints of DBCFR.

The Vendor undertakes to deliver Supplies that comply with the standards and practices of the latter and with the applicable laws, regulations and standards in force relating to health, safety, environmental protection and labour law. The Vendor has a duty to advise and inform.

2.3.2 The Vendor undertakes to deliver the Supplies in accordance with all the documents governing the relationship between DBCFR and the Vendor in respect of the Supply and which supplement the GTC, and in particular the plans, specifications, schedules, payment schedule, etc. (the "Documents").

3- OUTSOURCING

The Vendor may not subcontract all or part of the performance of the Order without the prior written consent of DBCFR. In all cases, the Vendor shall be fully responsible for any work or performance of work entrusted to its subcontractors.

4- PACKAGING AND SHIPPING DOCUMENTS

The Vendor shall livery the Supplies in packaging appropriate to their nature, mode of transport and storage, with a view to delivery in perfect condition.

5- DELIVERY

5.1. Acceptance of the Order automatically implies an undertaking by the Vendor to strictly adhere to the delivery period and place indicated, either on the Closed Order, or in the email, letter or any other electronic means agreed in the case of an Open Order. Delivery is "carriage paid" to DBCFR and to the address indicated on the Order form unless otherwise specified in the Order. The delivery must be accompanied by a delivery note on the Vendor's letterhead, stating the Order number, the details of the Supplies in the same terms as the Order form and including, if applicable, its detailed breakdown by box or any other packaging as well as the gross and net weights. DBCFR may accept or refuse any early delivery. In any event, payments due will only be made in accordance with the terms initially set out in the contractual payment schedule.

5.2 In the event of a delay in delivery, a daily penalty of 3% of the contractual value of the undelivered Supplies or of the Order in the event of non-performance of the service will be invoiced automatically by DBCFR. After 5 calendar days, DBCFR may terminate the Order by simple letter or e-mail. The amount of the above penalty will be retained by DBCFR, without prejudice to any other damages.

5.3 DBCFR reserves the right to refuse the Supplies, by simple letter, email, or any other agreed electronic means in the event of failure to adhere to the delivery period, incomplete or excess delivery, or non-conformity with the Order and/or the Documents. Any refused Supply will be returned to the Vendor at the Vendor's expense, risk and peril within eight (8) days of notification of refusal of delivery. DBCFR shall have the right to terminate the Order in accordance with Article 15.2.

6- SPECIFIC PROVISIONS FOR WORKS

When the Supply relates to the execution of work, the Vendor is bound by a guarantee of perfect completion of one year from the date of acceptance of the work by DBCFR. In the event of faulty or incomplete work, DBCFR may give formal notice to the Vendor to resume the work within a reasonable period determined by DBCFR. In the event that such formal notice remains without effect at the end of the allotted time, DBCFR may either: (i) pursue the forced performance of the work in kind before a judge, (ii) set a price reduction (also known as a price rebate) in return for accepting the work as is, or (iii) have the work performed by a third party at the Vendor's expense and risk, with the Vendor being responsible for refunding to DBCFR the sums incurred for this purpose. These three options shall in no way deprive DBCFR of any additional damages to which DBCFR may be entitled as a result of non-performance of the Contract.

7- QUALITY - RECEPTION - ACCEPTANCE - AUDITS

The Supplies livery must strictly comply in quality and quantity with the terms of the Order as well as with the agreed specifications (the "Documentation"). The unloading given to a delivery person does not constitute acceptance of the Supplies, and therefore cannot be invoked against DBCFR if the checks and controls subsequently reveal the non-conformity or malfunction of the Supplies. DBCFR reserves the right to carry out audits in order to ensure that the material purchased meets the specified purchasing requirements. DBCFR reserves the right to return, at the Vendor's expense and risk, or to request the replacement or refund of any Product which proves, at the time of any technical acceptance or during use, not to comply with the Order or the Documentation, or even after acceptance and during use, to be unsuitable for the use for which it is intended, for any reason not attributable to DBCFR.

8- GUARANTEES

The Vendor guarantees that the Supplies comply with the requirements defined in Article 7 above for a period of twelve (12) months from the date of delivery of the Supplies and the date of acceptance of said Supplies by DBCFR. In this respect, until the expiry of the warranty period, the Vendor is obliged, at DBCFR's option, to carry out, at its own expense and without delay, any replacement, repair, modification and/or adjustment necessary to maintain the characteristics and/or performance of the Supplies, or to refund the full price of the Supplies. In the event of performance of work/advice, the Vendor guarantees the accuracy of the data provided. In the event of non-compliant Supplies, the Vendor shall take any necessary corrective action. This guarantee also applies in the event of defects in the Supplies, it being specified that the starting point for this guarantee is the time at which the defect is discovered.

9- PRICES - BILLING AND PAYMENT TERMS

9.1 -Prices

The prices shown on the Order are firm and non-revisable. They apply to Supplies delivered to the delivery address, including postage, packaging and insurance, net of all duties.

9.2 - Billing

Invoices must include the compulsory publishing details and state the Order number, the name of the contact person, the description and number of Supplies delivered, the dates and references of the delivery note and the itemised price. All Order amounts are exclusive of pre-tax. The billing address is: FR.DL.Vendor.Invoices@deutschebahn.com.

The Vendor may only invoice after delivery and formal acceptance by DBCFR of the Supplies livery.

However, it should be noted that DBCFR has introduced paperless invoicing. The methods of dematerialisation will then be sent to the Vendor.

9.3 - Terms of payment

Invoices must be issued within one month of delivery of the Supply, only if its conformity has been verified and accepted without reservation by DBCFR. If delivery is subject to reservations, invoicing will be deferred until such reservations have been lifted. Unless otherwise stipulated by law or by commercial agreement between DBCFR and its Vendor, invoices are payable within 60 days net from the date of invoice, by bank transfer, subject to the compulsory details above and the conformity of the Supplies. In the event of late payment, the Vendor will apply default interest calculated and capped at three (3) times the legal interest rate and based on the pre-tax amount of the price of the services appearing on the invoice concerned. Any statement to the contrary on the Vendor's invoices, in particular with regard to the default interest applicable, shall be deemed to be unwritten.

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10- TRANSFER OF PROPERTY/RISK

The transfer of property takes place upon acceptance of delivery of the Supplies by DBCFR, at the place of delivery indicated on the Order. The Vendor assigns to DBCFR the rights of use, exploitation, reproduction, distribution or any other intellectual ownership interest relating to the Supplies.

11- RESPONSIBILITY

The Vendor shall be solely liable for any direct or indirect damage to property or consequential damage or loss caused by a Supply provided by him to DBCFR; in particular in the event that such damage or loss is due to an error in design, construction, manufacture or execution or to a defect in the materials used. The Vendor undertakes to pay any damages and any costs of proceedings which may result for DBCFR from a claim by a third party following damage suffered as a result of the Supplies.

12- INSURANCE

The Vendor undertakes to obtain and maintain, for the entire duration of the Order, all insurance necessary to guarantee itself and to guarantee DBCFR against any damage resulting from the manufacture of the Supplies or the performance of the services within the scope of these General Terms and Conditions and to cover itself against civil liability for any damage referred to in Article 11.

13- CONFIDENTIALITY

The Vendor undertakes to keep confidential all intelligence communicated by DBCFR during the performance of the Order. Consequently, the Vendor undertakes to refrain from disclosing all such intelligence for any reason whatsoever, in any form whatsoever and for any purpose whatsoever, and undertakes to ensure that all its staff, agents and sub-contractors comply with this obligation for a period of 10 years from the date of completion of the Order.

14- ACT OF GOD

The Parties agree that acts of God are considered to be the cases usually accepted by French law and case law.
The Party invoking the act of God must inform the other Party by any means as soon as possible. The Parties will then meet to discuss the consequences of such a situation and to find, in good faith, acceptable solutions enabling their relationship to continue and their respective obligations to be performed under the best possible conditions.
Should the act of God make it impossible to deliver all or part of the Supplies, subject-matter of the Contract, for a period of more than thirty (30) days, DBCFR may terminate the Contract, without compensation or notice.

15- END - TERMINATION

<u>15.1 - End of year</u>

Open Orders: DBCFR may need to send the Vendor Order codes for billing purposes, when a contract exists and for multi-week, multi-month or multi-year periods. Under no circumstances do the quantities that may be indicated on these Orders constitute a volume commitment to the Vendors. Only an existing and active formal contract, signed by a legal agent as designated by law, provides a framework for and governs the volume commitments made to the Vendors, and the volumes of so-called "open" Orders are provided for information purposes only, without any commitment as to volume. DBCFR may terminate the relationship at any time by registered letter with acknowledgement of receipt, subject to two weeks' notice. The Closed Order is agreed for a fixed period and may not be renewed. Termination of the Order will not give rise to any right to compensation on the part of the Vendor for any reason whatsoever.

<u>15.2 - Termination</u>

DBCFR may terminate the Order as of right and the Vendor may not claim any indemnity or compensation as a result of such termination, in particular in the following cases: (i) in the event of the Vendor's definitive physical or legal inability to perform the Order within the contractual deadlines, quality or quantity (ii) in the event that the Vendor fails to adhere to its contractual obligations under the terms of these GTC or the Order, and this thirty (30) days after formal notice has been sent by registered letter with acknowledgement of receipt, referring to the breach of the GTC or the Order, which has remained without effect.

16- NO ECONOMIC DEPENDENCE

The Vendor undertakes not to place itself in a situation of economic dependence vis-à-vis DBCFR. In this respect, the Vendor shall ensure that the turnover generated with DBCFR does not exceed 25% of its total turnover and shall notify DBCFR by registered letter should this threshold be exceeded.
DBCFR does not grant any exclusivity, and the Vendor shall remain solely responsible for the management and development of its customer base. Neither Party shall interfere with the commercial or strategic decisions of the other Party.
Should a situation of economic dependence nonetheless arise, the Vendor hereby agrees in advance to bear all consequences thereof, in particular in terms of risk management.
In the event of non-compliance with the obligations set out in this Article, or if any financial link or undue advantage creates a situation of economic dependence or an undeclared conflict, DBCFR shall be entitled to terminate the Contract automatically, without prejudice to any damage that may be claimed.

17- COMPLIANCE WITH APPLICABLE LAWS

The Vendor must comply with the requirements and standards of its industry, applicable in France, the European Union and the countries in which the Vendor operates. This includes in particular laws and regulations governing the environment, anti-corruption, health, safety, employment, child labour, clandestine or concealed work, discrimination and human rights. The Vendor shall ensure that its Supplies comply with the legal provisions applicable in the countries where its Supplies are sold. In particular, the Vendor guarantees that the substances, alone or contained in preparations that it has incorporated for the production of the Supplies, have been used in accordance with the provisions relating to registration, authorisation and restriction imposed by EU regulation REACH N°1907/2006.
The Vendor undertakes to ensure that its enterprise, its employees and all natural persons or legal entities which hold a majority interest (50% or more) in the capital of the Vendor, or which control it in any other way , are not included on any current sanctions list, including the European Union consolidated list of financial sanctions, the United Kingdom sanctions lists, the Office of Foreign Assets Control (OFAC) sanctions lists and the United States Department of the Treasury sanctions list. The Vendor undertakes to implement appropriate measures to ensure that the requirements of the current sanctions regimes are implemented for all performance of work provided to DBCFR.
The Vendor undertakes to comply with the laws and regulations applicable to personal data, in particular Law no. 78-17 of 6 January 1978 as amended relating to information technology, files and freedoms and the General Data Protection Regulation (RGPD) of 27 April 2016 no. 2016/679. It is also obliged to check with its own suppliers, where appropriate.
In the event that the Order relates to the processing of personal data, the Vendor and DBCFR will, if necessary, enter into a specific contract in accordance with the requirements of the GDPR. Any provision intended to limit the Vendor's liability under its obligations with regard to the protection of personal data shall be deemed null and void.
A breach of the aforementioned laws and regulations, in particular anti-corruption laws, by the Vendor (or by any third party acting in the name of and on behalf of the latter) in connection with the performance of the obligations and commitments under the Order, will constitute a failure. In such a situation DBCFR will be entitled to terminate the Order immediately to the sole detriment of the Vendor without observing the notice period referred to in Article 15.2. In the event that DBCFR has reasonable grounds to believe that the Vendor has been responsible, in the performance of the Order, for a failure to comply with its obligations relating to ethics and compliance, and more particularly in relation to corruption or money laundering, the Vendor undertakes to cooperate in good faith with DBCFR in order to determine whether such a failure has occurred. The Vendor undertakes to perform its obligations hereunder in accordance with the Code of Ethics for DB Business Partners available at the following address: [Ethique et conformité | DB Cargo France] and which it declares to have read prior to issuing the Order Form.

18- BRANDS AND ADVERTISING

Except with the prior written agreement signed by DBCFR for a limited period of time, the Vendor is prohibited from quoting, representing, reproducing, distributing and/or using the commercial name, the brand and more generally the distinctive signs of DBCFR.

19- APPLICABLE LAW - JURISDICTION

In the event of a dispute, the applicable law is French law, with the Commercial Court of Bobigny having exclusive jurisdiction. The 1980 Vienna Convention on the international sale of cargo is not applicable.

DB Cargo France
Public limited company with a capital of 20,000,000 Euros
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