

**GENERAL TERMS AND CONDITIONS
OF SALE AND DELIVERY OF RAILS**

1. APPLICATION AND ENFORCEABILITY OF THESE GENERAL TERMS AND CONDITIONS

1.1. The following general terms and conditions of sale and delivery of rails ("GTS") of SAARSTAHL RAIL (the "**Supplier**") are the basis of the commercial negotiation with its customers and contractual partners (the "**Purchaser**") to allow them to order the rails produced and sold by the Supplier (the "**Rails**").

1.2. These GTS will apply to any rail supply contract (the "**Contract**") entered into between the Supplier and the Purchaser regarding the sale of Rails, being specified that these GTS shall form part of this Contract as if they were set out in full in this Contract.

1.3. Purchaser's signature of the Contract shall constitute the Purchaser's binding and unreserved acceptance of these GTS.

1.4. Even if no contract was signed between the Supplier and the Purchaser regarding the supply of Rails, these GTS will apply to any commercial relation that concerns the supply of Rails by the Supplier to the Purchaser.

In such event, (i) Purchaser's order shall constitute the Purchaser's binding and unreserved acceptance of these GTS, and (ii) the Supplier shall only be bound to the Purchaser from the date of its written confirmation of the order sent to the Purchaser.

1.5. All contracts for the sale of Rails by the Supplier, however formed, incorporate these Conditions. Any term or condition in the Purchaser's order or other documentation which is inconsistent with these Conditions shall be of no effect, unless expressly accepted by the Supplier.

2. TESTING AND INSPECTION BEFORE DELIVERY

2.1. Where the Contract provide for inspection of the Rails by or on behalf of the Purchaser before delivery (whether at the Supplier's site or elsewhere), then the Purchaser shall inspect the Rails within seven (7) days of being notified by the Supplier that the Rails are available for inspection.

2.2. If the Purchaser does not inspect the Rails within the time specified by the Supplier in that notice or if, within 14 days of such inspection, the Purchaser does not give notice to the Supplier stating that, and specifying the reasons why the Rails do not comply with the Contract, then the Purchaser shall conclusively be deemed to have accepted that the Rails comply with the Contract and shall not be entitled to reject the Rails for any reason relating to the quality or to the technical and material specification of

the Rails which such inspection or testing has or would have revealed.

3. PACKAGING AND DELIVERY

The Parties agree that the Rails will be packaged and delivered (together with the transfer of risk in, and title to, the Rails) in accordance with any specification and standard specified by the Supplier in the Contract and the GTS.

4. DELIVERY

4.1. Unless the Contract specify otherwise, the method of carriage shall be at the Supplier's discretion and at the cost of the Purchaser, being specified that the cost of transport is included in the rail selling price.

If the Contract provides that the Purchaser shall collect the Rails from the Supplier site or if the Contract make no provision about delivery and the Purchaser so elects, then the Purchaser shall collect the Rails without delay and at the latest, 3 days after being notified by the Supplier that the Rails are ready for collection. If the Rails are not collected by the Purchaser within 3 days of the notification, the Supplier may dispatch the Rails itself at the Purchaser's expense and risk (if an address for delivery of the Rails has not been specified by the Purchaser, to such address of the Purchaser as the Supplier may in its discretion decide) or store them on the Supplier's site at the Purchaser's expense and risk.

4.2. The Supplier reserves the right to charge to the Purchaser any costs, charges or expenses incurred by the Purchaser, including, without limitation, any costs, charges or expenses incurred as a result of storage of the Rails, vehicle or wagon detention or demurrage of ships, in each case, in consequence of any act or omission of the Purchaser, or its servants or agents, including any failure of the Purchaser to accept delivery of the Rails, or as a result of any special requirement or stipulation not set out in the Contract.

Any claim by the Purchaser regarding any damage or loss of part or all the Rails in transit must be made strictly within the time limits mentioned in the Contract.

4.3. In case of marine transport, any marine insurance required to be effected by the Supplier under the Contract shall, unless otherwise agreed in the Contract, be 10% over the invoice price and shall cover the Rails from the time when transit of the Rails to the destination named in the Contract commences, as provided and contained in the Institute of London Underwriters ('the Institute') Cargo Clauses, the Institute's War Clauses and the Institute's Strikes Clauses, current at the time of shipment.

5. TIME OF DELIVERY

5.1. The Supplier shall deliver the Rails to the Purchaser or to the carrier when the Rails are transported by a third party, on the date or dates stated or referred to in the Contract.

5.2. The Parties agree that should the manufacture or processing of any of the Rails, or the delivery of any of the Rails at any of the Supplier's sites or to the Purchaser elsewhere, whether by the Supplier, an associated company or an independent freight carrier, be prevented or hindered directly or indirectly by fire, the elements, war, civil commotion, strikes, lock-outs, industrial dispute, shortage of raw materials or fuel (notwithstanding that the Supplier has taken all reasonable steps to procure such raw materials or fuel), shortage of labour, breakdown or partial failure of plant or machinery, pandemic, late receipt of the Purchaser's specification or other necessary information, acts, orders or regulations of Governments, decisions or directives of the Commission of the European Communities, delay on the part of any agent, sub-contractor or supplier, or any cause whatsoever beyond the reasonable control of the Supplier or any of its associated companies concerned with the manufacture, processing or delivery of the Rails then, notwithstanding any warranty set out in the Contract expressly modifying Condition 5.1, the time for delivery of the Rails shall be extended for a reasonable period, and any such warranty shall be deemed to have been modified accordingly.

6. CANCELLATION OF DELIVERY

If any of the causes or events referred to in Condition 5.2 give rise to, or are likely to give rise to, a delay in delivery greater than one hundred eighty (180) days, either party shall be entitled to terminate the contract and to cancel delivery of those Rails; neither party shall be liable in case of cancellation in such circumstances. In the case of such cancellation, each party will bear half of the total costs incurred by the parties under the Contract.

7. DELIVERY IN INSTALMENTS

Each part delivery or instalment of the Rails shall be deemed to be sold under a separate contract.

8. ACCEPTANCE OF RAILS

Without prejudice to the measures to be taken by the Purchaser regarding the carrier referred to in Condition 4.4, the Purchaser shall be deemed to have accepted the Rails and that the Rails comply with the Contract unless:

- a. In the case of an apparent defect or non-compliance in the quality or condition of the Rails with the Contract detected during the inspection or testing before delivery referred to in Condition 2, the Purchaser gives notice stating that, and specifying the reasons why the Rails do not comply with the Contract in accordance with Condition 2; or
- b. in the case of an apparent defect or non-compliance in the quality or condition of the Rails with the Contract, which defect or non-

compliance was apparent upon careful inspection or reasonable testing of the Rails (or would have been had a careful inspection or reasonable test been carried out) but could not be detected during the inspection or testing before delivery referred to in Condition 2, the Purchaser gives the Supplier a notice specifying such defect or non-compliance within **3** days after receiving the Rails and in any event prior to their use or re-sale and, after doing so, gives the Supplier a reasonable opportunity to inspect or test the Rails before they are used or resold; or

- c. in the case of a non-compliance regarding the weight and quality of the Rails with the Contract, the Purchaser gives the Supplier a notice specifying any discrepancy in weight or quantity within three (3) days after receiving the Rails and shall have given the Supplier a reasonable opportunity to witness the weight and/or quantity of the Rails being verified before they have been used, processed or sold.
- d. in the case of a non-apparent defect or non-compliance in the quality or condition of the Rails with the Contract within the meaning of UIC 860-R Warranty clause unless otherwise provided in the Contract, the Purchaser shall give the Supplier notice specifying such defect or non-compliance and, after doing so, gives the Supplier a reasonable opportunity to inspect the Rails. The Purchaser shall not be excused from providing such opportunity by reason only that the Rails have been incorporated into the Rails or property of a third party or that the Rails are located in, upon or under the premises or land of a third party.

9. CLAIMS

9.1. In the event of a claim from the Purchaser regarding a defect or non-compliance of the Rails with the Contract (the "**Claim**"), such Claim must be sent to the Supplier by email and followed by written confirmation by registered mail or courier in accordance with Clause 17 (*Notices*) of the Contract.

9.2. Any Claim must contain the following information:

- (i) the Contract number;
- (ii) reference to the B/L and any other relevant shipping documents;
- (iii) packing list;
- (iv) the identification numbers (hot stamping mark) of the Rails;
- (v) the number of pieces and weight of the Rails in respect of which the Claim is submitted; and
- (vi) a detailed description of the alleged nonconformities of the Rails.

9.3. Any Claim must be supported by the following documents:

- (i) original survey report (issued by a reputable and independent inspection surveyor for quality and quantity, internationally recognized in the rail industry (the “**Independent Surveyor**”) arranged at the Purchaser’s cost – for visible and/or hidden defects);
- (ii) copy of the Rail Supply Contract;
- (iii) copy of the relevant Invoice; and
- (iv) copies of the relevant shipping documents, e.g.: B/L, FCR, CMR, packing list.

9.4. All the aforementioned documents shall be presented in or translated, at the Purchaser’s cost, into English.

9.5. All Rails subject to an alleged Claim must be stocked separately, clearly marked, and must not be used for further processing until the Claim is settled, unless the Supplier agrees otherwise in writing. If the Rails subject to the alleged Claim are processed or used otherwise, the Purchaser acknowledges that it forfeits its right to make a Claim in respect of such Rails.

9.6. Should the Supplier dispute a Claim, the Supplier shall inform the Purchaser and the Parties shall jointly appoint an independent surveyor. The Purchaser is obliged to provide the independent surveyor with full access to the Rails, or to procure the provision of full access to the Rails to the independent surveyor, for the purpose of the inspection. The findings of the jointly appointed independent surveyor shall be final and binding on the Parties. The cost of the independent surveyor shall be borne by the losing Party.

9.7. If the Purchaser fail to notify a Claim within the time limits and/or strictly in accordance with the manner stipulated in the Contract and these GTS, then the Claim shall be deemed forfeited and the Supplier shall be relieved from any and all responsibilities in relation thereto. The Purchaser shall not claim on any insurance policy of the Supplier for recovery in respect of any forfeited Claim.

10. PAYMENT AND PRICING

10.1. The Purchaser shall not be entitled to withhold payment of any amount payable for the supply of Rails or otherwise under the Contract to the Supplier because of any disputed Claim of the Purchaser in respect of defective Rails or any other alleged breach of the Contract, nor shall the Purchaser be entitled to set off against any amount payable for the supply of Rails or otherwise under the Contract to the Supplier any monies which are not then presently payable by the Supplier or for which the Supplier disputes liability.

10.2. The price payable by the Purchaser for each delivery shall be the price set out in the Contract to which shall be added any Value Added Tax and any other tax or duty relating to the sale or delivery of Rails chargeable to the Supplier and the freight and other charges as specified in the Contract. Unless otherwise expressly stated in the

Contract, the price of each delivery (including such Value Added Tax, other tax or duty, freight and other charges) shall be paid in full and received by the Supplier by no later than 60 days from the date of invoice.

10.3. Any invoice not paid by the due date shall be increased by interest at the half-yearly key rate of the European Central Bank raised by 10 % points, in force at the date of payment indicated on the invoice until the date of effective payment of the invoice. These interests will be calculated on the whole amount including all taxes.

10.4. In the event of late payment, the Purchaser shall pay a fixed indemnity for collection costs, in the amount of 40 euros, automatically and without prior notice. The Supplier may request additional indemnification from the Purchaser if the collection costs actually incurred exceed this amount, upon production of supporting documents.

10.5. A fixed compensation of 10% shall also be added to the amount due, including Value Added Tax, as a penalty clause, with a minimum of 100 euros and without prejudice to the costs that may be incurred for the recovery of the debt, as mentioned above as a fixed compensation for collection costs.

10.6. Payment shall be made in the currency specified in the Contract. Subject to Condition 19, that amount shall not be subject to any discount or deduction except as agreed by the Supplier in the Contract.

10.7. The Supplier may at any time, whether before the beginning of the performance of the Contract or after partial performance thereof, require from the Purchaser, partly or wholly, a payment in advance or require a guarantee acceptable to the Supplier that the Purchaser shall satisfactorily fulfil his obligations towards the Supplier. The Supplier shall be under no obligation to justify his requirement for such payment in advance or guarantee.

10.8. The Contract Price shall be paid by the Purchaser net of any domestic or international correspondent bank charges, telegraph wire fees or other expenses of any kind, which shall be in any case to for the Purchaser’s account.

10.9. In the event that the Contract requires the Purchaser to provide the Supplier with a letter of credit, the Purchaser’s obligation to pay the Contract Price shall only be fully discharged once the issuing bank has made payment under the letter of credit to the Supplier’s nominated bank.

10.10. When payment is to be made using a letter of credit or an amendment to the letter of credit is required, all costs applied by the:

- (i) Purchaser’s bank are for Purchaser’s account; and
- (ii) Supplier’s bank are for Supplier’s account.

11. TRANSFER OF RISKS AND RETENTION OF TITLE

11.1. Subject to any Incoterms expressly incorporated into the Contract, risk in the goods shall pass to the Purchaser as per the Incoterm specified in the Contract.

11.2. The Supplier shall retain full title and ownership of the Rails until 100 % of the price of the Rails (the "Contract Price" under the Contract) is received by the Supplier's nominated bank.

As a consequence, the Supplier and the Purchaser expressly agree that during the retention of title, (i) the legal and beneficial ownership of such Rails remain with the Supplier; (ii) the Purchaser shall have a right to possession (but not ownership) of such Rails for the Supplier and ensure that the Rails shall be clearly marked and identifiable as being the Supplier's property; (iii) the Supplier may recover all or any part of such Rails at any time from the Purchaser if they are in the Purchaser's possession.

12. WARRANTIES

12.1. The Rails are delivered under the sole guarantees mentioned in Condition 8.

12.2. If any defect or non-compliance in the quality, or technical or material specification of the Rails with the Contract is detected after any test or inspection deemed necessary by the Supplier, the Supplier shall (in its sole discretion):

- (i) at its own cost, procure the manufacture and delivery of replacement Rails in accordance with the Specification; or
- (ii) refund to the Purchaser:
 - (a) the cost of the defective Rails as new at the time of the withdrawal of the Rails; and
 - (b) any costs involved in their removal of the defective Rails and any associated customs and transport costs in accordance with the Contract.

12.3. The defective Rails shall remain the property of the Purchaser.

13. LIMITATIONS ON LIABILITY

13.1. The Supplier's liability for any direct loss or damage, howsoever caused, which the Purchaser may sustain in connection with the performance of the Contract, shall be limited to the Contract Price of the Rails actually delivered by the Supplier to the Purchaser; and

13.2. The Supplier shall not be liable for any indirect loss or incidental, consequential, or special damages, including, but not limited to loss of business or profits, unrealized savings, additional expenses incurred, etc.

13.3. The Supplier shall not be liable in the following cases:

- The Purchaser has accepted the Rails within the meaning of Condition 8;

- If the defective functioning is the result of abnormal use of the item, negligence, lack of maintenance on the part of the Purchaser or any end user, improper use contrary to the precautions for use provided with the Rails, improper storage or also assembly that does not comply with the practice in the railway construction;
- If the damage is the result of an event resulting from Force Majeure, as defined in the Condition 16 below.

14. TERMINATION AND SUSPENSION

14.1. The Supplier shall be entitled without prejudice to its other rights and remedies either to terminate wholly or in part any or every contract between itself and the Purchaser or to suspend any further deliveries under any or every contract in any of the following events:

- (a) if any debt is due and payable by the Purchaser to the Supplier but is unpaid;
- (b) if the Purchaser has failed to provide any letter of credit, bill of exchange or any other security required by the Contract provided that, in such event, the Supplier's rights of termination or suspension under this Condition shall apply only in regard to the particular contract in respect of which the Purchaser shall have so failed;
- (c) if any guarantee or other security for trading in respect of the Purchaser's obligations under the contract or under the Contract is cancelled, suspended or amended in any respect;
- (d) if, in the reasonable opinion of the Supplier, the delivery (or any steps required in connection with the delivery) would involve a level of risk to the health or safety of any person that would constitute a breach, or potential breach, of any legal obligation by the Purchaser and/or the Supplier or would be excessive or unreasonable;
- (e) if the Purchaser has failed to take delivery of the Rails under any contract between it and the Supplier otherwise than in accordance with the Purchaser's contractual rights or the Purchaser is otherwise in breach of any such contract;
- (f) if the Purchaser becomes insolvent or enters into any composition or arrangement (including a voluntary arrangement) with its creditors or, being a body corporate, has passed a resolution for voluntary winding up except where solely for the purpose of reconstruction or if a petition has been presented for an order for its winding up or for a receiver (including an administrative receiver) or administrator to be appointed or if any such order or appointment is made or if, being an individual or partnership, the Purchaser suspends payment of his or their debts in whole or in part or if an application has been made for an interim order or a petition has been presented for a bankruptcy order or if any such order is made or if the Purchaser, whether or not a body corporate, shall

carry out or be subject to any analogous act or proceedings under any law;

- (g) the imposition of any new, additional or increased tax, public charge, freight, tariff or duty which may after the date of the quotation or contract be levied on or imposed on the Rails to be sold, or upon any sale, delivery, or other action taken under or in connection with any contract to which these GTS apply, or upon the export or import of such Rails or materials required to produce the Rails unless such imposition is supported by the Purchaser by virtue of Condition 9.7 ; or
- (h) if the Purchaser fails to comply with any request by the Supplier for advance payment or security pursuant to Condition 11 above;
- (i) if the Purchaser fails to meet its commitment to ensure that his actions within the framework of the Contract are strictly in accordance with the regulations in force and in particular the European and United Nations rules and sanctions, with regard to the resale or the use that could be made, in any way whatsoever, of the Rails.

14.2. The Supplier shall be entitled to exercise its rights of termination or suspension under this Condition at any time during which the event giving rise to such rights is continuing and has not been remedied and, in the event of a suspension, the Supplier shall be entitled, as a condition of resuming delivery under any contract between it and the Purchaser, to require prepayment of, or such security as it may require for the payment of, the price of any further Rails.

14.3. If the Supplier is entitled to exercise its rights of termination or suspension under this Condition, the Supplier shall further be entitled by notice to the Purchaser to treat all sums which are then due to the Supplier under any contract between the Supplier and the Purchaser but which are not then payable, as being immediately due and payable.

14.4. From a general standpoint, both Parties shall be entitled without prejudice to their other rights and remedies to terminate wholly or in part the Contract if the other Party fails to perform or is in breach of its obligations under the Contract and such failure or breach has not been rectified within sixty (60) days after receiving a written notice from the claimant, specifying the failure or breach and demanding its cessation.

Any failure to perform or breach of its obligation by the Supplier will be deemed rectified if the latter provides the Purchaser with evidence of the steps taken to correct such failure or breach, such as, for example, the launch of a new production phase if this proves necessary.

15. FORCE MAJEURE AND ECONOMIC SANCTIONS

15.1. "Force Majeure" means any circumstances which (i) are beyond the control of the Party invoking force majeure, (ii) where not reasonably foreseeable at the time of the conclusion of the Contract and (iii) make it impossible or difficult for the party invoking Force Majeure

to perform an obligation under the Contract or (iv) the intended acquisition or sale, intended processing or other use of the Rails as well as of the raw materials, semi-finished products, intermediate goods or parts used. Causes of Force Majeure may include, but are not limited to:

- (a) (Natural disasters such as earthquakes fires, floods, diseases (especially communicable diseases) and the release of radiation, biological or chemical substances;
- (b) War, civil war, terrorism, armed conflict, riots, demonstrations, strikes and lockouts;
- (c) Economic, trade or financial sanctions, embargoes, import or export bans, licensing requirements, punitive tariffs, quotas, other restrictions on the movement of goods, services or payments and measures comparable in purpose or effect (hereinafter referred to as "Economic Sanctions").

15.2. The Purchaser guarantees that, taking into account the Parties, their beneficial owners, the subject matter of the contract and all other circumstances (in particular the end buyer), no Economic Sanctions exist, have been announced or are envisaged at the time of the conclusion of the Contract, which would contravene the conclusion or performance of the Contract in whole or in part. The Purchaser shall continuously monitor the situation regarding the announcement of potential Economic Sanctions after the conclusion of the Contract and shall inform the Supplier immediately.

15.3. In the event of Force Majeure, the Party concerned shall immediately inform the other Party, stating the reasons. The Party concerned shall be entitled to refuse to perform the service in question for the duration of the case of Force Majeure, the other Party being equally entitled to refuse the counter-performance due to it. Neither Party shall be entitled to assert any claims resulting from a delay or failure to perform due to Force Majeure.

15.4. In the event that (i) the Supplier assume in good faith that there is Force Majeure and (ii) this is disputed by the Purchaser, the provisions of paragraph 15.3 above shall also apply until definite clarification.

15.5. In the case of Force Majeure that persists for more than 90 days after receipt of the notification referred to in paragraph 15.3 above, either Party shall be entitled to terminate the Contract. If the Force Majeure persists solely because of the refusal of one Party to fulfil its obligations under paragraphs 15.6 and 15.7 below, only the other Party shall be entitled to declare the Contract terminated.

15.6. The Parties shall cooperate with the Purchaser to the extent possible to remedy Force Majeure, for example by filing an application for exemption from Economic Sanctions. At the request of the Supplier, the Purchaser shall make available all relevant information and documents, in particular concerning the place of destination, the final buyer and the intended use of the contractual products or services as well as its own organization, that of the final buyer and their respective economic beneficiaries.

15.7. In the event that the occurrence or continuation of an event of Force Majeure resulting from an economic penalty can be prevented or eliminated by amending the provisions of the Contract, the Purchaser undertakes to accept such amendments, unless they result in an unreasonable disadvantage which cannot be remedied, even by providing security or other compensatory measures. Possible changes to the Contract may concern, inter alia:

- (a) Changes in delivery dates, elimination or reduction of delivery and payment periods;
- (b) Transfer of ownership and taking possession of the Rails; or
- (c) The temporary or permanent waiver of rights to refuse performance, in particular with regard to payments.

16. IMPREVENTION

In the event of a change in circumstances unforeseeable at the time of the conclusion of the contract, within the meaning of Article 1195 of the French Civil Code, which would make the performance of the contract concluded with the Purchaser excessively onerous for the Supplier, the latter may propose a renegotiation of the terms of the said contract to the Purchaser, who undertakes to consider this proposal in good faith.

17. NOTICES

Except where expressly stated otherwise in any of the Contract, a notice in respect of the Contract shall be in writing and shall be delivered personally, by e-mail or prepaid first-class post (or air mail if posted to or from a place outside France) in accordance with the notice details set out in the Contract or to any other address and/or email address provided by the Parties in writing.

18. THIRD PARTY RIGHTS

The Supplier and the Purchaser agree that if any term of the Contract purports to confer a benefit on any person

who is not a party to the contract (a 'third party'), that term shall not be enforceable by any such third party.

19. NO WAIVER

The rights of the Supplier or the Purchaser shall not be prejudiced or restricted by any indulgence or forbearance extended by either party to the other and no waiver by either party in respect of any breach shall operate as a waiver in respect of any subsequent breach. Any variation in the terms of the Contract must be agreed between the parties in written form.

20. SEVERABILITY

In the event that, for any reason, any provision in the Contract is held to be void, unenforceable or otherwise invalid, all the other provisions of the Contract, and the remainder of any provision where the effect of some part of it is held to be void, unenforceable or otherwise invalid, shall remain fully effective.

21. DATA PROTECTION

Each of the parties carrying out, within the framework of the Contract and these GTS, computer processing involving personal data undertakes to comply with all the provisions applicable to it under the regulations in force, and in particular Law No. 78-17 of 6 January 1978 relating to information technology, files and freedoms, as well as Regulation (EU) 2016/679 of the European Parliament and the Council of 27 April 2016.

22. CONFIDENTIALITY

Both Parties undertake to treat as confidential the terms of the Contract and these GTS, and information gathered by it as a result of the operation under this Contract and these GTS and shall not divulge confidential information to a third party. Any information which is not in the public domain shall be treated as confidential.