

## General Terms and Conditions of Purchase for Services of Televic Rail GmbH (hereinafter "TRA")

Status: 9<sup>th</sup> January 2023

### **§ 1 General, scope of application**

(1) These General Terms and Conditions of Purchase for Services (hereinafter "GTCS") are exclusively applicable to all business relationships between TRA and its contractual partners providing services (hereinafter "Contractor"). Deviating, conflicting or supplementary general terms and conditions of the Contractor will only become an integral part of the contract if and to the extent that TRA has expressly consented to their application. This requirement of consent shall apply in any case, for example also if TRA accepts Contractor's services without reservation despite knowledge of Contractor's general terms and conditions.

(2) These GTCS apply to contracts for the use of services (hereinafter "Services"). If services under a contract for work are ordered at the same time, the General Terms and Conditions of Purchase of TRA in the latest version (hereinafter "GTCP") shall apply to these. The GTCS shall also apply in their current version as a framework agreement for all future contracts for the use of Services with the same Contractor, without TRA having to refer to these again in each individual case; TRA shall communicate, without delay, to its Contractor any changes to these GTCS.

(3) Individual agreements reached with the Contractor in an individual case (including subsidiary agreements, extensions and amendments) shall in all cases have precedence over these GTCS. A written contract or TRA's written confirmation shall be - subject to proof to the contrary - authoritative for the contents of such agreements.

(4) The following order of validity applies to the contractual elements:

1. Individual agreements;
2. the order of TRA;
3. GTCS;
4. GTCP.

In the event of contradictions and/or uncertainties, the first-mentioned contractual elements shall always take precedence over the last-mentioned ones. Gaps shall be filled by the respective subordinate contractual elements. In case of documents in chronological order, the more recent document shall take precedence over the older document.

(5) Legally relevant declarations and notifications by the Contractor (e.g. setting of deadlines, reminders, declaration of withdrawal) shall be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Legal formal requirements and further proofs, in particular in case of doubts about the legitimacy of the declaring party, shall remain unaffected.

(6) References to the application of statutory regulations shall only be of clarifying significance. The statutory regulations shall also apply without such clarification, provided they are not directly altered or explicitly excluded in these GTCS.

### **§ 2 Contract conclusion**

(1) Orders placed by TRA shall not be considered binding until they have been submitted or confirmed in writing. In the event that the order, including order documentation, contains obvious errors (e. g. mathematical or spelling mistakes) or is incomplete, the Contractor must make TRA aware of this fact prior to acceptance so that the order can be corrected or made complete; otherwise, the contract is deemed not concluded.

(2) The Contractor is required to confirm any order by TRA in writing within ten (10) business days or by starting to provide the Service with-out any reservations (acceptance). Untimely acceptance constitutes a new offer by the Contractor that itself requires acceptance by TRA.

### **§ 3 Completion date, default, cooperation**

(1) The completion date stipulated by TRA in the order is binding. If the completion date is not specified in the order and has not been agreed otherwise, it shall be four (4) weeks from the conclusion of the contract, if a completion date is required. The Contractor is obligated to give TRA immediate written notice if it anticipates that it will – for whatever reason – be unable to adhere to agreed completion date. Such written notice shall also state the grounds and indicate the anticipated duration of the delay. Partial Services and/or early Services are not permitted without prior written consent from TRA.

(2) Should the Contractor not render its Services, or not render them within the agreed time, or enter into default, the rights of TRA – in particular of withdrawal and compensation – shall be determined pursuant to the statutory provisions. The provisions contained in § 3 (3) remain unaffected.

(3) If the Contractor is in default, TRA shall be entitled - in addition to further statutory claims -to demand liquidated damages for the damage caused by delay in the amount of 0.3% of the net price of the delayed Service, though, in total, not more than 10% of the net price of the Services that have not been provided on time. TRA reserves the right to prove that a higher damage has occurred. The Contractor reserves the right to prove that no damage at all or only significantly less damage has been incurred.

(4) TRA will cooperate in the execution of the contract in the sense of an obligation, insofar as this is contractually agreed and necessary.

(5) The Contractor is obliged to request TRA to cooperate within a reasonable period of time and by naming the specific act of cooperation. If the request is not made, TRA is not in default with the cooperation and the Contractor cannot invoke improper cooperation. TRA is only responsible for insufficient or delayed cooperation insofar as TRA is responsible for this.

(6) Regardless of the cooperation of TRA, the Contractor always remains solely responsible for the performance of the Service.

(7) All drawings, sketches, templates, models, construction/design documentation, component parts, data, etc. that belong to the order by TRA are binding for the Contractor. The Contractor shall, however, examine them for discrepancies and notify TRA, in writing and without delay, of any identified or suspected errors. Failure to do so shall prevent the Contractor from claiming the existence of identifiable deficiencies (errors).

### **§ 4 Subcontractors, place of performance, default on acceptance**

(1) The Contractor shall not be entitled, without prior written consent from TRA, to engage third parties (e.g. subcontractors) to carry out Services for which it is responsible.

(2) The Service shall be provided at the place stipulated in the order. If no place has been stated and no other agreement has been reached, then place of performance shall be TRA's registered place of business.

(3) If no more detailed specification requirements have been agreed on in the order, the Contractor shall fulfil the contract in good merchantable quality and, where existing, in conformity with industrial norms, standard specifications according to DIN, EN, IEC, ISO and/or equivalent norms.

(4) The statutory provisions shall govern when TRA shall be deemed to be in default on acceptance. Notwithstanding, the Contractor must expressly offer TRA its performance if a defined or definable calendar period has been agreed for action or cooperation on the part of TRA.

## **§ 5 Project management**

(1) Insofar as the Services are provided within the framework of a project, the Parties shall each appoint a project manager and, if applicable, technical contact persons.

(2) The Contractor may only replace its project manager with the consent of TRA. TRA shall not refuse its consent without an objective reason. An objective reason shall be deemed to exist in particular if Contractor's intended replacement is not technically equivalent or if TRA would probably incur more than insignificant initial training costs as a result of the replacement. TRA is free to replace its project manager if the intended replacement is professionally suitable.

(3) The Contractor shall report in text form on the current status of Service provision (project scope, content, milestone, etc.) every two (2) weeks after the order is placed. The Contractor's project manager shall inform TRA in text form immediately upon becoming aware of any impending overruns of the agreed effort or time requirements and of any impending non-compliance with the agreed deadlines and dates.

(4) Unless otherwise agreed, the project managers are not entitled to change agreed requirements, deadlines and dates as well as other essential parts of the contract.

(5) Even if the parties work in mixed project teams, this is not to be understood as a joint operation.

## **§ 6 Changes in service**

(1) TRA is entitled at any time to demand reasonable changes in Service - in writing or in text form - in accordance with the following provisions.

(2) The Contractor shall inform TRA within five (5) working days after request whether the change is possible and submit a corresponding offer based on the agreed remuneration in text form. In addition to the changes to the remuneration amount, to the performance and to the cooperation, this offer must also include the effects in terms of deadlines. If, due to the complexity or scope of the change request, it is not possible to prepare an offer within five (5) working days, the Contractor shall immediately indicate this and the parties shall agree on a reasonable deadline.

(3) If the Contractor does not submit a reasonable change proposal in due time or if an agreement on the change in performance cannot be reached, TRA is entitled to terminate the contract extraordinarily. In this case, all Services incurred up to this point in time will be remunerated by TRA.

(4) TRA is entitled to make reductions in the Service of up to 20% of the order value and to reduce the remuneration accordingly, without the Contractor being able to charge TRA for costs, losses or lost profit.

(5) The Contractor is only entitled to make changes to the Service with the written or text form consent of TRA.

## § 7 Code of Conduct, Security

(1) The Contractor is obligated to act in conformity with the laws of the legal system(s) that respectively apply. In particular, the Contractor shall neither actively nor passively, directly or indirectly be involved in any form of bribery or corruption, violations of human rights or fundamental rights of its employees, or child labour. Furthermore, the Contractor shall comply with the statutory legal provisions governing the statutory minimum wage, where applicable, in particular by always paying at least the statutory minimum wage and meeting its statutory record-keeping requirements, and shall urge its subcontractors to comply with the statutory provisions. Furthermore, Contractor shall (a) comply with the internationally applicable minimum labour standards, in particular all conventions of the International Labour Organisation with regard to workers' rights, working hours and occupational health and safety, (b) comply with the entrepreneurial duties of care in supply chains from the German Supply Chain Duties Act ("Lieferkettensorg-faltspflichtengesetz" – "LkSG"), if applicable, (c) assume responsibility for the health and safety of its employees at the workplace, in particular comply with all statutory and contractual accident prevention and occupational health and safety provisions, (d) comply with environmental protection laws and (e) ensure compliance with TRA's Code of Conduct for Suppliers (available at: Code of Conduct | Televic) and promote it with its subcontractors to the best of its ability.

(2) The Contractor shall provide the organizational instructions and measures (particularly with regard to the security of premises, business partners, personnel and information) necessary to protect the Services to TRA. In particular, the Contractor shall protect its Services for TRA, or to/for third parties designated by TRA, from unauthorized access and manipulation. The Contractor shall only entrust competent and reliable personnel with those Services, and shall oblige possible subcontractors to undertake corresponding measures.

(3) In the event that the Contractor violates these obligations, TRA shall be entitled to withdraw from the contract or to terminate the contract, without prejudice to further claims. If a violation of obligations on behalf of the Contractor is remediable, this right may only be exercised after the unsuccessful expiry of an appropriate period set for the elimination or alleviation of the causes for the violation.

## § 8 Prices, payment conditions

(1) The price stated in the order is binding. All prices include statutory value added tax, unless the value added tax is shown separately.

(2) Unless otherwise agreed, the price includes all Services and ancillary services by the Contractor (e.g. rights of use) as well as all ancillary costs (e.g. insurances, taxes, charges and fees). Travel expenses will only be reimbursed by TRA, if TRA has agreed to bear the costs in advance.

(3) The agreed price is due for payment within 60 calendar days following complete and defect free contractual performance by the Contractor and after receipt by TRA of a proper invoice. If TRA makes payment within 30 calendar days, the Contractor shall grant TRA an early payment discount of three (3) percent of the net invoice amount. Payment by bank transfer shall be deemed to have been made on time when TRA's transfer order is received by the bank prior to the expiry of the payment deadline; TRA shall not be responsible for delays caused by the banks involved in the payment transaction. The payment period begins the moment TRA has received an auditable invoice, however not before the date on which the Service is fully rendered.

(4) TRA shall not be liable for interest for delayed payment. Default on behalf of TRA shall be subject to the statutory regulations, whereby by way of derogation a written warning notice from the Contractor shall be required in any case.

(5) TRA is entitled to offsetting and withholding rights, as well as to objection on the grounds of contractual non-fulfilment, to the extent provided by law. TRA is, in particular, entitled to withhold payments due, as far as and for so long as TRA still has claims against the Contractor arising from incomplete or defective performance rendered by the latter.

(6) The Contractor only has an offsetting or withholding right with respect to legally effective or undisputed counterclaims.

## **§ 9 Secrecy**

(1) TRA and its licensors retain the property rights and copyrights for all illustrations, plans, drawings, sketches, instructions, product descriptions and other documents. Such documents are to be used exclusively for fulfilling the contractual obligations and are to be returned to TRA upon completion of the contract. The documents shall be kept confidential from third parties, including after the contract has been fulfilled or terminated. The obligation of confidentiality expires when the information and knowledge contained in the ceded documents has become public knowledge.

(2) The foregoing provision applies accordingly to materials and digital equipment (e.g. software, finished products, semi-finished products) as well as to tools, templates, samples, and other objects, that TRA provides to the Contractor. Such items - provided they are not further processed - shall be separately stored and insured by the Contractor to a reasonable extent against destruction and loss at Contractor's own expense. The Contractor may use them only in the course of performing the order by TRA, and they are to be returned to TRA either upon TRA's first request for them to be returned, or immediately upon completion of the order without the need for a respective request from TRA. The reproduction of documents and materials provided by TRA is forbidden, unless it is mandatory for the provision of the Service.

## **§ 10 Granting of Rights**

(1) The Contractor grants TRA an exclusive right of use, unlimited in terms of time, territory and content, to all work results upon their creation, but no later than upon handover to TRA, which extends to all known and unknown types of use, including

(a) the right to reproduce, in whole or in part, permanently or temporarily, by any means and in any form, for example for loading and/or running or other permanent and/or temporary storage on electronic, electromagnetic or optical storage media, such as any type of hard disk, RAM, DVD, etc.;

(b) the right to distribute the reproductions on any medium and in any form and by any means, including the right to exploit them commercially, including by rental and/or lending;

(c) the right of communication to the public by wire and/or wireless means, in particular making available to the public in such a way that the work results are accessible to the public from places and at times of their choice;

(d) the right to translate, adapt, or otherwise transform and exploit the versions so produced in the same way as the former work results.

(2) Insofar as individual elements of the work results (such as image or sound material) are based on third-party material, the Contractor undertakes to procure these elements from generally accessible databases, alternatively from the rights holder, and to grant TRA the non-exclusive rights of use thereto to the extent pursuant to § 10 (1) at its own expense.

(3) The Contractor shall inform TRA in each case of any restrictions on the rights of use.

(4) TRA is entitled to assign the above rights in whole or in part to third parties or to split further simple rights of use thereof and to grant them to third parties without further consent by the Contractor.

(5) TRA accepts the granting of the rights of use upon conclusion of the contract.

(6) The Contractor shall ensure that any moral rights are not asserted against TRA.

(7) All analog and digital work results supplied by the Contractor in execution of the contract (e.g. descriptions, drawings, documentation, object and source code) become the property of TRA upon their handover.

## § 11 Term, Termination

(1) Insofar as the order contains a fixed term, the contract ends with the expiry of this term without the need for termination. If the term is longer than one year, TRA may terminate at the end of each contractual year with a notice period of one (1) month.

(2) If no term is agreed within the order, the contract shall run for an indefinite period and may be terminated (a) by TRA at any time with a notice period of 14 calendar days to the end of the month or (b) by the Contractor within the statutory notice periods, but at least with a notice period of three (3) months to the end of the month.

(3) The right of the parties to terminate the contract extraordinarily for good cause shall remain unaffected. Good causes for termination exists in particular if

(a) it is unreasonable for one party to adhere to the contract due to serious or multiple breaches of contract by the other party or

(b) the economic situation of the Contractor deteriorates during the term of the contract in a way that seriously jeopardises the performance of the contract; or

(c) an application for insolvency has been filed against Contractor's assets and has not been rejected as unfounded within four (4) weeks, insolvency proceedings opened or rejected for lack of assets.

## § 12 Liability

(1) The Contractor shall be liable solely in accordance with the statutory provisions for all damage caused intentionally or negligently by the Contractor itself, its employees or commissioned third parties (vicarious agents and/or assistants).

(2) Unless otherwise agreed, the Contractor shall conclude a business liability insurance policy with a lump-sum coverage amount of at least five (5) million EUR per damage event and provide proof of the insurance policy to TRA on request.

(3) Contractual penalties or lump-sum damage claims against TRA are excluded.

(4) TRA is only liable for simple and slight negligence in the event of a breach of an essential contractual obligation and only in the amount of the foreseeable damage. Essential contractual obligations are those whose fulfilment makes the proper execution of the contract possible in the first place and on whose compliance the contractual partner may regularly rely.

(5) TRA shall not be liable for indirect damages, in particular lost profits.

(6) Insofar as liability of TRA is excluded, the exclusion also applies to the liability of TRA's employees, legal representatives and vicarious agents.

(7) § 12 (4) to (6) shall not apply in case of intent and gross negligence as well as in case of damage resulting from injury to life, body or health or the assumption of guarantees.

(8) The mutual claims of the parties to the contract shall be subject to a limitation period in accordance with the statutory provisions.



### **§ 13 Indemnification**

(1) The Contractor warrants and represents that its Services do not infringe any third-party rights, directly or indirectly, in particular intellectual property rights such as patents, trademarks, registered designs and copyrights. If claims are nonetheless made by a third party against TRA by reason of an asserted breach of that third party's rights associated with the Services by the Contractor, the Contractor is obligated to indemnify TRA from these claims at the first request and to reimburse TRA for all costs arising from those claims.

(2) If use of the Services results in an infringement of a third-party's rights, the Contractor shall, upon first request from TRA, alter or replace the injurious and/or hazardous Services at its own expense, this presuming that such an alteration or replacement shall not impact negatively on the intended purpose, value, use or performance of the Services.

(3) Claims according to § 13 shall lapse two (2) years after TRA gains knowledge of the circumstances founding the claim, or two years after the point in time at which TRA has failed, through gross negligence, to learn of said circumstances. Otherwise, claims covered in

§ 13 (1) lapse within ten (10) years from the time of their arising irrespective of the knowledge of such claims or of unawareness due to gross negligence.

### **§ 14 Confidentiality**

(1) The Contractor shall treat all documents, information, data and other carriers of information disclosed to it by TRA, or that it has received, to the knowledge of TRA, in the context of fulfilling the contract (hereinafter: "confidential information"), with strict confidentiality. The Contractor shall not make said confidential information available or accessible to third parties, shall not reproduce it without prior written approval from TRA and shall use it for no purposes other than for fulfilling the contract.

(2) The term "confidential information" shall not apply to information for which the Contractor can prove that:

(a) the information was already publicly known at the time of disclosure, or

(b) the information became public knowledge, but failure on behalf of the Contractor to comply with contractual duties was not a contributing factor to that public disclosure, or

(c) the Contractor received the information legally from a third party that was legally authorized to disclose to it said information, or

(d) the Contractor had already gained knowledge of the information by the time it was disclosed by TRA.

(3) The Contractor shall communicate or disclose confidential information only to employees who are directly entrusted with the task of fulfilling the contract, and who are bound to confidentiality requirements the extent of which mirrors those prescribed in this Section.

(4) The Contractor shall return or destroy any confidential information at TRA's first request. The Contractor may not reproduce any of the confidential information provided to it by TRA without prior written consent, either in whole or in part, with the exception of copies or excerpts which it (a) may absolutely need for the performance of the contract, (b) which must be retained due to legal requirements or (c) which are available on secondary storage media as a result of standardised, automatic backup copies (together "authorised copies"). Authorised copies are confidential information; they are exempt from the obligation to return and destroy (sentence 1).

(5) The Contractor shall under no circumstances use the existence of the contract as a means for advertising, marketing or similar purposes without the express prior written approval from TRA

(6) The provisions under § 14 shall apply for the full contract period and for a further five (5) years after the contract has ended, regardless of the grounds for which it has ended.

## § 15 Force Majeure

(1) The parties shall not be responsible for the non-performance of an obligation if and to the extent that the non-performance is due to circumstances caused by force majeure. Force majeure covers unforeseeable and uncontrollable events which (a) are beyond the control of the party concerned, (b) could not reasonably have been foreseen at the time of the conclusion of the contract and (c) cannot be prevented or overcome by it, such as wars, terrorist attacks, natural disasters or epidemics.

(2) The party affected by a case of force majeure shall notify the other party in writing of the event and its effects on the performance of the contract immediately upon becoming aware of it. Otherwise, the party shall be liable for any loss or damage suffered by the other party which could otherwise have been avoided. Furthermore, the affected party shall, as soon as possible, provide the other party with unsolicited evidence of the causes of the force majeure with appropriate documents to be confirmed by an official body (e.g. authority or chamber of commerce).

(3) The affected party shall make every effort to minimise the effects and duration of the event constituting force majeure and the damage that may occur to the other party as a result of the non-performance of the contract. If the duration of the asserted impediment has the effect of depriving the other party to a significant extent of what they could reasonably expect by virtue of the contract, the party shall have the right to terminate or withdraw from the contract.

(4) As soon as the case of force majeure has ended, the affected party shall immediately inform the other party thereof in writing and shall immediately resume the performance of its contractual obligations, unless a case of subsection 3 sentence 2 has occurred.

## § 16 Final Provisions

(1) The law of the Federal Republic of Germany shall apply to these GTCS and to all legal relationships between TRA and the Contractor, subject to exclusion of all international and supranational (contract) legal systems, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) Companies affiliated with TRA within the meaning of §§ 15 ff. German Companies Act (“AktG”) are entitled to commission Services from the Contractor under the terms and conditions of these GTCS. All agreements concluded between the affiliated companies and the Contractor establish independent and autonomous contractual relationships. TRA does not assume any liability for these contractual relationships and the fulfilment of the contractual obligations. TRA is entitled to assign all contractual obligations to affiliated companies and/or third parties with discharging effect.

(3) If the Contractor is a merchant within the meaning of the German Commercial Code (“HGB”), a legal entity under public law, or a public-law special fund, the exclusive place of jurisdiction – including internationally – for all disputes arising directly or indirectly from the contractual relationship is TRA’s registered office. The same applies if the Contractor is an entrepreneur within the meaning of § 14 German Civil Code (“BGB”). However, TRA is also entitled in all cases to bring an action at the place of performance or at the general place of jurisdiction of the Contractor. Overriding statutory provisions, in particular on exclusive jurisdiction, remain unaffected.

(4) These GTCS are governed by German law and must be interpreted in accordance with German understanding of the law. They are only binding in their German wording.

(5) In the event that a provision of the contract is invalid (e.g. unlawful or otherwise unenforceable), such invalidity shall not invalidate the remaining provisions of the contract. An invalid provision shall be replaced by a mutually agreed, legally valid provision that has comparable valid economic and legal effects. The same shall apply to any potential contractual gaps or omissions.