GENERAL TERMS AND CONDITIONS OF THE BUNDESFACHGRUPPE SCHWERTRANSPORTE UND KRANARBEITEN
[GERMAN FEDERAL WORKING GROUP OF HEAVY HAULAGE AND CRANE WORK] (AGB-BSK FOR CRANE AND TRANSPORT 2013) (VERSION OF 01 OCT. 2013)

I. General Section

1. All our crane and transport services as well as rough assemblies are subject to the Terms and Conditions set out below, unless overtaking statutory requirements stipulate otherwise (e.g., HGB [German Commercial Code] or CMR, CMNI/CLNI, CIM/COTIF or MÜ).

2. Crane services in the meaning of these Terms and Conditions are rendered in two standard service types:

   2.1 Service type 1 – Provision of Cranes

   Provision of cranes means the supplying of hoisting equipment, including operating personnel, to Customer for the performance of work in accordance with the latter’s instructions and arrangements.

   2.2 Service type 2 – Crane Work

   Crane work means the carriage of goods, in particular the hoisting, moving and relocating of loads and/or persons for working purposes by using hoisting equipment and refers to the performance of one or several agreed hoisting manoeuvres by Contractor according to instructions and arrangements. This includes, in particular, isolated handling of heavy objects by means of a crane.

3. Transport service as used in these Terms and Conditions means the commercial transportation of goods as well as the moving or relocating of goods, in particular by using special auxiliary transportation tools such as heavy load rollers, armoured rollers, heavy duty roller gears, lifting jacks, air cushions, hydraulic lifting scaffolding and lifting appliances or similar (so-called ground or transfer transports), including interim storage which is associated with the transport. Heavy items are usually transported unpacked on an open deck. Contractor shall not be responsible for packaging or covering the load as well as for loading, stowing and lashing and unloading, unless that was agreed – except for sea freight. In the event of transports on vessels, Customer agrees to an uncovered deck shipment.

4. Rough assembly and disassembly shall form part of the crane or transport service if that was contracted. It includes the fitting or disassembling and fastening or loosening of the load for the purpose of preparing and handling the transport. The BSK-Montagebedingungen [Terms and Conditions of Assembly], as amended, shall apply to any assembly services exceeding the scope above (final assembly, trial run, fine adjustments, etc.).

5. The parties should record the results of site inspections and special agreements, e.g. the place of loading and unloading, the crane location, etc., in protocols.

6. Contracts for the performance of large volume and heavy transports or the transportation of cranes in public road traffic require the permission or approval of the competent authority, in particular pursuant to Section 18 I 2 and Section 22 II., IV and Section 29 III and Section 46 I no. 5 of the SIVO [German Road Traffic Regulations] as well as Section 70 I of the SIVOZ [German Road Traffic Registration Act]. These contracts are concluded exclusively under the condition precedent that the required permissions or approvals are granted in due time.

7. If the authorities order traffic guidance measures (police escort, etc.) or request the compliance with other conditions and ancillary stipulations to maintain the safety and unimpeded traffic circulation and/or to protect the road surfaces, these contracts shall also be subject to the condition precedent that the safety personnel is available in due time and that the safety measures requested by the authority can be implemented in due time. Contractor undertakes to file the applications for the necessary permits and approvals in due time pursuant to the applicable administrative provisions and to immediately notify Customer about such conditions and ancillary stipulations relating to the performance of the transport which might impede or hinder the course of the transport. The BSK-Merkblatt [Information Leaflet] “Verkehrsr畅kende Maßnahmen” [Traffic-Guidance Measures] shall apply.

8. Contractor shall be entitled to engage other companies to fulfil the contractually accepted obligations, unless otherwise agreed.

9. Contractor shall be entitled to withdraw from the contract without giving rise to claims for damages if, after a careful examination, essential damage to external and/or own objects and/or assets or personal injury cannot be avoided, with a high probability, prior to or during the use of vehicles, devices or working appliances of all types and despite the fact that all reasonable efforts have been made to avoid such damage. Such exclusion of claims for damage shall not apply, if Contractor failed to observe the care of a prudent businessman (carrier). In the event of a withdrawal, the fee for crane services will be charged on a pro-rata basis, the legal provisions shall apply to transport services.

10. Contractor shall be entitled to immediately interrupt the deployment in case of hazard to equipment, load, personnel and/or third parties. Interruptions caused by weather conditions will not decrease the claim for fee while taking saved expenses into account, if it proved impossible to overcome adverse weather conditions despite reasonable efforts.

11. The order for crane services or transport services or the agreements made in the international consignment note shall be decisive for the services to be performed by Contractor. Contractor will provide any additionally necessary auxiliary personnel, inducting personnel or other personnel and slingers which might be required, at Customer’s expense, only if such was agreed. Unless otherwise agreed, billing will be based on time units (hourly or daily rates). Unless otherwise agreed, the obligation to pay fees shall commence at the time when the hoisting or transport vehicle leaves Contractor’s premises and ends at the time when such is returned. If hourly or daily rates were agreed, such shall also apply to the outbound and homebound travelling times and rigging times. If hourly rates apply, such will be accounted for per started half-hour, if daily rates apply, such will be accounted for per started working day. Contractor shall bear the charges and costs for expenses invoiced by authorities and all procurement costs and costs arising due to conditions and other ancillary stipulations requested by authorities as well as police export fees or the costs for the company’s own transport safety measures and other costs for safety precautions ordered by the authorities, unless otherwise agreed. The agreed amounts are exclusive of value added which shall be paid to Contractor in addition, at the legal rate applicable at the relevant time.

II. SPECIAL SECTION

1st Chapter Provision of Cranes

12.1 If Contractor’s main service consists in the designated provision of a hoisting equipment, including operating personnel, to Customer for the performance of work according to the latter’s instructions and arrangements, Contractor shall be obliged to provide a generally and particularly suitable hoisting device which was inspected by TÜV [Technical Inspectorate] and according to the UVV [Accident Prevention Regulations] pursuant to the applicable legal provisions and the applicable state of the art and which is ready for operation. Contractor will only be liable for the personnel provided within the scope of the applicable principles for a fault in the selection of personnel.

12.2 Any liability for failure to provide the equipment in due time shall be excluded in case of force majeure, strike, road blocks and other unavoidable events, unless Contractor could have prevented their consequences if they had taken the necessary care which is required in road transport.

12.3 Contractor’s liability in all other cases of failure to provide the equipment in due time shall be limited to the typically foreseeable damage – apart from cases of intent or gross negligence.

2nd Chapter Crane Work and Transport Services

13. Contractor undertakes to perform all orders entrusted to them properly and in a workmanlike manner with all means and technical possibilities available to them, by taking into account the applicable state of the art.
14. Contractor undertakes, in particular, to use generally and particularly suitable transport means and hoisting equipment which is ready for operation, safe to operate and was tested according to the applicable provisions of TÜV and UVV. In addition, Contractor undertakes to provide generally and particularly suitable operating personnel (crane operators and vehicles drivers) who are familiar with operating the transport means or the hoisting equipment.

15.1 If Contractor’s main service is crane work and/or transport services, the legal provisions applicable to the freight carrying business shall apply. Contractor’s liability for damage to goods shall be limited to 8.33 special drawing rights (SDR) per kilogramme of the damaged or lost goods — apart in cases of a qualified fault. In case of transport on vessels, Contractor’s liability in such cases shall be max. 2 SDR per kilogramme of raw weight of the shipment or max. 666.6 SDR per piece of packaging or unit.

15.2 Contractor waives the right to object to the limitation of liability regarding the amount as set out in sec. 15.1 for damage to goods up to an amount of € 500,000.00 as well as for other property damage up to an amount of € 125,000.00 each per event of damage.

15.3 Contractor’s liability shall be excluded, if the damage was caused by the conduct of their personnel, the crew of the vessel or other persons serving the vessel during the navigation or other operation of the vessel or by a fire or explosion on board of the vessel.

16. If Customer desires a higher amount than the one specified in sec. 15.2, an express agreement must be made regarding such before the order is placed, and Contractor shall be entitled to invoice to Customer the costs of a relevant insurance which is necessary to cover the higher liability.

17.1 Contractor shall only be obliged to insure the goods if they have received an express written order for such, by stating the sum insured and the risks to be covered; the mere statement of the declared value shall not be understood as an order to take out an insurance.

17.2 By accepting the insurance policy, Contractor does not accept the obligations which are incumbent on the Customer as policyholder; however Contractor shall take all usual measures in order to preserve the claim from the insurance.

17.3 Contractor will insure the goods according to the insurance conditions which are usually applicable at their registered domicile, unless any deviating written agreements have been made.

Obligations of Customer and Liability

18. Customer shall create all technical prerequisites necessary for the proper and risk-free realisation of the order at their own account and risk, and shall maintain these during the assignment. Customer shall be obliged, in particular, to maintain the goods to be handled in a condition ready and suitable for the performance of the order. In addition, Customer shall be obliged to provide, correctly and in due time, the dimensions, weights and special properties of the goods (e.g. centre of gravity, type of material, etc.), and to provide the load fastening points in case of crane work.

19. Customer shall obtain the permissions of owners necessary for driving on third-party property, non-public roads, paths and places and shall release Contractor of any claims of third parties which might arise from any unauthorised use of third party land.

20. Moreover, Customer shall be responsible for ensuring that the soil conditions, place conditions and other conditions at the deployment site as well as the access passages – apart from public roads, paths and places – allow for an orderly and safe execution of the order. Customer shall, in particular, be responsible that the soil conditions at the place of loading and unloading and the site where the crane is located as well as of the access roads can support the ground pressure loads and other loads. Customer is finally responsible for all hazardous situations which might arise while carrying out crane work or transport services with regard to the transported good and the surroundings (e.g. hazardous substances, contamination damage, etc.). Information and statements given by third parties which Customer uses to meet their obligations are deemed to be own statements of the Customer.

21. After having placed the order, Customer must not give instructions to the personnel of Contractor which deviate from the contractual agreements, in type and scope, or which are in contradiction to the purpose of the contract, without having obtained Contractor’s consent.

22. If Customer culpably violates the obligations mentioned above, in particular their obligations regarding preparation, information and cooperation, Customer shall be liable to Contractor for any damage arising therefrom. The regulations set out in Section 414 subsection 2 of the German Commercial Code shall remain unaffected thereby. Customer shall release Contractor in full of any claims for damages of third parties arising from the violation of the obligations of Contractor. In the event that claims are asserted against Contractor under the USchadG [Environmental Damage Act] or other comparable rules under public law, national or international laws, Customer shall release Contractor in full in their internal relationship, unless Contractor has caused the damage by intent or gross negligence. The right to contest the charge of contributory negligence shall remain unaffected for both parties.

III. FINAL PROVISIONS

23. Services rendered by Contractor are preliminary services and not eligible for discount deductions. After the completion of the order, Contractor’s invoices shall be paid immediately after receipt of the invoice, unless otherwise agreed after order placement. Any set-off or right of retention shall only be permissible against counterclaims that are undisputed or have been found to be legally effective, unless Customer is a consumer. Contractor shall have a right of lien and a right of retention to the goods or other values which are in their possession for all claims which are due or not due to which Contractor is entitled against Customer on account of the activities set out in Articles 2 to 4. However, the right of lien and retention shall not go beyond the statutory right of lien of a freight carrier or lessor and the general right of retention. Section 366 subsection 3 of the German Commercial Code shall apply with regard to a right of lien and right of retention for claims arising from other contracts concluded with the Customer insofar as such are undisputed or found to be legally effective or if the debtor’s asset situation puts the claims of Contractor at risk. The period of one month as set out in Section 1234 of the German Civil Code as being applicable to threats to sell pledged items shall, in all cases, be replaced by a period of two weeks. If Customer is in default, Contractor may, when they threatened to sell the good, freely sell that quantity of the goods and values in their possession which they deem at their own dutiful discretion to be sufficient to obtain satisfaction. In all cases, Contractor may charge a sales commission which is customary in the place from the net proceeds arising from the sale of the pledge items or self-help sale.

24. Place of fulfilment and place of jurisdiction, even for actions filed in connection with cheques and bills of exchange, between merchants shall exclusively be at the domicile of Contractor. All contracts concluded by Contractor shall be subject to German law. The same shall apply to non-German Customers.

25. If the written form is required for any statements, electronic data transmission and any other readable form shall be considered an equivalent to the written form, provided that it clearly identifies the originator.

26. If parts of these General Terms and Conditions are ineffective or inapplicable in individual cases for contractual or legal reasons, all other provisions shall remain in full force and effect; Section 139 of the German Civil Code shall be null and void in this regard.