

General Terms and Conditions of Business of Wimmer Maschinentransporte GmbH

for heavy transport and crane work General Terms and Conditions of the German Federal Working Group Heavy Transport and Crane Work AGB-BSK Crane and Transport, as at 2013

I. GENERAL SECTION

1. All our crane and haulage services, as well as rough assemblies, are subject to the following terms and conditions unless overriding statutory regulations stipulate otherwise (e.g. German Commercial Code (HGB) or CMR, CMNI/CLNI, CIM/COTIF or MÜ).
2. **Crane services** in the meaning of these terms and conditions are provided in two categories:
 - 2.1. **Category 1 - Crane hire**

Crane hire means the provision of hoisting equipment with operating personnel to the customer for carrying out work in accordance with the customer's instructions and arrangements.
 - 2.2. **Category 2 - Crane work**

Crane work refers to the carriage of goods, especially hoisting, moving and transporting loads and/or persons for the purpose of working with a mobile hoist and relates to accomplishing one or several contracted hoisting manoeuvres by the contractor according to the instructions and arrangements. This includes especially isolated marshalling of heavy objects by means of a crane.
3. **Transport service** in the meaning of these terms and conditions is the commercial transportation of goods and moving or relocating goods, especially by means of special auxiliary transportation gear such as e.g. heavy load rollers, armoured rollers, heavy duty roller gears, lifting jacks, air cushions, hydraulic lifting scaffolding and lifting portals or similar (so-called ground or transfer transports) including interim storage in connection with the transportation. Heavy items are usually transported unpacked and without tarpaulin cover. Packaging or covering the load with tarpaulins, loading, stowing and lashing – excepting sea cargo – are only owed by the contractor if this is contracted. The customer is agreed with open deck loading for shipment by sea.
4. **Rough assemblies and disassemblies** are components of the crane or transport service if this is contracted. This includes fitting together or disassembling and fastening or loosening the load for preparing or carrying out the transportation. The BSK Terms and Conditions of Assembly in the latest version apply for assembly services going beyond this (final assembly, trial run, fine adjustments, etc.).
5. Results of site inspections and special agreements, e.g. with regard to the loading and unloading locations, crane location, etc. must be recorded in writing by the parties.
6. Contracts for carrying out large volume and heavy transports or moving cranes in public road traffic require the permission or approval of the responsible public authority, especially with regard to § 18 I 2 and § 22 II, IV and § 29 III and § 46 I No. 5 of the Federal Road Traffic Regulations (StVO) as well as § 70 I Federal Road Traffic Registration Act (StVZO). These contracts are concluded exclusively under the condition precedent that the required permission or approval is granted in good time.
7. If the authorities order traffic direction measures (police escort, etc.) or decree other requirements and ancillary stipulations to comply with road safety and unimpeded traffic circulation and/or to protect road surfaces, then these contracts are also concluded under the condition precedent that the escort and/or safety personnel is available in good time and that the official traffic safety measures can be implemented in good time. The contractor commits to inform the customer immediately of such requirements and ancillary stipulations for executing the transport which could handicap or hinder the transport. In this respect we refer to the BSK information leaflet "Traffic Direction Measures".
8. Unless otherwise agreed, the contractor is entitled to employ other enterprises to fulfil the assumed contractual obligations.
9. The contractor is entitled to withdraw from the contract without this giving rise to damage compensation claims if a careful examination before or during the deployment of vehicles, equipment or working devices of any kind has revealed that significant damage to third party and/or own property and/or assets or injury to persons will very probably be inevitable despite all reasonable efforts to avoid such damage. The exclusion of damage compensation claims is void if the contractor ignored the due diligence required of a proper merchant (carrier). In the case of withdrawal, the remuneration for crane services is charged pro rata and transport services are subject to the statutory provisions.
10. The contractor is entitled to interrupt the deployment immediately in case of hazard to equipment, load, personnel and/or third parties. Interruptions caused by weather conditions do not diminish the entitlement to claim remuneration while taking saved expenditure into account if the impediments due to adverse weather conditions were insurmountable despite reasonable endeavours.

11. The service by the contractor is determined according to the crane or transport order or the agreements in the international consignment note. Only if so agreed does the contractor also supply necessary auxiliary, instruction and other personnel and the possibly necessary slingers at the cost of the customer. Unless otherwise agreed, billing is according to time units (hourly or daily rates). Unless otherwise agreed, the remuneration obligation comes into being with departure of the lifting or transport vehicle from the company grounds of the contractor and ends when said vehicle returns. If hourly or daily rates are agreed, then these also apply for outbound and homebound travelling times and for rigging times. Hourly rates are accounted as per started half-hour and daily rates as per started working day. Unless otherwise agreed, the customer bears the charges and costs for official charges and all procurement costs and costs incurred due to official requirements and other ancillary stipulations, as well as police escort fees or the costs for the company's own safety measures and other costs for safety precautions ordered by the authorities. The agreed amounts are understood as without VAT, which must be paid to the contractor in addition in the respective statutory amount.

II. SPECIAL SECTION

Chapter 1

Crane hire

Obligations and liability of the contractor

- 12.1 If the main service performed by the contractor consists of the designated supply to the customer of lifting equipment with operating personnel in order to carry out work in accordance with the customer's instructions and arrangements, then the contractor is under the obligation to provide a generally and particularly suitable hoist that complies with the applicable statutory provisions and valid regulations for technical equipment of the Safety Standards Authority (TÜV) and is approved pursuant to the Accident Prevention Regulations (UVV) and is ready for operation. The contractor is only liable for supplied personnel within the scope of the applicable fundamentals for a fault in the selection of personnel.
- 12.2 Liability for failure to provide equipment in good time is excluded in cases of force majeure, strikes, roadblocks and other unavoidable occurrences, unless the contractor could have avoided their consequences if the contractor had taken the necessary due care usual in the business.
- 12.3 The liability of the contractor in all other cases of failure to provide equipment in good time is limited to the typically foreseeable damage. This limitation is null and void in cases of intent or gross negligence.

Chapter 2

Crane work and transport

Obligations and liability of the contractor

13. The contractor commits to execute all orders placed with him properly and expertly with all means and technical possibilities at his disposal in observance of the applicable rules of technology.
14. The contractor commits especially to deploy generally and particularly suitable transport means and suitable hoisting equipment that comply with the applicable statutory provisions and valid regulations for technical equipment of the Safety Standards Authority (TÜV) and Accident Prevention Regulations (UVV). Furthermore, the contractor commits to provide generally and particularly suitable operating personnel (crane operators and vehicle drivers) who are familiar with operating the transport means or the hoisting equipment.
- 15.1. If the main service performed by the contractor consists of crane work and/or transportation, then the statutory regulations governing the freight carrying business apply. The liability of the contractor for damage to goods is – excepting in cases of qualified culpability – limited to 8.33 special drawing rights (SDR) per kilogramme of the damaged or lost property. For transportation by ship the contractor shall be liable in these cases to a maximum of 2 SDR per kilo-gramme gross weight of the consignment or a maximum of 666.67 SDR per packaging piece or unit.
- 15.2. The contractor waives the right to object to the limitation of liability in sum total pursuant to section 15.1 for damages to goods up to the amount of € 500,000.00 and for other pecuniary damages up to the amount of € 125,000.00, each per damage occurrence.
- 15.3 The contractor has no liability if the damage is caused due to the conduct of his people, the ship crew or other persons in the service of the ship in their navigation or other operation of the ship or caused due to fire or explosion on-board the ship.
16. If the customer requires a higher amount than that specified in section 15.2, this must be explicitly so agreed before the order is placed and the contractor is entitled to charge the customer for the costs of insuring a correspondingly higher liability.
- 17.1. The contractor is only obligated to insure the goods insofar as an explicit written order has been submitted for this stating the insurable value and the risks to be covered; merely stating the declared value shall not be understood as an order for insurance cover.
- 17.2. Acceptance of the insurance policy does not signify that the contractor assumes the obligations incumbent on the customer as policyholder; however, the contractor must take all usual measures in order to uphold the right to claim from the insurance.
- 17.3. In the absence of any deviating written agreements, the contractor insures to the insurance conditions usual at his registered business domicile.

Obligations and liability of the customer

18. The customer must create all technical prerequisites necessary for proper and safe realisation of the order at his own account and risk and must maintain these during the assignment. The customer is especially obligated to maintain the goods to be handled in a condition ready and suitable for executing the order. The customer is moreover obligated to state correctly and in good time the dimensions, weights and special characteristics of the goods (e.g. centre of gravity, type of material, etc.), as well as the load fastening points in the case of crane work.
19. The customer must obtain the necessary permission for the use of third party properties, private roads and places and must indemnify the contractor against any third party claims that may arise from unauthorised use of a third party property.
20. Furthermore, the customer is responsible that the ground, place and other circumstances at the deployment site, as well as the access paths – except public roads, paths and places – allow an orderly and safe execution of the assignment. The customer is especially responsible that the ground structure at the place of loading and unloading or where the crane stands and access roads can support the ground pressure loads and other loads. Finally, it is the responsibility of the customer to state all positions of underground cable conduits, supply pipelines and other lines and cavities that could impair the load-bearing capacity of the ground at the deployment site or on the access roads. Without being specially requested to do so, the customer must indicate the positions and existence of exposed and overhead conducting lines, underground cables, conduits, shafts and other cavities or other unrecognisable impediments that could impair the standing and operating safety of vehicles at the deployment site, as well as other particular hazardous situations (e.g. hazardous substances, contamination damages, etc.) which could arise while carrying out crane work or transportation with regard to the transported goods and the surroundings. Statements and declarations by third parties employed by the customer to fulfil the obligations of the customer are deemed to be own statements of the customer.
21. After placing the order, the customer is not permitted to give instructions without the consent of the contractor to the personnel of the contractor that deviate in type and scope from the contractual agreements or that are in contradiction to the purpose of the contract.
22. If the customer culpably offends against the aforesaid obligations, especially his obligation regarding preparation, information and cooperation, then the customer is liable to the contractor for any damages arising as a result. This does not affect the regulations of § 414 paragraph 2 German Commercial Code. The customer must indemnify the contractor fully against third party damage compensation claims arising from a breach of the obligations of the customer. In the case of recourse to the contractor under the Environmental Damage Act (USchadG) or other comparable public, national or international law, the customer must indemnify the contractor in the internal relationship to the full, unless the contractor caused the damage wilfully or in gross negligence. This does prejudice the plea of co-culpability for both parties.

III. CONCLUDING PROVISIONS

23. The performances of the contractor are preliminary performances and do not entitle discounts. After the assignment is fulfilled, the invoices of the contractor must be settled immediately following acceptance and invoice receipt, unless otherwise agreed at order placement. Netting or withholding is only permissible with counterclaims that are uncontested or established with lawful finality, unless the customer is a consumer. For all claims, whether due or not due, to which the contractor is entitled against the customer from the activities stated in sections 2 to 4, the contractor has a right of lien and a withholding right to the moveable items or other assets in his possession. However, the right of lien and withholding does not go beyond the statutory right of lien of a freight carrier or lessor and the general withholding right. Rights of lien and withholding due to claims from other transportation contracts concluded with the customer are governed by § 366 paragraph 3 German Commercial Code. The contractor may also only exercise a right of lien or withholding right due to claims from other contracts concluded with the customer if these claims are uncontested or established with lawful finality or if the debtor's assets situation puts the claim of the contractor at risk. The due period of one month stipulated in § 1234 German Civil Code for threatening to sell pledged items is replaced in all cases by a due period of two weeks. If the customer is in default, then after sale is threatened the contractor can freely sell that quantity of the goods and values in his possession which he deems at his own dutiful discretion to be sufficient to obtain satisfaction. In all cases the contractor can charge a locally usual sales commission from the net proceeds of the sale of pledged items or self-help sale.
24. Place of jurisdiction, also for cheque and bill of exchange protests between merchants, is exclusively the court of law with jurisdiction at the registered place of business of the contractor. All contracts concluded by the contractor are subject to German law. This also applies for non-German customers.
25. Where statements are required in writing, electronic data transmission and any other readable form is considered as equivalent provided that it clearly identifies the originator.
26. Should parts of these general terms and conditions be invalid or impracticable for any contractual or legal reasons, this shall not affect the remaining provisions: in this respect § 139 German Civil Code is regarded as null and void.