

# **General Terms and Conditions of the German Federal Working Group Heavy Haulage and Crane Work of Wimmer Maschinentransporte GmbH**

**Crane and Haulage 2019  
(AGB-BSK Crane and Haulage 2019)**

## **I. GENERAL SECTION**

Field of application/scope and essential contractual obligations

### **1.1. Field of application/scope**

All our crane and haulage services, as well as rough assemblies, are subject to the following terms and conditions unless otherwise stipulated by mandatory statutory regulations (e.g. German Commercial Code [Handelsgesetzbuch- HGB] or CMR, CMNI/CLNI, CIM/COTIF or Montreal Convention/Warsaw Convention [Montrealer Übereinkommen/Warschauer Abkommen- MÜ/WA], in the latest version [new version]).

### **1.2. Essential contractual obligations**

The essential contractual obligations of the contractor can be derived from Subclauses 2 to 4 of these terms and conditions. These are the obligations, the fulfilment of which makes the proper execution of the contract possible at all and on the compliance with which the contractual partner may, as a rule, rely and depend upon.

The obligations of the customer to provide assistance in Subclauses 18 to 22 are also such essential contractual obligations.

## **2. Crane services within 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 relocating 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 especially also includes isolated marshalling of heavy objects by means of a crane.

## **3. Transport services**

Transport services within the meaning of these AGB-BSK are so-called heavy haulage services and large volume transports.

Heavy haulage services in this case are the commercial carriage or relocation (vertical, horizontal or three-dimensional) of so-called heavy cargo with transport units, which do not correspond with the generally admissible axle loads and/or total masses. This also includes special auxiliary transportation gear such as heavy load rollers, armoured rollers, heavy duty roller gears, lifting jacks, air cushions, hydraulic lifting scaffolding and lifting portals, Self-Propelled Modular Transporters (SPMTs).

Large volume transports are commercial carriages with transport units, which do not correspond with the generally admissible vehicle dimensions and/or the generally admissible load dimensions.

The heavy haulage services and large volume transports also include the thus associated interim storages required due to the transport.

Heavy cargo and large-volume goods are usually transported unpacked and without a tarpaulin cover. Unless explicitly otherwise agreed, the contractor shall be responsible for packaging and covering the loads with tarpaulin, loading, stowing, lashing and unloading, except in the case of sea freight. In the case of carriage by sea, the customer agrees to open deck loading.

## **4. Rough assembly and disassembly, other additional services**

### **4.1. Rough assembly and disassembly**

These are components of the crane or transport service if this is agreed. 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 shall apply for assembly services which go beyond this (final assembly, trial run, fine adjustments, etc.).

### **4.2. Additional services**

These are all services that are to be remunerated separately, which do not directly belong to the essential contractual obligations,

however round off the entire range of services, such as e.g. all traffic direction measures, structural changes or static calculations of traffic routes, route checks, police escorts.

## **5. Site inspections**

Results of site inspections and special agreements, e.g. with regard to the loading and unloading locations, crane location, etc. must be recorded by the parties in writing.

## **6. Conditions subsequent of the contract – public law permits and approvals**

The execution of large volume and heavy transports or moving cranes in public road traffic requires the permission or approval of the responsible authority, in particular pursuant to Sections 29 III and 46 I No. 5 Federal Road Traffic Regulations [Straßenverkehrsordnung- StVO] as well as Section 70 I Federal Road Traffic Registration Act [Straßenverkehrszulassungsordnung- StVZO] and, if applicable, further special use permits in accordance with road and route law as well as other necessary public law permits. The contracts concluded under these terms and conditions are subject to a condition subsequent and will end if the permission or approval is refused by the responsible authority. Remuneration claims for services provided until this time shall remain unaffected hereby.

## **7. Traffic direction measures and secondary provisions**

Insofar as traffic direction measures (police escort, auxiliary police, administrative assistants, entrusted companies, etc.) or other conditions and secondary provisions are ordered by official authorities in order to maintain safety and the smooth flow of road traffic and/or to protect the road construction substance, the contracts concluded under these terms and conditions shall also be subject to the condition subsequent of the timely availability of the security forces and the ability to implement the official security measures in time. The contractor undertakes to apply for the necessary official permissions and approvals in writing in time according to the relevant administrative regulations and to inform the customer without delay about such conditions and secondary provisions for the execution of the transport, which could render more difficult or impede the transport flow. In this respect we refer to the BSK information leaflet „Traffic Direction Measures“ in the latest version.

## **8. Subcontractors and change in the mode of transport**

Unless agreed otherwise, the contractor is entitled to employ other enterprises and/or modes of transport to fulfil the assumed contractual obligations.

## **9. Termination of contract**

The contractor is entitled to withdraw from the contract without any claims for damages if, after careful examination before or during the use 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 failed to comply with the due diligence required of a proper merchant (carrier). In the case of rescission, the remuneration for crane services is charged pro rata and transport services are subject to the statutory provisions.

## **10. Regulations relating to unavoidable impediments to services, interruptions due to weather conditions**

The contractor is entitled to interrupt the deployment immediately in case of hazard to equipment, load, personnel and/or third parties. It shall not lose its claim for remuneration in case of force majeure or, if the obstacles could not be avoided despite making reasonable efforts and applying extreme care and attention.

Interruptions due to weather conditions shall not reduce the claim for remuneration.

## **11. Scope of the service**

Decisive for the contractor's service are the crane, crane frame or transport contract or the agreements in the international consignment note. The contractor shall be responsible for that which is respectively necessary for the individual services according to Subclauses 2 to 4. Services or activities beyond this, in the broader sense, are either to be agreed or shall become a new content of the contract according to the following regulations by way of amendments to the contract. Only if agreed, the contractor shall also provide the necessary posting, instruction and other personnel at the cost of the customer.

In addition, the contractor shall inform the customer about the relevant device data, such as wheel, chain and support pressures and the resulting floor loads.

# **II. SPECIAL PART**

## **1. Section**

Crane provision

## **12. Obligations and liability of the contractor**

Obligations of the contractor

The contractor shall owe the provision of a hoist that is suitable for the order, which has been tested according to the relevant statutory provisions and the applicable rules of technology and occupational safety and is ready for operation. Unless explicitly agreed otherwise, the contractor shall not be responsible for attaching the load or for providing suitable lifting gear, such as sling chains, sling ropes or lifting straps. The contractor is only liable for supplied personnel within the scope of the applicable principles for a fault in the selection of personnel. Except in the case of an obvious inaccuracy or incompleteness of the details the contractor is not obliged to check or supplement the details to be provided by the customer, in particular with regard to weight, dimensions, quantities and other relevant special features of the loads that are to be transported.

#### **12.1. Exclusion of liability**

Liability, in particular for the late provision, is excluded in case of force majeure, civil commotion, warlike or terrorist acts, strike and lock-out, blockades of transport routes, circumstances due to weather conditions, road block as well as other unforeseeable, unavoidable and serious events.

#### **12.2. Limitation to liability**

Except in the case of wilful intent and gross negligence of the contractor and its vicarious agents the liability of the contractor, in particular with the late provision, is limited to the damages that were foreseeable upon conclusion of the contract and which are typical for the contract.

This limitation to liability shall not apply to the injury to life, the body and the health of persons.

## **2. Section**

### **Crane work and transport services**

#### **13. Obligations of the contractor**

The contractor undertakes to properly and expertly execute all orders placed with it with all means and technical possibilities at its disposal by complying with the relevant rules of technology.

#### **14. Selection of means of transport, hoisting equipment and personnel**

The contractor in particular undertakes to deploy suitable transport means and hoisting equipment which are ready for operation, safe to operate and tested in accordance with the applicable provisions. Furthermore, the contractor undertakes to provide, in particular, suitable operating personnel (crane operators and vehicle drivers) who are familiar with the operation of the transport means or hoisting equipment.

#### **15. Liability of the contractor**

##### **15.1. Basic regulation**

The statutory regulations governing the freight business shall apply in this Section. The liability of the contractor during the safekeeping for damages to goods is- except in cases of qualified culpability pursuant to Section 435 HGB- limited to 8.33 Special Drawing Rights (SDR) per kilogramme of the damaged or lost property.

In the case of carriage by sea, the contractor will be liable for damage to goods at 2 SDR per kilogram gross weight of the consignment or a maximum of 666.67 SDR per package or unit, depending on which amount is higher. In case of national inland waterway transports the customer will be liable with a maximum of 2 SDR per kilogramme gross weight of the shipment. The same shall apply with multimodal transports with a vessel transport share if the damage location is unknown.

##### **15.2. Liability extensions for the benefit of the customer**

For the benefit of the customer the contractor will be liable in deviation from Subclause 15.1 for damages to goods up to the amount of EUR 600,000.00 as well as for other financial losses, for which liability is fundamentally assumed by law, up to the amount of EUR 125,000.00, respectively per damaging event under the lapse of the limitations to liability in terms of amount. The statutory regulations shall apply to damage amounts in excessive of this.

##### **15.3. Exclusions of liability for carriage by sea and international inland waterways**

###### **15.3.1. Carriage by sea**

Pursuant to Section 512 Para. 2 No. 1 HGB it is agreed that the contractor, in its position as transport agent shall not be responsible for a fault of its employed staff and the vessel crew if the damage due to a conduct during the steering or the other operation of the vessel, however not with the execution of measures, which were primarily taken in the interest of the load, or was caused by fire or explosion on board a vessel.

###### **15.3.2. International inland waterway transport**

The contractor, as carrier or executing carrier shall not be liable either pursuant to Article 25 Para. 2 CMNI if the damage

- was caused through an act or omission of the captain, pilot or other person in the service of the vessel or of a pusher or towboat in the nautical command or the assembly or disassembly of a pusher or towboat, presuming that the carrier has

satisfied its obligations in accordance to Article 3, paragraph 3 of CMNI with regard to the crew, unless the act or omission is committed with the intention of causing the damage or recklessly and with knowledge that such damage would probably occur;

- was caused by fire or explosion on board of the vessel without it being proven that the fire or the explosion was caused by a fault of the carrier, the executing carrier or its employees or authorised agents or through a defect of the vessel,
- is a result of defects to its or to a rented or chartered vessel, which existed before commencement of the journey, if it proves that the defect could not be discovered before commencement of the journey despite applying the required care and attention.

#### **15.4. Limitations to Liability**

Incidentally, the following shall apply outside of the safekeeping of the contractor as well as for other breaches of obligations: Except in the case of wilful intent and gross negligence of the contractor and its vicarious agents, the liability of the contractor shall be limited with respect to the amount to the damages, which are foreseeable upon conclusion of the contract and that are typical for the contract.

This limitation to liability shall not apply to the injury to life, the body and the health of persons.

#### **16. Declaration of higher value**

If the customer requires a higher amount than that specified in Subclause 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 correspondingly higher liability.

#### **17. Insurance of the goods**

##### **17.1. Request for cargo insurance**

The contractor shall only be obligated to insure the goods insofar as an explicit written order has been submitted for this purpose, stating the insured value and the risks to be covered. The mere declaration of value is not to be understood as an order for insurance.

##### **17.2. Special regulations in case of cargo insurance**

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. Agreement of customary insurance terms and conditions**

In the absence of any deviating written agreements, the contractor shall insure under the customary insurance terms and conditions at its registered seat at the expense of the customer.

### **3. Section**

#### **Obligations and Liability of the Customer**

##### **18. General obligations of the customer and assistance of the contractor**

The customer must create all technical prerequisites necessary for the proper and safe execution of the order at its 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 features of the goods (e.g. centre of gravity, type of material), as well as the load fastening points in the case of crane work. Unless otherwise agreed, the customer owes the slinging of the load and shall provide the appropriate slinging equipment.

The customer in particular has to comprehensively pass on its special know-how as well as information that is not generally known (together with documents) in writing.

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.

The contractor has, if necessary, beyond the information obligations regulated in Subclause 11, to support the customer and, in addition, to provide the individual acts of assistance regulated in the following Subclauses.

##### **19. Special obligations relating to access routes**

The customer must obtain the necessary permission of the owners for the use of third party properties, private roads, paths and squares and must indemnify the contractor against any third party claims that may arise from unauthorised use of a third party property.

The customer shall bear the risk of the construction road connection owing to the obligation to ensure public safety for which it is responsible.

## **20. Special obligations with regard to ground conditions, access routes, crane workstation, place of deployment**

### **20.1. Ground conditions at the place of deployment and access routes**

The customer shall be responsible for ensuring that the ground, site and other conditions at the place of deployment as well as the access routes - with the exception of public roads, paths and squares - permit proper and safe execution of the order. The contractor has to assist hereby and to provide the acts of assistance regulated in Subclause 11.

### **20.2. Reference to special risks**

The customer always has to point out special risks and to remedy these either itself or to have these remedied, insofar as they stem from the scope of the customer. The customer has, in particular, to provide the details which are necessary in order for the contractor to be able to sufficiently assess the special requirements.

### **20.3. Ground conditions**

The customer shall be responsible for ensuring that the ground conditions at the place of loading and unloading or at the site of operation as well as at the access routes are able to withstand the occurring ground pressures and other stresses. If applicable, the contractor also has to give indications of possibilities of the ground investigation in case of unknown ground conditions, as well as indications for making ground conditions possible for safe operation. The contractor also has to give other suitable indications, which are typically known to it as an operator, insofar as this is recognisably required by the customer.

### **20.4. Construction field**

With regard to the place of deployment and access route the customer has, if necessary, in particular depending on the communicated wheel, chain and support pressures, to establish the possible construction field to a suitable extent. Insofar as the contractor intends to use parking spaces that deviate from the agreed, instructed or recognisable construction field, it has to accordingly involve the customer and to determine the suitability in the interaction with the customer.

### **20.5. Shafts, cavities or other undetectable obstacles**

The customer is responsible for all information on underground cable ducts, supply lines, other underground lines and cavities which could impair the load-bearing capacity of the ground at the site of operation or the access routes. The customer is obligated to draw attention to the location and presence of open and overhead lines, underground cables, conductors, shafts and other cavities or to other undetectable obstacles which could impair the stability and operational safety of the vehicles and equipment used at the site of operation. The contractor shall explicitly point out typical risks occurring in the concrete situation, such as shafts or cavities in public roads, paths and squares, insofar as the customer recognisably requires or explicitly asks for such information. The customer is obligated to point out any particular hazards that may arise during the execution of the crane or transport services with regard to the goods to be transported and their surroundings (e.g. hazardous goods, contamination damage). The contractor also has to give the indications in this case that are possible for it as an operator, e.g. of typical and special risks known to it, insofar as these are not recognisably known to the customer.

### **20.6. Details of the customer**

By complying with the above, the contractor may rely on all details of the customer with regard to the ground conditions and is not obligated to check the information that is made available, unless this is obviously inaccurate or incomplete or it is derived from the nature of the matter that special features exist with regard to the ground conditions.

## **21. Instructions of the customer**

After placing the order, the customer is not permitted to give instructions without the contractor's consent 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. Liability of the customer**

If the customer culpably breaches the aforementioned obligations, especially its obligation regarding preparation, information and assistance, then the customer is liable towards the contractor for any damages arising as a result. This does not affect the regulation of Section 414 Para. 2 HGB. The customer must indemnify the contractor against third party damage compensation claims arising from a breach of the obligations of the customer. In the event of the assertion of a claim against the contractor under the German Environmental Damage Act [Umweltschadensgesetz- USchadG] or other comparable public-law, national or international regulations, the customer must indemnify the contractor in the internal relationship to the full, unless the contractor caused the damage wilfully or due to gross negligence. The plea of co-fault shall remain unaffected hereby for both parties.

## **III. FINAL PROVISIONS**

### **23. Regulations relating to remuneration including invoicing, offsetting / retention, right of lien and right of retention of the contractor**

#### **23.1. Bases of the remuneration**

Unless agreed otherwise, settlements will be carried out according to time units (hourly or daily rates). Unless agreed otherwise,

the remuneration obligation shall begin to apply with departure of the lifting or transport vehicle from the contractor's depot 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. In case of hourly rates settlement will be carried out for each started half an hour, in case of settlement according to daily rates each started workday.

Fees and costs for official expenses as well as all procurement costs and costs, which are incurred by official conditions and other secondary provisions, as well as police escort fees or costs for auxiliary police, for administrative assistants and for company-own transport safety and other costs for officially ordered safety precautions will be borne by the customer, insofar as not otherwise agreed.

The agreed amounts do not include VAT, which is to be paid to the contractor additionally, insofar as owed by law.

The services of the contractor are preliminary services and do not entitle to the deduction of cash discount. After fulfilment of the order, the invoices of the contractor must be settled immediately following invoice receipt, unless agreed otherwise when the order was placement.

### **23.2. Offsetting, retention**

Offsetting and retention is only permitted against claims from the contract and thus associated non-contractual claims if the due counter-claims are undisputed, ready for decision or have been declared final and binding, unless the customer concerns a consumer.

### **23.3. Right of lien and right of retention**

The contractor has a right of lien and a right of retention to the goods or other values at its power of disposal, owing to all due and not due claims, to which it is entitled against the customer from the activities stated in Subclause 2 to 4. However, the right of lien and of retention does not go beyond the statutory right of lien of a carrier or lessor and the general right of retention.

With regard to a right of lien and retention owing to claims from other contracts concluded with the customer Section 366 Para. 3 HGB shall apply.

The contractor may only exercise a right of lien or right of retention due to claims from other contracts concluded with the customer if these claims are disputed or have been declared final and binding or if the debtor's asset 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 one week.

The customer is entitled to object to the exercising of the right of lien if it grants the contractor an equivalent means of collateral with regard to the claim, e.g. an absolute bank guarantee. This shall also apply to rights of retention.

### **24. German law, place of jurisdiction**

Place of performance and place of jurisdiction, also for cheque and bill of exchange legal actions between merchants, is exclusively the registered seat of the contractor. All contracts concluded by the contractor are subject to German law. This also applies to foreign customers.

### **25. Regulations regarding the written form**

Where statements are required in writing, electronic communication and any other readable form is considered as equivalent provided that it clearly identifies the issuer.

### **26. Severability regulation**

Should parts of these General Terms and Conditions be invalid or not applicable in an individual case, for any contractual or legal reason, this shall have no effect on the remaining provisions.