



# General Terms and Conditions

## of Hess GmbH

Version: 02.01.2017

### I. General conditions

#### 1. Scope of application

**1.1** These General Terms and Conditions apply for all services of Hess Logistik für Betriebsumzüge GmbH (hereinafter referred to as: User). Our services are based on the following conditions unless opposed by compelling statutory regulations.

**1.2** Deviating General Terms and Conditions of Principals are not binding for us even if we have not explicitly opposed them, unless we have explicitly agreed to them in writing.

**1.3** Our General Terms and Conditions apply for all future business relationships also without an explicit new agreement in every individual case. The first formation of a contract generates a General Agreement effective for all future business transactions. Written deviations from these General Terms and Conditions in the context of issuing individual orders have precedence over these clauses.

#### 2. Formation of a contract

All offers of the User are subject to change. Verbal understandings require the User's written confirmation.

The execution of orders which require official permits, particularly the permit according to § 70 StVZO (German Road Vehicle Licensing Regulations) and § 29 StVO (German Road Traffic Regulations), are subject to the condition precedent of the granting of this permission/permit.

### **3. Pricing / modification of Agreement**

Price calculations are established according to the stipulations of the Principal. Changes of the scope of performance entitle the User to correct the price or establish supplemental invoices.

In any case, agreements regarding prices and performances only refer to the specifically stipulated performances and an essentially unaltered volume of goods and orders or quantity structure. On one hand, they are subject to unchanged data processing requirements, quality agreements and procedural instructions, on the other hand unaltered energy and personnel costs as well as public levies and private tariffs.

If the conditions stipulated under this item change, both Contractual Parties may demand negotiations regarding the modification of Agreement effective from the first of the month following the request for modification, unless the Contractual Party demanding the modification was aware of the changes at the time of the conclusion of the agreement. The modification of agreement has to be based on the verifiable changes including the rationalisation effects.

If the Contractual Parties have not reached consensus within a period of one month following the request for the modification of agreement, the agreement may be terminated by both Parties subject to complying with a period of notice of 14 days within the first year of the of the agreement and a notice period of one month thereafter. This termination can only be declared within the month following the failure of the modification of agreement.

### **4. Termination of contract**

**4.1** The termination of individual orders is regulated according to the statutory regulations applicable for the various performances of the User.

**4.2** In the event of the incorporation of these General Terms and Conditions and the resulting general agreement, the Principal may terminate the business transactions regulated in these clauses at any time with a notice period of six months at the end of a month. Agreements concluded up to this point in time are subject to these General Terms and Conditions unless opposed by deviating written agreements between the Parties.

## **5. Payment modalities / assignation prohibition / offsetting prohibition**

**5.1** The invoices of the User are due and payable strictly net, no-fee and without deduction immediately upon receipt of the invoice.

**5.2** An assignation prohibition in terms of the claims against the User is hereby agreed upon for all claims resulting from the business transactions between the Principal and the User.

**5.3** Offsetting against counterclaims of any kind is only admissible if these claims were approved by the User or conclusively determined.

## **6. Data protection / confidentiality / customer protection**

The Principal agrees that his data is stored in the context of the contractual relationship and may be transferred to third parties as far as required for the processing of the agreement.

All information provided in the context of the contractual relations or otherwise disclosed - unless they are already available from public sources - has to be treated confidential toward third parties, unless it is compulsively required for the execution of their contractual obligations. This also and particularly applies to price agreements. If the confidentiality agreement is violated, the violating Party is obligated to pay flat-rate compensation in the amount of 10% of the order value of the last transaction concluded between the Parties.

Each Party is obligated to treat all data and information which is not publicly accessible confidential and to use it exclusively for the intended purpose. Data and information may only be forwarded to third parties (e.g. insurer, subcontractor) who require them in the context of the fulfilment of the agreement. The same principles apply for the confidentiality of electronic data and information.

The obligation for confidentiality does not apply for data and information which has to be disclosed to third parties - particularly official authorities - due to legal obligations. The Party has to be informed immediately of this fact.

## **7. User's liability and warranty for defects**

### **7.1 Liability for impairments of performance at the provision of cranes / provision of lifting equipment**

Liability for late provision of a crane and/or provision of lifting equipment is excluded in case of force majeure, strike, road blocks and other unavoidable events, unless the User could have prevented their consequences by applying appropriate due diligence. In all other cases of late provision - except in cases of intent and gross negligence - the User's liability is limited to the typical foreseeable damage, however a maximum of EUR 20,000.00 per claim; the liability for all claims within one year is limited to EUR 500,000.00.

### **7.2 Conditions of liability for forwarding performances and transports (forwarding agent and transport performances including crane works)**

**7.2.1** The applicability of German law is agreed upon according to § 452 d HGB (German Commercial Code), namely that the liability in case of known location of damage in terms of § 452 a HGB - regardless of the fact at which section the damage shall occur - shall be determined according to the respective liability limitations and exclusions of §§ 407 cont. HGB and - subject to deviating regulations in these clauses. With the limitation that this agreement applies only for sections which are not subject to an international treaty binding for the Federal Republic of Germany which would be violated by this regulation.

**7.2.2** According to §§ 449 (2) No. 1, 466 (2) No. 1 HGB (German Commercial Code) it is agreed that the compensation to be paid by the User due to loss or damage of the goods shall be defined on two units of account of the International Monetary Fund (Special Drawing Rights). This regulation also applies if the underlying agreement is subject to foreign law if, according to the agreement, the place of take-over and the place of delivery of the goods should have been and/or actually is located in the Federal Republic of Germany.

**7.2.3** The liability for each claim is limited to an amount of EUR 1.0 million or 2 Special Drawing Rights for each kilogram of raw weight of the delivery.

**7.2.4** If only individual packages or components of the delivery were lost or damaged, the maximum liability sum is calculated according to the raw weight of the entire delivery if the entire delivery is devalued and of the devalued part of the delivery if only a part of the delivery is devalued.

**7.2.5** Excluded from the liability is compensation for damages other than damage to property, except for personal injury and material damage to third-party goods, the sum of the triple sum of the sum payable in the event of the loss of the goods is at most EUR 100,000.00 §§ 431 (3), 433 HGB (German Commercial Code) remain unaffected.

**7.2.6** The User's liability, regardless of the amount of claims raised from one loss event, is limited in any case to EUR 2.0 million per loss event or 2 Special Drawing Rights/kg raw weight of the lost or damaged goods, depending on which amount is higher; in case of several aggrieved Parties, the User is liable proportionately at the ratio of their claims.

### **7.3 Liability conditions for authorised storage**

**7.3.1** Storage is deemed authorised storage from an effective period of storage of 14 calendar days. This also applies if the (interim) storage was originally subject to transport.

**7.3.2** The User's liability in case of loss or damage of good (damage to goods) in case of authorised storage is limited to EUR 5.00 per kilogram of raw weight of the affected delivery, further to EUR 5,000.00 per claim, except for inventory differences (target inventory differs from actual inventory also after balancing); in this event the amount of liability is limited to EUR 25,000.00 regardless of the number of claims which led to this difference.

**7.3.3** Item 7.2.4 applies accordingly for authorised storage.

**7.3.4** The User's liability for damages other than damage to goods with the exception of personal and property damages to third party property in case of an authorised storage is limited to EUR 5,000.00 per claim.

**7.3.5** The User's liability in any case, regardless of how many claims are raised from one loss event, is limited to EUR 1.0 million per loss event. Item 7.2.6 applies accordingly.

#### **7.4 Liability for the provision of additional value performances in the sector of the law on contracts for work and services**

The statutory regulations of the law on contracts for work and services apply for logistic services related to the transport or storage of goods but which are not standard forwarding tasks (particularly the installation of parts) according to the following conditions:

**7.4.1** The User is only liable if he is culpable for the damage caused by him. The subsequent statutory and contractual liability of the User is limited to the foreseeable typical damage as well as EUR 20,000.00 per loss event; in case of more than four loss events with the same cause or the manufacturing/delivery of goods afflicted with the same defect to EUR 100,000.00 regardless of the number of resulting loss events.

**7.4.2** This liability limitation also applies in case of differences between target and actual inventory of the goods provided to the User; this difference has to be determined by value-balancing in case of simultaneous surplus and deficiencies.

**7.4.3** Liability is limited to EUR 1.0 million for all loss events within one year.

**7.4.4** The above mentioned exemption from liability and liability limitations also apply for extra-contractual claims against the User, his employees and other vicarious agents.

**7.4.5** The above mentioned exemption from liability and liability limitations do not apply for the violation of life, limb and health if statutory liability conditions, such as the Product Liability Act have to be strictly applied. They are furthermore excluded in case of culpable violation of cardinal obligations by the User or vicarious agents and in the event of gross negligent or intentional violation of other obligations by the User. The above mentioned exemptions from liability and liability limitations are also excluded if the User has maliciously concealed the damage.

**7.4.6** Upon the written request by the Principal, the User shall obtain an offer from his insurance to cover a higher sum of liability to be agreed upon. If applicable, the User would cover the risk for the Principal and invoice him with the generated costs together with the other performances.

**7.4.7** If the Principal cannot use the work according to the specifications due to omitted or defect execution of the owed services or the violation of ancillary obligations based on the fault of the User or his vicarious agents 's, the User is only liable for damages which have not occurred on the work itself in case of intent or gross negligence of the owner/organs or executive employees of the User or in case of culpable violation of life, limb or health or in case of defects which the User has maliciously concealed - regardless of the legal reasons upon which the claims are based.

**7.4.8** If the Principal grants an appropriate period of notice to the User following the due date - considering the statutory exceptions - and if this notice period is not complied with, the Principal is entitled to withdraw from the agreement in the context of the statutory regulations. Further claims based on default are exclusively determined according to these conditions.

If the Principal suffers damage due to culpably caused default with work performances of the User, he is entitled to demand flat-rate default compensation. For each full week of the delay, the compensation amounts to 0,5% overall, however a maximum of 5% of the work remuneration for the component of the work to be supplied by the User which cannot be used in good time due to a delay. The assertion of further damaged caused by default is excluded, unless the User has caused the damage gross negligently or intentionally.

**7.4.9** The assertion of further claims is excluded. In the event of a claim against the User according to the USchadG (Act for the prevention and remedying of environmental damage) or other comparable national or international regulations pursuant to public law, the Principal has to fully exempt the User in the internal relationship, unless the User has caused the environmental damage intentionally or gross negligently.

## **7.5 Liability for mediation activities**

The User is liable for the success of the mediation or the provision of the performance itself, but only for the fact that the mediation was performed with the care of a prudent merchant.

Any liability of the User for the execution of the performances by the service provider is excluded unless he offers the performances himself under his own name. In case of damages which are not physical injuries the User is only liable in cases of intent or gross negligence, in case of liability due to guarantee promises and liability for the violation of essential contractual obligations (cardinal obligations). The User's liability is limited to foreseeable damages typical to the agreement up to the amount of triple the price of the mediated performance in case of slight negligent violation of cardinal obligations. The individual specifications regarding the performances are based on the specifications of the service providers of the performances and do not represent a guarantee or similar commitment on the part of the User.

The User is not liable for the availability of a performance at the time of the reservation.

In the context of the mediation agreement, the User is also not liable for the consequences of force majeure which may impact on the performances of the mediated service providers or the User.

## **7.6 Extension of liability exemptions, restriction and limitation to people associated with the User**

Also people associated with the User may invoke the liability exemptions, restriction and limitation contained within these General Terms and Conditions. The same applies for the liability for actions and omissions of other persons commissioned by the User for or at the execution of the assignment. This regulation also applies for extra-contractual claims.



## **8. Insurance**

**8.1** If the Principal requires a greater liability than the liability amounts stipulated in these General Terms and Conditions, a written contract has to be agreed upon prior to the formation of the agreement and the User is entitled - but not obligated - to invoice the Principal for the costs of insurance for the additional liability.

**8.2** The User is only obligated to insure the goods upon presentation of an explicit written order under stipulation of the insurance value and the risks to be covered; the mere declaration of value is not considered as an order for insurance.

**8.3** By accepting the policy, the User does not assume the obligations which are the duty of the Principal as policy holder; however, the User is obligated to take all customary measures to preserve the insurance claim.

**8.4** In absence of deviating written agreements, the User insures according to the insurance terms and conditions customary at his place of fulfilment.

## **9. Right to give instructions**

**9.1** Following the formation of the agreement, the Principal is not entitled to issue instructions to the personnel utilised by the User which deviate in type and extent from the contractual agreements and/or are contrary to the purpose of the agreement or jeopardise the realisation of the purpose of the agreement without the explicit written consent of the User.

**9.2** If the compliance with instructions by the Principal causes damage, the Principal is exclusively liable for this damage unless he proves an adequate causal and gross negligent or intentional conduct of the User as contributory negligence. The Principal exempts the User from third party

claims unless the User is liable for the damage due to gross negligence or intent.

## 10. Information and documentation, electronic data exchange

Each Party is entitled to establish, transfer and exchange (electronic exchange) declarations and notification also electronically if the transmitting Party is recognisable. The transferring Party is responsible for the risk of loss and the correctness of the transmitted data.

The Principal is obligated to provide the User with all information, documents, files etc. in the form required by the User for the fulfilment of the agreement in due time and barrier-free. The Principal, particularly if he determines the process as "systems leader" in which the User is employed, is obligated to provide the objects, information and rights required for the execution of the logistic performances and to provide any cooperation, particularly

- to order primary products and materials
- to inform the User regarding specific peculiarities of the goods and procedures and related statutory, official or trade union requirements and - if required - to train his employees
- to develop and update specifications, procedure and material descriptions (manufacturing instructions, constructions and plans) and to verify their compliance by the User.

These primary performances and the acts of cooperation have to be provided completely and in due time. This also includes all necessary information required for optimal capacity planning.

If the User has to establish a joint EDP interface for the connection of both data systems, the Principal shall reimburse the User for the necessary expenses; each Party is furthermore obligated to execute the customary safety and control measures to protect the electronic data transfer from third party access as well as prevent alterations, loss or destruction of the electronically transmitted data.

Each Party nominates one or several contact persons for the receipt of information, declarations and enquiries for the execution of the agreement and informs the other Party of names and contact addresses.



If a Party does not nominate a contact person, the person concluded the agreement is deemed as the contact person.

Electronic or other digitally generated documents are on equal terms with written documents. The Parties are obligated to document all procedures relevant for the agreement and to establish respective protocols.

## **11. Right of lien and retention**

**11.1** The User is entitled to a right of lien and a right of retention regarding goods or other assets under his power of disposition with respect to all claims owed to him by the Principal based on the activities according to these General Terms and Conditions. However, the right of lien and retention does not go beyond the statutory haulage company and/or lessor's lien and the general right of retention.

**11.2** The User also is entitled to exercise a right of lien and retention based on claims from other agreements concluded with the Principals if these are uncontested or conclusively determined or if the asset situation of the debtor jeopardises the User's claim.

**11.3** The period of notice of one month for the order of a foreclosure sale in § 1234 BGB (German Civil Code) is replaced by a notice period of two weeks. If the Principal is in default, the User may privately sell an amount of goods and values in his possession as is required according to his due discretion, following a warning of the sale. The User is entitled to calculate a conventional sales commission from the net income in case of the lien or sale without resort to legal process.

## **12. Transfer of business**

If the agreement or its execution is associated with a transfer of business according to § 613 a BGB (German Civil Code), the Parties are obligated to reasonably regulate the economic consequences under consideration of the term of the agreement in favour of the User.

## II. Special conditions for the provision of cranes / lifting equipment

### 1. Definition

Provision of crane specifies the provision of movable lifting devices with/without operating personnel to the Principal to execute works according to his instructions and arrangements.

### 2. Execution of contract

**2.1** The Principal is obligated to perform all preliminary works required for the execution of the agreement and to create the necessary technical prerequisites on his own account and preserve them during the execution of the agreement.

**2.2** The Principal is obligated to procure the necessary permits from the respective owner or other eligible entities for the navigation on third party properties and non-public roads and places in the course of the execution of the agreement. The Principal has to exempt the User from claims by the owners, eligible entities or other third parties which may result from the unauthorised utilisation of the third party property. The Principal has to execute the necessary road safety measures at his expense.

**2.3** The Principal is obligated to nominate to the User in writing a person responsible for his performances. In absence of a nomination, the person respectively present at the place of deployment on behalf of the Principal, alternatively the person who has acknowledged the proper approval of the works with his signature on the performance confirmation. Information and declaration from third parties utilised by the Principal for the fulfilment of his obligations are deemed to be declarations of the Principal.

**2.4** If the User's main performance entails the specified provision of a lifting device including service personnel to the Principal for the execution of works according to the Principal's instructions and arrangements, the User owes the provision of a generally and particularly suitable lifting device which has been TÜV (MV Inspection) and UVV (Accident prevention) tested according to the relevant legal regulations and opposing regulations of technology. The Principal is only liable for the provided personnel in the context of the applicable principles of fault in selecting an agent.

**2.5** The Principal has to ensure that the ground, location and other conditions at the place of deployment as well as the access roads - except public roads, paths and locations - allow the proper and safe execution of the assignment. The Principal is furthermore required to ensure that the ground conditions at the loading and unloading location and/or the crane location are suitable to withstand the ground pressure and other loads. The Principal is responsible for all information regarding underground cable chutes, supply lines, other underground cables and cavities which may impair the load-bearing capacity of the ground at the place of deployment or the access roads. The Principal has to point out the position and the existence of underground cables, ducts and other cavities without prompting.

**2.6** Results of place of deployment inspections and special agreements, e.g. regarding the loading and unloading location, crane location etc. are recorded by the User. The Principal is obligated to countersign the protocol. If the Principal refuses to countersign the protocol, he has to state the reasons for his refusal on the protocol. If the Principal refuses the countersigning of the protocol without reason, the content of the protocol is deemed to be undisputed.

### **3. Liability of Principal for damage to the rented material**

If the Principal culpably violates the above mentioned obligations - particularly his preparatory obligation and his obligation to participate - or if he damages or destroys the utilised material, he is unlimitedly liable to the User for any resulting damage.

### **III. Special conditions for crane works / transport performances / special transports (heavy and large volume transports and crane transfers)**

#### **1. Definition**

##### **1.1 Crane works**

Crane works in terms of these General Terms and Conditions is the transport of goods, particularly the lifting, moving and location change of loads and/or persons for work purposes with the aid of a lifting device and specifies the adoption of one or several agreed lifting manoeuvres by the Principal according to his instructions and arrangements. This particularly includes also the isolated heavy goods transfer with the aid of a crane.

##### **1.2 Transport performance**

Transport performance in terms of these General Terms and Conditions is the transport of goods by road with motor vehicles or other means of transport as well as the moving or change of location of goods by way of special transport means such as caterpillar tracks, heavy duty rollers, lifting jacks etc.

#### **2. Permits and approvals**

Agreements regarding the execution of large volume and heavy load transports as well as crane transfers require the permit or approval of the responsible authority, particularly according to § 18 (1) sentence 2 and § 22 (2), (4) and § 29 (3) and § 46 (1) No. 5 StVO (German Road Traffic Regulations) as well as § 70 (1) StVZO (German Road Vehicle Licensing Regulations). These agreements are exclusively concluded subject to the condition precedent of the on-time permission - and/or granting of approval.

#### **3. Safety measures**

**3.1** If traffic-controlling measures (police escort etc.) or other constraints and ancillary conditions of safety and ease of road traffic and/or the protection of the road surface substance are ordered by authorities, these agreements are also subject to the condition precedent of the on-time availability of the security personnel and the on-time feasibility of the official safety measures.

**3.2** The User is obligated to apply on time for the necessary official permits and legal approvals according to the relevant administration regulations and to inform the Principal of such constraints and ancillary conditions for the execution of the transport which may complicate or impede the transport without undue delay. In this context the data sheet "Verkehrslenkende Maßnahmen" (traffic-controlling measures) available on the Internet applies.

#### **4. Contractual bases**

**4.1** The crane or transport order and/or the agreement in the international bill of lading are decisive for the performances of the User. The User shall provide any further required auxiliary, instruction or other personnel as well as the possibly required cost quotations only if it is explicitly agreed upon. Unless otherwise agreed, invoicing occurs according to time units (hourly or daily rates).

**4.2** Unless otherwise agreed, the obligation for remuneration commences with the departure of the lifting or transport vehicle from the User's depot and ends with its return. If hourly or daily rates are agreed upon, these also apply for the arrival and departure as well as set-up times.

**4.3** In case of hourly rates, invoicing occurs per commenced half hour; in case of daily rates, invoicing occurs per commenced working day.

**4.4** Unless otherwise agreed, fees and costs for official expenditures as well as all procurement costs and costs generated due to regulatory requirements and other auxiliary conditions as well as police escort fees or costs for companies with own transport security and other costs for officially prescribed safety precautions shall be borne by the Principal.

**4.5** The agreed amounts are respectively excluding VAT, which has to be additionally paid to the User in the respective legal amount.



## **5. Execution of contract**

If a specific vehicle is not prescribed for the transport, the User determines the utilisation of the means of transport at his discretion.

## **6. Right of withdrawal / abortion in case of crane works**

**6.1** The User is entitled to withdraw from the agreement excluding compensation claims if essential damage to third party and/or own property and/or assets and/or personal injury in all likelihood cannot be avoided following careful examination prior or during the deployment of vehicles, equipment or work devices, regardless of the type and despite all feasible efforts to prevent damage.

**6.2** The exclusion of a compensation claim is omitted if the User has not observed the care of a prudent merchant. In the event of withdrawal in case of crane works, the remuneration is calculated pro-rata; the statutory regulations apply in case of transport performances.

**6.3** The User is entitled to interrupt or, if necessary, abort the deployment immediately in case of danger to load, personnel and/or third parties. Interruptions caused by weather do not reduce the claim for remuneration under offsetting of saved expenditures if the impediments were insurmountable despite reasonable efforts.

## **7. Principal's liability**

If the Principal culpably violates the above mentioned obligations - particularly his preparatory obligation and his obligation to participate - or if he damages or destroys the utilised material, he is unlimitedly liable to the User for any resulting damage. The regulations of § 414 (2) HGB (German Commercial Code) remain unaffected.

#### IV. Special conditions for forwarding performances

##### 1. Forwarding performances

(1) The User is liable in all of his activities according to the legal regulations, unless the following regulations, compelling or General Terms and Conditions fixed legislation determine differently.

(2) If the User only owes the conclusion of agreements required for the provision of the contractual performances, he is only liable for the diligent selection of third parties commissioned by him.

(3) The value and cost replacement according to §§ 429, 430 HGB (German Commercial Code) has to be paid in all cases whereby the User is liable for the loss or damage of the goods.

(4) In as far as §§ 425 cont. and 461 (1) HGB (German Commercial Code) are not applicable, the User is only liable for damages caused due to

1. insufficient packaging or labelling of the goods by the Principal/third party,
2. out-door storage agreed upon or in accordance with the exercise,
3. aggravated theft or robbery (§§ 243, 244, 249 StGB (German Penal Code)),
4. force majeure, weather impacts, damage to equipment or performances, impact by other goods, damage through animals, natural alteration of the goods,

in as far as he can be accused of culpably causing the damage. If damage could have occurred due to one of the above mentioned circumstances, it is assumed that the damage did occur due to this circumstance.

## **V. Special conditions for authorised storage**

(1) The storage occurs according to the discretion of the User in his own or third party storage rooms. If the User stores the goods at a third party warehouse, he has to inform the Principal of his name and the location of the warehouse without undue delay or, if a warehouse receipt has been issued, note the details on this receipt.

(2) Upon appointment, the Principal is at liberty to inspect the warehouse prior to the storage. The Principal has to voice objections or complaints against the storage of the goods or the choice of warehouse immediately. If he does not exercise his right to inspect, he forfeits all objections against the type and manner of the storage if the choice of the warehouse and the storage occurred according to the care of a prudent merchant.

(3) The Principal is only permitted to enter the storage in the company of the User during the User's operating hours.

(4) If the Principal handles the goods (e.g. sample extraction), the User can demand that the amount, weight and condition of the goods are determined and documented jointly with the Principal. If the Principal does not comply with this request, the User's liability for subsequently determined damages is excluded unless the damage is not based on the handling of the goods. The respective proof rests with the Principal.

(5) The Principal is liable to the User, other storing Parties or other third parties for all damages caused by him, his employees or representatives during the access to the storage or access to or driving on the warehouse property unless the Principal, his employees or representatives are not culpable.

(6) In case of inventory differences, the User is entitled to perform a value balance of the inventory in the event of simultaneous deficit and surplus of the same Principal.

(7) If the User has justified doubts as to whether his claims are sufficiently secured by the value of the stored goods as lien, he is entitled to provide the Principal with an appropriate period of notice during which he either ensures the User's claims for security or procures an alternative storage for the goods. If the Principal does not comply with this demand, the User is entitled to terminate the agreement without notice.

## VI. Special conditions for packaging

(1) The Principal is obligated to provide the packages clearly and lastingly labelled with the codes required for their handling according to the agreement, such as addresses, characters, numbers, symbols for handling and characteristics; old labels have to be removed or rendered obscure.

(2) The Principal is furthermore obligated

1. to clearly label packages of one consignment as related packages;
2. to prepare packages in such a manner that access to the content is not possible without leaving external traces (adhesive tape, straps or similar are only sufficient if they are individually designed or otherwise difficult to copy; wrapping in film only if the film is fused.
3. to collate consignments, consisting of several pieces or units with a girth (largest circumference plus longest edge) of less than 1.0 m to be processed in consolidated cargo, to larger packages;
4. to collate consignment, which are processed hanging and which consist of several pieces, to handlebar units in sealed covers;
5. to affix the weight specification to package of at least 1000 kg gross weight, stipulated by law regarding the weight specification on heavy freight to be transported by ship.

(3) Packages are individual units or units formed by the Principal for the processing of the agreement, e.g. boxes, lattice boxes, pallets, handlebar units, closed loading containers, as well as enclosed wagons or wagons provided with a tarpaulin, trailers or swap bodies, containers, igloos.

## **VII.Special conditions for installation works (incl. dismantling and reinstallation) / other contractual performances**

### **1. Scope of application**

These installation conditions apply for all installations assumed by the User, unless otherwise agreed in individual contracts and unless they pertain to mere gross installation in connection with the transport preparation or processing.

### **2. Schedule of prices and services / installation price**

The User's schedule of prices and services, upon which the tender, the quote and/or the offer of the User was based, is exclusively decisive for the installation performance. The installation is invoiced according to time units unless a flat rate price is agreed upon. The agreed amounts are excluding VAT, which has to be additionally paid to the User in the legal amount.

### **3. Technical assistance by Principal**

**3.1** The Principal has to establish all technical prerequisites required for the proper and safe execution of the installation assignment at his expense and risk and maintain them during the term of the deployment. The Principal is particularly obligated to provide the goods to be installed in a condition ready and suitable for the execution of the installation assignment. The Principal is obligated to correctly and on-time stipulate the measurements, weights and special characteristics of the goods to be installed (e.g. centre of gravity, type of material etc.) as well as suitable lashing and attachment points. The Principal also has to point out special risks which may arise during the execution of installation works with respect to the goods to be installed and the environment (e.g. hazardous material, contamination damage etc.) without soliciting and in due time.

**3.2** Unless otherwise agreed in individual cases, the Principal is obligated to provide technical assistance at his expense; he is particularly obligated to perform the following services:

Executing all preparatory activities, particularly soil, building, bedding and scaffold works including procurement of necessary building materials; provision of heating, power and lighting, compressed air, water, incl. the necessary entitlements; provision of necessary dry and lockable rooms to store tools and auxiliary materials and utilities of the installation personnel; provision of suitable, theft-proof recreational rooms (with heating, lighting, washing facilities, sanitary facilities) and first aid for the installation personnel; provision of auxiliary materials and performance of all other acts necessary for the adjustment and calibration of the object to be installed and for the execution of a contractually stipulated trial; protection and safety of the installation site and materials from damaging influences of any kind, cleaning of the installation site.

**3.3** The technical assistance of the Principal has to ensure that the installation can be commenced immediately upon arrival of the installation personnel and continued without delay up to the acceptance by the Principal. If special plans or instructions of the User are required, he shall provide them to the Principal in due time.

**3.4** The Principal furthermore has to inform the installation foreman with any existing safety regulations if these are relevant for the installation personnel. The Principal shall inform the User of any violations by the installation personnel against such safety regulations (e.g. third party company instruction, special safety and protective clothing etc.).

#### **4. Substitute performance**

If the Principal does not comply with his obligations, the User is entitled but not obligated to perform the acts owed by the Principal in his stead and at the Principal's cost after setting a deadline. For the remainder, the statutory regulations and claims of the installation company remain unaffected.

## **5. Installation deadline and installation delay**

**5.1** The installation deadline is deemed complied with if the installation performance up to the acceptance by the Principal - in case of a contractually agreed trial up to its execution - has been provided by the time of its expiration.

**5.2** If the installation is delayed due to force majeure, orders by higher authorities or measure in the context of industrial disputes, particularly strike and lock-out as well as the occurrence of circumstances which are not due to the User, the installation period shall be appropriately extended if such impediments have a significant verifiable impact on the completion of the installation. This also applies if such circumstances occur after the User is in default.

## **6. Acceptance**

**6.1** If an acceptance of the logistic performances by the Principal is agreed upon, the acceptance may occur by way of utilisation, on-selling or processing of the works, supply and delivery to the Principal or nominated third parties due to the cooperative character of the logistic performance. If the logistic performances are not able to be accepted, it shall be replaced by the acceptance of the completion.

**6.2** The Principal is obligated to accept the installation performances as soon as he has been notified of the completion and - if agreed in writing - a scheduled trial of the installed object has been performed. If the installation proves not be according to the agreement at the time of the acceptance, the User is obligated to remedy the defect and a new date of acceptance has to be determined. The Principal cannot refuse acceptance in case of an insignificant defect.

**6.3** Upon simple request by the User, the Principal has to nominate a date for the acceptance of the performance within five working days (Saturdays are working days) and take all precautions for a proper acceptance. The acceptance date has to be within a period of a further 10 working days, thus in total within a term of 15 working days. If the Principal does not set an acceptance date within the above mentioned notice period or if the acceptance does not occur due to reasons owed to the Principal, the performance is deemed to be accepted.

**6.4** The Principal is obligated to notify the User of any obvious defects at the time of the acceptance. Hidden defects have to be reported within seven calendar days following their discovery, however at the latest within 14 days following the handover of the performance to the Principal. The notification has to occur in writing or electronically. The on-time sending of the notification is sufficient for the compliance with the deadline, if the User receives the notification. The Principal bears the onus of proof for the receipt of the notification. If the Principal omits the notification, the logistical performance is deemed to be according to the agreement unless the User has maliciously concealed the defect.

**6.5** If the Principal accepts the installation performances without reservations even though he knows of the defect, all warranty rights of the Principal for subsequent fulfilment, substitute performance against reimbursement for expenses and reduction as well as the right of withdrawal from the agreement are excluded.

**6.6** Following the acceptance of the performance, the User is liable for defects excluding all other claims of the Principal in a manner that he is obligated to remedy determined defects in terms of subsequent fulfilment. The Principal has to notify the User of a detected defect in writing without undue delay.

**6.7** If the User - under consideration of statutory exceptions - allows such a notice period to elapse without results, the Principal has a right to reduction in the context of the statutory regulations. The Principal's right to reduction also applies in other cases of failure of the remedy of defect. The Principal is only entitled to withdraw from the agreement if the installation is verifiably without interest for the Principal despite the reduction.

## **7. Principal's compensatory performance**

If the devices or tools provided by the User are damaged at the installation site without any fault



of the User or if they are lost without his fault, the Principal is obligated to compensate the User for any resulting damages.

## **8. Statute of limitation**

All claims of the Principal associated with the installation activity - regardless of the legal reason - become statute barred within 12 months from the date of their creation. The legal deadlines apply for compensation claims (excluding compensation claims due to consequential harm caused by a defect, Selection approach, gross negligence, culpable violation of life, body, health, maliciously concealed defects). The legal deadlines also apply if the User provides the installation performances at a building and if this performance causes the defect.

## **VIII. Special conditions for the procurement of foundation / breaking / roof tiling / steel and other works; procurement of truck-mounted cranes**

If the User assumes the contractual obligation to procure work and/or service contract performances, the provision of this performance shall not become a component of the User's obligations. The User is also not obligated to verify the specifications of the service providers.

## **IX. Purchasing / sales conditions**

### **1. Purchasing conditions**

**1.1** If a general agreement has been concluded between the Seller and the User, these general purchasing conditions apply for this general agreement as well as for the individual order.

**1.2** Only written orders are binding for the User. Verbal agreements and agreements by phone require a written confirmation by the User.

**1.3** The establishment of proposals is free of charge for the User.

**1.4** Documents or other manufacturing material such as samples, drawings, models, tools, technical specifications or similar, which have been provided to the Seller or which are paid for by the User may only be utilised for deliveries to the User.

Just as the subsequently produced products and/or the products produced with these means, they may not be passed on to a third party or utilised for the Purchaser's own purposes. They have to be kept confidential and have to be returned to the User without retention of any copies, individual items or similar in impeccable condition as soon as the assignment has been completed.

**1.5** The agreed prices are principally free destination specified by the User including freight, packaging and ancillary costs. In absence of a deviating agreement, the User only assumes the most economic freight costs in case of charged delivery. If the price has not been agreed including packaging, the packaging can only be charged at cost price. Reusable packaging such as boxes, containers etc. shall be returned to the Seller carriage paid and credited at the total invoice value. Other packaging material and/or fillers such as wood shavings, paper etc. may not be charged.

**1.6** Reservations for price increases require the explicit written consent of the User.

**1.7** The User shall settle invoices either within 14 days less 3% discount or net within 30 days.

**1.8** Payment and discount deadlines commence at the date of receipt of invoice, however not prior to receipt of the goods and/or in case of services not prior to their acceptance and, if documentation or similar records are part of the scope of performance, not prior to their contractual handover to the User.

**1.9** Payments may be made by way of cheque or bank transfer, whereby it is sufficient if the cheque has been dispatched by post on the due date and/or the transfer was lodged with the bank on the due date.

**1.10** When claiming default of payment, the receipt of an invoice or other payment schedule cannot be replaced by the receipt of the merchandise. The default interest rate amounts to 5 percentage points above the base interest rate.

**1.11** The User may assert rights to offset and retention in the legally admissible scope.

**1.12** Agreed delivery dates and deadlines are binding; the User has to be informed about pending delays in the delivery without undue delay.

**1.13** The legal rights existing at the commencement of the default cannot be excluded. Following the futile expiration of an appropriate period of grace in case of default, the User may withdraw from the agreement and demand compensation instead of performance.

**1.14** Partial deliveries are only admissible with the explicit consent of the User; surplus and short deliveries are only permitted within the commercial parameter.

**1.15** The Seller is responsible for the risk of accidental destruction and accidental deterioration up to the handover of the goods at the place of destination. The Seller is obligated to insure the deliver against transport damage at his expense.

**1.16** In case of the Seller's existing rights of reservation of title, the ownership of the goods is transferred to the User upon payment; other types of retention rights such as the so-called current account retention and/or multiple reservations are not applicable.

**1.17** § 449 (2) BGB (German Civil Code) cannot be waived.

**1.18** The delivery has to occur free of material and legal defects and has to comply with the approved regulations of technology and the contractually agreed characteristics, standards as well as the safety, work safety, accident prevention and other regulations.

**1.19** In the event of a defect, the User is entitled to the legal rights and entitlements.

**1.20** The limitation period for warranty claims is two years. This does not apply for items which are used first for a building according to their customary modus of application.

**1.21** The User has to inspect the delivery regarding defects within an appropriate period of time and reprimand the Seller. The reprimand is deemed to be on time if it is received by the Seller within a period of ten working days, calculated from the receipt of the goods or, in case of hidden defects, from the moment of discovery.

**1.22** If the Seller has provided declarations regarding the country of origin, he is obligated to reimburse the damage generated by the fact that the declared origin is not recognised due to e.g. incorrect certification or lack of verification options. This liability applies against the Seller only in case of culpable conduct or lack of a contractual characteristic.

**1.23** The Seller is obligated to exempt the User regarding the goods to be delivered from legal claims of domestic and foreign third parties which may be generated based on domestic or foreign patents, utility models, copyrights or other rights and/or to reimburse the User for any damages in the event of such a claim by third parties. This also includes legal costs, compensation performances as well as incidental modification and reconstruction works.

## **2. Sales conditions**

**2.1** If an order is to be considered as an offer according to § 145 BGB (German Civil Code), we may accept it within two weeks.

### **2.2** Provided documentation

The User reserves proprietary rights and copyrights to all documents e.g. calculations, drawings etc. provided to the purchase in the context of the assignment. This documentation may not be made accessible to third parties unless the User grants his explicit written consent to the Purchaser. Unless the User accepts the offer of the Purchaser within the period of notice of § 2, the documents have to be returned to the User without undue delay.

### **2.3** Prices and payments

(1) Unless otherwise agreed in writing, the prices of the User apply ex works excluding packaging and plus VAT in the respective valid amount. Packaging costs shall be invoiced separately.

(2) Payment of the purchase price has to be made exclusively to the account stipulated on the User's letterhead. Deduction of a discount is only permissible upon special written agreement.

(3) Unless agreed otherwise, the purchase price is due and payable within 10 days following delivery. Default interest in the amount of 8% above the respective base interest rate p.a. shall be charged. The assertion of a higher damage caused by default remains reserved.

(4) Unless a fixed-price-agreement was made, we reserve the right to adequate price changes due to changed wage, material and distribution costs for deliveries, which occur 3 months or more after conclusion of the contract.

#### **2.4 Off-setting rights and rights of retention**

The customer is only entitled to the off-set if his counter claims were legally determined or uncontested. The Purchaser is only entitled to a right of retention in as far as his counter claim is based on the same contractual relationship.

#### **2.5 Delivery time**

(1) The commencement of the delivery time stipulated by us implies the on-time and proper fulfilment of the Purchaser's obligations. The plea of the unfulfilled contract remains reserved.

(2) If the Purchaser is in default of acceptance or if he culpably violates other obligations to participate, the User is entitled to demand compensation for incurred damages including any additional expenses. Further claims remain reserved. If the above conditions exist, the risk of accidental destruction or accidental deterioration of the merchandise is transferred to the Purchaser at the moment he is in default of acceptance or payment.

(3) In case of delay in delivery not caused intentionally or gross negligently by the User, the User is liable for every completed week in case of a delay in delivery in the context of a flat-rate default compensation in the amount of 3% of the delivery value, however at a maximum of 15% of the delivery value.

(4) Further legal claims and rights of the Purchaser due to delay in delivery remain unaffected.

## 2.6 Transfer of risk at dispatch

If the merchandise is sent to the Purchaser at his request, the risk of accidental destruction or accidental deterioration of the merchandise is transferred to the Purchaser at the latest upon the merchandise leaving the works/warehouse. This applies regardless of whether the dispatch of the merchandise occurs from the place of fulfilment or who pays the freight costs.

## 2.7 Reservation of title

(1) The User retains ownership to the supplied product up to the complete payment of all claims resulting from the contract of delivery. This also applies for all future deliveries, even if the User does not explicitly refer to this fact. The User is entitled to take back the merchandise if the Purchaser acts contrary to the agreement.

(2) The Purchaser is obligated to treat the merchandise with care until the ownership has been transferred to him. He is particularly obligated to take out sufficient as-new insurance against theft, fire and water damages at his expense (only admissible for the purchase of high quality goods). If maintenance and inspection work has to be carried out, the Purchaser has to implement those at his expense in due time. Until ownership has been transferred the Purchaser has to notify the User in writing without undue delay if the supplied object is being seized or subjected to other interventions by third parties. If the third party is not able to reimburse the User for judicial and extra-judicial costs of a complaint according to § 771 ZPO (Code of Civil Procedure), the Purchaser is liable for the damage incurred by the User.

(3) The Purchaser is entitled to on-sell the reserved goods in the cause of normal commercial transaction. The Purchaser hereby assigns to the User the claims of the Purchaser from the on-selling of the reserved goods to the extent of the agreed final invoice amount (including VAT). This assignation applies regardless of whether the merchandise was on-sold with our without processing. The Customer is entitled to collect the claims also following the assignation. The User's authorisation to collect the claim himself remains unaffected. However, the User shall not collect the claim as long as the Purchaser complies with his payment obligations from the revenue, is not in default of payment and has particularly not applied for the commencement of insolvency procedures or has suspended payment.

(4) The treatment and processing or reconstruction of the merchandise by the Purchaser always occurs in the name and on behalf of the User. In this event the contingent right of the Purchaser to the merchandise is continued in the reconstructed object. If the merchandise is processed with other merchandise not belonging to the User, the User obtains co-ownership in the new object at the ratio of the objective value of the User's merchandise to the other processed objects at the time of processing. The same applies in case of intermingling. If the intermingling occurs in the manner that the object of the Purchaser is considered the main object, it is agreed that the Purchaser assigns proportional ownership to the User and preserves the thus created sole ownership or co-ownership for the User. To secure the User's claims against the Purchaser, the Purchaser also assigns such claims which he accrues based on the intermingling of the reserved goods with a property against a third party to the User; the User hereby accepts this assignation.

(5) The User is obligated to release the securities owed to him upon the Purchaser's request if their value exceeds the claims to be secured by more than 20%.

## **2.8 Warranty and notice of defect as well as recourse/manufacturer regress**

(1) Warranty rights of the Purchaser imply that he has properly complied with his obligations regarding inspection and requirement to give notice of defects in accordance with § 377 HGB (German Commercial Code).

(2) Warranty claims become statute barred within 12 months following the delivery of the goods supplied by us at our Purchaser (Note: in case of the sale of used goods, the warranty period may be excluded altogether). The conditions above do not apply if the law mandatorily prescribes longer notice periods according to § 438 (1) No. 2 BGB (German Civil Code) (Buildings and items for buildings), § 479 (1) BGB (Right of recourse) and § 634a (1) BGB (building defects). Our consent is required prior to any return of the goods.

(3) If the supplied product exhibits a defect which already existed at the time of the transfer of risk despite all applied diligence, we shall - at our discretion - repair the merchandise or supply a substitute subject to a notice of defect within the prescribed period. We are to be granted the opportunity of subsequent fulfilment within a reasonable period at any time. Claims of recourse remain unaffected from the above regulation.



(4) If the subsequent fulfilment fails, the Purchaser can withdraw from the agreement or reduce payment regardless of any compensation claims.

(5) Warranty claims do not exist in case of mere insignificant deviations from the agreed quality, immaterial impairment of usefulness, natural wear and tear as well as damages occurred after the transfer of risk due to faulty or negligent treatment, excessive load, unsuitable consumables, inadequate construction work, unsuitable construction surface or special external influences which are not stipulated according to the agreement. If the Purchaser or a third party performs improper repairs or changes, these and any resulting consequences are also excluded from warranty claims.

(6) Claims by the Purchaser due to expenses based on the subsequent fulfilment, particularly transport, shipping, labour and material costs, are excluded if the expenditure increases due to merchandise supplied by us being delivered to a location other than that of the seat of the Purchaser, unless the supply correlates with their intended usage.

(7) Claims of recourse of the Purchaser against us exist to the extent as the Purchaser has not agreed to any stipulations exceeding the statutory mandatory warranty claims with his Purchaser. Furthermore, paragraph 6 applies to the extent of the Purchaser's claim of recourse against the supplier.



## **X. Final clauses**

### **1. Place of fulfilment and place of jurisdiction**

**1.1** Place of fulfilment - also for cheque and bill of exchange claims - among merchants is exclusively the registered office of the respectively active branch of the User; in cases of doubt the registered office of the User's head office.

**1.2** Exclusive place of jurisdiction for all claims based on transactions regulated in these General Terms and Conditions is Düsseldorf.

### **2. Applicable law**

The laws of the Federal Republic of Germany apply under total exclusion of the Viennese UN Convention on Contracts for the Sale of Goods of 1980.

### **3. Form**

If the written form is required for declarations, data transfer or any other readable form - particularly the text form - are equally effective if the issuer renders them recognisable. The sender bears the onus of proof for the receipt of emails.

### **4. Interpretation regulation**

If one of the conditions of these Terms and Conditions or a condition in the context of other agreements is or becomes ineffective or inapplicable in isolated cases, the effectiveness of the remaining conditions or agreements remains unaffected. § 139 BGB (German Civil Code) is waived. In this case the ineffective condition is to be replaced by a legally effective condition, which corresponds with the economic purpose of the ineffective condition.

### **5. Data protection**



The User is entitled to process and store the data of the Seller obtained in the context of the business relationship - also if they originate from third parties - in terms of the Federal Data Protection Act and have them processed and stored by a third party commissioned by the User.