

## **1. Application of these terms**

These Terms and Conditions of Sale ("Terms") shall apply to any offer, tender and any contract of sale ("Agreement"), unless the parties agree otherwise in writing. Modifications of or amendments to these Terms must be agreed in writing. We object to any other or different terms and conditions than these even if we have not made an expressly objection. In the event of any inconsistency between the Agreement and these Terms, the Agreement shall govern.

## **2. Scope of delivery**

2.1. The scope of the delivery confirmed by the Seller in writing shall be decisive. All offers are non-binding. No Agreement has been made until Seller has confirmed the order of Buyer in writing. In the absence of such written confirmation, the offer of Seller shall apply.

2.2. The delivery of the equipment ("Equipment") includes all components, materials and services expressly specified in the Agreement.

2.3. The delivery includes Seller's standard technical documents, such as operating manuals and erection instructions (if the erection is not included in the scope of delivery) and main dimension drawings in English. Seller shall not be obliged to provide manufacturing drawings for the Equipment or spare parts.

2.4. Design, work at site, erection, supervision of erection, training services, start-up assistance and materials other than crane components are included to the extent they are expressly specified in the Agreement.

## **3. Documentation**

3.1. The Seller shall have all rights, title and interest including ownership right, copyright and other intellectual and industrial property rights to documents, drawings, software, reports, technical information, definitions, descriptions, manuals and any other intellectual property that the Seller has or creates.

3.2. Documents, drawings, software, reports, technical information, definitions, descriptions, manuals and any other intellectual property received by the Buyer shall not, without the consent of the Seller, be used for any other purpose than for the erection, commissioning, operation or maintenance of the Equipment. They may not otherwise be used or copied, reproduced, transmitted or communicated to a third party. The Seller may, however transmit the documents or software to a third party that the Seller sells the Equipment to.

## **4. Packing and marking**

The Equipment shall be packed in accordance with Seller's standard packing procedures as required for transportation under normal transport conditions. The Equipment shall be clearly marked and carry the necessary information concerning Buyer's identification and place of destination.

## 5. Price

5.1. In addition to the price set forth on the Agreement, Buyer shall be responsible for additional charges as set forth in these Terms.

5.2. If any part of the delivery of the Equipment is delayed due to reasons caused by Buyer or any third party under the control of Buyer, Buyer shall compensate any additional expenses incurred by Seller due to the late delivery.

5.3. Prices do not include any stamp duty, turnover or value-added tax, bank charges or any other similar taxes, duties or charges payable in the country into which the Equipment is to be imported and where the installation is to be carried out. In the event Seller is required to pay any such tax or charge, the tax or charge will be added to the invoice as a separate charge and Buyer shall reimburse Seller for the payment.

## 6. Terms of payment

6.1. The payments shall be made in accordance with the payment schedule specified in the Agreement.

6.2. Whenever any part of the payment is to be made by means of a Letter of Credit, Section "Letter of Credit" of the Terms shall apply.

6.3. If Buyer delays making any payment or in the establishment of the Letter of Credit or if it becomes evident that the Buyer will not fulfil his contractual obligations, Seller may postpone the fulfilment of its obligations until such a payment is made or the Letter of Credit is established.

6.4. Seller shall be entitled to charge interest from Buyer if payment to Seller is past due. The rate of the interest is the highest rate permissible under the applicable law. The interest shall be counted from the due date until the actual date of the payment. Buyer shall pay such interest within thirty (30) days from the date of the respective invoice.

6.5. If Buyer has not paid the amount due within three months Seller shall be entitled to terminate the Agreement by notice in writing to Buyer and to claim compensation for the loss it has incurred.

## 7. Standards of manufacturing and design

The Equipment supplied and the work carried out shall be in accordance with the technical standards and safety instructions commonly used in Seller's country. If the Equipment shall be operated outside of Seller's country, the scope of the work agreed in the Agreement shall prevail. The Seller shall not take into consideration laws and regulations prevailing at the place of operation, if they are not agreed in the Agreement. Buyer shall inform Seller of the applicable safety regulations. Any costs in excess of the costs of compliance with European standards resulting from mandatory local laws and regulations shall be added to the price and paid by Buyer.

## 8. Inspections during manufacturing

Buyer has the right at its own expense, subject to agreement with the Seller as to the time and place, to inspect the progress of manufacture and the quality of the Equipment. The inspections of the Equipment shall be carried out at Seller's works or at the place of manufacturing. Inspection carried out by Buyer is not a precondition to the delivery of the Equipment.

## 9. Delivery term and passing of the risk

9.1. Any agreed delivery term shall be construed in accordance with INCOTERMS® 2020. If no delivery term is specifically agreed, the delivery term shall be Ex works Seller's manufacturing plant (EXW).

9.2. The risk of loss of or damage to the Equipment shall pass from Seller to Buyer in accordance with the agreed delivery term. If no delivery term is set forth in the Agreement, the risk of loss shall pass to Buyer Ex Works Seller's manufacturing plant.

## 10. Delivery time

10.1. The delivery time shall start to run on the latest to occur of

- (a) the date of execution of the Agreement by Seller;
- (b) the date of receipt by Seller of the agreed down payment as set forth in the Agreement; or
- (c) the date of receipt by Seller of all agreed information, documentation, approvals, releases, calculations, or approvals of drawings by Buyer of the general arrangement drawings.

10.2. Seller shall be entitled to a reasonable extension of the delivery time (which shall not be less than the length of the delay) if the delivery is delayed due to Buyer's actions or actions by a third party under the control of Buyer, such as modifications requested by Buyer, delay in the approval of the relevant drawings, delay in the preparing work at the erection site and delay in payments, or it becomes evident that the Buyer will not fulfil his contractual obligations.

10.3. The Seller shall be entitled to partial deliveries providing these are reasonable for the Buyer.

## 11. Retention of title

11.1. Notwithstanding Section 9.1., we will retain the title of delivery until all the debts or receivables resulting from the Contract with the Buyer are paid.

11.2. In the event the applicable laws do not permit the Seller to retain title, the Seller shall be entitled to a security interest or charge in the property. The Buyer shall give the Seller assistance in securing an interest in the property or taking any measure required to protect Seller's title or such other rights. The retention of title, security interest or charge shall not affect the passing of risk of loss or damage under Section 9.2.

11.3. The Buyer shall inform the Seller immediately in writing in the case of seizure or other intervention by third party with regard to the delivery which are still under the ownership of the Seller.

11.4. The Buyer is entitled to resell the delivery in the ordinary course of business. The Buyer, however, already now assigns his claims to the Seller arising from the resale of the delivery to third parties in order to secure our claims up to equal to the amount of the goods invoiced of which property is retained.

11.5. Any processing or alteration of the objects delivered under reservation of title as well as combination of goods with foreign goods by Buyer or third parties shall be carried out for the Seller. The Seller shall acquire co-ownership of the resulting new item with the corresponding value of the delivered goods.

11.6. The Buyer is entitled to assert all his claims against his customer even after their assignment as long as he complies the terms of the contract and is not insolvent. The power of the Seller to collect the claims is not affected thereby. However, the Seller undertakes not to collect the receivables as long as the Buyer meets the payment obligations or he is not insolvent. Otherwise, the Seller may demand that Buyer indicate the assigned receivables and their debtors, give all data or particulars required for the recovery of the claims, submit all pertinent documents, and informs the debtors of such assignment.

11.7. In breach of the contract by the Buyer, including but not limited to default of payment, the Seller, after giving prior notice, shall be entitled to recover the goods delivered and the Buyer shall return the same. The Buyer is liable for all damages arising from return of the delivery.

11.8. The exercise by the Seller of his right under the reservation of title clause shall not constitute a termination of the Contract.

11.9. During the retention of title, the Buyer shall be obliged to insure the delivery against the pertinent risks subject to the condition that the Seller is entitled to the rights arising from the insurance policy. At the request of the Seller, the insurance policy is to be presented to the Seller.

11.10. The Seller undertakes to waive, at the request of the Buyer, the right reserved in this clause, insofar as their value exceeds the debts to be secured by more than 10%, to the extent that they are not paid yet.

## **12. Acceptance tests**

12.1. Should the Agreement require separate acceptance tests, the tests shall be carried out in accordance with the Agreement. If the Agreement does not specify the requirements, the tests shall be carried out in accordance with general practice in crane industry in the country of manufacture.

12.2. Seller shall notify Buyer of the tests on sufficient time to permit the Buyer to be represented. If Buyer is not represented, the test report shall be sent to Buyer and shall be deemed accepted as accurate.

12.3. If the tests show the Equipment not to be in accordance with the Agreement, the Seller shall without delay remedy any deficiencies in order to ensure that the Equipment complies with the Agreement. New tests shall then be carried out at Buyer's request, unless the deficiency was insignificant.

12.4. Seller shall bear its own costs for tests carried out at the place of manufacture. Buyer shall bear all its own costs, including but not limited to travelling and living expenses for Buyer's representatives in connection with such tests.

### 13. Final acceptance

13.1. Should the Agreement require separate acceptance, the Equipment is deemed to be finally accepted when acceptance tests have been carried out and the Equipment is found to be in accordance with the Agreement. Minor defects do not prevent the acceptance of the Equipment. Such defects shall be listed and Seller shall remedy any listed deficiencies without delay. If acceptance tests are not to be carried out, the Equipment is deemed to be delivered and taken over when delivered in accordance with the delivery term specified in Section 9.

13.2. If the acceptance has been agreed, the acceptance is to be made without delay after the notification of readiness for acceptance. If the acceptance is not carried out in due time or completely, the Equipment is deemed to be finally accepted seven (7) days after the notification of readiness for acceptance.

13.3. Buyer is not entitled to take the Equipment into use before final acceptance. If Buyer takes the Equipment into use before final acceptance without Seller's consent, the Equipment is deemed to be finally accepted.

13.4. In the cases specified in Section 13.2. and 13.3. the Seller is entitled to invoice the Equipment from the Buyer.

### 14. Warranty

14.1. Seller warrants that to the best of its knowledge the Equipment is free from defects caused by faulty design, materials or workmanship, which would prevent the electrical or mechanical functioning of the Equipment and which existed at the time of the delivery. However, should such defects occur during the period of this warranty, Seller will, at its option, either repair the defects or supply the correct parts free of charge. The reasonable and direct cost of disassembling installing a replaced or repaired part furnished under this warranty is included.

14.2. The period of the warranty for any part of the Equipment is twelve (12) months from the date of the delivery of the Equipment.

14.3. The warranty period for replaced or repaired parts is six (6) months from the date of repair or replacement. However, no warranty for any parts shall apply after twelve (12) months from the original delivery of the Equipment.

14.4. The Buyer shall give the Seller written notice of a defect without undue delay after the defect has appeared. The notice shall contain a description of how the defect appears, the serial and the order number of the Equipment. If the Buyer fails to give notice to the Seller within the warranty period above, he loses his right to make any claim in respect of the defect.

14.5. Defective parts, which are replaced under this warranty, shall be placed at the Seller's disposal and shall become his property.

14.6. This warranty is given on the condition that the Equipment is in all respects operated, handled, serviced and maintained properly, in accordance with Seller's instructions and under specified operating conditions.

14.7. Excluded from the warranty are those parts

- (I) to which repair or replacement becomes necessary due to normal wear and tear;
- (II) which are exhaustible items, including but not limited to such items as bulbs and fuses;
- (III) on which repairs, alterations or adjustments have been performed or begun by Buyer or any third party without Seller's previous consent;
- (IV) which failures are not promptly reported to Seller within the warranty period above;
- (V) which failures or damage are due to negligence other than that of Seller, accident, abuse, improper installation (other than installations made by Seller), improper operation, or abnormal conditions of temperature, moisture, dirt or corrosive matter;
- (VI) which have been damaged otherwise without the fault of Seller.

14.8. If the Seller fails to repair or replace the Equipment after the reasonable period of time which have been set in writing, the Buyer shall have the right to claim the price reduction or the termination of the Agreement, however, the termination of Agreement is possible only in the case of material breach of Agreement, which has to be proven by the Buyer.

14.9. THIS IS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY SELLER TO BUYER WITH RESPECT TO THE EQUIPMENT AND IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## 15. Force majeure

Either party shall be entitled to suspend performance of its obligations under the Agreement to the extent that such performance is impeded by circumstances beyond the control of the party, including but not limited to war (whether declared or not), revolution, strikes, failure of supplies of power, fuel, transport, equipment or other goods or services, natural disasters, unacceptable weather conditions, acts of government, traffic accidents, export or import prohibitions, fire, explosions, floods, accidents, sabotage, civil commotions, riots, and breakage or loss during transportation or storage as well as delays of deliveries by the subcontractors (when caused by Force Majeure as herein defined).

## 16. Delay of seller

Buyer is entitled to liquidated damages for delay from the date on which the delivery should have taken place in case the delivery is delayed due to Seller's fault. The liquidated damages shall be 0.5 per cent of the price of the delayed portion of the Equipment for each complete week of delay. In no event shall

the liquidated damages for delay exceed 5 % of the price of the delayed portion of the Equipment. The Buyer shall forfeit his right to liquidated damages if he fails to claim liquidated damages by written notice within one (1) month after the date when the delivery took place. The liquidated damages referenced in this Article shall be the sole and exclusive remedy for such delay. The parties agree that such liquidated damages are a reasonable estimate of the damages Buyer is likely to incur as a result of such delay. This article shall not apply in case of intention or gross negligence. The right to terminate the Agreement in case of the failure of fulfil the Agreement after the agreed reasonable period of time, shall remain unaffected.

### **17. Delay of buyer**

If any part of the delivery or the acceptance of the Equipment is delayed due to reasons not caused by Seller, the risk of loss passes to Buyer, the warranty starts to run and the Buyer pays the storage costs in the amount of 0.5 % of price of the delayed portion of Equipment for each complete week of delay, starting 14 days after notification of the readiness for shipment or acceptance, where the costs are limited to 5 % of the price of the Equipment, unless higher costs or damages can be proven by Seller. The Buyer shall compensate any additional expenses incurred by Seller due to delay.

### **18. Limitation of liability**

18.1. THE BUYER CAN NOT ASSERT ANY CLAIMS AGAINST THE SELLER BEYOND THE AFOREMENTIONED RIGHTS, IN PARTICULAR NO CLAIMS FOR DAMAGES, WHETHER BASED ON CONTRACT OR OTHER ACTS, OR ANY RIGHTS DUE TO ANY LOSSES IN CONNECTION WITH THE SERVICES, NO MATTER ON WHICH LEGAL BASIS.

18.2. NOTWITHSTANDING THE AFOREMENTIONED, THE SUPPLIER IS LIABLE

- IN CASE OF INTENTION OR GROSS NEGLIGENCE,
- IN THE CASE OF CULPABLE DAMAGE TO LIFE, BODA AND HEALTH,
- IN THE CASE OF DEFECTS THAT WERE MALICIOUSLY CONCEALED,
- IF LIABILITY UNDER THE PRODUCT LIABILITY ACT IS PRESENT FOR DAMAGE TO PERSONS OR PROPERTY PRIVATELY USED.

18.3. IN THE CASE OF CULPABLE VIOLATION OF MATERIAL CONTRACTUAL OBLIGATIONS, THE SELLER IS ALSO LIABLE IN THE CASE OF SLIGHT NEGLIGENCE, HOWEVER LIMITED TO THE TYPICAL, REASONABLY FORSEEABLE DAMAGES.

18.4. THE OVERALL LIABILITY OF THE SELLER FOR ANY DIRECT DAMAGES IN CONNECTION WITH THE EQUIPMENT AND/OR THE AGREEMENT IS LIMITED TO A MAXIMUM AMOUNT OF PRICE PAID BY THE BUYER TO SELLER FOR THE EQUIPMENT FOR ONE INCIDENT OR A NUMBER OF INCIDENTS.

18.5. IF LIABILITY OF THE SUPPLIER FOR INDIRECT DAMAGES IS EXCLUDED, THIS IN PARTICULAR APPIES TO LOST PROFIT (LOSS OF REVENUE AND LOSS OF PRODUCTION) AS WELL AS FOR INCIDENTAL DAMAGES OF ANY KIND.

## 19. Letter of credit

19.1. The Letter of Credit shall be irrevocable and transferable, it shall allow partial shipments, loading on deck, charter party Bill of Lading and transshipments.

19.2. The Letter of Credit shall be established in a form acceptable to Seller not later than 30 days from the date on which the Agreement is executed by Seller and it shall remain valid for a period of at least 30 days after the date of last shipment.

19.3. The Letter of Credit shall be issued and confirmed by a first class international bank acceptable to Seller and it shall be payable at sight at the counters of a bank nominated by Seller against presentation of a commercial invoice and/or other documents specified in the Agreement.

19.4. Regardless of any other paragraph of these Terms, if any, if Seller is unable to ship the goods due to any reason outside of its control, the Letter of Credit shall be payable against the forwarding agent's receipt, or, should Buyer fail to name the forwarding agent, against the warehouse receipt.

19.5. The Letter of Credit shall provide that the rules in the "Uniform Customs and Practice for Documentary Credits (2007 Revision) ICC Publication No. 600" are applicable to the Letter of Credit.

19.6. Buyer shall pay all expenses including but not limited to those arising from the opening, confirming and extending of the Letter of Credit.

## 20. Applicable law and settlement of disputes

20.1. The Agreement shall be governed by and construed in accordance with the laws of Germany.

20.2. Any disputes arising in connection with this Agreement shall be finally settled under the Arbitration Rules of the German Institution of Arbitration (DIS) by one or more arbitrators appointed in accordance with the said rules. The arbitration shall take place in Stuttgart. The language of the arbitration proceedings shall be English. Notwithstanding the above, Seller shall be entitled to take action for collecting its receivables from Buyer at the courts of the Buyer's place of domicile.

## 21. Language and separability

21.1. The All documents and correspondence between Seller and Buyer shall be in English.

21.2. Invalidity or enforceability of any provisions of the Agreement shall not impair the validity or enforceability of any other provisions; provided, however, that the Agreement shall be reformed to the maximum extent permitted by law to carry out the parties' original intention.