



General Terms & Conditions of Schmidbauer GmbH & Co. KG for Crane Work and Transport Services

I. GENERAL PART

1. 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 -HGB, or CMR, CMNI/CLNI, CIM/COTIF, MÜ/WA, in the latest 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 maneuvers 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 service in the meaning of these terms and conditions is the commercial transportation of goods and moving or relocating goods, especially by means of special auxiliary transportation gear such as e.g. heavy load rollers, armored rollers, heavy duty roller gears, lifting jacks, air cushions, hydraulic lifting scaffolding and lifting portals or similar (so-called ground or transfer transports) including interim storage in connection with the transportation. Heavy items are usually transported unpacked and without tarpaulin cover. Packaging or covering the load with tarpaulins, loading, stowing and lashing – excepting sea cargo – are only owed by the contractor if this is contracted. The customer is agreed with open deck loading for shipment by sea.

4. Rough 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 the 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.

II. SPECIAL PART

1. Section Crane provision**12. Obligations and liability 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 regarding 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, roadblock as well as other unforeseeable, unavoidable and serious events. The contractor's strict warranty liability for crane services in accordance with category 1 (crane hire) is also excluded.

12.2 Limitation to liability

Except in the case of willful 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 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, 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 safe-keeping 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 kilogram of the damaged or lost property. In case of national inland waterway transports the customer will be liable with a maximum of 2 SDR per kilograms 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 excess of this.

15.3 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 willful 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 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. center 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 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 unauthorized 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 regarding 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 - except for 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 must point out special risks and to remedy these either himself or to have these remedied, insofar as they stem from the scope of the customer. The customer has 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 recognizably required by the customer.

20.4 Construction field

Regarding the place of deployment and access route the customer has, if necessary, 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 recognizable 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 recognizably requires or explicitly asks for such information. The customer is obligated to point out any hazards that may arise during the execution of the crane or transport services regarding the goods to be transported and their surroundings (e.g. hazardous goods, contamination damage). The contractor also must 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 recognizably 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 regarding 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 regarding 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 willfully or due to gross negligence. The plea of co-fault shall remain unaffected hereby for both parties.

III. FINAL PROVISIONS

23. Official expenses, offsetting/retention, contractor's right of lien and right of retention**23.1 Bases of the official expenses**

Unless otherwise agreed, invoicing shall be based on time units (hourly or daily rates). Unless otherwise agreed, the obligation to pay begins with the departure of the lifting or transportation vehicle from the contractor's depot and ends upon its return. If hourly or daily rates have been agreed, these shall also apply to the arrival, departure, and set-up times (Mob/Demob). In the case of hourly rates, each half hour or part thereof shall be invoiced; in the case of invoicing based on daily rates, each working day or part thereof shall be invoiced. Fees and costs for official expenses as well as all procurement costs and costs arising from official requirements and other ancillary provisions, as well as police escort fees or costs for auxiliary police, for administrative assistants and for the company's own transport security and other costs for officially ordered safety precautions shall be borne by the customer, unless otherwise agreed. The agreed amounts are exclusive of value added tax, which shall be payable to the contractor in addition, if legally owed. The contractor's services are preliminary services and do not entitle the customer to a discount. Unless otherwise agreed when the order is placed, the contractor's invoices shall be paid immediately upon receipt of the invoice.

23.2 Adjustment of remuneration

The remuneration shall be agreed for the duration of the respective contract. The contractor reserves the right to adjust the remuneration in the event of a significant increase in costs between the award of the contract and its execution, considering the following factors:

The contractor shall adjust the prices to be paid based on this contract. In addition at its reasonable discretion to the development of the costs that are decisive for the price calculation. A price increase shall be considered and a price reduction shall be made if, for example, the costs for the procurement of fuel or the use of the road network (toll) increase or decrease, or other changes in the transport industry or legal framework conditions lead to a changed cost situation (e.g. due to wage increases, fuel prices, tolls, approval costs according to GebOStV (Gebührenordnung für Maßnahmen im Straßenverkehr), accompanying fees according to StTBV (Straßenverkehr-Transportbegleitungsverordnung), insurance premiums, motor vehicle taxes, etc.). Increases in one type of cost may only be used for a price increase to the extent that they are not offset by any declining costs in other areas. In the event of cost reductions, the contractor shall reduce the prices insofar as these cost reductions are not fully or partially offset by increases in other areas. In exercising its reasonable discretion, the contractor shall select the respective points in time of a price change in such a way that cost reductions are not considered according to more unfavorable standards for the customer than cost increases, i.e. cost reductions are effective at least to the same extent as cost increases.

23.3 Offsetting, retention

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

**23.4 Right of lien and 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. Regarding 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 regarding the claim, e.g. an absolute bank guarantee. This shall also apply to rights of retention.

24. Force majeure

24.1 "Force majeure" means the occurrence of an event or circumstance that prevents a party from fulfilling one or more of its contractual obligations under the contract if and to the extent that the party affected by the impediment proves that:

- a) such impediment is beyond its reasonable control; and
- b) it could not reasonably have been foreseen at the time the contract was concluded; and
- c) the effects of the impediment could not reasonably have been avoided or overcome by the party concerned.

24.2 In the absence of proof to the contrary, the following events affecting a party shall be presumed to fulfill the conditions under paragraph 1 a) and b) of this clause:

- a) war (declared or undeclared), hostilities, invasions, actions of foreign enemies, extensive military mobilization;
- b) civil war, riot, rebellion and revolution, military or usurped power, insurrection, acts of terrorism, sabotage or piracy;
- c) currency and trade restrictions, embargo, sanctions;
- d) lawful or unlawful acts of authority, compliance with any law or government order, expropriation, seizure of works, requisition, nationalization;
- e) plague, epidemic, pandemic, natural disaster or extreme natural event;
- f) explosion, fire, destruction of equipment, prolonged break-down of transportation, telecommunication, information system or energy;
- g) general labor disturbance such as boycott, strike and lock-out, go-slow, occupation of factories and premises.

24.3 A party who successfully invokes this clause shall be released from its obligation to perform its contractual obligations and from any liability for damages or any other contractual remedy for breach of contract from the time when the impediment prevents it from performing, provided that notice is given without delay. If notice is not given without delay, the release shall take effect from the time the notice reaches the other party. If the effect of the alleged impediment or event is temporary, the consequences set out above shall apply only for so long as the alleged impediment prevents the party concerned from performing the contract. If the duration of the alleged impediment has the effect of substantially depriving the parties of what they could reasonably expect under the contract, either party shall have the right to terminate the contract by giving notice to the other party within a reasonable time. Unless otherwise agreed, the parties expressly agree that the contract may be terminated by either party if the duration of the impediment exceeds 120 days.

25. Hardship clause

25.1 A party to a contract is bound to perform its contractual duties even if events have rendered performance more onerous than could reasonably have been anticipated at the time of the conclusion of the contract.

25.2 Notwithstanding paragraph 1 of this clause, where a party to a contract proves that:

- a) the continued performance of its contractual obligations due to an event beyond its reasonable control which could not reasonably have been expected at the time the contract was entered into; and that
 - b) the contracting party could not reasonably have avoided or overcome the event or its consequences,
- are bound, within a reasonable time of the invocation of this clause, to negotiate alternative contractual terms which reasonably allow to overcome the consequences of the event.

25.3 Where paragraph 2 of this Clause applies, but where the parties have been unable to agree alternative contractual terms as provided for in that paragraph, either party is entitled to request the judge or arbitrator to adapt the contract with a view to restoring its equilibrium, or to terminate the contract, as appropriate.

26. 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.

27. Severability

Should one or more of the provisions of these terms and conditions be or become invalid or unenforceable, this shall not affect the validity of the remaining provisions. § Section 139 BGB shall be deemed waived in this respect. This shall also apply if one part of a provision is invalid, but another part is valid. The invalid or unenforceable provision shall be replaced by the contracting parties by a provision that comes closest to the economic interests of the parties but is effective or enforceable and does not conflict with the other contractual agreements.

28. Regulations regarding the written form

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