

**GENERAL TERMS OF BUSINESS**  
**of Gustav Seeland GmbH, 22113 Hamburg (valid from March 2009)**

**1. General**

1.1 All our business operations are subject to the following general terms of business, unless mandatory domestic or international legal directives apply. Where our operations consist of the provision of cranes, crane work and/or transport services (including rigging) these general terms of business for the most part correspond to the general terms of business of the Federal German association for the transport of heavy loads and crane work ("BSK").

1.2 Transactions subject to these general terms of business include contracts on:

1.2.1 The provision of cranes („Service type 1“)

The provision of cranes covers the renting of lifting equipment together with operating personnel to the customer for the implementation of work on the instructions and scheduling of the customer (rental contract including operating personnel).

1.2.2. Crane work („Service type 2“)

Crane work involves the transport of goods, in particular the lifting, movement and change of location of loads and persons for operating purposes with the aid of lifting equipment and indicates the implementation by us of one or more agreed lifting operations on our instructions and scheduling.

1.2.3 Transport services

Transport services as defined by these general terms of business cover the movement of goods with vehicles and the movement or relocation of goods by means of special means of transport such as tank steel rollers, heavy duty roller gear or lifting jacks. Transport services can also cover assembly and/or dismantling operations. The transport services also cover rigging operations. This includes connecting or separating and securing or freeing the loaded materials for the purpose of preparing or executing transport.

1.2.4 Storage services

Storage services cover the placing into storage and storage of goods.

### 1.2.5 Rentals

Rentals as defined by these general terms of business cover the provision for a fee of movable equipment (machines, vehicles, working platforms, cherry pickers, ramps etc.).

### 1.2.6. Precision rigging

Precision rigging (final rigging, trial run, fine adjustments etc.) as defined by these terms of business go beyond standard rigging and are no longer included in the transport services as defined under Section 1.2.3.

1.3 Any contracts concluded by us are subject exclusively to these general terms of business; no other contractual provisions will apply, even if they have not been expressly rejected by us.

1.4 Any divergent agreements will only apply if made in writing.

## **2. Official permits**

2.1 Any contracts whose implementation requires a permit from the responsible authorities, in particular in accordance with §§ 18 Section 1 Sentence 2, 22 Section 2, Section 4, 29 Section 3, 46 StVO and 70 StVZO (road transport regulations) are concluded subject to the suspensive condition of the granting of the relevant permit.

2.2 Where there is no express written agreement to the contrary, any fees and costs which arise from official requirements and police escort operations or other safety precautions which are required by the authorities will be the responsibility of the customer. In addition we are entitled to be refunded for any expenditure which we regard as necessary in accordance with the circumstances.

## **3. Subcontracting**

Where there is no express written agreement to the contrary we have the right to commission other companies to implement the contractual obligations we have entered into.

#### **4. Withdrawal from the contract**

- 4.1 The customer has the right to withdraw from the contract where there is an important reason for doing so. In this case the customer agrees to pay to us the agreed fee after the deduction of any expenditure which has been saved or earnings achieved elsewhere. In the case of transport services or crane work, dead freight will be payable in accordance with § 415 Section Sub-section 2 HGB (Commercial Code).
- 4.2 We have the right, to the exclusion of any claims for damages on the part of the customer, to withdraw from the contract if, after careful examination, it becomes clear before or during the use of vehicles, equipment or operational facilities of any kind that serious damage could be caused to our own property and/or that of third parties and/or financial damage or damage to persons. In such cases 80% of the agreed fee will be charged on a pro rata basis.

#### **5. Obligations of the customer**

5.1 The customer has the obligation,

- 5.1.1 to provide and maintain during the whole period of the operation, at his own risk and expense, all the technical requirements which are needed for the correct and risk-free implementation of the contract. The customer has the duty in particular to ensure that the goods which are the subject of the operation are ready and in a suitable condition for the implementation of the contractually agreed operations. The customer has the duty to indicate and make available in good time the correct dimensions, weights and other characteristics of the goods (e.g. type of material etc.), and in the case of crane services the attachment points in sufficient quantity and size.
- 5.1.2 to obtain the requisite permission of the owner for access to property belonging to third parties as well as to roads, paths and areas which are not public, and to indemnify us against claims by third parties which could arise from access without permission to property owned by third parties.
- 5.1.3 to ensure that the ground conditions, the necessary space and other circumstances at the place of operations as well as the access roads – with the exception of public roads, paths and areas – enable the correct and risk-free

implementation of the order. In particular the customer will be responsible for ensuring that ground conditions at the place of loading and unloading or the location of the crane together with the access roads can meet relevant pressure and other loads. Finally the customer will be responsible for all information about underground cable channels, utility supply lines, other underground pipelines and cables as well as any hollow spaces which could affect the load capacity of ground conditions at the place of operations and the access roads. The customer has the duty to inform us without being specially requested to do so of the presence of such about underground cable channels, utility supply lines, other underground pipelines and cables as well as any hollow spaces. The same applies if the access roads – including public roads, paths and areas – do not allow unhindered and risk-free access and exit. In the event that the above obligations are not observed our customer will be liable for damages.

5.1.4 without our express agreement, not to give our operating personnel any instructions after the order has been placed which diverge in their nature and extent from the contractually agreed operations.

5.2 If the customer is culpably in breach of any of the above agreements (Sections 5.1.1 – 5.1.4) he will be responsible for recompensing us for any damage which ensues. This is without prejudice to the regulations of § 414 Section 2 HGB. The principal hereby indemnifies us against claims for damages on the part of third parties arising from failure by the principal to fulfil his obligations. In the event that a claim is made against us under USchadG or any other comparable regulation under public law or domestic or international regulations, the principal hereby agrees to indemnify us under the terms of our internal relationship, unless we caused the damage in a culpably premeditated or grossly negligent way.

5.3 In the case of rentals the customer has the obligation to inspect the goods when he takes delivery and report any damage or defects in writing without delay. If nothing is reported in writing the goods will be regarded as having been accepted in a fault-free condition. The customer will correctly maintain the rented goods at his own expense. If any damage occurs he must inform us immediately and request instructions.

At the end of the rental period the goods are to be returned by the customer in a clean and defect-free condition.

The customer accepts liability for any damage which occurs during the rental period

unless such damage is the result of force majeure. The customer will be responsible for proving that force majeure applies.

The customer will be responsible for any repair costs. This also covers any costs for tyres resulting from excessive wear.

Without our express prior written permission the customer will not have the right to sub-let and/or allow third parties to use the equipment.

Machinery breakdown insurance will be taken out. The premium for this will be invoiced to the customer separately.

Where machines/vehicles are rented these will be made available to the customer with a full tank. If the machines/vehicles are not returned with a full tank we will invoice the customer for the differential amount. Any other lubricants which are required will be invoiced to the customer separately as appropriate.

5.4 In precision rigging the principal is obliged, at his own expense, to provide the following support services, which must be implemented in good time in order to ensure that there is no delay in acceptance.

5.5 Implementation of all preparatory work, in particular with regard to earthworks, building work, foundations and scaffolding, including provision of the necessary materials.

5.5.1 Provision of heating, power and lighting, compressed air and water, including the required connections.

5.5.2 Provision of suitably equipped and theft-proof premises for staff and for the storage of tools and other equipment and materials.

5.5.3 If the principal fails to meet these obligations even after a reasonable time has passed we will have the right but not the obligation to carry out the principal's duties in his place and at his expense. In other respects our legal rights and claims are not affected.

5.5.4 The principal has the duty to accept the rigging service as soon as we have notified him that it has been completed. If such acceptance is delayed without

any responsibility on our part, acceptance will be regarded as having been effected two weeks after our notification of completion.

## **6. Our obligations**

### **6.1 The provision of cranes**

If our main service consists of the provision of cranes in accordance with Section 1.2.1 we will have the obligation in general and in particular of making available suitable lifting equipment which is operationally ready, safe and has been tested in accordance with the applicable TÜV and UVV regulations. We also have the obligation to provide suitable operating personnel.

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

If our main service consists of the provision of crane work and/or transport services in accordance with Section 1.2.2 or Section 1.2.3 we will have the obligation in general and in particular of making available suitable means of transport and lifting equipment which is operationally ready, safe and has been tested in accordance with the applicable TÜV and UVV regulations. We also have the obligation in general and in particular to provide suitable operating personnel (crane drivers or drivers with the relevant qualifications) who are familiar with the operation of the means of transport or the lifting equipment. In addition we will provide the necessary support and supervisory staff as well as any other necessary personnel, together with any strikers who are required on agreement and at the expense of the customer. Heavy cargo is normally transported without packaging and on deck. We will only be responsible for packing the cargo and covering it with tarpaulins as well as loading, stowing, securing and unloading it if such services have been expressly agreed in writing.

### **6.3 Storage**

If our main service consists of storage we will have the duty to store and keep in safety the goods entrusted to us with due care. Depending on the agreement the goods will be stored in an outside store or in an unheated shed.

## 6.4 Rentals

If our main service consists of rentals we agree to provide the customer with the rented goods in accordance with the agreement. We also agree to make sure that the goods are free from any defects which would significantly reduce their suitability for the agreed purpose.

## 6.5 Precision rigging

If our main service consists of precision rigging we will have the duty to execute the agreed work on time and free from defect. In addition we hereby agree to take care of the principal's property and protect it against damage.

## **7. Liability and limitations on liability**

### 7.1 General liability provisions

We will be fully liable for any damage which is caused by premeditation or gross negligence by us, our senior staff or those acting on our behalf or by the breach of any significant contractual provision, with claims for damages in the latter case limited to foreseeable and typical damage. In addition we will be fully liable on the basis of product liability legislation if any assembly errors lead to damage to persons or property damage to privately used objects. In the case of rentals we will also be fully liable if damage is caused by the absence of warranted features, if the agreement on specific features had the specific purpose of safeguarding the customer against any such damage. In other respects our liability is limited or excluded in accordance with the following provisions of Sections 7.2 to 7.6.

### 7.2 Specific restrictions on liability in the provision of cranes

In the provision of cranes we are liable for the personnel provided only to the extent of the applicable basic principles of negligent selection. Liability for failure to provide a service by the agreed time is excluded in the case of force majeure, strikes, road closures and other unavoidable events whose consequences we are unable to avert. In other cases of failure to provide a service by the agreed time liability on our part is limited to three times the rental amount.

### 7.3 Specific restrictions on liability in the case of crane work and transport services

- 7.3.1 For damage to goods and other property our liability is in accordance with the legal provisions of §§ 431 Section 1 and 461 Section 1 HGB/Art. 23 CMR (8.33 SDR of the International Monetary Fund per kg gross weight of the damage or lost goods). If the customer requires this a higher liability amount can be agreed in writing before the order is placed. In this event we will have the right, in view of our increased liability, to take out additional insurance and charge the customer for the relevant costs.
- 7.3.2 In the case of crane work and transport services we waive the plea of limitation of the amount of liability in accordance with Section 7.3.1 for damage to property up to an amount of € 500,000.00 as well as other financial damage up to an amount of € 125,000.00 for each event of damage. For claims for damages above this amount the provision of Section 7.3.1 will apply. This waiver only applies if there is an agreement between the customer and ourselves in accordance with our order forms for a "separate surcharge for heavy goods liability insurance."
- 7.3.3 For any damage other than damage to goods our liability is limited to three times the agreed payment.
- 7.3.4 The limitations on liability outlined in Section 7.3 do not apply in the cases covered by § 435 HGB and Art. 29 CMR (negligent or premeditated damage).

### 7.4 Specific restrictions on liability in the case of storage

In the case of storage we are liable for the stored goods to an amount of € 5.00/kg of gross weight to a maximum of € 5,000.00/damage event. If the customer sustains damage in the form of a difference between the target and actual quantity of the stored goods, the amount of liability will be limited to € 25,000.00, regardless of the number of damage events which are responsible for the difference in stocks. In both cases the above limitation on liability to an amount of € 5.00/kg of gross weight remains unaffected. If only individual packages or parts of the goods are lost or damaged, the maximum amount of liability will be based on the gross weight

- of the entire goods if all the goods are affected;
- the affected part of the goods if a part of the goods are affected.

Regardless of the number of claims which arise out of an event of damage our liability is in all cases limited to € 2 million per event of damage. Where a number of parties have suffered damage our liability will be in proportion to their claims.

#### 7.5 Claims arising in connection with precision rigging

After acceptance of the work our liability for defects, excluding all other claims on the part of the principal – without prejudice to Section 7.1 – consists of the remedying of any such defects as we have been responsible for.

The principal must notify us of any defects in writing without delay.

If we fail to remedy the defect within a reasonable period of notice we have been given to do so, the principal will have a right to a reduction in price. Such right to a price reduction will also apply in other cases where any attempt to remedy defects remains fruitless. The principal will only be able to withdraw from the contract if the precision rigging can be proven to be of no use to him.

#### 7.6 We accept no liability in other respects.

### **8. Insurance obligations**

8.1 We are only obliged to conclude separate transport insurance to protect the customer against damage to the goods if there is an express written order indicating the insured value and the risks to be covered. A simple notification of value to us will not be regarded as a commission to take out insurance cover.

8.2 Our acceptance of the insurance certificate (policy) does not mean that we accept the obligations which are the responsibility of our customer as the insured party; however, we will be obliged to take all standard measures to comply with the terms of the insurance cover.

8.3 To cover our liability under these general terms of business we have concluded liability insurance on the usual terms.

## 9 Payment and setoff

9.1 After the completion of the order our invoices are payable immediately and without deduction.

9.2 Counterclaims on the part of our customer from concluded contracts and any related non-contractual claims can only be set off or withheld if there is no objection on our part or if they have been legally established.

## 10. Concluding provisions

10.1 If the customer is not a consumer the place of jurisdiction will be Hamburg. If our customer is a consumer the jurisdiction will be in accordance with the relevant legal provisions.

10.2 The law of the Federal Republic of Germany will apply. If the customer is a consumer this law only applies to the extent that the protection provided by mandatory legislation of the state in which the consumer is normally resident is not withdrawn.

10.3 If any provision of these general terms of business proves to be invalid and/or not applicable in an individual case this will not affect the validity of the remaining provisions. The invalid or inapplicable provision will be replaced by whatever provision comes closest to the business intention of the original provision.

Diese Allgemeinen Geschäftsbedingungen werden in einer deutschen und einer englischen Textfassung ausgefertigt. Bei Auslegungszweifeln oder Diskrepanzen zwischen der deutschen und der englischen Formulierung gilt die deutsche Textfassung als verbindlich / These general terms of business are drawn up in German and English. In the event of differences of interpretation or discrepancies between the German and English versions, the German text will apply.