

GENERAL TERMS OF BUSINESS
FEDERAL ASSOCIATION FOR HEAVY GOODS TRANSPORTATION AND CRANE WORK
(BSK) 1998
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PREAMBLE

The Federal Association for Heavy Goods Transportation and Crane Work (BSK) recommends its members to adopt the following BSK General Terms of Business for business dealings with their customers and subcontractors. The members are of course free to choose whether they follow this recommendation or adopt other general terms of business.

I. GENERAL TERMS

1. Our provision of any crane and transportation services is subject to the following terms unless other regulations take priority over these terms (e.g. the CMR Agreement on the Contract of Conveyance for International Freight Traffic).
2. **Crane services** as governed by these terms fall into two standard service categories:
 - 2.1. Service type 1 - Crane supply

Crane supply constitutes the supply of mobile hoisting gear and relevant operating staff to a given customer to perform appropriate work as required by same.
 - 2.2. Service type 2 - Crane work

Crane work constitutes the conveyance of goods with particular regard to the lifting, moving and relocation of loads and/or persons for work purposes using mobile hoisting gear and involves the performance of one or more agreed hoisting manoeuvres by the supplier as deemed appropriate by same.
3. **Transportation services** as governed by these terms of business constitute the conveyance of goods by road using appropriate goods vehicles as well as the movement or relocation of goods with the assistance of special transportation aids such as caterpillar tracks, trolleys, derricks etc.
4. Agreements deviating from these terms only apply in individual cases and require agreement in the specific case concerned. The responsibility for providing proof of the content as well as of the correct and full notification of same is borne by the person having recourse to same. Alternative terms of business, however, only apply in individual cases and require agreement in the specific case concerned
5. All offers submitted by the supplier are subject to alteration and must be confirmed in writing to become effective.
5. Any results of site inspections and any special agreements concerning loading and unloading locations, crane siting etc. must be documented by the contracting parties to become effective.
7. Contracts requiring the permission or authorisation of the relevant local authorities, particularly in cases where § 18 I 2 and § 22 II.IV and § 29 III and § 46 I no. 5 of the Road Traffic Act as well as § 70 I of the Road Traffic Licensing Act, are concluded with the proviso that the permission or authorisation required is obtained in good time.
8. Fees and costs incurred by way of charges raised by local authorities as well as all procurement costs and costs incurred due to conditions imposed by local authorities and due to police escort as well as other costs for safety measures required by local authorities are all payable by the customer unless the contracting parties come to a different arrangement in this respect.
9. The supplier is entitled to appoint other companies to fulfil the given contractual obligations, unless the contracting parties come to a different arrangement in this respect.
10. The supplier is entitled to back out of the contract without any obligation to pay compensation if, after careful consideration and examination prior to or during deployment of vehicles, equipment or other work facilities of any kind, the supplier comes to the conclusion that serious damage can occur to items and/or property belonging to him or a third party or that persons can suffer injury if the contract is fulfilled. The supplier is not exempt from payment of compensation if he has not acted with the diligence of a prudent businessman (carrier). In the event of the supplier cancelling the contract, the cost of the crane services provided are calculated on a pro rata basis, whereas statutory regulations apply in the case of the transportation services.

11. Weather-related interruptions in work and any associated cost savings do not reduce the supplier's payment entitlement, unless the contracting parties come to a different arrangement in this respect.

II. SPECIFIC TERMS

Section 1

Crane supply

The supplier's obligations and liability

- 12.1 In the event of the supplier's main duty involving the agreed supply of mobile hoisting gear and relevant operating staff to a given customer to perform appropriate work as required by same, the supplier undertakes herewith to supply appropriate hoisting gear both in general and in specific terms that has been officially inspected to ensure its compliance with relevant statutory regulations and modern technical requirements and is fully operational. The supplier is only liable for the staff supplied within the framework of the principles attached to their selection and the responsibility associated with same.
- 12.2 The supplier is not liable for unpunctual supply in the event of acts of God, strike, road blocks and other unavoidable events occurring which are completely outside the supplier's control.
- 12.3 Under all other circumstances, the supplier is liable for unpunctual supply up to a maximum of three times the hire cost. This limit does not apply in cases of intent and gross negligence.

Section 2

Crane work and transportation services

The supplier's obligations and liability

13. The supplier undertakes to carry out all the contracts placed with him in a proper and professional manner using all the means and technical facilities at his disposal in compliance with relevant modern technical practice.
14. Furthermore, the supplier specifically undertakes to supply and use appropriate means of transportation and hoisting gear both in general and in specific terms that has been officially inspected to ensure its compliance with relevant statutory regulations and modern technical requirements and that is fully operational and safe. The supplier also undertakes to place at the customer's disposal appropriate operating staff (crane driver and operator) both in general and specific terms who are familiar with the operation of the means of transportation and/or hoisting gear concerned. The supplier also agrees to supply at the customer's cost any support, technical or other staff needed as well as an anchorman if required.

15.1. In the event of the supplier's main duty constituting the performance of crane work and/or provision of transportation services, then this is subject to the statutory regulations governing the freight business providing these General Terms of Business do not stipulate terms deviating from these. According to the relevant statutory regulations, the supplier is liable up to maximum of 8.33 Special Drawing Rights (SDRs) per kilogram of the damaged or missing goods concerned.

Limitation of liability no longer applies if the damage occurs as a result of an action or omission perpetrated by the supplier or his staff or agents in deliberate or negligent manner and in full awareness that the damage would probably occur (§ 435 Commercial Code).

15.2. The supplier agrees to disregard the limitation of liability to a given amount as per subsection 15.1. for damage to goods up to a maximum of EURO 500,000.- and for other material damage up to a maximum of EURO 125,000.-, for each individual case of damage. The ruling mentioned in subsection 15.1. applies for claims for damages above these amounts.

16. In the event of the customer requiring supplier liability above that mentioned in section 15., then a written agreement to this effect must be concluded prior to placement of contract. The supplier is also entitled to charge the customer with the costs incurred in insuring the increased amount for which he is liable.
- 17.1. The supplier is only responsible for insuring the goods concerned if he receives an explicit written request to this effect including details of the value of the goods to be insured and the risks requiring cover; the mere mention of the value of the goods is not deemed to constitute a request to insure them.
- 17.2. The receipt of an insurance note (policy) on the part of the supplier does not mean that the associated duties of the customer in his function as the insured party are transferred to the supplier; however the supplier is expected to take all the usual measures to ensure that the customer can claim against the insurance if required.
- 17.3. If no other written agreement is concluded, the supplier shall take out the relevant insurance on terms of a usual nature for his place of business.

The customer's obligations and liability

18. The customer agrees to meet at his own cost and risk all the requirements necessary for the proper and safe execution of the contract concerned and to continue to meet these requirements throughout the period of contract. The customer specifically undertakes to keep the goods in question in a ready and appropriate state permitting fulfilment of contract.
The customer undertakes to provide the supplier in good time with details of the right dimensions, weights and specific features of the goods concerned (e.g. centre of gravity, type of material involved etc.) as well as the anchor points in the event of crane services being supplied.
19. The customer undertakes to obtain the necessary authorisation from the respective owners for access to land owned by third parties, private roads, paths and places and to exempt the supplier from all claims asserted by third parties in connection with the unauthorised access to and use of land owned by a third party.
20. Furthermore, the customer is responsible for ensuring that ground conditions, room availability and other circumstances at the place of contract fulfilment as well as access routes – apart from public roads, paths and places – permit the proper and safe execution of contract. It is the customer's specific duty to ensure that the ground at the loading and unloading point and/or crane location point as well as the access routes can withstand the pressure and other stress they will be subjected to. Finally, the customer is also responsible for all details concerning underground cable shafts, supply lines, other underground ducts and cavities that could affect the loading capacity of the ground at the place of contract fulfilment or that of the access routes. The customer is obliged to inform the supplier of the location and existence of underground ducts, shafts and other cavities without having to be asked to do so. In the event of the customer neglecting his duty to inform the customer in this respect, then the customer is liable for all damage incurred as a result including all material damage and subsequent material damage to the supplier's vehicles, equipment and other work facilities as well as to other property.

Information given and declarations made by third parties, which are used by the customer to help him fulfil his contractual obligations, are considered to constitute information given and declarations made by the customer himself.

21. Once contract placement has been performed, the customer may not give any instructions to the supplier's staff that deviate from the agreed terms of contract either in nature or in scope or that run counter to the intended purpose of the contract without first obtaining the supplier's agreement to do so.
22. In the event of the customer culpably neglecting the above-mentioned obligations with specific regard to his preparatory and assisting duties, then he is liable vis-à-vis the supplier for all damages occurring as a result. The regulations stipulated in § 414, section 2 of the Commercial Code remain unaffected by this.

III. Concluding terms

23. The services rendered by the customer are considered to constitute preparatory duties and do not entitle the customer to reduce payment to the supplier.
Once the contract has been completed, the supplier's invoices should be paid immediately upon receipt, unless different arrangements have been agreed in this respect after contract placement. Only undisputed or legally valid counter claims entitle the customer to reduce or withhold payment to the supplier.
24. The customer's registered base constitutes the exclusive place of fulfilment and jurisdiction. This is also the case for legal disputes between businessmen concerning cheques and bills of exchange. All contracts concluded by and with the supplier are subject to German law. This also applies in cases where the other contracting party is not based in Germany.
25. The liability exemption and limitation stipulated in these General Terms of Business also apply to the supplier's staff as well as to actions and omissions perpetrated by other persons assisting the supplier in his fulfilment of the contract in question.
The liability exemption and limitation stipulated herein also apply to claims not governed by the terms of this contract.
26. In the event of any declarations requiring the written form, then all forms of data transmission and other legible forms are equally acceptable providing the author of the declaration is clearly identifiable.
27. In the event of any part or parts of these General Terms of Business being invalid or inapplicable in individual cases for contractual or legal reasons, all other terms herein remain unaffected by this; § 139 of the Civil Code has thus been mutually reformulated to the agreement of the contracting parties.