

General Terms of Services and Delivery of Demag Cranes & Components GmbH

1. General Provisions

1.1 Any agreement - in particular those modifying these Terms - shall only become binding by our confirmation in writing.

1.2 Any and all supplies and services to be furnished by us at any time, including proposals, technical advice and assistance as well as any other supplementary services (referred to as supplies or deliveries hereafter), shall be based, in a business-to-business relation, exclusively on the present General Terms. Any other terms and conditions are not accepted as part of the contract, even if we do not expressly reject them or accept payments without reservation.

1.3 Our offers are generally not binding. However, if it should be binding, it shall be revised and adapted taking into account the interests of both parties, if, after the submitting of the offer, modifications of the contractual obligations are necessary to meet new or modified legal requirements or new requirements of public authorities and inspection boards. This shall apply respectively after the acceptance of the offer. If the Purchaser's subsequent confirmation deviates from our confirmation, he will draw our attention to these divergencies.

1.4 The Purchaser is entitled to non-exclusive use of standard software with the agreed properties in unmodified form on the agreed equipment. Unless agreed or indicated otherwise, e.g. on the data media or in the software documentation, the Purchaser is entitled to create two back-up copies.

2. Prices, Payment, Securities

2.1 The prices quoted are understood "ex works" (EXW Wetter/Ruhr INCOTERMS 2000) and exclude accessory charges (such as packing, freight, insurance, storage, inspection by third parties and any other additional charges). If we agreed to render installation or erection services and no other agreement has been concluded, the Purchaser shall bear all necessary additional costs such as travel expenses, costs for transportation of tools or the cost of electricity, water or compressed air in addition to the agreed prices.

The due statutory turnover (value added) tax (VAT) will be added to the prices agreed (at present 19% in Germany). In the case of export deliveries, any and all taxes, customs duties and other public charges payable by us abroad shall be reimbursed by the Purchaser. The minimum order value is €40.00 (net).

2.2 Free and net payment to our banking account(s) must be made by the dates agreed.

2.3 The Purchaser shall only have a right of retention and be entitled to set off counterclaims to the extent that such counterclaims are undisputed or have been validly decided. If this is not the case, retention shall only be possible if the counterclaim results from the same contractual relation as our claim and is in proportion to our claim.

2.4 Only if expressly agreed, we shall accept discountable and properly taxed bills of exchange for payment. When accepting bills of exchange, debts shall only be redeemed after these have been honoured. When accepting cheques, debts shall only be redeemed

when the amount is irrevocably credited on our bank account. Discount costs and any costs resulting from honouring the bill of exchange or cheque amount shall be borne by the Purchaser.

2.5 Should the Purchaser be in arrears with payment, interest in accordance with the average corresponding bank rates for overdraft facilities of business accounts, however no less than the statutory interest rate, will be charged from the day following the payment date and without any further reminder.

2.6 In the event of a delay in payment or danger to our claims due to a significantly impaired creditworthiness of the Purchaser, we shall be entitled to make due immediately all claims we have regardless of the terms of any bills of exchange or to demand securities. We shall also be entitled to effect any outstanding supplies against prepayment only or against the provision of securities.

3. Packing

Unless otherwise agreed, packing will be invoiced separately to the Purchaser. Instead, we may request the packing material to be returned charging user and pledge fees.

4. Deadlines, Obstacles to Compliance

4.1 The deadlines shall apply only on condition that all details of the order have been clarified in due time, that all necessary documents and approvals to be obtained by the Purchaser have been procured in due time, that all drawings have been approved, that, if applicable, any amount agreed upon as downpayment has been received by us in due time and that, if applicable, any securities agreed upon have been provided in due time. A further condition is the completion in due time of preparatory services for construction and erection to be provided by the Purchaser, in particular provision free of charge for us of electrical power, gas, water and any required auxiliary workers.

4.2 The agreed delivery dates shall be considered as fulfilled with the notice of readiness for dispatch, especially if the goods to be supplied cannot be dispatched on time for reasons for which we cannot be held responsible.

4.3 Should we be hindered in fulfilling our obligations due to the event of unforeseen circumstances affecting us or our sub-suppliers and/or sub-contractors and which we could not avoid with due care based on the circumstances of the specific case, e.g. war, intervention by a higher authority, internal unrest, natural forces, accidents, strikes and lockouts, other interruptions and delays in the supply of major operating material or pre-materials, the delivery deadlines shall be extended by the duration of the interruption and a reasonable start-up time. Should the fulfilment of our obligations become impossible for us due to the obstacle or become unacceptable, we may terminate the contract; the Purchaser shall also be entitled to do so if he cannot be reasonably asked to receive or accept the goods or services due to the delay.

4.4 Should the Purchaser credibly demonstrate that he has sustained any loss due to a delay through our fault,

he shall be entitled to claim compensation. Compensation for delayed delivery for each full week of delay is 1/2 per cent, however no more than 5 per cent of the value of the parts of the deliveries which cannot be used appropriately due to the delayed delivery. Both claims for damages due to delays in delivery as well as claims for damages instead of the services rendered which exceed the given limits are excluded in all cases of delayed delivery, even after a delivery deadline has expired that may have been given to us. This does not apply in cases of wilful damage, gross negligence or cases in which liability is obligatory, especially due to death, injury or detriment of health. The Purchaser may only withdraw from the contract in the scope of the legal provisions insofar as the delay in our deliveries is our responsibility. The above provisions imply no change in the burden of proof to the detriment of the Purchaser.

4.5 At our request, the Purchaser is obliged to declare within a reasonable period of time whether he continues to insist on the delivery and/or whether he wants to assert any claims rights he may be entitled to due to a delay in delivery.

4.6 Any right of rescission to which the Purchaser or we are entitled shall apply exclusively to the part of the contract not yet fulfilled. Insofar as any partial deliveries effected cannot be reasonably used by the Purchaser, he shall also have the right of rescission regarding these partial deliveries.

5. Acceptance

5.1 If an acceptance test has been agreed, it must be carried out immediately upon notification of readiness for acceptance. The Purchaser bears the costs of the acceptance.

5.2 An acceptance test is also carried out upon our request or if specific properties of the goods to be delivered have been agreed. This shall also apply to completed partial deliveries.

5.3 The Purchaser must ensure the conditions required for carrying out an acceptance test. With the exception of our labour costs, the Purchaser shall bear all costs arising in conjunction with the acceptance test.

5.4 Rights pursuant to Section 8 notwithstanding, the Purchaser shall not be entitled to withhold an acceptance due to insignificant defects.

5.5 Should the acceptance test not – or not completely – be carried out in due time for reasons for which we are not responsible, the goods to be delivered shall be deemed accepted following our written demand and after expiry of a reasonable period allotted by us when this consequence has been indicated by us explicitly.

5.6 The delivered goods shall be deemed accepted if they are put into operation without our prior consent.

6. Passage of Risk, Dispatch

6.1 Risk shall pass to the Purchaser, also in the case of deliveries with carriage paid and including cases where partial deliveries are made, as follows:

6.1.1 in the case of deliveries not including erection or assembly, as soon as the goods to be delivered are shipped or are collected. At the request and expense of the Purchaser, we shall insure deliveries against the usual transport risks;

6.1.2 in the case of deliveries including erection or assembly on the day of handover in own facility or, if agreed, following acceptance by the Purchaser.

6.2 If shipping, delivery, the commencement, the implementation of erection or assembly, receipt in own

facility or acceptance are delayed for reasons imputable to the Purchaser or in case of the Purchaser's default of acceptance, risk shall pass to the Purchaser.

6.3 Means and route of transportation shall be at our discretion. The same shall apply to the selection of the forwarding agent or carrier.

6.4 Goods to be delivered which have been notified as ready for dispatch must be called immediately, otherwise we shall be entitled, at our discretion, to store them at the cost and risk of the Purchaser and to invoice them as if delivered.

6.5 We are entitled to supply partial deliveries and to invoice them correspondingly.

7. Reservation of Ownership, Nondisclosure and Data Protection

7.1 Ownership (title and right of disposal) of the items supplied shall not pass to the Purchaser until all claims have been fulfilled, in particular all balances to which we are entitled against the Purchaser within the framework of business relations.

7.2 Treatment or processing of the goods supplied under reservation will be carried out for us in our capacity as manufacturer according to the legislative intent of § 950 BGB (German Civil Code). Goods processed shall be considered goods supplied under reservation as specified in Section 7.1.

Should the Purchaser process, combine or mix the goods supplied under reservation with other goods, we shall be entitled to co-ownership of the new property in the ratio of the objective value of the goods supplied under reservation to the objective value of the goods added. Should our ownership of the goods become void due to processing, combining or mixing, the Purchaser shall already at this moment transfer to us the Purchaser's right of ownership of the new stock or new property to an amount which covers the objective value of the goods supplied under reservation and the Purchaser, free of charge for us, shall hold the said goods in safe custody.

Our rights of co-ownership so created shall be treated as goods supplied under reservation as specified in Section 7.1.

7.3 The Purchaser shall be allowed to sell the goods supplied under reservation exclusively in the normal course of business subject to his normal terms of delivery and only as long as the Purchaser is not in arrears with payment and provided that the claims resulting from the sale are transferred to us in accordance with Clause 7.4. The Purchaser shall not be entitled to any other disposal of the goods supplied under reservation.

7.4 Claims of the Purchaser resulting from resale of goods supplied under reservation, whether processed or not, or combined with other goods not delivered by us, shall be transferred at this moment to us in an amount necessary to cover the invoiced value or the amount of co-ownership according to Section 7.2; this shall also apply to balances which are due to the Purchaser if the claims resulting from resale are entered into a current account.

7.5 The Purchaser shall, for his own account, insure the goods supplied under reservation of ownership against all risks of theft, breakage, fire or water damage for the duration of his obligation and provide proof thereof on request. He shall assign all rights of the

corresponding insurance contracts irrevocably to us until his obligations are completely fulfilled.

Should the Purchaser not fulfil his obligations in accordance with the above paragraph, we shall be entitled to conclude the above-mentioned insurances in the scope we deem necessary at the cost of the Purchaser with the provision that the rights resulting from the insurance contract are directly assigned to us.

7.6 The Purchaser shall be obliged to maintain the goods supplied under reservation in perfect condition and to have any repair work that may become necessary carried out by immediately specialist companies; he shall provide information regarding the goods supplied under reservation at any time, in particular regarding the corresponding locations. We shall be entitled to access to the location of the goods supplied under reservation at any time; if required, the Purchaser shall ensure access to us or our authorized representatives to the location of the goods supplied under reservation at any time.

The Purchaser shall be obliged to notify us immediately of any jeopardy to our property.

7.7 Should the Purchaser fail to meet essential obligations in accordance with Section 7, we shall be entitled to make due immediately the entire remaining debt for the goods supplied under reservation regardless of the terms of any bills of exchange or to demand securities.

If the Purchaser fails to pay the entire remaining debt within a period of seven days after a corresponding request made by us or if he fails to provide the demanded securities within this period, his right of use for the goods supplied under reservation shall expire. We shall then be entitled to demand the immediate return at the cost of the Purchaser of the goods supplied under reservation excluding any lien on goods.

7.8 We shall be entitled - regardless of the payment obligation of the Purchaser - to make the best possible use of the goods supplied under reservation and returned to our possession in voluntary sale or to accept them back at the current market price. The market price of the goods supplied under reservation shall be estimated by a sworn expert appointed by the Chamber of Commerce responsible for the Supplier's plant and it shall be binding for the Purchaser and us. The proceeds of the sale or the market price shall be offset against the payment obligation of the Purchaser after deducting any costs incurred by us.

7.9 Withdrawal from or the assertion of the right of reservation of ownership as well as seizure of the goods supplied by us shall not be considered withdrawal from the contract unless this is expressly declared by us.

7.10 We shall release securities at our discretion up to a corresponding amount on request of the Purchaser if the total value of the securities given to us exceeds our claims by more than 20 %.

7.11 We retain the ownership, copyrights and all other rights concerning models, estimations of costs, drawings and other material.

7.12 The Purchaser will keep secret all information obtained from us in hardcopy or electronic version containing drawings, models, estimations, business secrets and other confidential documents. They may be revealed only to third parties if necessary and with our written consent. This obligation persists after termination

of this contract until the information has ceased to be of confidential nature.

7.13 We may, for the execution of this contract, store and treat the obtained individual-related data or confer this task to a third person. We will ensure the respect of the applicable laws on privacy and data protection.

8. Liability for Defects

We assume liability for defects as follows:

8.1 All deliveries are to be rectified, replaced by new parts or rendered again free of charge at the discretion of DCC which display a defect within the warranty period – regardless of the period of service – provided the cause of the defect already existed at the time of the passage of risk.

8.2 In the case of software with source code that we are able to modify ourselves ("Class A"), we shall rectify defects in the software at our discretion by provision of an update to the software in which only the defects are rectified or by provision of an upgrade in which the defects are also rectified.

In the case of software with source code that we are unable to modify ourselves ("Class C"), this presupposes that such an update or upgrade is made available to us or can be procured by us at appropriate cost.

8.3 Claims for defects become time-barred within twenty-four months after commissioning, however, no later than 30 months after the prescription's starting point stated by the law. This does not apply if the liability is obligatory according to section 10.4 or if legislation prescribes longer claim periods according to §§ 438 Abs. 1 Nr. 2 (building structures and items for building structures), 479 Abs. 1 (right of recourse) and 634a Abs. 1 Nr. 2 (building defects) BGB (German legal code). The provisions concerning process stoppage, stoppage or restart of claim periods remain unaffected.

8.4 Notification of defects must be submitted immediately and in writing.

8.5 The Purchaser shall first give us the opportunity to rectify the defect within a reasonable period.

8.6 Should we fail to rectify the defect, the Purchaser shall be entitled – regardless of any other claims for damages according to Section 10 – to withdraw from the contract or to reduce the payment.

8.7 The Purchaser shall not be entitled to assert claims for defects in the case of only insignificant deviation from the agreed properties, nor in the case of only insignificant impairment of use, nor in the case of natural wear or damage following the passage of risk arising from incorrect or negligent treatment, incorrect, inappropriate, omitted or untimely maintenance, inappropriate storage, excessive loading or operation, unsuitable operating equipment, defective civil engineering or building work, unsuitable building site or due to special influences (e.g. chemical, electrochemical or electrical influences or exceptional temperature and atmospheric influences) not specified as requirements according to the contract, as well as non-reproducible software errors. Nor shall any claims for defects be accepted for inappropriate modifications or repairs carried out by the Purchaser or third parties or any consequences resulting therefrom.

Claims for defects for software extended by the Purchaser beyond an interface provided by us may only be asserted up to the interface.

8.8 Section 10 shall otherwise apply for any claims for damages. Any further claims or claims other than those

regulated in Section 8 asserted against us and any parties employed by us in fulfilling our obligations due to a defect are excluded.

9. Industrial Property Rights, Copyright; Defects of Title

9.1 Unless agreed otherwise, we undertake only to effect deliveries which are free of third-party industrial property rights and copyright (referred to hereafter as property rights) in the country of delivery. If a third party asserts a justifiable claim against the Purchaser for the violation of property rights by deliveries furnished by us and used as laid forth in the contract, we shall be liable to the Purchaser within the claim period (Section 8.2) as follows:

9.1.1 At our discretion and at own cost, we shall either effect a right of use for the relevant deliveries, or change them in such a way that the property right is not violated or replace them. If this is not possible on economically appropriate conditions, the Purchaser shall be entitled to assert his statutory rights of withdrawal or price reduction.

9.1.2 Section 10 shall otherwise apply for any claims for damages.

9.1.3 The above obligations relevant to us shall apply only if the Purchaser informs us in writing immediately of any claims made by third parties, a violation is not acknowledged and if all defensive measures and settlement negotiations are reserved for us. If the Purchaser ceases to use our deliveries for reasons of limitation of damages or other significant reasons, he undertakes to inform the third party that the cessation of use implies no acknowledgement of the infringement of patent rights.

9.2 Any claims by the Purchaser are excluded, insofar as he is responsible for the infringement of patent rights.

9.3 Any claims are also excluded, insofar as patent rights are infringed upon as a result of special requirements laid down by the Purchaser or if the Purchaser modifies our deliveries or uses them together with products not supplied by us.

9.4 If patent rights are infringed upon, the provisions of Sections 8.3, 8.4 and 8.5 shall otherwise apply accordingly for the rights regulated in Section 9.1.1.

9.5 The provisions of Section 8 shall apply accordingly in the event of other defects in title.

9.6 Any further claims or claims other than those regulated in Section 9 asserted against us and any parties employed by us in fulfilling our obligations due to a defect in title are excluded.

10. Other Claims for Damages

10.1 We shall be liable for damages and reimbursement of expenses solely based on the legal statutes, subject to the following provisions.

10.2 Claims for damages and reimbursement of expenses (referred to in the following as claims for damages), regardless of the legal reason, in particular due to infringement of obligations resulting from the relationship under the law of obligations and from non-permitted activities, are excluded.

10.3 Liability for indirect damages and consequential damages such as downtime, loss of profit, or financing costs are excluded.

10.4 These restrictions (10.2 and 10.3) do not apply if liability is obligatory, e.g. according to product liability legislation, in cases of wilful damage or gross negligence, death, injury or detriment of health, or due to the acceptance of a guarantee for the properties of an item or due to the infringement of material contractual obligations. Material contractual duties are in particular those, which are required in order to achieve the purpose of the Agreement or the fulfilment of which enable the proper performance of the Agreement in the first place and on the observation of which the buyer may rely, the liability is insofar limited to the compensation of the contractually typical and foreseeable loss, however, not to cases of wilful damage or gross negligence or cases in which liability is obligatory due to death, injury or detriment of health.

10.5 The temporal limitation of liability according to this section 10 shall be determined by the liability for defects (clause 8.3).

10.6 The above liability provisions involve no change in the burden of proof to the detriment of the Purchaser.

11. Impossibility; Contract Modification

11.1 Insofar as the performance of the agreed deliveries is impossible, the Purchaser shall be entitled to demand damages under the conditions stated in section 10 if we are responsible for the impossibility. However, the claim for damages by the Purchaser shall be limited to 10% of the value of the part of the delivery which cannot be used appropriately due to the impossibility. This limitation does not apply in cases of wilful damage or gross negligence or cases in which liability is obligatory due to death, injury or detriment of health; this involves no change in the burden of proof to the detriment of the Purchaser. The right of the Purchaser to withdraw from the contract remains unaffected.

11.2 Section 4 (delay) shall be applied in the event of temporary impossibility.

11.3 Insofar as unforeseeable circumstances in the sense of Section 4.3 result in considerable changes to the economic significance or the contents of the deliveries or considerably influence our operation, the contract shall be modified appropriately taking into consideration good faith. Insofar as this is not economically acceptable, we shall be entitled to withdraw from the contract. If we intend to make use of this entitlement to withdraw from the contract, we undertake to inform the Purchaser immediately on becoming aware of the consequences of the event, even if an extension to the delivery date had initially been agreed with the Purchaser.

12. Export Licenses, Transfer of Contractual Rights and Obligations

12.1 The export of contractual items may – e.g. due to their nature or purpose – be subject to export approval.

12.2 We are entitled to transfer our rights and duties from this Contract to third parties. The transfer shall not become effective if the Purchaser objects in writing within four weeks after receipt of corresponding notification; we shall refer to this in the notification

13. Place of Delivery, Venue, Applicable Law

13.1 Place of delivery for our supplies is the location of the delivery plant. Should we also have to perform work (e.g. erection), place of delivery shall be the location where the work is to be rendered. For the payment obligation of the Purchaser, payment of debts shall be rendered at the bank quoted in our invoice.

13.2 The exclusive venue for settlement of any legal disputes, including bills of exchange and cheque collection by way of enforcement shall be Wetter/Ruhr in the Federal Republic of Germany. However, we are also entitled to elect to institute proceedings at the place of

domicile of the Purchaser or at the place of the censurable act.

13.3 The legal relationship between the Purchaser and us shall be governed only by the laws of the Federal Republic of Germany, excluding the UN Convention on the International Sale of Goods (CISG)