

## General Terms and Conditions of Sale and Payment

### 1. General Statements, Area of Application

- 1.1 These General Terms and Conditions of Sale and Payment (hereinafter referred to as Terms and Conditions of Sale) shall apply exclusively to all of our supplies and services. We do not recognise any adverse terms and conditions of sale or the terms and conditions of sale of the orderer if they depart from these unless we have consented to their application in writing. Our Terms and Conditions of Sale shall also apply if we carry out the delivery to the orderer without reservations being aware of any adverse terms and conditions of sale or the terms and conditions of the orderer departing from ours.
- 1.2 Our Terms and Conditions of Sale shall only extend to public-law legal entities, special public-law funds and companies as defined by Section 310, Paragraph 1 Bürgerliches Gesetzbuch (German Civil Code).
- 1.3 These Terms and Conditions of Sale shall also extend to all future transactions and contracts with the orderer.
- 1.4 These Terms and Conditions of Sale shall also extend to sales based upon a trade clause, in particular Incoterms. Incoterms shall be applicable in the version current at the time when the contract is signed with sales based upon one of the contractual formulas of Incoterms. However, the trade clauses shall only apply in the absence of differently worded provisions made in these Terms and Conditions of Sale or special agreements.

### 2. Quotations and Signing the Contract

- 2.1 In the absence of other explicit designations in our quotation, our quotations are non-binding.
- 2.2 The orderer's quotations or orders shall only be deemed accepted with an explicit written declaration (purchase order confirmation). Our silence in relation to said quotation or an order shall not be deemed as acceptance.
- 2.3 All declarations directed towards concluding, amending or ending contracts shall require the written form.
- 2.4 Public statements on our part, in particular in advertising or labelling, shall not constitute any descriptions of the condition of the products or a guarantee for them.
- 2.5 Our quotations and deliveries shall be made exclusively complying with the Außenwirtschaftsgesetz (External Economic Relations Act). The orderer shall explicitly oblige itself to comply with the latest provisions of Außenwirtschaftsgesetz (External Economic Relations Act) when the contract is signed.

### 3. Production and Design Standards

The plants supplied and the work done on them satisfy the applicable technical standards in Germany. If the plants supplied are used outside of Germany, the type and scope of the supplies to be furnished by us shall be dictated pursuant to the contractual agreements made and otherwise pursuant to German law. We only have to comply with the statutory regulations applicable at the place of use to the extent that this was explicitly agreed to in the contract with the orderer. The orderer has to notify us of the applicable standards and rules of safety. The orderer has to pay the costs in addition to the agreed price incurred by us because the plant has to be produced and mounted in accordance with obligatory standards and regulations other than the German ones according to the orderer's instructions.

### 4. Documents Allowed the Use of/Documentation

- 4.1 We reserve ourselves the ownership of and copyright to all documents and drawings, etc. the orderer is allowed the use of in connection with placing the purchase order. Said documents may not be made accessible to third parties unless we give the orderer our explicit written permission for this.
- 4.2 The documents belonging to our quotation such as illustrations, drawings and weight/dimension information are only approximate to the extent that they are not explicitly designated as binding.
- 4.3 The scope of delivery constitutes our standard technical documentation. We are not obliged to provide manufacturing plans for plants or spare parts.

### 5. Delivery Periods and Delivery Deadlines

- 5.1 Delivery deadlines and delivery periods shall only be binding on us if they were explicitly agreed to as binding.
- 5.2 Delivery periods shall begin with the date of our purchase order confirmation, however not before there is full clarification of all details of the purchase order. This shall extend to delivery deadlines accordingly.
- 5.3 All delivery deadlines and periods are under the reservation of unforeseeable production disturbances and on-time self delivery with the preliminary materials needed.
- 5.4 If the orderer has not met its contractual obligations in due time - including obligations of assistance or secondary obligations, we shall be entitled to appropriately postpone our delivery deadlines and periods in accordance with the requirements of our production routine. Our rights from the orderer's default shall remain unaffected.
- 5.5 The time when the goods are sent ex works shall be applicable to staying within the delivery deadlines and periods.
- 5.6 We shall be entitled to make partial deliveries.
- 5.7 In the event of default, we shall be liable pursuant to the specifications of Item 13 for the damage from delay proven by the orderer. We shall notify the orderer without delay of the anticipated duration of the delay in delivery.
- 5.8 The orderer shall only be entitled to the rights from Sections 281 and 323 of Bürgerliches Gesetzbuch (German Civil Code) with non-compliance with the delivery deadlines or periods if the orderer has set us an appropriate period for delivery in advance. This has to be linked to the declaration that it rejects acceptance of the performance after this period - to this extent departing from Sections 281 and 323 of Bürgerliches Gesetzbuch (German Civil Code).

### 6. Shipping and Passage of Risk

- 6.1 In the absence of other explicit agreements, we shall define the freight-forwarder or carrier.
- 6.2 The risk shall pass to the orderer when the goods are delivered to the freight-forwarder or carrier, however no later than when they leave our works.
- 6.3 If there is damage from transport, the orderer has to arrange for the required measures to secure the facts and circumstances and notify us without delay.
- 6.4 If it has been agreed that the orderer makes parts available to us for producing the contractual goods, the orderer shall deliver these parts without expenses to us.

### 7. Acceptance, Official Acceptance, Default in Taking Delivery

- 7.1 If shipping the goods is delayed for reasons the orderer is responsible for, we shall charge the orderer the costs incurred from storage for each month, at least 0.5% of the amount of the invoice if the goods are stored in our facilities, beginning one month after notification of shipping readiness.
- 7.2 If the orderer comes into default with its obligation to pick up or officially accept the goods or if the orderer does not call off goods reported as ready for shipment within the agreed to period of time, we shall be entitled at our discretion to store the goods at the orderer's risk and to invoice them as delivered. If the orderer comes into default with official acceptance, pick-up or call-off, the risk of accidental destruction or accidental deterioration of the goods shall pass to the orderer. Beyond this, the orderer shall reimburse us the costs incurred from storage, at least 0.5% of the amount of the invoice for every month if the goods are stored in our facilities.
- 7.3 If the purchaser does not pick up goods reported as ready for shipment or if the purchaser fails to call off within the agreed to period of time, we shall be entitled to set the purchaser an appropriate period for carrying out its assistance activities and withdraw from the contract after it fruitlessly expires and demand the portion of the remuneration corresponding to our performance. The statutory regulations on default in taking delivery shall remain unaffected.
- 7.4 If the orderer cancels its purchase order or if the orderer refuses all acceptance for reasons that the orderer is responsible for, we shall be entitled, provided that we do not insist upon compliance, to lodge cancellation costs amounting to 10% of the purchase order value in the place of a claim to compensation for damage instead of performance without any proof. The orderer shall be entitled to prove to us that the damage incurred is less. The orderer not only has to remunerate the cancellation costs, but also the objects specially built for it that are made available to it at its request.

### 8. Prices and Turnover Tax

- 8.1 The prices reported in the purchase order confirmation shall apply. This does not include the statutory value-added tax. The amount applicable on the day of invoicing shall be separately reported in addition in the invoice provided that no special provisions extend to supplies sent abroad.
- 8.2 We reserve ourselves the right to change prices correspondingly if there are increases or decreases in costs three months or later after signing the contract, in particular due to signing collective bargaining agreements, changes in material prices or changes in energy prices. We shall document them to the orderer at its request.
- 8.3 The applicable turnover tax laws of the 6<sup>th</sup> EC Directive shall extend to invoicing supplies from one member state of the European Union to another provided that national law does not stand in the way of that.
- 8.4 Should there be difficulties in transferring the amount invoiced to the Federal Republic of Germany, regardless of the reasons, the detriments this causes shall be at the orderer's expense. The orderer shall bear the foreign exchange risk from the day of signing the contract with sales in a currency other than euros. In this event, the orderer has to procure the equivalent of the invoiced foreign currency at maturity converted at the rate referred to at the European Central Bank in euros applicable on the day the contract was signed. If the orderer cannot maintain the agreed to mode of payment or the agreed to way of payment, the orderer shall render the payment at our choice.

### 9. Terms and Conditions of Payment

- 9.1 In the absence of other agreements, the orderer has to render the agreed to price within 14 days after receipt of the invoice.
- 9.2 Deducing the trade discount shall only be permissible with an explicit written agreement.
- 9.3 If we are obliged to provide advance performance and if there is a substantial deterioration in the orderer's assets after signing the contract that jeopardises the payment of the purchase price, in particular if the orderer ceases payments or a petition has been lodged to initiate insolvency proceedings on the orderer's assets, we may refuse delivery until the purchase price payment has been effected or collateral has been provided. If the orderer neither renders payment nor provides appropriate collateral within an appropriate period, we shall be entitled to withdraw from the contract excluding the orderer's claims to compensation.
- 9.4 The statutory regulations on default in payment shall remain unaffected.
- 9.5 To the extent that the contract sets forth the provision of a commercial letter of credit, we shall not be obliged to fulfilment of the terms of the contract before receiving it.

## 10. Reservation of Ownership

- 10.1 The reservation of ownership agreed to hereinafter has the purpose of collateralising all of our claims existing against the orderer at present and in future from the supply relationship for cranes and crane components between us and the orderer (including balance claims from an open account relationship restricted to this supply relationship).
- 10.2 The goods delivered by us to the orderer shall remain our property until all collateralised claims have been paid in full. Said goods and the goods replacing them pursuant to this clause that are covered by said reservation of ownership shall be hereinafter referred to as the conditional commodity.
- 10.3 The orderer shall store the conditional commodity for us at no charge. It has to treat it carefully, store it separate from other goods and insure it sufficiently against fire, water, breakage, theft and miscellaneous damage.
- 10.4 The orderer shall be entitled to process and dispose of the conditional commodity until the occurrence of the case of exploitation (Paragraph 10.9) in normal business transactions. It shall not be permissible to pledge it or transfer ownership by way of security.
- 10.5 If the orderer processes the conditional commodity, it shall be agreed that processing shall be carried out in our name and on our account as the manufacturer and we directly acquire the ownership or – if processing is made of materials of several owners or the value of the thing processed is higher than the value of the conditional commodity – the co-ownership (ownership by fractional shares) of the new thing at the ratio of the value of the conditional commodity to the value of the new thing. In the event that we do not acquire ownership in this fashion, the orderer transfers now its future property or co-ownership to the new thing as per the aforementioned ratio to us by way of security. If the conditional commodity is connected with other things into a uniform thing or is inseparably mixed and if one of said things may be deemed the main thing, the orderer transfers the co-ownership of the uniform thing to us on a pro-rata basis at the ratio specified in Sentence 1 to the extent that it owns the main thing.
- 10.6 In the event of further sales of the conditional commodity, the orderer shall assign the claim incurred from this against the acquirer to us now by way of security – on a pro-rata basis with co-ownership of the conditional commodity in accordance with our proportion of co-ownership. The same shall also extend to miscellaneous claims that replace the conditional commodity or are otherwise incurred with reference to the conditional commodity such as insurance claims or claims from disallowed actions with loss or destruction. We revocably authorise the orderer to collect the claims assigned to us in its own name, but on our account. We shall only revoke said direct debit authorisation in the event of exploitation.
- 10.7 If third parties access the conditional commodity, in particular by levy of execution, the orderer shall point out our ownership without delay and notify us to make it possible for us to enforce our rights of ownership. Provided that the third party is not capable of reimbursing the court or out-of-court costs we incur in this framework, the orderer shall be liable to us for this.
- 10.8 We shall release the conditional commodity and the things or claims replacing them at request at our choice to the extent that their value is more than 50% in excess of the value of the secured claims.
- 10.9 If we withdraw from the contract with behaviour in breach of contract (case of exploitation), in particular default in payment, we shall be entitled to demand the conditional commodity.
- 10.10 If the reservation of ownership or assignment or transfer of ownership by way of security is not valid pursuant to the law in whose area the goods are, the collateral corresponding to reservation of ownership, assignment or transfer of ownership by way of security in this area shall be deemed as agreed. If the orderer's assistance is required, the orderer shall take all measures needed for justifying and maintaining said rights.

## 11. Warranty Claims

- 11.1 The goods shall be contractual if they do not depart from the agreed to specifications or only to an insignificant extent at the point in time of the passage of risk; our goods being contractual and free of defects shall be exclusively measured pursuant to the explicit agreements on quality and quantity of the ordered goods. We shall only assume liability for a particular purpose or particular suitability to the extent that this has been explicitly agreed; otherwise, the risk of suitability and usage shall be exclusively incumbent upon the orderer. We shall not be liable for deterioration or destruction or incorrect treatment of the goods after the passage of risk.
- 11.2 The content of the agreed to specifications and any explicitly agreed to purpose shall not constitute a guarantee; assuming a guarantee shall require an explicit written agreement.
- 11.3 The orderer has to check goods received without delay after receipt. There shall only be warranty claims if written notification of defects is provided without delay. Notification of concealed defects of quality has to be provided without delay after being discovered. After carrying out agreed to official acceptance, notification of defects that might be discovered after said official acceptance shall be ruled out.
- 11.4 With complaints, the orderer has to give us the opportunity to check the goods complained about without delay; at our request; the goods complained about or a sample thereof shall be made available to us at our expense. If said complaints are not justified, we reserve ourselves the right to charge the orderer freight and transfer costs and the expenditures of checking.
- 11.5 If there is a defect of quality, we shall provide subsequent compliance either by supplying a replacement or reworking at our choice taking the orderer's needs into account. If we are not successful at carrying out subsequent compliance within an appropriate period of time, the orderer can set us an appropriate period for subsequent compliance and after it expires fruitlessly it can either diminish the purchase price or withdraw from the contract; there shall not be any further claims. Item 13 shall remain unaffected.
- 11.6 The limitation of actions in the event of defective delivery shall end one year after delivery except in the event of intent. Supplying a replacement or reworking shall not start the limitation of actions again.
- 11.7 The orderer's recourse against us pursuant to Section 478 of Bürgerliches Gesetzbuch (German Civil Code) shall be limited to the legal extent of the warranty claims of third parties asserted against the orderer and the prerequisite shall be that the orderer complies with its requirement to give notice of defects

that is incumbent upon it in relation to us pursuant to Section 377 of Handelsgesetzbuch (German Commercial Code).

## 12. Copyright

- 12.1 We shall reserve ourselves the right to property, copyrights and other intangible industrial property rights to drawings and other documents. The orderer may not make said drawings and documents accessible to third parties. We shall only make plans designated by the orderer as confidential accessible to third parties with its consent.
- 12.2 If we take on a delivery order according to drawings, patterns or other specifications of the orderer, the orderer shall be liable for the industrial property rights of third parties not being violated.
- 12.3 If third parties assert claims against us due to said violation of industrial property rights, the orderer has to indemnify us from these claims at first written request and reimburse us for the necessary expenditures incurred from claims being asserted.
- 12.4 To the extent that software is included in the scope of delivery, the orderer shall be conceded a non-exclusive right to use the software supplied including its documentation. It shall be permitted the use of the delivery item intended for it. Using the software on more than one system shall be prohibited.

The orderer may only copy, revise or translate the software or reengineer it to the legally admissible extent. The orderer obliges itself not to remove the manufacturer's statements (in particular copyright labels) or not to change it without the supplier's explicit consent.

All other rights to the software and documentation including copies shall remain with the supplier or software supplier. It shall not be permitted to award sublicenses.

## 13. General Limitations to Liability

- 13.1 In the absence of other provisions in these terms and conditions, we shall only be liable for compensation for damage due to violating contractual or non-contractual obligations or when initiating the contract with intent or gross negligence of our legal representatives or vicarious agents and with culpable violation of essential contractual obligations. The liability for compensation for damage shall be limited to the typically occurring foreseeable damage with culpable violation of essential contractual obligations.
- 13.2 The liability due to culpable violation of life, limb or health shall remain unaffected; this shall also extend to mandatory liability pursuant to the Produkthaftungsgesetz (German Product Liability Law).
- 13.3 To the extent that the liability for compensation for damage is ruled out or limited for us, this shall also extend to the personal liability for compensation for damage of our workers, co-workers, representatives and vicarious agents.
- 13.4 Provided that we have assumed a guarantee due to an explicit written agreement (Section 443 of Bürgerliches Gesetzbuch - German Civil Code), only the agreements made there shall extend to the claims from said guarantee.

## 14. Setting Off, Intercompany Pricing Clause

- 14.1 The orderer shall only be entitled to the right of setting off its counterclaims if they have been declared final and conclusive or are undisputed. The orderer shall only be authorised to exercise a right of retention to the extent that its counterclaim is based on the same contractual relationship.
- 14.2 We shall be entitled to set off all claims we are entitled to against the orderer against all claims that the orderer is entitled to against us.

We shall be further entitled to set off all claims we are entitled to against the orderer against all claims that the orderer is entitled to against companies that Georgsmarienhütte Holding GmbH has direct or indirect majority holdings in, regardless of the legal grounds. The current group of companies can be seen in internet under <http://www.georgsmarienhuetten-holding.de>. The orderer can be given information at any time on the group of companies at its request.

## 15. Applicable Law

The law of the Federal Republic of Germany shall apply. The UN Convention on the International Sales of Goods shall not apply.

## 16. Place of Performance, Venue

The place of performance for our delivery obligation shall be the location of our headquarters or our supplying factory provided that the delivery is not carried out from our headquarters. The place of performance for your payment obligations shall be the location of our headquarters. The venue for all disputes from and in connection with this contract shall be Köthen, Germany for both contractual parties jurisdiction of the local court and Dessau, Germany with the jurisdiction of the regional court. We shall be entitled to sue the orderer at its general venue.