

DB Schenker in Germany

German Forwarders' Standard Terms

## German Freight Forwarders' Standard Terms and Conditions

**We operate exclusively in accordance with the Allgemeine Deutsche Spediteurbedingungen 2017 - ADSp 2017 - (German Freight Forwarders' General Terms and Conditions 2017) and – if they do not apply for performing logistics services - with the Logistic-AGB (General Terms and Conditions of Logistics-Services Providers), as of March 2006.**

Note: In clause 23 the ADSp 2017 deviates from the statutory liability limitation in section 431 German Commercial Code (HGB) by limiting the liability for multimodal transportation with the involvement of sea carriage and an unknown damage location to 2 SDR/kg and, for the rest, the customary liability limitation of 8.33 SDR/kg additionally to Euro 1.25 million per damage claim and EUR 2.5 million per damage event, but not less than 2 SDR/kg.

### Special transports/Movement by crane

Inasmuch as we work as haulage contactor, also as heavy loads haulage contractor, then we do so exclusively on the basis of the General German Haulier Terms and Conditions (ADSp). The “General Terms and Conditions of the German Federal Working Group Heavy Haulage and Crane Work (AGB-BSK)” apply if we ourselves perform crane work or carry out heavy and bulky transports and rough assemblies as a component of the crane work or transport service. For other assemblies that are not rough assemblies in the meaning of the AGB- BSK, we work on the basis of the BSK Terms and Conditions of Assembly (BSK- Assembly). The respective most recently published version of AGB- BSK and BSK- Assembly applies.

### Trade fair transportation

For trade fair transportation additional trade fair transportation regulations and the trade fair-transport directory of services apply.

Enclosures:

- German Freight Forwarders' Standard Terms and Conditions (ADSp) 21 pages (1<sup>st</sup> to 21<sup>st</sup>)
- AGB BSK Heavy Haulage and Crane Work Conditions 2 pages (22<sup>nd</sup> to 23<sup>rd</sup>)
- GTC BSK Platforms and Stackers 2 pages (24<sup>th</sup> to 25<sup>th</sup>)
- AGB BSK Installation Conditions 5 pages (26<sup>th</sup> to 30<sup>th</sup>)

Schenker Deutschland AG in  
Vertretung der Schenker AG  
als dem Vertragsspediteur der  
Messe Düsseldorf



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**Note:** In clause 23 the ADSp 2017 deviates from the statutory liability limitation in section 431 German Commercial Code (HGB) by limiting the liability for multimodal transportation with the involvement of sea carriage and an unknown damage location to 2 SDR/kg and, for the rest, the customary liability limitation of 8.33 SDR/kg additionally to Euro 1.25 million per damage claim and EUR 2.5 million per damage event, but not less than 2 SDR/kg.  
In addition the Fair and Exhibition Conditions are applicable. The “Bundesfachgruppe Schwertransporte und Kranarbeiten (BSK)” terms and conditions are the basis for heavyload orders.

## ADSp 2017

The following text is a translation of the German version of the ADSp 2017 by the DSLV and BGL. In case of doubts, the German version of the ADSp 2017 shall prevail.

<b>Preface</b>	
<p>The German Freight Forwarders' Standard Terms and Conditions 2017 (<i>Allgemeine Deutsche Spediteurbedingungen 2017 - ADSp 2017</i>) are recommended for use as of 1 January 2017 by the Federal Association of German Industry (BDI), the Federal Association of German Wholesale, Foreign Trade and Services (BGA), the Federal Association of Road Haulage, Logistics and Disposal (BGA), the Federal Association of Furniture Forwarders and Logistics (AMÖ), the Federal Association of Transport and Logistics in Industry and Trade (BWVL), the Association of the German Chambers of Industry and Commerce (DIHK), the Federal Association of German Freight Forwarders and Logistics Operators (DSLV) and the German Retail Federation (HDE). This advice is non-binding and the contract parties are free to make agreements that deviate from the contents of this recommendation.</p>	
<b>1.</b>	<b>Definitions<sup>1</sup></b>
(1.4)	<p>Consignee</p> <p>Legal person to whom the goods shall be delivered according to the Freight Forwarding Contract or valid instruction of the Principal or other persons authorised to dispose of.</p>
(1.11)	<p>Damage Case / Damage Event</p> <p>Damage Case means, when, due to an external process, a claimant raises a claim on the basis of a Freight Forwarding Contract or in lieu of a freight forwarding claim; Damage Event means, when, due to an external process, several claimants raise claims on the basis of several Freight Forwarding Contracts.</p>
(1.6)	<p>Dangerous Goods</p> <p>Dangerous Goods are goods that have the potential to endanger people, Vehicles or legal interests of third parties during the course of standard transportation, warehousing or other activities. In particular, hazardous goods are defined as goods that fall in the scope of application of statutes and regulations relating to hazardous goods, such as provisions covering dangerous materials, water or garbage.</p>
(1.1)	<p>Delivery</p> <p>The term of Delivery includes also the delivery in the warehouse business.</p>
(1.13)	<p>Freight Forwarder</p> <p>Legal person, which concludes a Freight Forwarding Contract with the Principal. Freight Forwarders are particularly carrier according to section 407, Freight Forwarder according</p>

<sup>1</sup> For user-friendliness, Section 1 ADSp 2017 ("Definitions") is sorted in alphabetical order. The numbering is according to the German version of the ADSp 2017.

	to section 453, warehouse keeper according to section 467 and sea freight carrier according to sections 481, 527 HGB.
(1.14)	<p>Freight Forwarding Contracts ("<i>Verkehrsverträge</i>")</p> <p>The ADSp cover all Freight Forwarding Contracts undertaken by the Freight Forwarder as contractor for all activities, regardless of whether they are freight forwarding, carriage of goods (by sea), warehousing or other, typical services pertaining to the freight forwarding business, such as customs handling, tracking of goods or cargo handling.</p> <p>These terms and conditions also apply to all typical logistical services included in freight forwarding, if these are in relation to the transport or warehousing of goods, in particular to activities such as the creation of loading units, consignments, labelling, weighing of goods and returns processing.</p> <p>Contracts about the presentation of manned motor Vehicles for use on instruction by the Principal shall also be deemed as Freight Forwarding Contracts ("<i>Lohnfuhrverträge</i>").</p>
(1.12)	<p>Interfaces</p> <p>After acceptance and before Delivery of the goods by the Freight Forwarder, Interfaces are defined as any transition of the goods from one legal person to another any transshipment from one Vehicle to another, any (temporary) storage.</p>
1.7	<p>Loading Means</p> <p>Means for the aggregation of Packages and for the creation of loading units, such as pallets, container, swap trailers, bins.</p>
(1.16)	<p>Material Contractual Obligations</p> <p>Material Contractual Obligations are defined as those that initially enable the contractually agreed fulfilment of the Freight Forwarding Contract and on which the contracting partner is entitled to reasonably rely on.</p>
(1.10)	<p>Packages</p> <p>Single items or units formed by the Principal for the fulfilment of the order with or without Loading Means, which the Freight Forwarder must handle as one ensemble (freight item as defined by sections 409, 431, 504 <i>German Commercial Code</i> (HGB)).</p>
(1.8)	<p>Place of Loading / Discharge</p> <p>The postal address, if the parties have not agreed on a more precise location.</p>
(1.19)	<p>Point of Time</p> <p>Agreed Point of Time for the arrival of the Freight Forwarder at the Place of Loading or</p>

	Place of Discharge.
(1.2)	Principal Legal person which concludes a Freight Forwarding Contract with the Freight Forwarder.
(1.15)	Shipper Legal Person, which hands over the goods for transportation according to the Freight Forwarding Contract or on a valid instruction.
(1.3)	Theft-Sensitive Goods Theft-Sensitive Goods are those exposed to an increased risk of robbery and theft, such as money, precious metals, jewellery, watches, precious minerals, art, antiques, check books, credit cards and/or other payment means, stocks and security papers, documents, spirits, tobacco, entertainment electronic goods, telecommunications goods, IT equipment and accessories as well as smart cards.
(1.18)	Time Frame Agreed Time Frame for the arrival of the Freight Forwarder at the Place of Loading or Place of Discharge.
(1.9)	Time of Performance The time (date, time of day) up to a particular performance must be taken place, for example a Time Frame or Point of Time.
(1.17)	Valuable Goods Good, at the time and place of taking over, with an actual value of at least 100 Euro/kg.
(1.5)	Vehicle Means of transport for the transportation of goods on traffic routes.
<b>2.</b>	<b>Scope of application</b>
2.1	The ADSp cover all Freight Forwarding Contracts undertaken by the Freight Forwarder as contractor.
2.2	Statutory provisions which cannot be modified by pre-formulated standard terms and conditions take precedence over the ADSp.

2.3	The ADSp do not apply to businesses that are exclusively dedicated to:
2.3.1	packaging,
2.3.2	transportation and warehousing of towed or salvaged goods,
2.3.3	transportation and warehousing of removal goods according to section 451 HGB,
2.3.4	storage and digitalisation of files; files are all types of embodied and digitalised business papers, documents, data storage mediums and similar objects for information collection,
2.3.5	abnormal and heavy-load transports, which require a transportation regulation permission or exception, crane services and associated assembly work,
2.4	The ADSp do not apply to Freight Forwarding Contracts with consumers as defined in Section 13 <i>German Civil Code</i> (BGB).
3.	<b>Obligation of the Principal regarding placing of orders, information requirements, special goods</b>
3.1	The Principal shall inform the Freight Forwarder about all relevant parameters affecting the carrying out of the order.  These include
3.1.1	addresses, type and quality of the goods, the gross weight (including packaging and Loading Means) or otherwise specified quantities, marks, numbering, quantities and type of Packages, specific characteristics of the goods (such as live animals and plants, perishability), the value of the goods (for example for customs purposes or the insurance of goods according to clause 21 ADSp) and Delivery times,
3.1.2	all public-legal duties and safety regulations, such as duties relating to customs, foreign trade regulations (particularly those relating to goods and people as well as specific country embargos) and legal safety obligations.
3.1.3	in case of carriage of goods by sea, all relevant data in the compulsory form relating to safety statutes (e. g. International Convention for the Safety of Life at Sea (SOLAS).
3.1.4	intellectual property rights of third parties, such as trademark and license limitations which are connected to the possession of the goods, including legal or regulatory hindrances capable of prejudicing the processing of the order.

3.1.5	specific technical requirements for the means of transport and particular cargo securing means to be supplied by the Freight Forwarder.
3.2	In case of Dangerous Goods, the Principal must inform the Freight Forwarder in due time and in text form about the quantity and specific nature of the hazard including - if required - the necessary safety measures. If Dangerous Goods fall into scope of the law on the transport of dangerous goods ( <i>Gesetz über die Beförderung gefährlicher Güter</i> (GGBefG) or if other transported and stored goods fall into scope of other Dangerous Goods or garbage related statutes or regulations, the Principal must provide the relevant information, in particular the classification according to the relevant Dangerous Goods laws, and, at the latest, during the handover of the goods, supply the required documentation.
3.3	In case of valuable or Theft-Sensitive Goods, the Principal must inform the Freight Forwarder in text form regarding the type and value of the goods and the current risks involved to enable the Freight Forwarder to assess the acceptance of the order or take appropriate measures for the safe and damage-free completion of said order. In case of acceptance of the order, the Freight Forwarder is obliged to undertake appropriate safety measures for protecting the goods.
3.4	The Principal is responsible for supplying the Freight Forwarder with all information, certificates and other documentation required, such as customs classification, for the correct processing of customs or other statutorily required handling of the goods, including, but not limited to, security checks for air freight shipments.
<b>4</b>	<b>Rights and duties of the Freight Forwarder</b>
4.1	The Freight Forwarder shall act in the interest of the Principal, check the placed order for obvious faults and immediately inform the Principal, if required, about all dangers known by the Freight Forwarder for the fulfilment of the order.
4.2	The Freight Forwarder takes care that the Vehicles, loading safety means and, if their presentation is agreed, Loading Means are in a technically perfect condition, comply with statutory provisions and the requirements of the Freight Forwarding Contract. Vehicles and Loading Means shall be equipped with the typical appliances, equipment or methods for the protection of the goods, in particular loading safety means. Vehicles shall have low emissions and noise as well as low energy consumption.
4.3	The Freight Forwarder shall deploy reliable, appropriate and, for the particular task in question, suitable and duly employed, qualified and trained drivers and, if required, with a driver certification.
4.4	On foreign premises, the Freight Forwarder shall comply with the house rules, plant or construction site regulations in force, if they were announced to the Freight Forwarder. Section 419 HGB remains unaffected.

4.5	The Freight Forwarder is entitled to make customs clearance dependent on issuance of a written power of attorney that assigns direct representation.
4.6	<p>If the Freight Forwarder is assigned with the cross-border transportation of the goods or the import or export customs clearance, the Freight Forwarder is, in case of doubt, also entitled to act in regards to the customs or other statutorily required handling of the goods, if the transport of the goods to the agreed destination would be impossible without such action.</p> <p>The Freight Forwarder is hereby entitled</p>
4.6.1	to open Packages whenever such action is necessary to comply with statutorily required controls (for example, Freight Forwarder as regulated agent), and, subsequently, to undertake all measures necessary to complete the order, such as repackaging the goods.
4.6.2	to advance payments required by customs.
4.7	In case of damage to or delay of the goods and upon request by the Principal or Consignee, the Freight Forwarder must procure immediately all required and known information for securing their compensation claims.
4.8	In the absence of a separate agreement in the order supplied to the Freight Forwarder, the service does not include:
4.8.1	the supply or replacement of pallets or other Loading Means,
4.8.2	the loading and unloading of goods, unless otherwise indicated by circumstances or common practice.
4.8.3	a transshipment ban (Section 486 HGB does not apply),
4.8.4	the allocation of a shipment tracking system, unless it is in line for this sector of industry. Clause 14 ADSp remains unaffected.
4.8.5	<p>returns, detours and hidden additional cargo.</p> <p>If in deviation to the actual order, one or more Packages are handed over and accepted for transportation by the Freight Forwarder, then the Freight Forwarder and the Principal concludes a new Freight Forwarding Contract about these goods. In case of returns or hidden additional cargo and in absence of a separate agreement, the terms and conditions of the original Freight Forwarding Contract will apply. Clause 5.2 ADSp remains unaffected.</p>

4.9	Further service and information obligations, for example quality management measures and their auditing, monitoring and evaluation systems as well as key performance indicators needs to be expressly agreed.
<b>5</b>	<b>Contact person, electronic communication and documents</b>
5.1	<p>Upon request of a contracting party, each side will nominate one or more contact persons to receive information, explanations and enquiries regarding the fulfilment of the contract and exchange names and addresses. This information needs to be updated in case of changes. If either contracting party fails to provide details for a contact person, then the relevant signatory to the contract shall be the designated contact person.</p> <p>Information obligations, which exceeds the obligation in statutory provisions, for example measures of the Freight Forwarder in case of disruptions, in particular, an imminent delay during takeover or Delivery, obstacles to carriage and Delivery, damages to the goods or other disruptions (emergency concept) needs to be agreed separately.</p>
5.2	In the absence of an expressly agreement, contractual statements by warehousing or transport personnel require approval from the respective party to be considered valid.
5.3	The Principal takes care of the required declarations to be supplied by the Principal's Shipper or Consignee during the fulfilment of the contract at the Place of Loading and Place of Delivery, and of real actions, such as Delivery and receipt of the goods.
5.4	If agreed between the Principal and the Freight Forwarder, the parties will transmit and receive the shipping details, including the creation of the invoice, by electronic means (electronic data interchange / remote transmission). The transmitting party carries the responsibility for the loss, completeness and validity of any sent data.
5.5	In case of an agreement according to clause 5.4 ADSp, the parties ensure that their IT system is ready for operation and that data can be processed appropriately, including the usual safety and control measures, to protect the electronic data exchange and prevent unauthorized access, modification, loss or destruction by third parties. All parties are obliged to give timely notification of any changes to their IT systems that could affect the electronic data interchange.
5.6	<p>Electronic or digital documents, in particular proof of deliveries, shall be considered equal to written documents.</p> <p>Furthermore, each party is entitled to archive written documentation in exclusively electronic or digital format and to eliminate originals, the latter always in consideration of the legal regulations regarding the same.</p>
<b>6.</b>	<b>Packaging and labelling duties of the Principal</b>

6.1	The Principal shall pack the goods, and if required, clearly and permanently label all Packages with their required identifications, such as addresses, marks, numbers and symbols relating to the handling and characteristics of the goods. Old identification marks must be removed or garbled. The same applies for Packages.
6.2	Furthermore, the Principal is responsible for:
6.2.1	identifying all items belonging to the same shipment, to ensure easy recognition,
6.2.2	ensuring that Packages, if required, cannot be accessed without leaving external traces.
7	<b>Securing cargo and supervisory duties of the Freight Forwarder</b>
7.1	In all cases where loading and discharge occurs at more than one location, the Freight Forwarder takes care for the security of cargo until the last Place of Discharge and at all times, but not before the completion of loading in a transport safety manner.
7.2	The Freight Forwarder shall conduct controls at all Interfaces. The Freight Forwarder shall check completeness and identity of the goods, their apparent good order and condition as well as all seals and locks and record any irregularities in the accompanying documents or via separate notification.
8.	<b>Receipt</b>
8.1	The Freight Forwarder shall issue a certificate of receipt with reservations noted, if necessary.  In case of doubt, the certificate of receipt issued by the Freight Forwarder only confirms the number and type of Packages, but not their content, value, weight or other measurements.
8.2	Previously loaded or sealed loading units, such as containers or swap bodies and previously transmitted data, the accuracy of the certificate of receipt regarding quantity and type of loaded Packages is vitiated, if the Freight Forwarder notifies the Principal on differences (in quantity) or damages, immediately after unloading the loading unit.
8.3	The Freight Forwarder must request proof of Delivery from the Consignee in form of a Delivery receipt listing all Packages as outlined in the order or other accompanying documentation. Should the Consignee refuse to issue a Delivery receipt, the Freight Forwarder must request instructions from the Principal.  The Principal can demand the Delivery receipt for a period of one year after the goods have been delivered.

8.4	As receipt for takeover or Delivery of the goods counts any signed document which gives evidence for fulfilment of the order, such as Delivery notes, forwarders certificate of receipt, consignment note, sea way bill, consignment bill or a bill of lading.
8.5	The certificate of receipt and Delivery receipt can also be issued electronically or digitally, unless the Principal requests the issuing of a consignment note, sea way bill, consignment bill or bill of lading.
9.	<b>Instructions</b>
	Upon conclusion of the contract, the Freight Forwarder must follow all instructions regarding the cargo, unless carrying out such instructions poses disadvantages to his business or damages to consignments of other Principals or Consignees. If the Freight Forwarder intends not to follow an instruction, then the Freight Forwarder shall inform the instructor immediately.
10.	<b>Freight payment, cash on Delivery</b>
10.1	Notifications by the Principal to the effect that the order should be executed freight collect or for the account of the Consignee or a third party, for example according to Incoterms, do not exempt the Principal from his obligation to pay the Freight Forwarder its remuneration and outlays, including freights, customs charges and other expenses. Freight collect instructions, for example according to section 422 HGB, Article 21 CMR, remain unaffected.
11	<b>Default of loading and Delivery times, demurrage</b>
11.1	In cases where the Principal must load or unload the Vehicle, the Principal has the obligation to do so within the agreed, otherwise within a reasonable loading and unloading time.
11.2	If, in case of carriage of goods by road, the parties agree on a Time Frame or Point of Time or is such notified by the Freight Forwarder without objection by the Principal, Shipper or Consignee, the loading and unloading time - irrespective of the number of shipments per Place of Loading and Discharge - for full truck loads, but with the exception for bulk goods, for Vehicles with 40 tons maximum permissible weight shall be maximum 2 hours for loading and unloading in general. The times shall be reduced appropriately for Vehicles with a lower maximum permissible weight in the individual case.
11.3	The loading or unloading time begins with the arrival of the road vehicle at the designated Place of Loading and Discharge (for example, by notifying the gate keeper), and ends when the Principal has completed all its duties.  However, if a Time of Performance has been agreed for the arrival of road Vehicles at the

	Place of Loading and Discharge, the loading and unloading time does not begin before the agreed presentation time.
11.4	In cases where the contractually agreed loading and unloading time are not maintained due to reasons beyond the Freight Forwarder's scope of responsibility, the Principal must pay the Freight Forwarder the agreed, otherwise commonly accepted, demurrage fees.
11.5	The aforementioned provisions apply accordingly, when the Freight Forwarder is obliged to load and unload the goods, and when the Principal is exclusively committed to prepare the goods for loading or to accept them after unloading.
<b>12.</b>	<b>Performance hindrances and <i>force majeure</i></b>
12.1	If the Freight Forwarder is unable to take over the goods, or unable to take them over on time, the Freight Forwarder must immediately notify and seek instruction from the Principal. Section 419 HGB applies accordingly. The Principal remains entitled to terminate the Freight Forwarding Contract, whereas the Freight Forwarder is not entitled to ask for compensation according to section 415 (2) HGB.
12.2	<p>Performance hindrances that do not fall within the scope of responsibility of either contracting party, free said parties of their performance duties for the duration of the hindrance and the extent of its impact.</p> <p>Such performance hindrances are defined as force majeure, civil unrest, war or acts of terrorism, strikes and lock-outs, transport route blockades, and any other unforeseeable, unavoidable and serious events.</p> <p>In case of a performance hindrance, the contracting parties are obliged to notify the other party immediately. Additionally, the Freight Forwarder is obliged to ask the Principal for instructions.</p>
<b>13.</b>	<b>Delivery</b>
13.1	If, after arrival at the Place of Discharge, it becomes apparent that the unloading cannot take place within the time of unloading, the Freight Forwarder must immediately notify the Principal and request for relevant instructions. Section 419 HGB applies accordingly.
13.2	If the Freight Forwarder cannot adhere to the agreed Time of Performance or - in the absence of an agreement - to a reasonable time for Delivery, the Freight Forwarder shall request instructions from the Principal or the Consignee.
13.3	In cases where the Consignee is absent at the designated home, business or shared location address and if the Consignee lives therein, the goods, always assuming there are no obvious doubts regarding the entitlement to receive the goods of the person in question, may be delivered to:

13.3.1	an adult family member; a family employee; or an adult with permanent residence at the designated home address,
13.3.2	an employee at the designated business location,
13.3.3	a manager or representative authorised to receive the goods at the designated shared location.
13.4	In cases where the Freight Forwarder and Principal have agreed on Delivery without the presentation to an actual person (for example, night, garage or assembly line deliveries), Delivery is deemed to have taken place on the actual physical deposit of the goods at the agreed location.
13.5	The Delivery can only take place under supervision of the Principal, Consignee or a third party authorised for reception. Clauses 13.3 and 13.4 ADSp remain unaffected.
<b>14.</b>	<b>Information and restitution duties of the Freight Forwarder</b>
14.1	The Freight Forwarder has the duty to supply the Principal with the required information and, upon request, with the status of the business as well as to demand accountability upon completion. However, the Freight Forwarder is only obliged to reveal costs, if the Freight Forwarder works on Principal's account.
14.2	The Freight Forwarder has the duty to give anything to the Principal what he has received by carrying out and managing the business.
<b>15.</b>	<b>Warehousing</b>
15.1	The Principal has the duty to pack and mark the goods, if required, and to make available all documents and information to the Freight Forwarder for an appropriate storage.
15.2	The Freight Forwarder decides in its sole discretion if warehousing takes place in its own facilities or, if not otherwise agreed, those of third parties. Whenever warehousing take place at third party warehouses, the Freight Forwarder must supply timely information regarding its name and location to the Principal or, whenever a warehouse warrant has been issued, to make a note of the information on the same.
15.3	The Freight Forwarder takes care for the duly maintenance and care of the warehouse and storage space, the drives on the premises and for securing the goods, in particular theft protection. Additional security measures, for example measures exceeding the statutory fire protection laws, must be explicitly agreed.

15.4	Unless otherwise agreed:
15.4.1	takeover of the goods for warehousing begins with the unloading of the goods from the Vehicle by the Freight Forwarder and ends with the completion of the Delivery by the Freight Forwarder.
15.4.2	inventory management is via the Freight Forwarder's inventory accounting,
15.4.3	there is one physical inventory inspection per year. On instruction of the Principal, the Freight Forwarder shall conduct further physical inventories against compensation.
15.5	With taking over the goods and if appropriate examination means are available, the Freight Forwarder is obliged to conduct a receiving inspection on types, quantities, marks, numbering, quantities of Packages as well as outer visible damages according to section 438 HGB.
15.6	The Freight Forwarder shall conduct regular inspections with appropriate personnel for securing the goods.
15.7	In case of stock shortfall and imminent changes at the goods, the Freight Forwarder shall immediately inform the Principal and ask for instructions. Section 471 (2) HGB remains unaffected.
15.8	Additional service and information obligations require an explicit agreement.
<b>16.</b>	<b>Remuneration</b>
16.1	The services according to the Freight Forwarding Contract are compensated with the agreed remuneration, if this remuneration includes the costs for transportation and warehousing. Supplemental claims for costs occurred during regular transportation or warehousing and which were not foreseeable at the time of the offer, cannot be claimed separately, unless otherwise agreed. Calculation errors are at the expense of the calculator. sections 412, 418, 419, 491, 492, 588 until 595 HGB and comparable provisions of international conventions remain unaffected.
<b>17.</b>	<b>Compensation claims and right of recourse</b>
17.1	The Freight Forwarder is, if not caused by him, entitled to ask for refund of expenses properly incurred, in particular those relating to average contributions, detention or demurrage charges, including additional packaging for protecting the goods.

17.2	If the Principal instructs the Freight Forwarder to receive goods and if, on reception of the goods by the Freight Forwarder, freight, cash on delivery, customs duties, taxes, or other expenses and charges are demanded, the Freight Forwarder is entitled - but not obliged - to pay these costs according to the circumstances he has properly assessed, and to claim reimbursement from the Principal, unless otherwise agreed.
17.3	On request, the Principal must immediately indemnify the Freight Forwarder for expenditures, such as freight, average contributions, customs duties, taxes and other fees demanded from the Freight Forwarder, in particular acting as a person authorised to dispose or as possessor of goods belonging to third parties, unless the Freight Forwarder is not responsible for their accrual.
<b>18.</b>	<b>Invoices, foreign currencies</b>
18.1	Remuneration claims of the Freight Forwarder require the reception of an invoice or payment schedule in accordance to statutory requirements. If not otherwise agreed, the maturity is not dependent on presenting a delivery receipt in case of an uncontested Delivery.
18.2	Regarding foreign Principals or Consignees, the Freight Forwarder is entitled to ask whether to receive payment in the relevant foreign currency or in Euro (EUR).
18.3	If the Freight Forwarder owes foreign currency or has advanced foreign currency amounts, the Freight Forwarder is entitled to ask for payment in either the relevant foreign currency or in EUR (EUR). In case of Euro (EUR), currency conversion is made according to the official exchange rate on the day of payment, which shall be evidenced by the Freight Forwarder.
18.4	Payment according to a credit memo procedure must be expressly agreed. In case of doubt, all credit memos are to be issued immediately, upon completion of services. Clause 18.1 1 <sup>st</sup> sentence ADSp is not applicable for credit memo procedures.
<b>19.</b>	<b>Set-off, Retention</b>
	In the face of claims arising from the freight forwarding contract and associated non-contractual claims, set-off or retention is only permitted when the claim is uncontested, ready for decision or legally established.
<b>20.</b>	<b>Lien and retention rights</b>
20.1	The Freight Forwarder is entitled to secure its demands arising from freight forwarding services according to the legally permitted regulations regarding lien and retention rights.

20.2	Lien rights can be exercised according to the legally established provisions, providing:
20.2.1	the threat and the required notifications about the lien exercise and the sale of the pledged items by the carrier shall be forwarded to the Consignee,
20.2.2	the time limit of one month as specified in section 1234 BGB is superseded by a time limit of two weeks.
20.3	The Principal is entitled to prohibit the exercise of the lien by granting an equivalent security for its claims, such as a directly enforceable bank guarantee.
<b>21.</b>	<b>Insurance of goods</b>
21.1	The Freight Forwarder arranges the insurance of the goods (c. f. goods in transit or warehousing insurance) with an insurer of its choice, when the Principal assigns the Freight Forwarder to do so prior to handing over the goods.
21.2	The Freight Forwarder shall arrange insurance for the goods, if this is in the interests of the Principal. The Freight Forwarder can assume that insurance is in the interests of the Principal, in particular when:
21.2.1	the Freight Forwarder has arranged insurance for a previous Freight Forwarding Contract for the same Principal in the course of an ongoing business relationship,
21.2.2	the Principal has declared a value of the goods for the purpose of insurance.
21.3	The assumption that insurance is in the interest of the Principal according to clause 21.2 ADSp can be discounted, in particular when:
21.3.1	the Principal has prohibited the purchase,
21.3.2	the Principal is a Freight Forwarder, carrier or warehouse keeper.
21.4	In case of purchasing insurance cover, the Freight Forwarder shall observe instructions of the Principal, in particular the amount insured and risks to be covered. In the absence of such an instruction, the Freight Forwarder must assess the type and scope of insurance in its sole discretion and purchase insurance cover at the usual market conditions.
21.5	If, due to the nature of the goods to be insured, or for another reason, the Freight Forwarder is unable to purchase insurance cover, the Freight Forwarder will notify the

	Principal immediately.
21.6	If the Freight Forwarder purchases an insurance after conclusion of the Freight Forwarding Contract and upon instruction of the Principal or recovers a claim or acts otherwise on behalf of the Principal regarding carrying out insurance claims or averages, the Freight Forwarder is entitled to a reasonable remuneration according to local standards, otherwise, an appropriate remuneration, in addition to the compensation of its expenses, even in the absence of a prior agreement.
<b>22.</b>	<b>Liability of the Freight Forwarder, Subrogation of claims of reimbursement</b>
22.1	The Freight Forwarder is liable for damages according to the statutory provisions. However, the following provisions shall apply, in as much as they do not contradict mandatory regulations, in particular the law of pre-formulated terms and conditions.
22.2	In all cases, where the Freight Forwarder is fault-based liable for losses or damages to the goods (" <i>Güterschaden</i> ") according to clause 23.3 and 24, the Freight Forwarder must only pay the value and reimburse the costs according to sections 429, 430, 432 HGB instead of damage compensation.
22.3	In case of inventory divergences, the Freight Forwarder is entitled to balance the inventory with positive stock balance differences and stock shortfall of the same Principal for value evaluation in cases as set out in clause 24 ADSp.
22.5	If the Freight Forwarder has claims, for which the Freight Forwarder is not liable for, against a third party in case of damages, or in cases when the Freight Forwarder has claims exceeding the sum for which the Freight Forwarder is liable, the Freight Forwarder must subrogate such claims to the Principal upon request, unless the Freight Forwarder has a separate agreement to pursue claims on behalf and at the expense of the Principal. sections 437, 509 HGB remain unaffected.
<b>23.</b>	<b>Liability limitations</b>
23.1	Except in case of damages during carriage of goods by sea or ordered warehousing, the Freight Forwarder's liability for damages to goods is limited according to Section 431 (1), (2) and (4) HGB, to:
23.1.1	8,33 <i>Special Drawing Rights</i> (SDR) for every kg, whenever the Freight Forwarder is: <ul style="list-style-type: none"> <li>- a carrier, as defined by Section 407 HGB,</li> <li>- acting as principal ("<i>Spediteur im Selbsteintritt</i>"), fixed costs freight forwarder (<i>Fixkostenspediteur</i>) or consolidator ("<i>Sammelladungsspediteur</i>"), according to sections 458 to 460 HGB or</li> <li>- care, custody and control Freight Forwarder ("<i>Obhutsspediteur</i>") according to</li> </ul>

	Section 461 (1) HGB.
23.1.2	<p>2 instead of 8.33 SDR for every kg, whenever the Principal has agreed to a Freight Forwarding Contract which is subject to a variety of transport means and includes carriage of goods by sea and an unknown damage place.</p> <p>In case of a known damage place, the liability according to section 452a HGB is subject to the liability exclusion and liability limitation of the ADSp.</p>
23.1.3	Whenever Freight Forwarder's liability according to clause 23.1.1 ADSp exceeds an amount of EUR 1,25 million per Damage Case, this liability is furthermore limited to EUR 1,25 million per Damage Case, or to 2 SDR for every kg, whichever amount is higher.
23.2	The liability of the Freight Forwarder for damages to the goods in its custody for Freight Forwarding Contracts which are subject to carriage of goods by sea and cross-border transportation is limited to the maximum statutory liability amount. Clause 25 ADSp remains unaffected.
23.3	For all cases out of scope of clauses 23.1 and 23.2, such as section 461 (2) HGB, 280 ff BGB, the liability of the Freight Forwarder for damages to goods is limited according to Section 431 (1), (2) und (4) HGB to a maximum of:
23.3.1	2 SDR per kg for Freight Forwarding Contracts relating to carriage of goods by sea or a transportation by a variety of transport means, but including carriage of goods by sea,
23.3.2	8.33 SDR per kg for all other Freight Forwarding Contracts.
23.3.3	Furthermore, the Freight Forwarder's liability is limited to the maximum amount of EUR 1,25 million for each case of damage.
23.4	The liability of the Freight Forwarder for all other damages than damages to the goods with the exception of damages during ordered warehousing or damages to personal injury or goods of third parties is limited to three times the amount that would be payable for the loss of goods according to clauses 23.3.1 or 23.3.2 ADSp. Furthermore, the Freight Forwarder's liability is limited for each case of damage to the maximum amount of 125,000 Euros.
23.4.1	Sections 413 (2), 418 (6), 422 (3), 431 (3), 433, 445 (3), 446 (2), 487 (2), 491 (5), 520 (2), 521 (4), 523 HGB as well as any relevant liability provisions in international conventions shall remain unaffected.
23.4.2	Clause 23.4 ADSp is not applicable on statutory provisions, such as Article 25 <i>Montreal Convention</i> (MC), Article 5 <i>Règles uniformes concernant le Contrat de transport international ferroviaire des marchandises</i> (CIM) or Article 20 <i>Convention de Budapest relative au contract de transport de marchandises en navigation intérieure</i> (CMNI), which

	extend Freight Forwarder's liability or permit to extend.
23.5	If Freight Forwarder's liability according to Articles 23.1, 23.3 and 23.4 ADSp exceeds the amount of EUR 2,5 million per Damage Event, then Freight Forwarder's liability is, irrespective of how many claims arise from a single Damage Event, further limited to a maximum amount of EUR 2,5 million per Damage Event or to 2 SDR per kg for lost or damaged goods, whichever amount is the higher. When there is more than one claimant, the Freight Forwarder's liability shall be proportionate to individual claims.
<b>24.</b>	<b>Liability limitations for ordered warehousing, inventories and declaration of value</b>
24.1	In the case of ordered warehousing, the liability of the Freight Forwarder for damages to goods is limited to:
24.1.1	8.33 SDR for every kg corresponding to 431 (1), (2) and (4) HGB,
24.1.2	a maximum of EUR 35,000 per Damage Case.
24.1.3	70,000 Euros per year, in cases where the damage claimed by the Principal bases, contrary to clause 24.1.2 ADSp, on a difference between calculated stock and actual stock of the inventory, irrespective of the amount and type of inventory taking and the amount of Damage Cases causing the difference in inventory.
24.2	Upon payment of an agreed supplement and prior to warehousing of goods, the Principal can specify a value in text form for an increased liability that differs from the maximum amounts stipulated in clause 24.1. In this case, the specified value replaces the relevant maximum amount.
24.3	In case of warehousing upon instruction, the Freight Forwarder's liability for other damages, excluding damages to personal injury or goods of third parties, is limited to EUR 35,000 per case of damage.
24.4	In case of warehousing upon instruction, but excluding personal injury or damages to goods of third parties, the Freight Forwarder's liability is always limited to EUR 2,5 million per Damage Event, irrespective of how many claims arise from a single Damage Event. When there is more than one claimant, the Freight Forwarder's liability shall be proportionate to individual claims. Clause 24.2 ADSp remains unaffected.
<b>25.</b>	<b>Exclusion of liability for carriage of goods by sea and inland waterway transportation</b>
25.1	In accordance with section 512 (2) No. 1 HGB, it is agreed that:  The Freight Forwarder in its position as carrier is not responsible for any fault or neglect

	on the part of its servants or of the ship's company, insofar as the corresponding damage was caused in the course of steering or otherwise operating the ship, or was caused by fire or explosion on board the ship and the measures taken were not predominantly for the benefit of the cargo.
25.2	According to Article 25 (2) CMNI it is agreed that the Freight Forwarder in its position as carrier or actual carrier is not liable for damages:
25.2.1	caused by an act or omission by the master of the vessel, the pilot or any other person in the service of the vessel, pusher or tower during navigation or in the formation or dissolution of a pushed or towed convoy, provided that the Freight Forwarder complied with the obligations set out for the crew in Article 3 (3) CMNI, unless the act or omission results from an intention to cause damage or from reckless conduct with the knowledge that such damage would probably result,
25.2.2	caused by fire or an explosion on board the vessel, where it is not possible to prove that the fire or explosion resulted from a fault of the Freight Forwarder or the actual carrier or their servants or agents or a defect of the vessel,
25.2.3	the defects existing prior to the voyage of his vessel or of a rented or chartered vessel if he can prove that such defects could not have been detected prior to the start of the voyage despite due diligence.
25.3	Clause 22.4 ADSp remains unaffected.
<b>26.</b>	<b>Non-contractual liability</b>
	In accordance with sections 434, 436 HGB, the above mentioned liability exclusions and limitations also apply to non-contractual claims. Clause 23.4.1 ADSp applies accordingly.
<b>27.</b>	<b>Qualified fault</b>
27.1	Liability exclusions and limitations listed in clauses 22.2, 22.3, 23.3 and 23.4 in conjunction with 23.5, 24 as well as 26 ADSp do not apply when the damage has been caused by:
27.1.1	intent or gross negligence of the Freight Forwarder or vicarious agents or
27.1.2	infringement of Material Contractual Obligations, whereby such claims are limited to predictable and typical damages.
27.2	Divergent from clause 27.1.2 ADSp, the liability limitations of clause 24.1 and 24.2 ADSp only apply in case of gross negligent or intentional infringements of material contractual

	duties.
27.3	Sections 435, 507 HGB remains applicable within their scope of application.
27.3	Clause 27.1 ADSp is not applicable on statutory provisions, such as Article 25 MC, Article 36 CIM or Article 20, 21 CMNI, which extend Freight Forwarder's liability, allows extending or expanding the imputation of fault of servants or third parties.
<b>28.</b>	<b>Liability insurance of the Freight Forwarder</b>
28.1	The Freight Forwarder is obliged to purchase and maintain liability insurance at the usual market conditions with an insurer of his choice that, as a minimum, covers the ordinary liability amounts of its freight forwarding liability according to ADSp and statutory provisions. The agreement of maximum insurance amounts per Damage Case, Damage Event and year is permitted as well as the agreement of reasonable deductibles for the Freight Forwarder.
28.2	Upon request, the Freight Forwarder is obliged to provide evidence of the liability insurance and its validity by presentation of an insurance confirmation within a reasonable Time Frame. In absence of such a presentation, the Principal is entitled to terminate the Freight Forwarding Contract extraordinarily.
28.3	The Freight Forwarder is only entitled to rely on the liability limitations of the ADSp, when the Freight Forwarder provides an appropriate insurance cover at the time of order.
<b>29.</b>	<b>Liability of the Principal</b>
29.1	The liability of the Principal pursuant to sections 414, 455, 468, and 488 HGB is limited to EUR 200,000 per Damage Event.
29.2	The aforementioned liability limitation does not apply in case of personal injuries, such as injury of life, body and health, if the damage was caused by gross negligence or wilful intent of the Principal or its vicarious agents, or infringement of Material Contractual Obligations, whereas the latter is limited to predictable and typical damages.
<b>30.</b>	<b>Applicable law , place of fulfilment, place of jurisdiction</b>
30.1	The legal relationship between the Freight Forwarder and Principal is governed by German law.
30.2	The place of fulfilment for all involved parties is the location of the Freight Forwarder's branch office dealing with the order or the enquiry.

30.3	The place of jurisdiction for all disputes and all involved parties arising from the Freight Forwarding Contract, an enquiry or in relation to it, is the location of the Principal or Freight Forwarder's branch office dealing with the order or enquiry, as far as all these parties are merchants. The aforementioned place of jurisdiction shall be deemed as an additional place of jurisdiction pursuant to Article 31 CMR and Article 46 § 1 CIM, but not in case of Article 39 CMR, Article 33 MC, Article 28 <i>Convention for the Unification of certain rules relating to international carriage by air (WC)</i> .
<b>31</b>	<b>Confidentiality</b>
31.1	Contractual parties are obliged to maintain confidentiality regarding all unpublished information received during the execution of the freight forwarding contract. This information can only be used for the exclusive purpose of contract fulfilment. The parties shall commit other legal persons with an equivalent confidentiality obligation, if these legal persons are deployed for contract fulfilment.
<b>32</b>	<b>Compliance</b>
32.1	The Freight Forwarder shall comply with minimum wage provisions and minimum conditions for workplaces and confirms the compliance in text form upon request of the Principal. The Freight Forwarder indemnifies the Principal for its liability for minimum wages, if the Freight Forwarder, its subcontractor or hirer during the course of fulfilment of the Freight Forwarding Contract, does not pay the minimum wages and the Principal is demanded to pay.
32.2	The Freight Forwarder shall ensure in case of transportation services, that its executing subcontractor
32.2.2	deploys driving personnel, which comply with the requirements of section 7 (1) <i>Güterkraftverkehrsgesetz (GüKG)</i> , if applicable,
32.2.3	upon request provides all documents, which must be carried during transportation according to statutory provisions, when the Principal or third parties must comply with statutory controlling obligations,
32.3	In case of transportation, the Freight Forwarder or its executing subcontractor is obliged to organise the activities of its driving personnel according to the compulsory working, driving and recreation times. During the driving of Vehicles, alcohol and drugs are generally prohibited.
32.4	Both contracting parties commit to carrying out their contractual duties and to act according to the legal regulations covering their business and to support and obey the principles of the United Nations Global Compact (UNG), the United Nations Declaration of Human Rights, and the Declaration of the International Labour Organization regarding the 1998 Declaration on Fundamental Principles and Rights at Work, in accordance with

	national laws and customs. In particular, both parties will commit to:
32.4.1	no child or forced labour,
32.4.2	comply with the relevant national laws and regulations regarding working hours, wages, salaries and to comply with any other obligations for employers,
32.4.3	to comply with the current regulations on health and safety at work, and to provide a safe and healthy workplace to ensure the health of employees and to avoid accidents, injuries and work-related illness,
32.4.4	prohibit all discrimination based on race, religion, disability, age, sexual orientation or sex,
32.4.5	comply with international standards on corruption, such as those published in UNGC and to adhere to local anti-corruption and bribery laws,
32.4.6	adhere to all current environmental protection laws and regulations,
32.4.7	engage its business partners and subcontractors according to the aforementioned principles.

**GENERAL TERMS AND CONDITIONS OF  
THE GERMAN FEDERAL WORKING GROUP HEAVY HAULAGE AND CRANE WORK  
(AGB-BSK Crane and Haulage 2013) (Status 01.10.2013)**

**I. GENERAL SECTION**

1. All our crane and haulage Services, as well as rough assemblies, are subject to the following terms and conditions unless overriding statutory regulations stipulate otherwise (e.g. German Commercial Code (HGB) or CMR, CMNI/CLNI, CIM/COTIF or MÜ).
2. **Crane Services** in 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 transporting loads and/or persons for the purpose of working with a mobile hoist and relates to accomplishing one or several contracted hoisting manoeuvres by the contractor according to the instructions and arrangements. This includes especially isolated marshalling of heavy objects by means of a crane.
3. **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, armoured 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 assemblies and disassemblies** are components of the crane or transport Service if this is contracted. 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 apply for assembly Services going beyond this (final assembly, trial run, fine adjustments, etc.).
5. Results of Site inspections and Special agreements, e.g. with regard to the loading and unloading locations, crane location, etc. must be recorded in writing by the parties.
6. Contracts for carrying out large volume and heavy transports or moving cranes in public road traffic require the permission or approval of the responsible public authority, especially with regard to § 18 I 2 and § 22 II, IV and § 29 III and § 46 I No. 5 of the Federal Road Traffic Regulations (StVO) as well as § 70 I Federal Road Traffic Registration Ad (StVZO). These contracts are concluded exclusively under the condition precedent that the required permission or approval is granted in good time.
7. If the authorities order traffic direction measures (police escort, etc.) or decree other requirements and ancillary stipulations to comply with road safety and unimpeded traffic circulation and/or to protect road surfaces, then these contracts are also concluded under the condition precedent that the escort and/or safety personnel is available in good time and that the official traffic safety measures can be implemented in good time. The contractor commits to inform the customer immediately of such requirements and ancillary stipulations for executing the transport which could handicap or hinder the transport. In this respect we refer to the BSK Information leaflet "Traffic Direction Measures".
8. Unless otherwise agreed, the contractor is entitled to employ other enterprises to fulfil the assumed contractual obligations.
9. The contractor is entitled to withdraw from the contract without this giving rise to damage compensation Claims if a careful examination before or during the deployment 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 ignored the due diligence required of a proper merchant (carrier). In the case of withdrawal, the remuneration for crane Services is charged pro rata and transport Services are subject to the statutory provisions.
10. The contractor is entitled to interrupt the deployment immediately in case of hazard to equipment, load, personnel and/or third parties. Interruptions caused by weather conditions do not diminish the entitlement to claim remuneration while taking saved expenditure into account if the impediments due to adverse weather conditions were insurmountable despite reasonable endeavours.
11. The Service by the contractor is determined according to the crane or transport order or the agreements in the international consignment note. Only if so agreed does the contractor also supply necessary auxiliary, instruction and other personnel and the possibly necessary slingers at the cost of the customer. Unless otherwise agreed, billing is according to time units (hourly or daily rates). Unless otherwise agreed, the remuneration Obligation comes into being with departure of the lifting or transport vehicle from the Company grounds of the contractor and ends when said vehicle returns. If hourly or daily rates are agreed, then these also apply for outbound and homebound travelling times and for rigging times. Hourly rates are accounted as per started half-hour and daily rates as per started working day. Unless otherwise agreed, the customer bears the charges and costs for official charges and all procurement costs and costs incurred due to official requirements and other ancillary stipulations, as well as police escort fees or the costs for the company's own safety measures and other costs for safety precautions ordered by the authorities. The agreed amounts are understood as without VAT, which must be paid to the contractor in addition in the respective statutory amount.

**II. SPECIAL SECTION**

**Chapter I Crane hire /Obligations and liability of the contractor**

- 12.1 If the main Service performed by the contractor consists of the designated supply to the customer of lifting equipment with operating personnel in order to carry out work in accordance with the customer's instructions and arrangements, then the contractor is under the Obligation to [prov.de](http://prov.de) a generally and particularly suitable hoist that complies with the applicable statutory provisions and valid regulations for technical equipment of the Safety Standards Authority (TÜV) and is approved pursuant to the Accident Prevention Regulations (UVV) and is ready for Operation. The contractor is only Nable for supplied personnel within the scope of the applicable fundamentals for a fault in the selection of personnel.
- 12.2 Liability for failure to provide equipment in good time is excluded in cases of force majeure, strikes, roadblocks and other unavoidable occurrences, unless the contractor could have avoided their consequences if the contractor had taken the necessary due care usual in the business.
- 12.3 The liability of the contractor in all other cases of failure to provide equipment in good time is limited to the typically foreseeable damage. This limitation is null and void in cases of intent or gross negligence.

## Chapter 2 Crane work and transport / Obligations and liability of the contractor

13. The contractor commits to execute all Orders placed with him properly and expertly with all means and technical possibilities at his disposal in observance of the applicable rules of technology.
14. The contractor commits especially to deploy generally and particularly suitable transport means and suitable hoisting equipment that comply with the applicable statutory provisions and valid regulations for technical equipment of the Safety Standards Authority (TÜV) and Accident Prevention Regulations (UVV). Furthermore, the contractor commits to provide generally and particularly suitable operating personnel (crane Operators and vehicle drivers) who are familiar with operating the transport means or the hoisting equipment.
- 15.1. If the main Service performed by the contractor consists of crane work and/or transportation, then the statutory regulations governing the freight carrying business apply. The liability of the contractor for damage to goods is - excepting in cases of qualified culpability - limited to 8.33 Special drawing rights (SDR) per kilogramme of the damaged or lost property. For transportation by ship the contractor shall be liable in these cases to a maximum of 2 SDR per Kilogramme gross weight of the consignment or a maximum of 666.6 SDR per packaging piece or unit.
- 15.2. The contractor waives the right to object to the limitation of liability in sum total pursuant to section 15.1 for damages to goods up to the amount of € 500,000.00 and for other pecuniary damages up to the amount of € 125,000.00, each per damage occurrence.
- 15.3. The contractor has no liability if the damage is caused due to the conduct of his people, the ship crew or other persons in the Service of the ship in their navigation or other Operation of the ship or caused due to fire or explosion on-board the ship.
16. If the customer requires a higher amount than that specified in section 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 a correspondingly higher liability.
- 17.1. The contractor is only obligated to insure the goods insofar as an explicit written order has been submitted for this stating the insurable value and the risks to be covered; merely stating the declared value shall not be understood as an order for insurance cover.
- 17.2. 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 in order to uphold the right to claim from the insurance.
- 17.3. In the absence of any deviating written agreements, the contractor insures to the insurance conditions usual at his registered business domicile.

### Obligations and liability of the customer

18. The customer must create all technical prerequisites necessary for proper and safe realisation of the order at his 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 characteristics of the goods (e.g. centre of gravity, type of material, etc.), as well as the load fastening points in the case of crane work.
19. The customer must obtain the necessary permission for the use of third party properties, private roads and places and must indemnify the contractor against any third party Claims that may arise from unauthorised use of a third party property.
20. Furthermore, the customer is responsible that the ground, place and other circumstances at the deployment site, as well as the access paths - except public roads, paths and places - allow an orderly and safe execution of the assignment. The customer is especially responsible that the ground structure at the place of loading and unloading or where the crane Stands and access roads can support the ground pressure loads and other loads. Finally, it is the responsibility of the customer to State all positions of Underground cable conduits, supply pipelines and other lines and cavities that could impair the load-bearing capacity of the ground at the deployment site or on the access roads. Without being specially requested to do so, the customer must indicate the positions and existence of exposed and overhead conducting lines, Underground cables, conduits, shafts and other cavities or other unrecognisable impediments that could impair the Standing and operating safety of vehicles at the deployment site, as well as other particular hazardous situations (e.g. hazardous substances, contamination damages, etc.) which could arise while carrying out crane work or transportation with regard to the transported goods and the surroundings. 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.
21. After placing the order, the customer is not permitted to give instructions without the consent of the contractor 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. If the customer culpably offends against the aforesaid obligations, especially his Obligation regarding preparation, Information and cooperation, then the customer is liable to the contractor for any damages arising as a result. This does not affect the regulations of § 414 paragraph 2 German Commercial Code. The customer must indemnify the contractor fully against third party damage compensation Claims arising from a breach of the obligations of the customer. In the case of recourse to the contractor under the Environmental Damage Act (USchadG) or other comparable public, national or international law, the customer must indemnify the contractor in the internal relationship to the full, unless the contractor caused the damage wilfully or in gross negligence. This does not prejudice the plea of co-culpability for both parties.

## III. CONCLUDING PROVISIONS

23. The Performances of the contractor are preliminary Performances and do not entitle discounts. After the assignment is fulfilled, the invoices of the contractor must be settled immediately following acceptance and invoice receipt, unless otherwise agreed at order placement. Netting or withholding is only permissible with counterclaims that are uncontested or established with lawful finality, unless the customer is a consumer. For all Claims, whether due or not due, to which the contractor is entitled against the customer from the activities stated in sections 2 to 4, the contractor has a right of lien and a withholding right to the movable items or other assets in his possession. However, the right of lien and withholding does not go beyond the statutory right of lien of a freight carrier or lessor and the general withholding right. Rights of lien and withholding due to Claims from other transportation contracts concluded with the customer are governed by § 366 paragraph 3 German Commercial Code. The contractor may also only exercise a right of lien or withholding right due to Claims from other contracts concluded with the customer if these Claims are uncontested or established with lawful finality or if the debtor's assets 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 two weeks. If the customer is in default, then after sale is threatened the contractor can freely sell that quantity of the goods and values in his possession which he deems at his own dutiful discretion to be sufficient to obtain satisfaction. In all cases the contractor can Charge a locally usual sales commission from the net proceeds of the sale of pledged items or self-help sale.
24. Place of jurisdiction, also for cheque and bill of exchange protests between merchants, is exclusively the court of law with jurisdiction at the registered place of business of the contractor. All contracts concluded by the contractor are subject to German law. This also applies for non-German customers.
25. Where Statements are required in writing, electronic data transmission and any other readable form is considered as equivalent provided that it clearly identifies the originator.
26. Should parts of these general terms and conditions be invalid or impracticable for any contractual or legal reasons, this shall not affect the remaining provisions: in this respect § 139 German Civil Code is regarded as null and void.

## General Terms and Conditions for the Hire of Work Platforms and Industrial Trucks (GTC-BSK Platforms + Stackers 01.10.2014)

### 1. Application scope

1.1 Work platforms (platforms) and industrial trucks (forklift and telescopic stackers etc.) are hired out exclusively on the basis of the following General Terms and Conditions of Hire. Contradicting or deviating terms and conditions of the Lessee are explicitly refuted. In continuing business relations with contractors the once-only explicit referral to these General Terms and Conditions of Hire suffices also for future contractual relations.

1.2 These General Terms and Conditions of Hire apply towards consumers as well as towards contractors, corporate bodies under public law and special funds under public law, unless a distinction is drawn in the respective clause. Clauses that apply towards contractors also apply towards corporate bodies under public law and special funds under public law.

### 2. Proposal, Contract conclusion, Hire price

2.1 A contract first comes into being when the order is confirmed in writing.

2.2 The prices stated in the order confirmation shall be binding. The hire rate shall consist of the equipment costs only and without operating personnel – excepting those cases in No. 4 – and without fuel or energy costs. Unless explicitly agreed otherwise, the stated hire prices relate exclusively to a maximum daily period of use of nine hours per calendar day, unless explicitly agreed otherwise. Operation over two or more shifts is only permitted after prior arrangement with us and with our written consent.

### 3. General terms of use

3.1 The Lessor shall be obligated to provide to the Lessee, for the period stated in the hire contract, a reliable and roadworthy hire device which is tested and approved according to Technical Inspection Association (TÜV) standards and § 10 Industrial Safety Regulation (BetrSichV) for the contractually agreed purpose.

3.2 The Lessee – unless this is a consumer – shall bear the responsibility for ensuring that the requested hire device is suitable for the purpose for which it is hired. On request, the Lessor provides working diagrams, load curves and other technical specifications for the individual hire devices to enable the suitability of the devices to be determined.

3.3 However, the Lessee has no entitlement to a specific hire device unless a separate agreement has been made. The Lessor shall at all times be entitled to select a hire device which is technically equivalent and at least equally suitable for the operational requirements of the Lessee.

3.4 The Lessee bears sole responsibility for trouble-free accomplishment of the work he intends to carry out, ensuring unrestricted access to land and premises, obtaining all necessary official permits and cordoning off the area(s) in question, and ensuring that the hire item can be used safely with regard to ground conditions, the environment and other operational risks. The Lessee shall be obligated to inform the Lessor, without special request, of the presence of buildings and obstacles in the operating area, such as underground canals, conduits, shafts, trenches, underground car parks and any weight restrictions applicable to road structures etc. and/or, if the Lessee is operating the equipment himself, he shall be obligated to independently find out about such obstacles prior to starting the works he intends to undertake.

3.5 The Lessee has no claim for damage compensation if the hire item cannot be deployed punctually due to reasons for which the Lessor is not answerable. The same applies if despite prior functionality inspection the hire item fails during use for no fault of the Lessor. Unless contractually agreed otherwise, the Lessee bears the costs of the downtime during which the hire item cannot be deployed due to bad weather or due to other circumstances for which the Lessor is not answerable.

3.6 Work platforms may only be used to carry persons within the scope of the respective permitted maximum load. Work platforms may not be used for pulling loads or cable assemblies or similar. This kind of work is therefore strictly prohibited. Exempt from this are lifting platforms with power-lift systems for simultaneous load transport specifically approved for this purpose. Industrial conveyors may not be used to carry persons unless they are specifically approved and prepared for this purpose.

### 4. Terms of use with specialist operating personnel

4.1 In the case of hire with specialist operating personnel, the Lessor shall provide a trained operator together with the hire item. Hire devices which are rented together with specialist personnel may only be operated by these personnel.

4.2 For the period of the hire, the specialist operating personnel shall work exclusively for and under the instruction of the Lessee within the context of a service procurement contract. Lessor is therefore only liable for the provided operating personnel according to the principle of fault in selecting an agent.

4.2 If it is contractually agreed that the Lessor is to deliver and collect hire devices, this shall be understood to be exclusively to/from the construction site, insofar as this site can be accessed by the towing vehicle. The agreed transportation price shall especially not include setting up and equipping the work platform on the construction site, or in rear courtyards or rooms etc.

4.3 Transportation of self-propelled hire devices outside the construction site shall be undertaken exclusively by the Lessor.

### 5. Conditions of use for self-drivers

5.1 Self-drive devices shall only be hired out on condition that the Lessee and/or the Lessee's operating personnel are aged 18 or over and fulfil the applicable occupational health and safety protection laws and accident prevention regulations. Instruction regarding the operation of the hire devices shall only be given on presentation of valid proof of competence and – if necessary – a valid driving licence.

5.2 Only those persons we have instructed shall be entitled to operate the hire item and the Lessee must have explicitly authorised them to do so.

5.3 When the hire item is handed over the Lessee will be given the vehicle documentation, operating instructions, maintenance notes and an information leaflet concerning the action to be taken in case of accident. Before first operation of the equipment Lessee is obligated to inform the operating personnel in a suitable manner about the contents of all provided documents and must order these persons to observe all instructions concerning industrial and health safety contained therein.

5.4 The Lessee undertakes to handle the hire item with care, not to overload it, and to observe all statutory provisions in connection with the possession or use of the hire item and pertaining equipment, in particular with regard to the applicable industrial safety and accident prevention regulations. In the case of rough work, the hire item must be adequately covered and protected against dirt. This applies especially in the case of painting and decorating, welding and cleaning work using acids. The hire item may not be used in close proximity to areas where painting or sandblasting work is being carried out, nor may it be exposed to extreme heat or cold.

5.5 The hire item may not be sublet or transferred to third parties without prior written permission. Furthermore, the Lessee shall not be entitled to move the hire item to a site of operation other than that specified in the hire contract.

5.6 The Lessee is obligated to check the operating consumables and the water level of the battery on a daily basis and to replenish these where necessary at his own expense. The Lessee shall be liable for damage caused as a result of insufficient quantities of operating consumables.

### 6. Terms of payment

6.1 The hire charges must be paid as from the time when the hire item leaves our depot until its return. Transport of the hire item from the depot to the site of operation and back shall – if carried out by the Lessor – be charged according to the actual time spent at the agreed hire rates and/or at agreed flat rates. The accounting shall be based on the order confirmation and the hire rates and/or hourly rates stated therein. Each day of hire or part thereof shall be charged at the full rate.

6.2 The agreed device hire rates shall be payable strictly net with no deductions on receipt of the invoice. Statutory default interest shall be charged if the payment deadline is overrun.

6.3 The Lessor shall be entitled to request a reasonable advance payment prior to provision of the hire device and/or to request reasonable instalment payments during the hire period.

6.4 In the event that the Lessee fails to meet his payment obligations under the hire contract or if damage to the hire item is suspected, the Lessor shall have the right to gain access to the site of operation at which the hired device is located and to take possession of the hire device by way of self-remedy.

6.5 The Lessor is moreover entitled to withhold any outstanding services until arrears are paid. The Lessor may as he chooses either refuse to continue to provide hire devices until the corresponding contract value is paid in full or, at his own option – without the Lessee being entitled to claim any compensation – withdraw wholly or partially from performance of the contract and charge a flat rate of 25% of the contract value, insofar as the

Lessor can prove higher damages or the Lessee can prove that no or significantly lower damages were incurred.

6.6 The Lessee shall only be entitled to offset if his counterclaims are undisputed or have been established as final and absolute. The Lessee shall only be entitled to exercise a right of retention if his counterclaim is based on the same contractual relationship.

#### 7. Warranty

7.1 The Lessee must inform the Lessor without delay of any defect or any interruption in the operation of the hire item during the period of deployment and shall immediately shut down the hire item if necessary. The period for giving notice of defects shall be deemed to have been observed if notice of a defect is sent promptly.

7.2 The Lessor shall be obligated to remedy any reported faults or malfunctioning of the hire item as soon as is technically and practically possible, insofar as the Lessor is responsible for such faults or malfunctioning.

7.3 All warranty rights of the Lessee shall be forfeit if defects are not notified promptly.

#### 8. Liability: Insurance

8.1 The hire item passes into the custody of the Lessee as from the moment it is handed over to him. The Lessee bears the cost of all damage caused to the hire item as a result of its use. The period of assumption of risk by the Lessee shall not end until the device is duly returned and the return inspection report is signed. On acceptance of the hire item, the Lessee shall assume the entire operational risk for the duration of the hire contract and shall in particular warrant that the ground conditions at the site of operation are such that they permit safe use of the hire item. In this respect, the Lessee shall indemnify the Lessor against third-party claims within the internal relationship. This shall also apply in the event that recourse is sought against Lessor under the Environmental Damage Act (USchadG) or other comparable public-law, national or international regulations, insofar as the Lessor did not cause the damage with intent or through gross negligence.

8.2 Unless agreed otherwise, the Lessor takes out machinery breakdown and comprehensive insurance which also insures the material usage interests of the Lessee and includes the Lessee under the coverage offered by the machinery breakdown and comprehensive insurance policy. The Lessee must however bear the contractual deductible per damage claim in every case.

8.3 In otherwise, the Lessee shall be liable for all damage that he or his operating personnel cause to the hire item, and for all downtime arising as a result. In case of doubt, the costs for repairs and downtime shall be charged to the Lessee on the basis of the opinion of a sworn publicly accredited expert.

8.4 The Lessee shall be liable in each case and to the full extent for all damage caused by any one of the following as a result of using the hire item, whereby recourse to the provider of the machinery breakdown and comprehensive insurer is permitted:

- a. any accident or damage to the hire item caused through gross negligence or wilful conduct,
- b. damage to superstructures caused by failure to observe the clearance height,
- c. damage caused by failure to observe the safety and deployment conditions or due to unsuitable anti-theft measures,
- d. unauthorised subletting of the hire item, or letting to unauthorised persons,
- e. in all other cases in which the insurer provides no coverage under the machinery breakdown and comprehensive insurance contract.

8.5 The machinery breakdown and comprehensive insurance policy taken out by the Lessor (section 8.2) does not include liability insurance to cover the business operation risks of the Lessee. Hire devices subject to mandatory official registration shall only have liability insurance cover within the scope of statutory compulsory liability insurance and with the prescribed minimum amounts of coverage. It is therefore strongly recommended that the Lessee extend the coverage offered by his business liability insurance to include the hired device for the duration of hire.

8.6 The Lessee may assert further claims for compensation against the Lessor, to the full extent, in particular compensation for damage not sustained to the hire item – irrespective of the legal grounds – only in the event of

- a. wilful conduct or gross negligence
- b. culpable injury to life, limb or health
- c. defects which the Lessor has maliciously concealed or which the Lessor has guaranteed do not exist
- d. cases where liability exists under the Product Liability Act (ProdHaftG) for bodily injury and property damage to privately used items.

In the event of culpable breach of essential contractual obligations, the Lessor shall also be liable for minor negligence, but limited to damage which is reasonably foreseeable and typical for this kind of contract. Further claims shall be excluded

#### 9. Further obligations of the Lessee

9.1 No claims whatsoever of the Lessee may be assigned, whether with regard to performance, any kind of warranty or otherwise to compensation.

9.2 If a third party should assert rights in the hire item by way of confiscation, levy of execution or the like, the Lessee shall be obligated to notify the Lessor immediately in writing and to inform the third party in writing of the property rights of the Lessor.

9.3 The Lessee must take reasonable steps to protect the hire item against theft.

9.4 The Lessee must inform the Lessor in the event of any accidents and – except in the case of impending danger – await instructions from the Lessor. The police must be involved in cases of road accidents or theft.

9.5 If the Lessee culpably fails to abide by the above provisions (sections 9.1 to 9.4), he shall be obligated to pay compensation for all damages incurred by the Lessor as a result, unless said damages are covered by a statutory compulsory insurance policy.

#### 10. Termination of the hire contract

10.1 The Lessor shall be entitled to declare the hire contract terminated without observing a notice period if

- a. the Lessee is in default for more than 14 calendar days after a written reminder has been issued or a cheque or bill of exchange from the Lessee is protested.
- b. it first becomes apparent after conclusion of the contract that the entitlement to be paid the hire fee is at risk due to inability to pay on the part of the Lessee.
- c. the Lessee uses the hire item or a part thereof for a purpose other than the intended purpose or moves the item to another site or transfers it to unauthorised third parties without our permission.
- d. if the Lessee culpably violates the provisions under section 5.4 and sections 9.1 to 9.4.

10.2 The Lessee may terminate the hire contract without observing a notice period if the hire item cannot be used due to circumstances for which the Lessor is answerable.

#### 11. Return

11.1 On expiry of the hire period the Lessee shall be obligated to return the hire item to the Lessor at the agreed location in the same condition as it was in when accepted by the Lessee, with the exception of normal wear and tear to the hire item sustained through use in accordance with the contract.

11.2 Unless agreed otherwise, the hire item must be returned during the usual hours of business of the Lessor at a time which is early enough to allow the Lessor to inspect the hire item for functionality and damage on the same day. If the hire item is returned outside usual hours of business or parked at the Lessor's depot without prior notice, this shall be at the expense and own risk of the Lessee. The Lessee shall remain responsible for ensuring safe custody of the hire item until it is accepted back by the Lessor.

#### 12. Concluding provisions

12.1 Should any provision of these terms and conditions of hire be or become invalid or impracticable, this shall not impair the validity of all other provisions or agreements herein. Section 139 of the German Civil Code (BGB) shall be waived in this respect.

12.2 For all disputes arising in connection with the contractual relationship, including claims for bill of exchange and cheque receivables, if the Lessee is a merchant, a corporate body under public law or a special fund under public law, legal proceedings may as the Lessor chooses also be initiated before the court with jurisdiction over the head office of the Lessor or the branch office of the Lessor which is conducting the hire process.

12.3 It is agreed that the hire contracts concluded between the contracting parties shall be subject to German rental law, even if the site of operation of the hire item or the registered office of the Lessee are located outside Germany.

12.4 All disputes arising from or in connection with this contract or concerning its legal force shall be settled by an ordinary court of law.

## **BSK Installation Conditions**

(BSK Installation 2008 / Status 01.08.2008)

For use towards:

1. a person who, upon conclusion of the contract, is acting in the execution of his/her commercial or self-employed occupational activities (entrepreneur);
2. juristic persons of public law, or special property under public law.

### **I. Scope**

These installation conditions apply to all installation work undertaken by a company of the heavy goods transport sector (contractor), provided that deviating agreements have not been reached in individual cases and provided that this installation work does not refer to straightforward, rough installation work related to transport preparations or procedures in accordance with the general business conditions of the German federal specialist group for heavy goods transports and crane work (AGB-BSK).

### **II. Bill of quantities, installation price**

The bill of quantities of the orderer upon which the invitation to tender, the cost estimate, or the preparation of an offer was based applies exclusively to the installation service. The installation work is invoiced according to units of time if a lump-sum price has not been explicitly agreed. The agreed sums are understood without value-added tax, which must be paid to the client in addition in the statutory amount.

### **III. Technical assistance by the orderer**

1. The orderer is obliged – unless otherwise agreed – to provide technical assistance at his/her costs, in particular:
  - a) execution of preparatory activities, in particular, excavation, construction, bedding and scaffolding work, including the procurement of the necessary building materials;
  - b) provision of heating, power and lighting current, compressed air, water, including the required connections;
  - c) provision of necessary, dry and lockable rooms for the storage of the tools and of the auxiliary and operating materials of the installation staff;
  - d) provision of suitable, theft-proof recreation rooms, (with heating, lighting, washing facilities, sanitary facility) and first aid for the installation staff;
  - e) provision of the auxiliary materials and execution of all other activities which are necessary for the precise regulation and adjustment of the

object to be installed and which are also necessary for the performance of a contractually provided trial test; and

- f) protection and safeguarding of the installation site and materials against detrimental influences of any kind, and cleaning of the installation site.
2. The technical assistance provided by the orderer must guarantee that the installation work can be started immediately following the arrival of the installation staff and be carried out without delay up to the time of acceptance by the orderer. If special plans or instructions of the contractor are required, the contractor places them at the disposal of the orderer in due time.
3. If the orderer does not fulfil his/her obligations, the contractor, after fixing a time limit, is entitled to carry out the activities for which the orderer is responsible in the orderer's place and at the orderer's costs. Apart from that, the statutory rights and claims of the installation company remain unaffected.

#### **IV. Installation time limit, installation delay**

1. The installation time limit is met if, up to the time of its expiration, the installation service is ready for acceptance by the orderer in the case of a contractually provided trial test regarding the execution of the installation service.
2. If the installation work is delayed by force majeure, acts of authorities or by measures within the framework of labour disputes including, in particular, strikes and lockouts, as well as by the occurrence of circumstances for which the contractor is not responsible, an appropriate extension of the installation time limit occurs if it can be proved that such obstacles have a considerable influence on the completion of the installation work. This also applies if such circumstances occur after the contractor has defaulted.
3. If a damage arises for the orderer as a result of the default of the installation company, the orderer is entitled to demand a lump-sum compensation for damage resulting from default. The lump-sum compensation amounts to 0.5 % for every week of the delay, in all, however, to no more than 5 % of the installation price for that part of the system to be installed by the contractor that cannot be used on time as a result of the delay. The assertion of a further damage caused by default is excluded unless, however, the contractor caused the damage with gross negligence or premeditation.
4. If the orderer fixes – while taking the statutory exceptional cases into account – an appropriate time limit according to a due date for the contractor to provide the service and if that time limit is not met, the orderer is entitled to withdrawal within the framework of statutory regulations. Further claims resulting from default are exclusively defined according to subsection VII.2 of these conditions.

#### **V. Acceptance**

1. The orderer is obliged to accept the installation service as soon as its completion has been reported to him and any contractually provided trial test of the installed object has taken place. If the installation work proves to be not in accordance with the contract at the time of acceptance, the contractor is

obliged to rectify the defect. If a non-essential defect exists, the orderer cannot refuse the acceptance.

2. If the acceptance is delayed through no fault of the contractor, the acceptance is considered as having been carried out after a period of two weeks since the notification of completion of the installation work.
3. If the orderer accepts the installation service without reservation although the orderer knows about the defect, all the orderer's deficiency rights to subsequent fulfilment, to substitute performance against reimbursement of expenses and price reduction, including the right to withdraw from the contract are inapplicable.

## **VI. Claims arising from a defect**

1. Following acceptance of the installation work, the contractor is liable for defects excluding all other claims of the orderer regardless of No. 3 and section VII. in such a way that the orderer must rectify the defects. The orderer must notify the contractor of a detected defect immediately in writing.
2. If the contractor allows – while taking the statutory exceptional cases into account – an appropriate time limit fixed for him/her to rectify the defect to elapse fruitlessly, the orderer then has a right to a price reduction within the framework of the statutory regulations. The orderer's right to a price reduction also exists in other cases involving a failure to rectify the defect. The client may withdraw from the contract only if it can be proved that the installation work is not of any interest to the orderer despite the price reduction.
3. Further claims are exclusively defined according to section VII.2 of these conditions.

## **VII. Liability of the contractor, exclusion from liability**

1. If, through the fault of the contractor, the installed object cannot be used in accordance with the contract by the orderer as a result of omitted or incorrect implementation of suggestions and consultations provided before or after the conclusion of the contract as well as of other contractual accessory obligations, the claims arising from a defect pursuant to section VI. and the following regulations apply – excluding further claims of the orderer.
2. The contractor is liable – unless nothing to the contrary arises from the contract or the law – for damage not incurred on the installation object itself and for whatever legal reasons, only
  - a) in case of premeditation;
  - b) in case of gross negligence of the owner/organs or of the executive staff;
  - c) in case of culpable injury of life, body, health;
  - d) in case of defects the contractor has maliciously concealed;
  - e) within the framework of a guarantee.

In case of gross negligence of vicarious agents, the contractor is liable for the foreseeable damage unless, however, the contractor can exempt himself/herself from that liability by virtue of customary commercial practice. In case of culpable violation of essential contractual obligations, the contractor is liable even in the case of gross negligence of non-executive staff

and in the case of slight negligence – limited, however, to the typical, foreseeable damage.

3. Further claims are excluded. In the event of taking recourse to the contractor, in accordance with the USchadG (German environmental damage law), or other comparable public-law, national or international regulations, the orderer must completely exempt the contractor in the internal relationship if the contractor did not cause the environmental damage with premeditation or gross negligence.

### **VIII. Obligations of the orderer**

1. The orderer must create all the basic technical requirements required for the proper and safe implementation of the installation order on his/her own account and at his/her own risk and must sustain those basic technical requirements for the duration of the operation. In particular, the orderer is obliged to keep the product to be installed available in a condition ready and suitable for the implementation of the installation order. The orderer is obliged to specify the dimensions, weights, and special properties of the product to be installed (e.g. centre of gravity, type of material, etc.) including suitable tie-down and fastening points correctly and on time. The orderer must point out, without being requested and on time, special hazardous situations which could arise in the course of executing the installation work with regard to the product to be installed and the surrounding area (e.g. hazardous goods, contamination damage, etc.).
2. The orderer must obtain the necessary consents from owners for the purpose of driving on third-party properties, non-public roads, paths and yards, and the orderer must also exempt the contractor from third-party claims which could arise from unauthorised use of a third-party property.

Beyond that, the orderer is responsible for making sure that the ground conditions, yard conditions, and other conditions at the installation site and at the access roads – with the exception of public roads, paths and yards – permit proper and safe implementation of the installation order. In particular, the orderer is responsible for making sure that the ground conditions at the installation locations, at any storage or pre-installation yards and at the access roads are capable of withstanding the occurring ground pressures and other stresses caused by the installation vehicles and equipment (e.g. cranes, heavy goods vehicles, lift frames, etc.). Finally, the orderer is responsible for all information regarding underground cable shafts, supply lines, other underground lines, and cavities which could affect the load-bearing capacity of the ground at the installation site or at the access roads. Without being requested, the orderer must point out the position and presence of underground lines, shafts, and other cavities. If the orderer culpably fails to perform this obligation to point out such details, the orderer is liable for all arising damage, even for property damage and consequential property damage on the vehicles, equipment and working implements of the entrepreneur and also for pecuniary damage.

4. The orderer must also inform the installation manager about any existing safety regulations if these are important for the installation staff. The orderer notifies the contractor about violations of the installation staff against such safety regulations (e.g. instructions for outside companies, special safety and protective clothing, etc.).

## **IX. Statutory limitation**

All claims of the orderer – for whatever legal reasons – fall under the statutes of limitation in 12 months. The statutory time limits apply to damage claims pursuant to section VII. 2. a) – d). If the contractor provides the installation service on a building and if the contractor causes its defectiveness as a result, the statutory time limits also apply.

## **X. Compensation by the orderer**

If the implements or tools supplied by the contractor are damaged at the installation location through no fault of the contractor or if they are lost through no fault of the contractor, the orderer is obliged to provide compensation for all resulting damages.

## **XI. Final provisions**

1. The legislation of the Federal Republic of Germany on contracts for work and services which is relevant for the legal relations of domestic parties among each other applies exclusively to all legal relations between the contractor and the orderer, even if the installation site is located abroad.
2. The services of the contractor are advance services from which a cash discount is not allowed to be deducted. The invoices of the contractor must be settled immediately after the acceptance and after invoice receipt, provided that no other period of payment was agreed to when the order was placed. A setting-off or retaining of payments is only permissible with undisputed or legally established counterclaims.
3. The place of jurisdiction is the competent court for the registered office of the contractor. However, the contractor has the right to take legal action at the principal place of business of the orderer.
4. Should a provision in these business conditions or a provision within the framework of other agreements be or become ineffective or non-applicable in individual cases, the effectiveness of all other provisions or agreements remains unaffected. In this respect, § 139 BGB (German Civil Code) is eliminated by agreement. In that case, the contractor, together with the orderer, replaces the ineffective provision with an effective one which comes closest to the economic purpose of the ineffective provision.