

# General Terms of Business (GTB) of Convoi GmbH

## I. Miscellaneous

These General Terms of Business also apply to all future transactions between the contracting parties, without the need for repeated mention of our GTB. The first inclusion of these GTB shall have the effect of forming a framework contract for future legal transactions of this nature. They shall also apply if we do not expressly refer to them in subsequent contracts, in particular even if we render a delivery or service to the customer in the knowledge of conflicting general terms of business of the customer or such terms that deviate from our own GTB.

Our deliveries and services shall take place subject exclusively to the General Terms set out below. Our services are subject exclusively to the *Werkvertragsrecht* (German law on contracts for work & services). Differing GTB, terms of purchase or terms of procurement of the customer which we do not expressly acknowledge shall not be binding on us, even if we do not expressly object to them.

The latest version of the General Terms of Business of the *Bundesfachgruppe Schwertransporte und Kranarbeiten* (Federal Working Group on Heavy Haulage and Crane Work) and the *Allgemeinen Deutschen Spediteurbedingungen* (General German Forwarding Conditions) additionally applies.

## II. Quotes and formation of a contract, service description

1. Our quotes to the customer are without obligation for us. Informal understandings, modifications and service data shall require our written confirmation. Our executive board and branch management have sole authority to conclude this agreement. All other employees, in particular technicians, have no representative authority in this respect.
2. We reserve proprietary rights and copyright to cost estimates, drawings and plans and other documents; these may only be made available to third parties with our prior, written permission and must be returned to us on demand, at no cost.
3. Unless otherwise agreed, all quotes are drawn up on the basis of continuous, uninterrupted performance of the delivery or rendering of the service.
4. The services to be rendered by us will be definitively determined by the service and interface description in our quotes. All services in addition to the service and interface description in the quote must be agreed upon separately. If a performance location outside Germany is agreed, the obligation to perform in regard to health and safety and environmental protection regulations shall be dictated by the agreements made or, in case of doubt, by the regulations applicable in Germany. The customer shall be responsible for observance of legal or other regulations at a performance location outside Germany.

## III. Prices, payment terms, default

1. The prices agreed at the time of conclusion of the respective contract shall apply, in particular the prices indicated in the order confirmation. All prices quoted are net plus the respective applicable statutory value added tax. All public charges (taxes, charges, customs duties etc.) incurred by us in connection with the conclusion or performance of the

contract outside Germany shall be borne by the customer.

2. We reserve the right to adjust our prices as appropriate if costs change after the contract is concluded, due in particular to tariff agreements, price increases implemented by upstream suppliers or exchange rate fluctuations. We will provide the customer with substantiation for the price adjustment on request.
3. If there is a change to the scope of the service in accordance with Clause II, paragraph 4, the additionally agreed services will be billed separately. If, contrary to Clause II, paragraph 3 (continuous executing of work) there are any interruptions or delays in the rendering of the services for which we are not responsible, any additional costs incurred as a result, additional journeys to and from the place where the work is being carried and idle times will be invoiced additionally to the customer on the basis of the charging rates attached to the quote.
4. Unless a different date of payment has been stipulated in the invoice, our outstanding invoices are payable within 14 days of the invoice date, without deductions. If payment is not received by the payment date, default interest will be charged pursuant to § 288 BGB (German Civil Code), commencing on the day after the payment date and under reserve of asserting further claims.
5. We shall be entitled to first allocate payments received to older debts, then to costs and interest in respect of the principal service and finally to the principal service itself. The customer shall only have the right of set-off or retention if his counterclaims have been established in law, are not disputed by us or have been acknowledged by us. The right of retention shall furthermore only exist if the counterclaim asserted is based on the same contractual relationship as our claim.
6. If the customer does not pay due invoices, fails to meet a payment date granted, the customer's financial circumstances deteriorate after the contract is concluded or we receive unfavourable information about the customer after the contract is concluded which cast doubt on the customer's capacity to pay or creditworthiness, we shall be entitled to fix a due date for the customer's entire remaining debt and, amending the agreements made, to demand advance payment or surety, or immediate payment once the service has been rendered, for all our claims based on the same legal relationship. This shall apply in particular if the customer ceases making payments, cheques issued by the customer are not cashed, bills of exchange given by the customer are not paid by the customer, insolvency proceedings commence in respect of the customer's assets or if an application is made for insolvency proceedings and has been rejected for lack of funds.

## IV. Delivery and performance period, delay in performance

1. Agreed performance deadlines shall be approximations only, unless a firm deal has been agreed. Fulfilment of our obligation to perform shall be contingent upon the customer fulfilling his contractual obligations in timely and proper manner. If an advance payment has been agreed upon or if the customer is required to supply documents, authorizations or clearances in order for us to render a service, the performance period shall not commence until all the stated requirements have been met. We reserve the plea of an unfulfilled contract. In the event of force majeure or other unforeseen, exceptional circumstances for which we are not responsible, such as stoppages caused by fire, water and similar circumstances, the

breakdown of production facilities and machinery, failure to meet delivery dates or failure to deliver by our suppliers as well as business interruption due to lack of raw materials, power or manpower, strike, lock-out, difficulties procuring means of transport, traffic congestion or official interventions, we shall, insofar as we have been prevented by the aforementioned circumstances from fulfilling our performance obligations on time through no fault of our own, be entitled to postpone the performance for the duration of the hindrance plus a reasonable start-up period. If the delivery or performance is delayed by more than a month as a result, both we and the customer shall be entitled to withdraw from the contract, to the exclusion of any claims for compensation.

We shall not be in default until a reasonable additional period allowed by the customer has expired.

2. If agreed performance periods are exceeded due to circumstances that are within our control, the customer may withdraw from the contract by written declaration, after a reasonable additional period allowed by him has elapsed to no avail.
3. In the event of default, our obligation to compensate shall be limited in accordance with the provisions of clause VIII.

#### **V. Execution of work**

1. In principle, we shall execute assembly/installation and dismantling work independently, using our own supervisory staff, tools and assembly tools and the usual auxiliary materials.
2. We shall be entitled to use the services of subcontractors for deliveries and services.
3. We may commission specialist companies for orders for lifting tools and for the transportation of machinery and equipment.
4. Work at construction sites will be executed wearing the company's own work clothing. This clothing bears our logo.
5. We shall ensure compliance with the statutory accident prevention rules applicable under German law. Furthermore, the customer must notify any special requirements with regard to safety rules before awarding the contract, in particular with regard to accident prevention regulations under foreign law.
6. The customer must provide us with all information necessary for proper and expert delivery and performance before we commence our work.
7. The customer shall provide free and unhindered access to the installation areas and shall ensure that the installation areas are in a condition suitable for the installation work to be executed.

#### **VI. Retention of title**

1. The delivered goods shall remain our property until the purchase price is paid in full.
2. The customer must inform us at once, in writing, of any levy of execution or other interventions by third parties, in order that we can institute legal proceedings pursuant to § 771 ZPO (Code of Civil Procedure).
3. Any processing, adaptation or alteration by the customer of the goods supplied by us subject to retention of title shall always be executed on our behalf, without creating any obligations for us. If the goods supplied by us subject to retention of title are processed with other objects that do not belong to us, we shall acquire joint ownership of the new object in proportion to the value of the goods supplied by us (final invoice amount including value added tax) in relation to the other processed objects at the time of processing. The

same stipulations as apply to the object delivered subject to retention of title shall also apply to the object created by the processing actions.

4. If the goods supplied by us subject to retention of title are inseparably combined or connected with other objects that do not belong to us, we shall acquire joint ownership of the new object in proportion to the value of the goods supplied by us (final invoice amount including value added tax) in relation to the other combined or connected objects at the time of their combination or connection. If the objects are connected or combined in such a way that the customer's object must be regarded as the principal object, it shall be deemed to have been agreed that the customer shall transfer proportionate joint ownership to us.
5. In the event of any conduct by the customer that is contrary to the contract, in particular defaulting on payment of more than 10% of the invoice amount for a substantial period, we shall be entitled – without prejudice to the further claims for compensation or other claims that we have – to withdraw from the contract and to demand the return of the goods we have supplied. We shall be authorized to use the goods we have supplied after regaining possession of them.

#### **VII. Rights of the customer in the event of defects**

1. The following applies in respect of deliveries of fungible goods:
  - a) Manifest material defects, wrong delivery and discrepancies must be notified to us by the customer without delay, in writing, no later than 7 working days after receipt of the goods. Latent defects must be notified to us in writing within 7 working days of their discovery. The defective goods must be made available to us for inspection on request.
  - b) In the event of defects in goods delivered by us, we shall be obliged at our discretion to remedy the defects or to deliver perfect goods (cure). If we are unwilling or unable to execute a cure, and in particular if this is delayed beyond a reasonable period for reasons that are within our control, or if the cure fails in other ways, the customer shall be entitled at his discretion to withdraw from the contract or to demand a reduction in the purchase price. Attempts to remedy the defect shall be deemed to have failed after the third attempt, unless the nature of the object or the other circumstances suggest otherwise. If the customer has suffered damage or incurred wasted expenditure due to defects in goods delivered by us, our liability for this shall be in accordance with clause VIII.
2. The following applies for the assembly/installation and dismantling and storage of machinery and equipment, as well as the manufacture and delivery of goods made to specification:
  - a) If the service rendered by us is defective the customer shall initially be limited to making a claim for a cure which we may, at our discretion, execute by providing a new delivery or service or by remedying the defect.
  - b) If we are unwilling or unable to execute a cure, or if this is not reasonable for the customer, due in particular to an unreasonable delay for which we are responsible or because the cure has failed, the customer shall be entitled, at his discretion and within the confines of the legal provisions, to withdraw from the contract, demand a reduction in the remuneration for work done or arrange to

remedy the defect himself, at our expense, and to demand compensation in lieu of performance. Attempts to remedy the defect shall be deemed to have failed after the third attempt, unless the nature of the performance or the other circumstances suggest otherwise. If the service rendered consists of construction work within the meaning of § 634 a BGB (German Civil Code), the customer shall not be entitled to withdraw as stipulated above. Any rights to withdraw for other reasons are unaffected.

- c) In the case of manifest defects, the customer shall forfeit his rights if they are not notified, in writing, within 14 days of completion of the work and notification of same to the customer. If the customer has suffered damage or incurred wasted expenditure due to defects in services rendered by us, our liability for this shall be in accordance with clause VIII.

### VIII. Liability

1. Our company's liability for damage or wasted expenditure – irrespective of the legal grounds – shall only be incurred if the damage or wasted expenditure
  - a) was caused by us or one of our vicarious agents through culpable breach of a material contractual obligation or
  - b) is attributable to a grossly negligent or intentional breach of duty by us or one of our vicarious agents.
2. If, pursuant to Clause VIII. paragraph 1.a., we are liable for the breach of a material contractual obligation but there has been no gross negligence or intent, our liability to pay compensation shall be limited to the foreseeable damage that typically occurs. In this event we shall, in particular, not be liable for the customer's lost profit or for foreseeable, indirect consequential damage.
3. The aforementioned limitations of liability pursuant to Clause VIII. paragraph 1. and 2. shall apply by analogy to damage caused by our employees or agents, unless they are one of our managing directors or executive employees.
4. We shall only be liable for damages within the scope of the insurance policies taken out. Within the scope of the assembly and dismantling insurance policy taken out, we shall be liable for damage related to deliveries and services during the assembly/installation and dismantling work in the maximum sum of EUR 2,000,000 per damage event, for both brand-new and used machinery and equipment.  
Insurance policies for higher insured sums will be concluded by the customer as required. The customer shall pay the additional insurance premium.
5. The limitations on liability set out in Clause VIII. paragraph 1. and 2. above shall not apply if our liability is mandatory pursuant to the provisions of the *Produkthaftungsgesetz* (Product Liability Act) or if claims are asserted against us for injury to life, limb or health.
6. Within the scope of the general liability insurance policy taken out, we shall be liable for personal injury and property damage insofar as we are responsible for the damage. The limit of liability per damage event for personal injury and property damage is EUR 2,000,000. If the service rendered lacks a guaranteed characteristic, we shall only be liable for damages the absence of which was warranted under the guarantee.
7. Any further liability to pay compensation as provided for under Clause VIII. paragraphs 1. to 5. is excluded,

irrespective of the legal nature of the claim asserted. In particular, this also applies to compensation claims for negligence in contracting pursuant to § 311 paragraph 2 BGB (German Civil Code), positive breach of contract pursuant to § 280 BGB or claims based on tort pursuant to § 823 BGB.

8. Insofar as liability to pay compensation is excluded with respect to us or is limited pursuant to Clause VIII. paragraph 1. to 6., this shall also apply in respect of the personal liability to pay compensation of our salaried employees, hourly workers, associates, representatives and vicarious agents.

### IX. Limitation of claims due to lapse of time

1. Claims of the customer on account of defects in goods delivered by us or on account of services rendered by us in a manner that is contrary to our duty – including compensation claims and claims for the reimbursement of wasted expenditure – shall be prescribed by lapse of time one year after the statutory commencement of the limitation period, unless a different period is provided for in paragraphs 2. to 3. below. If the customer or another purchaser in the supply chain after the customer is meeting the claims of the consumer on account of defects in newly-manufactured objects delivered by us which have also been delivered to consumers as newly-manufactured objects, the period of limitation for claims of the customer against us arising from §§ 437 and 478 paragraph 2 BGB (German Civil Code) shall commence not sooner than two months after the time at which the customer or the other purchaser in the supply chain has met the existing claims of the consumer that have not yet become prescribed by lapse of time. The suspension of the period of limitation pursuant to paragraph 2. below shall end not more than five years after the time at which we delivered the object in question to the customer.
2. In the case of newly-manufactured objects delivered to us which have been used in the usual manner for construction work and construction works performed by us pursuant to § 634 a paragraph 1(2) BGB (German Civil Code), the claims of the customer shall be prescribed by lapse of time five years after the statutory commencement of the period of limitation. By derogation from the first sentence, a period of limitation of two years shall apply if the customer has used the object delivered by us to perform contracts in which Part B of the *Verdingungsordnung für Bauleistungen* (contracting rules for the award of building works contracts) has been incorporated in full or if the construction works were part of such contracts. The period of limitation for the purchaser's claims against us shall in any event commence as soon as the claims of the customer/our customer's contracting party on account of defects in the services rendered by us have been prescribed by lapse of time vis-à-vis our customer, but not later than five years after the time at which we rendered the services in question.
3. The provisions set forth in paragraphs 1. to 3. shall not apply to the period of limitation for claims on account of injury to life, limb or health, nor to the limitation of claims under the *Produkthaftungsgesetz* (Product Liability Act) and on account of defects of title in the goods supplied by us which consist in a third party's right in rem, including a right on the basis of which the surrender of the goods delivered by us can be demanded. Nor shall they apply to the period of limitation for claims of the customer based on our having fraudulently concealed defects or having breached a duty with intent or out of gross negligence. In the instances referred to in

sentence 1 and 2, the statutory periods of limitation shall apply to these claims.

**X. Place of performance, place of jurisdiction, applicable law**

1. The place of performance and jurisdiction for all claims between us and merchants or legal entities under public law or special funds under public law is our company's registered office, unless dictated otherwise by mandatory provisions of law. However, we shall have the right to also bring actions against a customer before that customer's general place of jurisdiction according to the law.
2. The legal relationship between us and the customer or between us and third parties is governed exclusively by the laws of the Federal Republic of Germany as applies between German merchants. The applicability of the United Nations Convention on the International Sale of Goods (CSIG Vienna) and of German private international law is expressly excluded.

**XI. Final provisions**

1. Should any of the above provisions be ineffective or be excluded by a special agreement, this shall not affect the effectiveness of the other provisions.
2. We store customer data within the context of our mutual business relations in accordance with the *Bundesdatenschutzgesetz* (Federal Data Protection Act).

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