

General Terms and Conditions of Sale



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1 Scope of application

1.1 Our General Terms and Conditions of Sale shall exclusively apply to customers that are not consumers (entrepreneurs, public law entities or special funds under public law as described in section 310, para. 1 of the German Civil Code). These General Terms and Conditions are exhaustive unless otherwise agreed upon in writing. Any contrary terms and conditions of the customer that deviate from or exceed the scope of these General Terms and Conditions shall not apply. We expressly object to such deviating General Terms and Conditions unless we accept them in writing. Our silence shall not be deemed to be a declaration of intent.

1.2 These General Terms and Conditions of Sale shall also apply to all future transactions with the customers to the extent such legal transactions are similar to this present one.

1.3 Our General Terms and Conditions of Sale shall also apply if we execute deliveries / work / services without reservations, although we are aware of the existence of the customer's terms and conditions contrary to or deviating from our General Terms and Conditions of Sale.

1.4 Any deviating or collateral agreements must be in writing to be effective. This shall also apply to any waiver of this requirement of written form.

1.5 The customer's non-acceptance of our terms shall entitle us to rescind the contract.

2 Offer, conclusion of contract, scope of performance

2.1 All our offers – target price offers / cost estimates are expressly excluded – shall be binding during the period of time after the date of issue that is stipulated in such offer. A contract shall be deemed concluded at the time we receive the customer's acceptance of our offer / the customer's order within the acceptance period. An offer acceptance / order we receive after expiration of the acceptance period shall be deemed to be a new offer to be made by the customer, which shall not be valid unless expressly accepted by us.

2.2 We shall present to the customer for approval (by signature) any technical plans / drawings that are to be made after conclusion of the contract. We shall be entitled to demand express approval of such plans / drawings before commencement of production and installation of our products.

2.3 If the contents of the order confirmation deviate from the offer and/or from the order, the contents of the order confirmation shall be binding unless the customer objects to the contents of the order confirmation within 5 days upon receipt thereof.

3 Prices

3.1 Unless otherwise agreed upon, prices contained in our offers or in our order confirmations shall be stated ex supplier's works (EXW – Am Knick 18, 22113 Oststeinbek, Germany, Incoterms® 2020) plus applicable statutory VAT, if any.

3.2 If the specifications forming the basis of our offer or of our order confirmation are changed at a later time and such changes require a larger scope of delivery / work / services (e.g. due to larger quantity of materials or personnel, etc.), we shall prepare a change offer.

4 Terms of payment

4.1 Unless otherwise agreed upon, payments, including without limitation any advance or partial payments, are to be made within 10 days after the date of invoice, net, without any deductions, free to the company's paying agent.

4.2 If the customer fails to observe the payment periods for reasons attributable to the customer's sphere of responsibility, we shall be entitled to assert default interest amounting to 9 percentage points above the relevant base rate. We reserve the right to assert additional damages. The customer's payment default shall entitle us to suspend the deliveries, work or services to be provided by us.

4.3 The customer shall not be entitled to exercise rights of retention of payment or to set off any payments against counterclaims unless such claims are undisputed or established with legally binding effect. Such prohibition of retention / set-off shall not apply to any counterclaims / rights of retention arising out of the same contractual relationship.

5 Retention of title, right to repossess

5.1 We reserve the title to the delivered items / services until all claims against the customer arising out of the business relationship, including without limitation all claims arising out of add-on sales, re-orders or replacement orders, are settled. Such retention of title shall remain in force in any case, including without limitation in case individual or all receivables are included in a current invoice and the balance is struck and recognised.

5.2 If the customer is in default of payment, we shall be entitled to re-claim and repossess the delivered items / services. We shall also be entitled to re-claim and repossess the delivered items / services after expiry of a reasonable period of time in case the customer violates the contract. Any withdrawal or attachment of the delivered item or service by us shall not be deemed a rescission of contract unless expressly declared in writing. The customer shall be obliged to inform us immediately of any attachments of or other interferences with the delivered items / services by third parties.

5.3 Any application for the institution of insolvency proceedings against the customer's assets entitles us to rescind the contract without notice and to demand immediate return of the delivered items / services.

6 Dates and periods of time

6.1 Estimated delivery dates shall not be deemed fixed delivery dates.

6.2 Agreed periods of time shall not commence before all technical details are clarified and our technical drawings of the plant are approved.

6.3 In case of any delay in payment of outstanding claims resulting from the business relationship, the agreed periods for execution of the order and delivery shall be extended by a period of time equal to such delay in payment.

6.4 Agreed periods for the completion and/or service deadlines are subject to the requirement that performance may commence as scheduled and that any advance performance to be provided by the customer is duly provided as stipulated in the contract. To the extent the customer has to provide any advance performance during the execution of the order, such advance performance must not impede or interrupt our work / services. If the execution of our work / services is to be interrupted or the completion of our work is delayed, in each case for causes not attributable to our sphere of responsibility (e.g. due to delayed acceptance tests by experts, etc.), the customer shall bear all related costs, including without limitation the costs for the waiting period and any additional travel costs for our technicians / service technicians.

6.5 The agreed periods of time shall be reasonably extended in case of labour disputes, including without limitation strikes and lockouts and in case of occurrence of unforeseeable impediments outside our sphere of influence to the extent they are proven to affect the completion or delivery of the delivery / work / services. The same shall apply if sub-suppliers suffer from such circumstances. In material cases, we will inform the customer of the commencement and end of such impediments without delay.

6.6 If the delivery of our products or the execution of our work / services is delayed for reasons attributable to the customer, we shall be entitled (without limitation) to set a grace period and after fruitless expiry thereof and provided the delivery / work / services have not been paid yet, to otherwise use such material and to supply the customer at a later time. If there are no suitable storage facilities, we shall be entitled to store such material at the customer's costs. The customer shall be informed of such costs in writing in advance.

7 Place of delivery, delivery, acceptance, transfer of risk

7.1 Deliveries and services shall be made ex supplier's works (EXW – Am Knick 18, 22113 Oststeinbek, Germany – in accordance with INCOTERMS®2020), including in cases in which we bear freight and other costs in accordance with a separate agreement. An acceptance made before delivery shall be decisive for the transfer of risk.

7.2 To the extent acceptance is required, such acceptance shall be made and documented upon agreement, either by issuing a factory acceptance certificate and/or customer acceptance certificate and/or an expert acceptance certificate. Such agreement may also be made by implication. By signing our service report, the customer shall accept services as being in accordance with the contract.

7.3 The customer shall be obliged to accept work performance if such work was performed (and delivered, if applicable) in accordance with the contract. We shall be entitled to ask and/or invite the customer to accept the work performance / services. Upon our request to accept the work performance, the

customer shall be obliged to do so within two weeks after our request. Acceptance shall be deemed made if the customer does not refuse acceptance within such period of time, stating at least one defect.

7.4 If the customer commissions our delivery / service without prior acceptance, such commissioning shall be deemed acceptance.

7.5 The customer shall not be entitled to refuse acceptance in case of complaints based on immaterial defects.

7.6 If performance is interrupted for reasons not attributable to our sphere of responsibility but to the customer's, the risk shall be transferred to the customer at the time such interruption of performance commences. Any compensation paid by any third party for any damage to our delivered item / service (e.g. insurance benefits) shall be paid to the person or entity that bears the risk at the time such damage occurred.

8 Early termination of contract

8.1 Should we, after the contract was concluded, become aware of the customer's bad financial standing (e.g. imminent insolvency, insolvency proceedings already initiated, etc.), we shall be entitled to demand collateral and/or advance payment for our delivery / work / service or to demand compensation for all expenses we made. Such expenses may amount to 20% without proof or, in case of materials produced, to 70% of the order value, unless the customer is able to prove that the actual expenses were in fact lower than that or unless we are able to prove that the actual expenses were in fact higher than that. Should we not receive payment / collaterals within 10 days and two reminders thereafter, we shall be entitled to rescind the contract.

8.2 If the customer terminates the contract, we shall be entitled to invoice termination costs amounting to 20% of the order value without the obligation to provide evidence unless the customer is able to prove that the actual expenses were in fact lower than that or unless we are able to prove that the actual expenses were in fact higher than that.

9 Warranty / claims based on defects in quality / liability

9.1 The customer shall only be entitled to assert claims based on defects if the customer duly fulfils / fulfilled the obligations to investigate and to make a complaint in respect of a defect according to section 377 of the Commercial Code.

9.2 The customer shall be obliged to inform us without delay and in writing of any defects detected.

9.3 There shall be no right to assert claims based on defects in the following cases (without limitation): immaterial deviation from the agreed quality, immaterial impairment of merchantability, natural wear and tear.

9.4 In addition, a prerequisite for the customer's rights to assert claims based on defects is that our products were skillfully installed by an expert company for cranes and lifting gear, duly commissioned by us and reasonably and properly used by the customer in accordance with the operating manual. The same shall apply to spare parts, irrespective of whether they were purchased from us or from a third party.

9.5 If the customer or any third party makes improper repairs or changes to the delivered items / services, the customer shall not be entitled to assert any claims based on defects with regard to such repairs or changes and any consequences thereof.

9.6 If our delivery / service shows a defect within the limitation period which already existed at the time the risk was transferred, we shall be obliged to provide supplementary performance, i.e. – in our discretion – to remedy such defect (removal of defects) or to exchange the product (new delivery), in each case free of charge. We shall bear the expenses for the removal of defects up to the amount of the agreed order value. Any travel or shipping costs outside the Federal Republic of Germany (place of performance) caused by such removal of defects shall be borne by the customer.

9.7 To the extent required, feasible and economically reasonable, the customer shall be entitled to participate in or execute tests on our premises, during our usual hours of operation and upon prior notice.

9.8 Our liability for any claims for damages asserted by the customer based on our or our representatives' or vicarious agents' wilful intent or gross negligence and based on slight negligence regarding the violation of material contractual obligations (i.e. obligations the fulfillment of which actually facilitates the due execution of the contract and on the fulfillment of which the customer generally relies and may rely on) shall be subject to legal provisions.

9.9 Otherwise, our liability for damages shall be limited to the foreseeable, typical damage.

9.10 Liability for culpable injury to body, limb or health shall remain unaffected; this shall include liability in accordance with the Product Liability Act.

9.11 The limitation period for claims based on defects shall be 12 months.

9.12 To the extent the law mandatorily provides for longer periods of time in accordance with section 438, para. 1, no. 2 of the German Civil Code (civil works and products for civil works) and in accordance with section 634a, para. 1, no. 2 of the German Civil Code (construction defects) or otherwise, such longer periods shall apply.

9.13 Claims for damages based on wilful intent or gross negligence and on the injury to body, limb or health due to an intentional or negligent violation of the user's obligations and in case of fraudulent concealment of defects shall be subject to the legal period of limitation.

9.14 The customer shall only be entitled to assert claims of recourse against us in our capacity as the supplier in accordance with section 478 of the German Civil Code (recourse by an entrepreneur) to the extent the customer – and/or with the customer's customer, if applicable – failed to make agreements beyond the scope of the legal claims based on defects. The scope of the customer's recourse claims against us in accordance with section 478, para. 2 of the German Civil Code shall also be subject to section 9.6 of these General Terms and Conditions of Sale.

10 Insurance

10.1 We shall be entitled to take out insurance for the delivered items / services against theft, breakage, fire, water and other damage at the customer's expense if the customer is unable to provide evidence that the customer took out such insurance.

10.2 In addition, we undertake to take out and maintain product liability insurance in accordance with the Product Liability Act at our own expense with an insured lump sum of EUR 5 million per case of bodily injury / property damage.

11 Assignment

Without our express consent, the customer shall not be entitled to assign to any third party any claims resulting from the contractual relationship with us.

12 Confidentiality, secrecy obligations

12.1 We hereby expressly reserve title, copyrights and any other industrial property rights to any and all documents made available to the customer in connection with enquiries or orders, including but not limited to target price offers, cost estimates, offers, technical descriptions of the scope of delivery / service, illustrations, drawings, calculations, models, files and other documents.

12.2 The customer shall have the obligation to treat strictly confidentially the documents made available to it and to only use them in connection with the contract concluded with us. Such items shall not be copied or reproduced without our express prior consent. Upon request, the customer must return to us all documents and any copies, reproductions etc. thereof without delay and must confirm that there are no documents and any copies, reproductions etc. in its possession anymore. Illustrations, drawings, calculations, models, files and other documents may only be disclosed to third parties upon our express written prior consent.

12.3 Any internal information the customer becomes aware of in the course of our cooperation must also be treated confidentially and must only be used for the purposes of such cooperation with us.

12.4 The customer shall be obliged to subject its employees and/or any third parties involved to compliance with the secrecy obligation in accordance with these Terms and Conditions and with the legal provisions.

12.5 The confidentiality and secrecy obligation shall remain effective after the execution / completion of the order / delivery / service and shall survive the termination of the business relationship.

12.6 Reverse engineering (e.g. replication, reproduction, etc.) of our products in accordance with the Directive (EU) 2016/943 and with other legal provisions is strictly prohibited at all times.

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13 Privacy notice

Our privacy notice, which can be read and downloaded at <https://www.fuchs-cranes.de/en/Impresum.html>, shall apply during, before and at the time of initiation of the business relationship with the (future) customer.

14 Final provisions

14.1 The laws of the Federal Republic of Germany shall apply. The UN Sales Convention shall be excluded.

14.2 Unless otherwise agreed upon, place of jurisdiction for any disputes arising out of the business relationship shall be our place of business, provided the customer is a merchant, a public law entity or a special fund under public law.

14.3 Unless otherwise agreed upon, place of performance shall be our place of business.

14.4 Should individual provisions of these Terms and Conditions of Sale be or become ineffective in whole or in part, or should a gap be detected, this shall not affect the effectiveness of the remaining provisions of these Terms and Conditions of Sale. The ineffective provision and the gap shall be replaced by a legally admissible provision that comes as close as possible to the intent of the ineffective provision.