

**I. General provisions** 1.)<sup>1</sup>In contractual relations with entrepreneurs within the meaning of Section 14 of the Civil Law Code (BGB), legal persons under public law and special funds under public law, these General Terms and Conditions of Service and Assembly in addition to the supplementary General Terms and Conditions of Sale of COLUMBUS MCKINNON Engineered Products GmbH as contractor shall apply exclusively for all maintenance, assembly, repair and service works on ground excavation vehicles, industrial machines, lifting installations, cranes and all types of lifting machines (contractual goods).<sup>2</sup>Contrary or differing terms shall not apply unless expressly agreed upon in writing; this shall apply even if an order is accepted without objection or if unconditional delivery is made in spite of the contractor being aware of the principal's contradictory or deviating terms and conditions.

2.)<sup>1</sup>All agreements to be concluded with the principal must be in writing.<sup>2</sup>If the order constitutes an offer within the meaning of Section 145 BGB it can be accepted within two weeks.<sup>3</sup>Reasonable part performances by the contractor are admissible.

3.) To the extent necessary for the performance of the contractor's obligations, the placing of an order shall include at the same time also permission for test driving and test runs of the contractual goods.

## II. Duties of cooperation of the principal

1.)<sup>1</sup>Unless otherwise agreed in writing, the principal shall be obliged to cooperate free of charge for the purpose of performance by the contractor.<sup>2</sup>Such necessary duties of cooperation of the principal constitute essential contractual obligations of the principal.

2.) To enable the contractor to perform, he shall be provided in good time with the necessary documentation and information, in particular error descriptions, test data and similar information.

3.)<sup>1</sup>If the place of performance is not the registered office of the contractor, the employees of the contractor are to be escorted to the contractual goods by a person designated by the principal who is familiar with the geographical and material conditions. The principal shall ensure adequate working conditions and adequate protection for the employees and things deployed by the contractor.<sup>2</sup>If necessary, the principal shall also provide for an adequate number of support staff.<sup>3</sup>Theft-proof facilities for storing the contractor's working equipment and heated rooms for accommodating the contractor's employees shall also be provided; furthermore, power (lighting and operating power) and water as well as the materials and operating materials for testing and adjusting the contractual goods shall be supplied by the principal.

4.)<sup>1</sup>The principal shall also inform, and if necessary instruct, the contractor's employees about the safety instructions applicable at the place of performance.<sup>2</sup>The principal shall notify the contractor without undue delay about any breach thereof.

5.)<sup>1</sup>If the principal fails to comply with his duties of cooperation, in spite of having been requested to do so, the contractor shall be entitled but not obliged to perform the necessary actions himself or to have them performed by third parties at the expense of the principal.<sup>2</sup>Any other statutory rights and claims of the contractor arising from the failure to perform necessary acts of cooperation remain unaffected, in particular the right to assert additional costs incurred as a result of the obstruction.

6.)<sup>1</sup>The principal shall be responsible for the disposal of old parts or any other objects.<sup>2</sup>Any disposal by the contractor shall be on behalf and at the expense of the principal.

## III. Time-limits and dates

1.)<sup>1</sup>Any indication of dates and time-limits shall be non-binding, unless expressly declared to be binding by the contractor. Time-limits and dates shall only be binding if the principal has complied fully with all duties of cooperation incumbent on the principal pursuant to Section II.<sup>2</sup>In all other respects, the defence based on non-performance of the contract is reserved.

2.)<sup>1</sup>Observance of the time of delivery is conditional on the delivery by sub-suppliers, unless the contractor is responsible for the failure to obtain delivery.<sup>2</sup>If the failure to observe time-limits or dates is due to force majeure, labour conflicts or other causes beyond the sphere of responsibility of the contractor, the time of delivery shall be extended appropriately.

3.)<sup>1</sup>If the principal is in default of acceptance or culpably infringes any other duties of cooperation, the risk of accidental destruction or accidental deterioration of the contractor's performance passes to the principal.<sup>2</sup> Furthermore, the principal shall be obliged to indemnify the contractor for any damage incurred, including any extra expenses.<sup>3</sup>The contractor reserves the right to assert any further claims or rights.

4.)<sup>1</sup>The principal is entitled to revoke the contract without notice if the supplier is definitively unable to provide the entire performance prior to the passing of risk.<sup>2</sup>In addition the principal is entitled to revoke the contract if performance becomes partially impossible and if the principal has a legitimate interest in rejecting the partial performance.<sup>3</sup>If that is not the case, the principal is obliged to pay the portion of the contractual price corresponding to the partial performance.<sup>4</sup>The same shall apply to the inability of the contractor.<sup>5</sup>In all other respects Section VIII (Liability) shall apply.<sup>6</sup>If the impossibility or inability of performance occurs while the principal is in default of acceptance or if the principal is solely or mainly responsible for these circumstances, the principal shall remain obliged to provide the required consideration.<sup>5</sup>)<sup>1</sup>If the contractor is in culpable default of performance, the contractor shall be entitled to indemnification amounting to 0.5 % per completed week, however limited in total to 5 %, of the contract price for the part of the delivery which was not delivered in time or which could not be used in the contractually intended manner due to the delay.<sup>2</sup>The principal shall only have further claims if the default is due to intentional or grossly negligent conduct on the part of the contractor or if the parties have agreed specifically on a fixed date for delivery.<sup>3</sup>In all other cases, in which the liability of the contractor exceeds the level of compensation stipulated in

Sentence 1, the contractor's liability is limited pursuant to Section VII (Liability).

6.) Within the scope of the statutory provisions, the principal shall only be entitled to revoke the contract for late performance if the contractor is in default.

## IV. Risk, transport, acceptance

1.)<sup>1</sup>The risk of the accidental destruction or accidental deterioration of the contractual goods provided to the contractor for the purpose of performance shall remain with the principal. The contractor shall conclude an insurance against damage resulting from fire, water, theft, transport and storage only at the request and expense of the principal.

2.)<sup>1</sup>If the contractor undertakes to transport the contractual good, the transport is done at the risk and expense of the principal.<sup>2</sup>This also applies even if the transport is done by means of the contractor's own vehicles.

3.)<sup>1</sup>Acceptance by the principal shall take place without undue delay, however at the latest two weeks after the contractor has given notice that the goods are ready.<sup>2</sup>Invoicing by the contractor shall be deemed to be notice that the goods are ready.<sup>3</sup>Unless the principal objects in writing to the performance on the basis of a defect entitling the principal to refuse acceptance within two weeks after receipt of the notice that the goods are ready, the contractor's performance shall be deemed to have been accepted.<sup>4</sup>Unconditional payment of the contractor's invoice by the principal shall also be deemed to constitute acceptance.<sup>5</sup>Any assertion of a contractual penalty incurred by the contractor is conditional on a corresponding reservation by the principal at the time of acceptance.

## V. Remuneration and payment

1.)<sup>1</sup>Unless otherwise agreed in writing, e.g. in the form of a lump-sum payment, the contractor shall be remunerated in accordance with the contractor's price lists applicable on the date of the performance (exclusive of statutory VAT at the date of invoicing).<sup>2</sup>The current price lists are available for inspection at the offices of the contractor and will be made available at the request of the principal.

2.)<sup>1</sup>Necessary services of third parties shall be invoiced to the principal the net purchase price, plus a 15 % surcharge.<sup>2</sup>Waiting times due to causes beyond the contractor's sphere of responsibility will be charged as working time.

3.)<sup>1</sup>Any calculation of the anticipated remuneration of the contractor merely constitutes a non-binding cost estimate.<sup>2</sup>A cost quote shall be done in writing and is to be designated as such.<sup>3</sup>Unless otherwise agreed in writing, a cost quote is not made under a warranty of its correctness.<sup>4</sup>If it becomes apparent that the costs quote will be exceeded substantially or that cost limits set by the principal will be exceeded, the contractor shall inform the principal accordingly without undue delay.

4.)<sup>1</sup>The contractor shall be entitled to demand an advance payment for replacement parts.<sup>2</sup>The contractor shall be entitled to charge part payments for performance already delivered.

5.)<sup>1</sup>Invoices are immediately due for payment.<sup>2</sup>Discounts for prompt payment shall require an express agreement in writing.<sup>3</sup>The respective statutory provisions shall apply to payment default by the principal.<sup>6</sup>)<sup>1</sup>If the principal is in payment default, the contractor is entitled to demand advance payment and to retain services not yet delivered.<sup>2</sup>If the claim for payment is jeopardised by the principal's inability to perform, the contractor is entitled to request an appropriate advance payment or and appropriate security.<sup>3</sup>Agreed delivery delays shall be extended correspondingly.<sup>4</sup>After unsuccessful expiry of a time-limit pursuant to sentence 2 the contractor is entitled to revoke the contract.

7.)<sup>1</sup>The principal shall be entitled to set-off only to the extent that his counter-claims are uncontested or have been finally and non-appealably established or acknowledged by the contractor.<sup>2</sup>The principal shall be entitled to exercise a right of retention only to the extent that the counter-claim is based on the same contractual relation.

## VI. Retention of title, security rights

1.)<sup>1</sup>When installing replacement and accessory parts in the contractual goods, the contractor obtains co-ownership of the her object at the ratio of the value of installed parts (list price exclusive of VAT) to the value of the contractual goods (commercial value exclusive of VAT) immediately prior to the combination or intermixture.<sup>2</sup>If the combination or intermixture is done in such a manner that the contractual goods are considered as the principal object, the principal shall transfer a pro-rata share of co-ownership to the contractor upon combination/intermixture.

2.)<sup>1</sup>The contractor shall obtain a security right in the contractual goods of the principal to secure the provided services.<sup>2</sup>The security right also extends to previous works provided in connection with the contractual goods.<sup>3</sup>Other claims arising out of the business relation are only subject to the security right if such claims are uncontested or have been acknowledged by the principal or have been finally and non-appealably established.

3.)<sup>1</sup>If the contractor does not obtain security right pursuant to subsection 2.) because the principal is not the owner of the contractual goods, the latter shall transfer the claim or the right to expect transfer of ownership to the contractor.<sup>2</sup>The contractor shall also be irrevocably authorised – but not obliged – for the purpose of obtaining property to perform the claims of third parties against the principal.

## VII. Liability for defects

1.) Defects in the performance of the contractor shall be notified to the contractor in writing.

2.)<sup>1</sup>If the performance is defective, the contractor shall cure the defect, at his option, by remedying the defect or by supply providing non-deficient performance.<sup>2</sup>The necessary expenses for curing the defect, in particular the shipping, road, labour and material costs shall be borne by the contractor, unless such

costs were caused by the fact that the contractual goods were transported by the principal to a location other than the place of performance.<sup>3</sup>Parts replaced in the scope of the defects cure shall become the property of the contractor.

3.) If the goods remain defective even after repeated cure, the principal shall be entitled to revoke the contract in accordance with the statutory provisions regarding the revocation of a contract, reduction of the contract price or in accordance with the provisions of Section VIII (Liability) on damages.<sup>4</sup>)<sup>1</sup>The limitation period for claims for defects shall be 12 months calculated from the date of acceptance.<sup>2</sup>The statutory time-limits shall apply to a defective performance that was used in accordance with the customary manner for a construction and has caused this construction to be defective.<sup>3</sup>These provisions shall also apply to the extent that the supplier has undertaken to warrant certain properties of the contractual goods or fraudulently conceals a defect, in the case of an injury to life, body or health as well as in the case of an intentional or grossly negligent violation of obligations.

5.)<sup>1</sup>Merely trivial deviations from the agreed quality or merely trivial limitations to the suitability of the contractual goods, inappropriate or improper use of the contractual goods, their erroneous putting into operation by the principal or third parties, ordinary wear and tear, erroneous or negligent treatment, improper maintenance, excessive use, unsuitable operational materials, defective construction works, unsuitable construction ground as well as chemical, electro-chemical or electrical impacts that were not to be expected according to the contract shall not give rise to claims for defects.<sup>2</sup>The Contractor shall also not be liable for improper modifications or repairs by the principal or a third party, nor for any consequences resulting therefrom.

6.) The right of recourse pursuant to Sections 478 and 479 BGB are not affected by the above provisions.

## VIII. Haftung

1.)<sup>1</sup>In principle, the supplier shall only be liable for claims for damages if the supplier or a person used to perform an obligation of the supplier have acted with intent or gross negligence.<sup>2</sup>In the case of an infringement of essential contractual duties, the supplier shall also be liable for simple negligence, however limited to contract-typical, foreseeable damage.<sup>3</sup>In all other respects, liability shall be excluded.

2.)<sup>1</sup>The provision of No. 1.) shall not apply in the case of injury to life, body and health, or to compulsory statutory claims pursuant to the Product Liability Act.<sup>2</sup>It shall also not apply to liability for the fraudulent concealment of defects and the assumption of a written warranty.

3.) Any exclusion or restriction of the liability of the supplier shall also apply to the personal liability of the supplier's employees and worker, personnel, representatives and of other persons used to perform the supplier's duties or his vicarious agents.

## IX. Applicable law, place of performance, jurisdiction

1.) This contract shall be governed exclusively by the laws of the Federal Republic of Germany (excluding the UN Convention on Contracts for the International Sale of Goods).

2.)<sup>1</sup>For lack of deviating written agreements the place of performance shall be the registered office of the contractor.<sup>2</sup>If the principal is an entrepreneur for the purposes of Section 14 BGB, a legal person under public law or a special fund under public law, the registered office of the contractor shall be the exclusive place of jurisdiction at the same time.<sup>3</sup>However, the contractor shall also be entitled to sue the principal in the courts at the latter's registered office. **COLUMBUS MCKINNON**

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