

General Terms and Conditions

of Cramo AG (CRAMO) for the trading in and repair of construction machinery and equipment (Version dated: 01/10/2014)

1. Business Terms, quotation, contract conclusion

1.1 We will provide any of CRAMO's quotations, deliveries and services exclusively on the basis of these General Terms and Conditions. We hereby expressly object to any of our business partners' which deviate from our Terms and Conditions herein.

1.2 CRAMO's quotations are subject to change without notice. All quotation documents (including drawings and cost estimates, etc.) are the property of CRAMO and shall not be made accessible to third parties.

1.3 Contracts shall be deemed validly concluded only after CRAMO's written confirmation of a purchase order. The same shall apply to amendments, modifications, and collateral agreements. The nature and scope of any deliveries/services shall be defined exclusively by CRAMO's written confirmation of order.

1.4 Drawings, illustrations, dimensions, weights, and other performance data shall become binding only upon express written agreement.

2. Prices

Unless otherwise agreed, all prices shall be deemed quoted EXW (ex works) the supplier's factory. In addition, the value added tax at the statutory rate applicable at the time will be added to all prices.

3. Time of delivery and performance

3.1 The deadlines for deliveries/performance of services shall commence no earlier than on receipt of CRAMO's written confirmation of order and shall be deemed binding only if this has been expressly agreed in writing.

3.2 In case of delays in delivery and performance caused by the occurrence of unforeseen force-majeure events beyond CRAMO's control (e.g. material procurement difficulties, interruptions of operations, strikes, lockouts, etc., also affecting the suppliers of CRAMO), the delivery deadline shall be extended accordingly.

3.3 In case of delays in delivery for which CRAMO is responsible, and which are not at least due to gross negligence, the customer shall be entitled to claim compensation – subject to furnishing proof of loss. Such compensation shall, to the exclusion of any further claims, equal 0.5% of the partial or total net order value affected by the delay for each full week of the delay, but shall altogether not exceed 5% of the partial or total net order value.

3.4 Partial deliveries and the partial performance of services will be accepted at any time.

4. Risk transfer, acceptance

4.1 The risk of accidental loss or accidental deterioration of the delivery item shall transfer to the customer on hand-over of the shipment to the person in charge of shipping, or at the latest by the time the delivery item has left CRAMO's warehouse or the manufacturer's production facility for the purpose of shipment.

4.2 The customer shall take delivery of the supplied goods, even if they show minor defects, without prejudice to the customer's rights.

4.3 Damages in transit shall be at the entire expense of the recipient. They shall be identified on arrival of the shipment and any claims for compensation shall be addressed by the recipient to the carrier.

5. Retention of ownership title

5.1 CRAMO reserves ownership of all delivery items until all claims accrued by CRAMO under the entire business relationship with the customer have been settled in full. In the case of running accounts, all of the reserved goods shall serve as collateral to protect the balance claim. In cases where the estimated value of the reserved goods serving as collateral for CRAMO exceeds the unsettled receivables from the customer by more than 30%, CRAMO shall be obliged, at the customer's request, to release some of the collateral at its own (CRAMO's) discretion.

5.2 The customer agrees to refrain from selling, encumbering, mortgaging, treating or processing, transferring by way of collateral, or leasing any of the reserved goods. If a third party nevertheless acquires any rights to the security collateral, the customer hereby assigns to CRAMO any and all of its rights to the security collateral resulting from such acquisition, and CRAMO hereby accepts such assignment. Any treatment or processing is always done for CRAMO in its capacity as manufacturer, albeit without any obligation for CRAMO. In case of third-party seizure of the reserved goods, the customer shall indicate CRAMO's ownership of these goods and shall immediately notify CRAMO in writing. Any intervention costs will be charged to the customer.

5.3 If the customer is in breach of the contract, or if CRAMO's rights are compromised in any way, CRAMO shall be entitled to immediately collect and repossess the reserved goods at the customer's expense. For this purpose, the customer will grant CRAMO and/or third parties designated by CRAMO the right of access to the respective storage locations.

6. Payment

6.1 All payments will be made in cash and without deduction at the time of delivery/acceptance. Payment orders, checks, or bills of exchange will be accepted only upon special written agreement and only on account of payment, assuming that all collection and discount fees have been paid by the customer. CRAMO has the option of offsetting incoming payments against outstanding receivables (in which case incoming payments are first offset against the costs, then against the interest, and finally against the main amount), unless the customer has applied payment conditions of its own.

6.2 In case of failure to comply with the terms of payment, or if CRAMO becomes aware, after conclusion of contract, that the payment claim may be at risk due to the customer's lack of solvency/ability to perform, CRAMO shall have the right to defer/agree any outstanding deliveries and services until receipt of the advance payment or collateral security.

6.3 CRAMO's employees are not authorized to collect payment without express collection authorization.

6.4 According to Section 286 of the German Civil Code [BGB], the customer shall be deemed to be in default no later than 30 days after receipt of the invoice and the due date thereof. If CRAMO issues a written reminder before expiry of 30-day period after the maturity and receipt of an invoice, this alone shall trigger the default consequences. The level of the default interest shall be according to Section 288 of the German Civil Code [BGB].

6.5 If payment by instalments was agreed, the entire residual debt – regardless of the maturity of any bills of exchange – shall become due for payment immediately if the customer is for more than ten (10) days in partial or complete default of an instalment.

6.6 For each reminder sent after a default has occurred, the customer shall be liable to reimbursing the administrative expenses by paying the sum of 10.00 Euros in each case.

6.7 The retention of payments or the set-off of payments against receivables of the customer which are contested by CRAMO and have not been recognized as legally valid shall be excluded.

7. Warranty, liability

7.1 Complaints by companies shall at all times be notified immediately and in writing, i.e. complaints on the grounds of obvious defects shall be notified within eight (8) days, whereas complaints in case of repair works shall be notified within three (3) days following delivery at the place of destination; otherwise, the enforcement of warranty claims for material defects shall be excluded.

7.2 In case of defective deliveries/performance of services, the customer may demand rectification of the defects, or, in cases where rectification is deemed inadequate, impossible, or unreasonable, may demand replacement by CRAMO. In cases where the (even repeated)

rectification or replacement fails, or in cases where CRAMO culpably allows an appropriate period of grace granted for this purpose to elapse, the customer shall have the right to withdraw from contract, or to demand a price reduction or compensation for damages.

7.3 Any warranty will lapse in case of failure to comply with CRAMO's or the manufacturer's operating or maintenance instructions, or in case of unauthorized modifications to the delivery item, or in case of inappropriate treatment thereof, or in case of normal wear & tear, or in case the purchaser or third parties performed actions to the subject-matter of the agreement during ongoing repair works without CRAMO's prior consent.

7.4 For new delivery items, the customer's claims based on material defects – in the customer's capacity as an entrepreneur – shall be subject to a limitation period of twelve (12) months from the date of delivery of the goods, except in cases where the defect was maliciously concealed or in cases where CRAMO had guaranteed the absence of the defect. The foregoing does not apply to consumer goods purchases within the meaning of Sections 474 et seqq. of the German Civil Code [BGB].

7.5 Used delivery items sold to entrepreneurs will be sold to the exclusion of any liability for material defects. The foregoing does not apply to consumer goods purchases within the meaning of Sections 474 et seqq. of the German Civil Code [BGB]. In this case, the consumer will be granted a limitation period of twelve (12) months for claims based on material defects.

7.6 Any further claims the customer may have, notably in case of consequential damages, will be excluded except in cases where CRAMO is guilty of gross negligence,

- in case of injury to life, limb or health,

- in case of breach of essential contractual obligations, insofar as the achievement of the contractual intent is jeopardized, with regard to foreseeable damages typical for the contract,

- in case of defects in the delivery item which, under the German Product Liability Act, are subject to liability for personal damages or property damages to privately used items,

- in case of absence of expressly warranted qualities where the purpose of such warranty was specifically to safeguard the purchaser against damages not caused to the delivery item itself,

- in case of defects which were maliciously concealed or the absence of which had been guaranteed by the contractor.

7.7 In all other respects, the foregoing provisions shall apply mutatis mutandis in the presence of defects in title.

7.8 Declarations about the quality of an item shall in no case constitute a guarantee of such quality.

8. Supplementary terms and conditions for the execution of works to construction machinery and construction equipment etc.

8.1 By issuing a repair order to CRAMO, the customer simultaneously grants CRAMO permission to perform test drives and test runs.

8.2 Cost estimates will be deemed binding only if this has been expressly agreed to in writing. Otherwise, a cost estimate may be readily exceeded by up to 20% if necessary for the completion of the works. The customer will be notified in cases where a cost estimate is exceeded by more than 20%. If the customer objects to the excess, CRAMO will in any case be reimbursed for any expenses incurred, as well as for an adequate share of the profit.

8.3 Repair periods will be deemed binding only if this has been expressly agreed to in writing. In case of an extension of the contract, the repair period will be extended accordingly.

8.4 The risk shall in any case transfer to the customer as soon as CRAMO has advised the customer about the finalization of the works. Invoicing will be deemed as notification. The customer agrees to accept the subject-matter of the agreement within three (3) days; otherwise, CRAMO will warehouse the subject-matter of the agreement at the customer's risk and will charge the customer for the warehousing expenses.

8.5 CRAMO shall retain the property right to any built-in assemblies, spare parts and accessories until full payment by the customer as defined in Paragraph 5. Until that time, CRAMO shall also have a right of lien and a right of retention in the repaired object. CRAMO's right of lien shall also extend to CRAMO's claims arising from work carried out at an earlier date or from any of CRAMO's other claims against the customer. CRAMO has the right, in case of the purchaser's default in payment and/or in case of fruitless expiry of an adequate period of grace with threat of foreclosure sale, to sell the contractual object by private contract in the open market or to otherwise commercialize them, and to satisfy its claims from the proceeds.

8.6 CRAMO will scrap any of the used parts freed up by the repair performed, provided the repair was performed at CRAMO's workshops. Should the customer wish to dispose of the used parts in any other way, the customer shall promptly notify CRAMO of its intentions in writing immediately on receipt of the order conformation.

8.7 Paragraph 7.6 of these General Terms and Conditions shall apply mutatis mutandis to CRAMO's liability for the contractual object in cases where a repair order was issued.

8.8 Any of the customer's claims for defective repairs shall be subject to a limitation period of twelve (12) months, except in cases where the defect was maliciously concealed or in cases where CRAMO had guaranteed the absence of the defect. The foregoing does not apply to consumer goods purchases within the meaning of § of the German Civil Code [BGB].

9. Data privacy protection

9.1 Both the Lessee's and the collecting party's personal data will be collected, processed and used by CRAMO for the purposes of conclusion, implementation, or termination of the contract. Any use of such data for advertising purposes will be limited strictly to CRAMO's own advertising. Transmission of such data to other third parties will be limited strictly to the extent necessary for performance of the contract, e.g. for billing purposes to the Lessee's credit card company. Any use of such data over and above the foregoing shall be subject to a legal permit or a declaration of consent.

9.2 Notice pursuant to Section 28 sub-section (4) of the Federal Data Protection Act [BDSG]: The Lessee has the right at any time to object to the processing or use of its data for advertising or market research purposes. Any objections shall be addressed to: Cramo AG, Emeranstrasse 49-51, 85622 Feldkirchen, email: deutschland@cramo.com.

10. Applicable Law, place of performance, place of venue, partial invalidity

10.1 All legal relationships between CRAMO and its customers shall be governed exclusively by the laws of the Federal Republic of Germany. Place of performance shall be CRAMO's registered office, to wit Munich.

10.2 Exclusive place of venue for any disputes with general merchants, legal entities under public law, and persons without any court of general jurisdiction in the country of residence, shall be Munich. The same shall apply to disputes with persons whose place of residence or usual domicile after contract conclusion is unknown at the time of the legal action being filed.

10.3 Should individual provisions of this agreement or parts thereof be or become ineffective either wholly or in part, the effectiveness of the agreement shall remain otherwise unaffected. The ineffective provisions shall be replaced by effective provisions which as closely as possible approximate the factual, legal and economic intentions of the ineffective provisions as well as of the agreement per se. The same steps shall be taken in case the agreement shows any unforeseen loopholes.