

# WEBSITE GENERAL TERMS AND CONDITIONS OF SALE

## 1 APPLICATION OF THESE TERMS

### 1.1 Definitions

"Seller" is a company belonging to Konecranes Group of Companies selling the Product over the Portal.

"Buyer" is a company, entity or person purchasing the Product over the Portal.

1.2 These General Terms and Conditions of Sale ("Terms") together with any terms on Seller's website (the website is called the Portal) upon which Buyer has placed its order (collectively, "Contract") constitute the entire agreement between Seller and Buyer with respect to goods Buyer has ordered over the Portal (Product(s)) and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between Seller and Buyer, whether written or oral, relating to its subject matter.

1.3 The Contract is binding on Buyer upon placing of an order on the Portal. All orders for Products received by Seller through the Portal shall be governed only by the Contract, notwithstanding any terms and conditions in any purchase order, release order, or any other form issued by Buyer. Seller hereby rejects any terms and conditions which may be found in any purchase order, release order, or any other form issued by Buyer and hereby notifies Buyer that they are rejected.

1.4 If Buyer is not an individual, the person placing an order on the Portal such as employee, representative or agent of Buyer hereby confirms that he/she has the authority to bind Buyer to the Contract and the purchase of Seller's Products pursuant hereto and thereto.

1.5 Buyer understands that these terms are only for Business-to-Business use and not valid for consumer transactions. Buyer hereby confirms that he, she or the company or other entity he or she is working for or representing is not or cannot be interpreted to be a consumer and that these Terms are not used in consumer transactions.

1.6 Seller may amend these Terms from time to time without prior or subsequent notice to Buyer. The Terms in effect at the time of Buyer's order will apply to the Contract between Seller and Buyer, unless otherwise amended as agreed upon in writing consistent with the terms herein..

## 2 SCOPE OF DELIVERY

2.1 For purposes of these Terms and the Contract, the term "Product" or "Products" shall also include any documentation of Seller that are provided with the Products.

2.2 If Seller is unable or unwilling to supply Buyer with any Product for any reason whatsoever, including but not limited to situations in which, the Product is not in stock or is no longer available or because of an error in the price on the Portal, Seller will inform Buyer by e-mail and the order for such Products will be canceled or, if Seller will eventually be able to supply such Product(s) and Buyer and Seller separately agree in writing, the order shall remain open until such time that Seller is able to supply such Product(s). Products for which Buyer has already paid but for which Seller does not supply to Buyer for any reason will be refunded. The refund of the purchase price for Products shall be Seller's sole and exclusive obligation with respect to the cancellation of any order for Products that Seller cannot supply.

2.3 Seller is not responsible for installation, maintenance, erection, commissioning, replacement of or anything else with respect to the Product, except delivery of the Product as agreed to in these Terms. All sales of Products are final.

2.4 The Products may not be provided, used, or otherwise employed in, on or around a facility generating and/or employing in any manner nuclear or radioactive material and/or generating nuclear, radioactive or ionizing radiation whether as a fuel, product or any other substance. Seller disclaims any and all liability for all Products provided, used, or otherwise employed in violation of this section, 2.4.

## 3 INTELLECTUAL PROPERTY RIGHTS

3.1 Seller shall have and retain all right, title and interest including ownership right, copyright and other intellectual and industrial property rights to documents, drawings, software, reports, technical information, definitions, descriptions, manuals and any other intellectual property that Seller has or creates with respect to a Product.

3.2 Documents, drawings, software, reports, manuals, technical information, definitions, descriptions and any other intellectual property received by Buyer shall not, without the consent of Seller, be used for any other purpose than for the erection, commissioning, operation or maintenance of a Product and may not otherwise be used or copied, reproduced, transmitted or communicated to a third party. Buyer may, however transmit the documents or software to a third party to whom Buyer sells a Product; provided, however, that the limitations provided in this Section 3.2 shall also apply to any subsequent purchaser of a Product.

## 4 PACKING AND MARKING

Products shall be packed in accordance with Seller's standard packing procedures as required for transportation under normal transport conditions. Products shall be clearly marked and carry the necessary information concerning Buyer's identification and place of destination.

## 5 PRICE

5.1 If not otherwise agreed in the Contract, the price for the Product(s) is Ex Works price excluding transportation costs. Any reference to freight charges contained in the Contract is an estimate. Seller is not responsible for any differences that may occur between freight estimates contained in the Contract and actual freight charges applicable at the time of shipment, and Buyer shall incur and be responsible for all costs associated therewith.

5.2 If any part of the delivery of the Product is delayed or impeded due to reasons caused by Buyer or any third party under the control of Buyer, Buyer shall compensate any additional expenses incurred by Seller due to such delay or impediment including but not limited to storage costs.

5.3 Prices do not include any stamp duty, turnover or value-added tax, bank charges or any other similar taxes, duties or charges payable in the country into which a Product is to be imported and where the installation is to be carried out. In the event Seller is required to pay any such tax or charge, the tax or charge will be added to the invoice as a separate charge and Buyer shall reimburse Seller for the payment.

## 6 TERMS OF PAYMENT

6.1 Unless otherwise provided in the Contract, the purchase price shall be paid before Seller dispatches the Product. Buyer shall pay Seller to the extent of the quantity of Products shipped should Seller be unable for any reason to provide and/or ship the entire scope of Products identified in the Contract.

6.2 If Buyer delays making any payment or if it becomes evident that Buyer will not fulfill its contractual obligations, Seller may, in its sole discretion, cancel Buyer's order or postpone the fulfilment of its obligations until such a payment is made.

6.3 Seller shall be entitled to charge interest from Buyer if payment to Seller is past due. The rate of the interest is 1.5% per month (18% per annum) or the highest rate permissible under the applicable law, whichever is higher. The interest shall be counted from the due date until the actual date of the payment. Buyer shall pay such interest within ten (10) days from the date of the respective invoice.

6.4 If Buyer has not paid the amount due, Seller shall, in addition to and not in lieu of any other remedies available to Seller under the Terms, the Contract, at law or in equity, be entitled to cancel the order and the Contract by notice in writing to Buyer and to claim compensation for the loss it has incurred including but not limited to all

services performed to date, including but not limited to all of Seller's costs, expenses and reasonable profit for work in process as of the date of cancellation. In case of such termination, Buyer is obliged to return the Product to Seller at its cost.

## **7 STANDARDS OF MANUFACTURING AND DESIGN**

The Product supplied and the work carried out shall be in accordance with the technical standards commonly used by Seller. Seller shall not take into consideration laws and regulations prevailing in Buyer's country or at the place of operation.

## **8 DELIVERY TERM AND PASSING OF THE RISK**

8.1 Any agreed delivery term shall be construed in accordance with INCOTERMS<sup>®</sup> 2010. If delivery term is not specifically agreed, the delivery term shall be CPT, the address Buyer has registered on the Portal. For the avoidance of doubt, the selected delivery term is subject to section 5.1.

8.2 Delivery of the Product shall be completed when Seller has delivered in accordance with the applicable delivery term or has tried once to deliver the Product to the address given by Buyer.

## **9 DELIVERY TIME**

9.1 Subject to Section 1, Seller shall take efforts to deliver the Product by the date set forth in the Contract or dispatch confirmation, whichever is applicable.

9.2 The delivery times are, however, estimates and Seller shall not be under any liability in respect of any delay in delivery including transportation.

## **10 TRANSFER OF PROPERTY**

The Product shall remain Seller's property until the total purchase price has been paid in full.

## **11 WARRANTY**

11.1 Throughout the warranty period set forth below, Seller warrants that, to the best of its knowledge, the Product is free from defects caused by faulty design, materials or workmanship, which would prevent the electrical or mechanical functioning of the Product. Should such defects occur during the warranty period, Seller will, at its option, either repair the defects or supply the correct parts free of charge on FCA (INCOTERMS<sup>®</sup> 2010) basis. All labor costs of (i) disassembling and (ii) installing a repaired or replaced part furnished under this warranty are excluded."

11.2 The warranty period for the Product or any part of the Product and for any replaced or repaired parts is six (6) months after the date of shipment. The warranty period for hoisting equipment is, however, twelve (12) months after the date of shipment.

11.3 The warranty period for replaced or repaired parts is twelve (12) months from the date of repair or replacement. However, no warranty for any parts shall apply after twenty four (24) months from the date of shipment.

### **11.4 Warranty Process**

Buyer shall give Seller written notice of an alleged defect within ten (10) days following Buyer's discovery thereof and in no case later than two (2) days after the expiration of the warranty period and the notice shall contain a description of the alleged defect sufficient enough to allow Seller to determine whether such alleged defect is covered by the above warranty. If Buyer fails to give notice to Seller within the above time limits, Buyer shall waive any right to make any claim in respect of the alleged defect. If Buyer's notice is insufficient to allow Seller to determine whether the alleged defect is covered by Seller's warranty, Seller may reject such notice and the warranty claim and unless Buyer resubmits proper notice of the alleged defect within the above time limits, Buyer shall waive any right to make any claim in respect of the alleged defect. The notice shall be given to [varaosakysely@konecranes.com](mailto:varaosakysely@konecranes.com).

11.5 Defective parts, which are replaced under Section 11.1, shall be placed at Seller's disposal and shall become its property.

11.6 This warranty is subject to Buyer's obligation to operate, handle, service and maintain the Product in all respects properly and

in accordance with Seller's instructions and under specified operating conditions

- 11.7 Excluded from the warranty are those parts of the Product
- (i) to which repair or replacement becomes necessary due to normal wear and tear;
  - (ii) which are exhaustible items, including but not limited to such items as brakes, tires, wire ropes, chains, bulbs and fuses;
  - (iii) on which repairs, alterations or adjustments have been performed or begun by Buyer or any third party without Seller's previous consent;
  - (iv) whose failures are not promptly reported to Seller within the warranty period above;
  - (v) whose failures or damage are due to negligence other than that of Seller, accident, abuse, improper installation (other than installations made by Seller), improper operation, or abnormal conditions of temperature, moisture, dirt or corrosive matter; or
  - (vi) which have been damaged otherwise without the fault of Seller.

**THIS IS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY SELLER TO BUYER WITH RESPECT TO THE PRODUCT AND IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BUYER HEREBY WAIVES ANY CLAIM THAT ANY EXCLUSIONS OR LIMITATIONS OF ANY WARRANTY PROVIDED BY SELLER DEPRIVE IT OF AN ADEQUATE REMEDY OR CAUSE ITS AGREEMENT WITH SELLER TO FAIL OF ITS ESSENTIAL PURPOSE. BUYER SHALL BE ENTITLED TO NO OTHER REMEDY REGARDLESS OF THE FORM OF CLAIM OR CAUSE OF ACTION, WHETHER BASED IN AGREEMENT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE.**

## **12 FORCE MAJEURE**

Seller shall be entitled to suspend performance of its obligations under the Contract to the extent that such performance is impeded by circumstances beyond the control of Seller, including but not limited to war (whether declared or not), revolution, strikes, failure of supplies of power, fuel, transport, equipment or other goods or services, delays in transportation, natural disasters, unacceptable weather conditions, acts of government, embargo or trade restriction, traffic accidents, export or import prohibitions, fire, explosions, floods, accidents, sabotage, civil commotions, riots, and breakage or loss during transportation or storage (collectively, "Force Majeure") as well as delays of deliveries by service providers and/or subcontractors (when caused by Force Majeure).

## **13 LIMITATION OF LIABILITY**

**SELLER'S LIABILITY UNDER THESE TERMS AND THE CONTRACT SHALL BE LIMITED TO THE LESSER OF THE AMOUNT OF THE ACTUAL DIRECT DAMAGES INCURRED BY BUYER OR TO 40 % OF THE PRICE PAID BY BUYER TO SELLER FOR THE PRODUCT OR TO THE REPLACEMENT OF THE PRODUCT. BUYER SHALL BE ENTITLED TO NO OTHER REMEDY REGARDLESS OF THE FORM OF CLAIM OR CAUSE OF ACTION, WHETHER BASED ON CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE.**

**IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, PUNITIVE, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PRODUCTION, LOSS OF PROFIT, LOSS OF USE, OR LOSS OF CONTRACTS.**

**SELLER SHALL NOT BE LIABLE FOR AND BUYER SHALL RELEASE, INDEMNIFY AND HOLD SELLER, OR ANY ENTITY AFFILIATED IN ANY WAY THEREWITH, HARMLESS FROM ANY CLAIMS, DEMANDS, DAMAGES (REGARDLESS OF THEIR TYPE, INCLUDING, BUT NOT LIMITED TO DIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SPECIAL), ACCOUNTS, GRIEVANCES, LOSSES AND EXPENSES, WHETHER KNOWN OR UNKNOWN, PRESENT OR FUTURE, ANY AND ALL LIABILITY, OF**

**AND FROM ANY AND ALL MANNER OF ACTIONS, CAUSE(S) OF ACTION, INCLUDING BUT NOT LIMITED TO SUITS FOR CONTRIBUTION AND/OR INDEMNITY AND ALL SUITS IN LAW, IN EQUITY, OR UNDER STATUTE, OF WHATEVER KIND OR NATURE, ON ACCOUNT OF OR IN ANY WAY ARISING OUT OF ACTS OR OMISSIONS OF BUYER, ITS AGENTS, CONTRACTORS, EMPLOYEES OR ANY PERSON UNDER THEIR CONTROL AND RELATING IN ANY WAY TO THE PRODUCTS AND/OR SERVICES PROVIDED UNDER THE CONTRACT, INCLUDING, BUT NOT LIMITED TO BUYER'S USE, INSTALLATION, INCORPORATION OR SELECTION THEREOF.**

#### **14 APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

14.1 The Contract shall be governed by and construed in accordance with the laws of Seller's place of incorporation.

14.2 Any disputes arising in connection with this Contract shall be finally settled under the Arbitration Rules of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules. The arbitration shall take place in the capital city of Seller's country. The language of the arbitration proceedings shall be English.

14.3 Notwithstanding the above, Seller shall be entitled to take action for collecting the purchase price from Buyer within the courts situated in Buyer's place of domicile. Seller and Buyer hereby irrevocably consent to the jurisdiction of such courts.

#### **15 EXPORT AND COMPLIANCE**

15.1 Buyer shall comply with all relevant statutes, rules and regulations and by-laws affecting its obligations and the performance of the Contract and shall obtain at its own cost and expense all necessary permits and licenses necessary for the purchase, receipt, installation, use, operation and maintenance of the Product. Seller may suspend performance if Buyer is in violation of applicable laws or regulations.

15.2 Buyer will comply with all applicable trade laws and regulations (the Trade Laws and Regulations). Besides the other applicable laws and regulations, the Trade Laws and Regulations of the United Nations, European Union and the United States of America are always applicable.

15.3 For the avoidance of doubt, the Product also includes all related software.

15.4 Prior to any transfer of the Product to a third party or use of the Product provided by Seller, Buyer shall in particular check and guarantee by appropriate measures that:

- (i) Buyer shall not infringe any applicable Trade Laws and Regulations, also considering the prohibitions of by-passing those embargos;
- (ii) The Product is not intended for use in connection with armaments, nuclear technology or weapons, if and to the extent such use is subject to prohibition or authorization, unless required authorization is provided;
- (iii) If required to enable authorities to conduct export checks, Buyer, upon request by the authorities, shall promptly provide the authorities with necessary information required by mandatory law or regulations.

15.5 Buyer shall maintain all documentation required under the Trade Laws and Regulations and shall provide the same to Seller without delay at Seller's reasonable request. This recordkeeping obligation of Buyer shall continue for five (5) years from delivery of the Product.

15.6 Buyer understands that the requirements and restrictions of the Trade Laws and Regulations vary depending on the product, software, documentation and technical data provided under this Contract and may change over time and that Buyer is obliged to know about and comply with such changes.

15.7 Buyer shall defend, indemnify and hold the Seller harmless from all fines, penalties and all associated expenses arising out of or resulting from any violation by the Buyer of any of its obligations in this section 15.

#### **16 DATA PRIVACY**

Seller's collection of personal information in connection with the Portal is governed by the Data Protection Policy - Ecommerce that applies to the use of the Portal.

#### **17 LANGUAGE**

All documents and correspondence between Seller and Buyer shall be as stated in the Contract. If the applicable language is not separately stated it shall be English.

#### **18 NO WAIVER**

Except to the extent that these Terms and/or the Contract provide for a sole and exclusive remedy, no course of dealing between the parties, no failure or delay on the part of either party in exercising any right or remedy under these Terms and/or the Contract and no single or partial exercise of any other right or remedy of either party shall operate as a waiver of any such other right or remedy.

#### **19 SEVERABILITY AND REFORMATION**

The invalidity or non-enforceability of any provisions of these Terms and/or the Contract shall not impair the validity or enforceability of any other provisions; provided, however, that these Terms and/or the Contract shall be reformed to the maximum extent permitted by law to carry out the parties' original intention.

KC 17 June 2016