

ESTA Standard Terms and Conditions concerning Crane hire, Crane work and Transportation Services



Issue date: 06-09-2009

1. General Terms

- 1.1 Standard Terms and Conditions: the underlying Standard Terms and Conditions concerning Crane hire, Crane work and Transportation Services;
- 1.2 Lessee: Party hiring in, tenant;
- 1.3 Lessor: Party hiring out, Rental Company;
- 1.4 Parties: lessor and lessee;
- 1.5 Movement Regulations: set of rules, regulations and procedures mandatory by law or otherwise to execute exceptional road transport in an EU-country;
- 1.6 In Writing: per postal mail or per fax message; where statements are required in writing, any electronic form of data transmission and any other readable form is regarded as being equal, provided that it clearly specifies the issuer;

2. Scope of work/contract

- 2.1 These terms and conditions are applicable on all offers of and assignments to the lessor and all contracts following there upon or deriving there from;
- 2.2 These terms and conditions are applicable to all crane hire, crane work and transportation services;
 - 2.2.1 Crane hire: entails the hiring of mobile hoisting equipment, either complete with operating staff or without an operating staff, to the lessee for completing tasks in accordance with the lessee's instructions and arrangements;
 - 2.2.2 Crane work: entails contract lifts, i.e. the carriage of goods, in particular hoisting, moving and transportation of loads and/or persons for the purpose of working with the assistance of a mobile hoist, and relates to the completion of one or more contracted hoisting manoeuvres by the lessor in accordance with the lessee's instructions and arrangements;
 - 2.2.3 Transportation services: entails the transportation of goods using commercial road transport by motor vehicle as well as the transportation or removal of goods by means of special transportation gear;
- 2.3 Unless otherwise stipulated, and special transportation gear excluded, the CMR-convention applies.

ESTA Standard Terms and Conditions concerning Crane hire, Crane work and Transportation Services



Issue date: 06-09-2009

3. Responsibility and liability

3.1 Of the lessor

3.1.1 Crane hire

3.1.1.1 If the main service provided by the lessor consists of the designated hiring of mobile hoists, possibly along with operating staff to the respective lessee in order to complete the assigned tasks in accordance with lessee's instructions and arrangements, then the lessor is liable to provide a suitable mobile hoist that complies with the appropriate legal regulations and valid rules for technical equipment. The lessor is only liable for the operational staff within the scope of the applicable principles to the extent of a failure in the selections procedure;

3.1.1.2 The lessor is not liable for unpunctual supply in the event of breakdowns, force majeure, strikes, road blocks and other unavoidable events occurring which are completely outside the lessor's reasonable control;

3.1.1.3 The liability of the lessor for any other unpunctual supply is limited to three times the original hourly fee for the hire of the equipment. This limitation is null and void in cases of intentional or culpable negligence.

3.1.2 Crane work and transportation services

3.1.2.1 The lessor undertakes to execute all orders properly and professionally and to the best of the available tools and technical facilities under consideration of the appropriate rules of the technology.

3.1.2.2 The lessor is committed in particular, to employ generally and specially suitable means of transportation and hoists that are ready for operation, reliable and that comply with the applicable regulations of the safety. The lessor is furthermore committed to make available generally and specially qualified operating staff (crane operator and drivers) who are familiar with the operation of the equipment used for transportation or the hoist. At the expense of the lessee, the lessor will furnish any necessary assistants, guides and other staff as well as riggers that may be required.

3.1.2.3 If the lessor's services are mainly limited to crane work and/or transportation services and unless otherwise agreed in these general terms and conditions, the valid legal

ESTA Standard Terms and Conditions concerning Crane hire, Crane work and Transportation Services



Issue date: 06-09-2009

rules and regulations relating to the cargo carrying trade apply. The liability of the lessor in accordance with these regulations is limited to 8.33 special drawing rights (SDR) per kilogramme of the damaged or lost property.

The limitation of liability is void, if the damages are due to an action or omission of the lessor or his assistants, whether deliberate or careless, and with the knowledge, that the probability exist for damages to occur.

3.1.2.4 Unless otherwise agreed, the lessor is entitled to employ other companies in order to satisfy the contractual liabilities. These other companies and/or staff members of the lessor are also able to call upon the limitation or avoidance of liability of the lessor.

3.1.2.5 The limitation and indemnity of liabilities also apply to non-contractual claims.

3.2 Of the lessee

3.2.1 Crane hire

3.2.1.1 Without operating staff

3.2.1.1.1 The lessee is responsible and liable for any damage caused to any equipment hired from the moment of acceptance of the contract equipment until the moment of return by the Lessee or collection by the Lessor.

3.2.1.1.2 The lessee is liable for any damage caused by contract equipment to any third party from the moment of acceptance of the contract equipment until the moment of return by the Lessee or collection by the Lessor.

3.2.1.2 Complete with operating staff

3.2.1.2.1 The lessee is responsible and liable for any and all instructions given to the operating staff and any damage resulting there from caused to any equipment hired from the moment of acceptance of the contract equipment until the moment of redelivery.

3.2.1.2.2 The lessee is responsible and liable for any and all instructions given to the operating staff and for any damage resulting there from caused by contract equipment to any third party from the moment of acceptance of the contract equipment until the moment of redelivery.

3.2.1.2.3 The lessee cannot be held responsible or liable for any non-compliance of the operating staff with any and all instructions given by the lessee and any damage resulting

ESTA Standard Terms and Conditions concerning Crane hire, Crane work and Transportation Services



Issue date: 06-09-2009

there from caused to any equipment hired or caused by contract equipment to any third party.

3.2.2 Crane work and transportation services

3.2.2.1 The lessee is obliged to provide all the technical requirements that are necessary for the proper and safe realisation of the assignment at his/her own account and risk maintain these for the duration of the project. The lessee is obliged in particular to maintain the goods required execution of the work a state that is suitable for the realisation of the project.

The lessee is obliged to submit the correct dimensions, weights and especially the properties of the goods (e.g. the centre of gravity, type of the material, etc.) as well as in the case of crane work lifting points in good time.

3.2.2.2 The lessee must obtain the necessary permissions for the use of foreign properties, private roads, paths and places from the owners, to exempt the lessor from any claims of third parties that may arise from the unauthorized usage of a foreign property.

3.2.2.3 In addition, the lessee must ensure that on-site conditions like surface, space and other requirements as well as access roads, with the exception of public roads, are suitable for the proper and safe realisation of the project. In particular the lessee is responsible to ensure that the structure of the ground at the loading and unloading location or the site for the crane as well as the access road ways is able to withstand the pressures and other loads. The lessee is also responsible to provide all relevant details regarding subterranean cable ducts, service pipes, other underground pipelines and cavities that could impair the load-carrying capacity of the ground on-site or the access road ways. The lessee must indicate the position and existence of subterranean cables, ducts and other cavities. If the lessee should ignore the duty to provide the required information, he will be held liable for all damages resulting from the omission, including material damages and secondary damages to vehicles, equipment and devices of the supplier as well as financial damages. Statements and declarations of third parties that were employed by the lessee to fulfil the obligations that are incumbent upon him/her are deemed to have been issued by the lessee himself/herself.

ESTA Standard Terms and Conditions concerning Crane hire, Crane work and Transportation Services



Issue date: 06-09-2009

3.2.2.4 After having placed his/her order, the lessee is not permitted to issue instructions to the staff of the lessor that deviate from the contractual arrangements in any way or are in contradiction to the purpose of the contract.

3.2.2.5 The lessee is obligated to instruct the staff of the lessor. The lessee is obligated to do so in accordance with the contractual arrangements. The lessee is fully liable and responsible for all instructions given.

3.2.2.6 If the lessee is culpable of violating the mentioned responsibilities, in particular the duties in relation to preparation and cooperation, he/she is liable to indemnify the lessor for any resulting damages.

3.2.2.7 Unless otherwise agreed, the fees and costs for official expenses as well as all procurement costs and expenses that result from official requirements, fees for police escorts, road closures or diversions and other expenses for official safety measures will be charged to the account of the lessee.

4. Insurance

4.1 The lessee is responsible for obtaining all necessary insurance cover for all risks associated with the use of any equipment hired, the lifting operations, crane work and transportation services. The lessor reserves the right to require confirmation that the lessee is complying with its insurance obligations;

4.2 Upon receiving a written request from the lessee requesting accident damage waiver cover, the lessor may, if it so chooses, provide accident waiver cover for which a charge would be made. If, in such case, the amount of the damage appears to be higher than the amount submitted in writing, the lessee remains his own insurer for the excess;

4.3 The lessor is only responsible for insuring the goods concerned, for which a charge could be made, if he receives an explicit written request to this effect including details of the value of the goods to be insured and the risks requiring cover; the mere mention of the value of the goods is not deemed to constitute a request to insure them;

4.4 Concerning the utilized equipment the lessor is, if this is mandatory under the applicable law, obliged to have third party liability insurance to cover possible damages and risks for damages to third parties only, which would only apply if the lessor is responsible and liable for such damage under these terms and conditions.

ESTA Standard Terms and Conditions concerning Crane hire, Crane work and Transportation Services



Issue date: 06-09-2009

5. Payment terms

5.1 The lessor shall submit an invoice either before commencement of the work or hire or at the end of the rental period, or – in case of leasing- at the end of each week/month;

5.2 The lessee shall pay all of lessor's invoices within 30 days of the invoice date, unless otherwise agreed in writing;

5.3 The lessee is not allowed to set of any invoices or claims for whatever reason, unless the lessor has given written permission to do so;

5.4 If the lessee fails to pay the invoices within the said 30 days, the lessee will be automatically legally in default. The lessee will then be liable for the applicable legal interest or the interest stipulated within the contract, whichever is higher. If the lessee fails to pay after receipt of a letter of demand send by the lessor, the lessee will also be liable for collection-fees and extra judicial costs;

5.5 If the lessee is in breach of any of the terms of the contract, or becomes insolvent or bankrupt, or enters into any financial arrangement with his creditors, or places the rented equipment at risk, the lessor may enter the premises where the rented equipment is located and recover it from the lessee. The costs for recovery will be for the account of the lessee;

5.6 In the event of a breach of the contract on the side of the lessee, the lessee will settle all outstanding invoices immediately whether they are due or otherwise;

5.7 In case the lessee is represented by more than one party, all are jointly and severally liable for payment of the invoices of the lessor.

6. Termination of contract

6.1 The lessor can terminate the contract when:

- the rented equipment exceeds use, breaches health and safety regulations, or is placed in a different location than otherwise agreed upon by the lessor;
- if the lessee breaches any of the terms of the contract or fails to fulfil its obligations according to this agreement;
- immediately without prior notice in case of any non-payment by the lessee of an amount on the due date, or

ESTA Standard Terms and Conditions concerning Crane hire, Crane work and Transportation Services



Issue date: 06-09-2009

- immediately without prior notice in case of insolvency or suspension of payment by the lessee or bankruptcy the lessor can release and collect the equipment at the lessee's expense;

6.2 The lessee may cancel the contract:

- only after giving proper notice of cancellation prior to the commencement of the rental period to enable the lessor to comply with the Movement Regulations. Proper notice is considered to be the period necessary to comply with the Movement Regulations, plus 7 days. The lessee will be charged for all costs incurred prior to cancellation and any applicable transportation / demobilisation charges.

The lessee must, when terminating:

- a contract of indeterminate length, give the required notice to enable the lessor to comply with all necessary Movement Regulations, plus 7 days;
- a contract of determined length, give 7 days' written notice to the lessor, unless otherwise agreed in the hire contract.

6.3 Either party, on a hire of indeterminate length, may terminate the hire contract by giving at least 7 days' written notice to the other party, unless otherwise agreed in the hire contract.

7. Dispute resolution

7.1 Jurisdiction

If a dispute arises between the lessor and the lessee, then the matter will be decided in competent court of the place where the lessor resides, unless parties can agree to arbitration.

7.2 Applicable law

Every agreement between the lessor and the lessee is governed by the applicable law of the place where the lessor resides, unless otherwise agreed by contract. Should any provision of these general terms and conditions be held to be unenforceable for any reason, it is agreed that all the remaining provisions remain fully enforceable.

7.3 Time limit

ESTA Standard Terms and Conditions concerning Crane hire, Crane work and Transportation Services



Issue date: 06-09-2009

The lessor will be discharged from all liability whatsoever, unless suit is brought within one year from the date the incident has occurred from which the claim has derived.

8. Conversion clause

8.1 In case any clause or provision of these standard terms and conditions should be held unenforceable or void for any reason, it is agreed that all the remaining clauses and provisions remain fully enforceable.

9. Translation

9.1 In case a translation differs from the English text, the latter will prevail.