

# **BUSINESS TERMS AND CONDITIONS No. 2018/1**

**of the company Hanyš - Jeřábnické práce, s.r.o., Identification No./IČO/: 27243460, registered office Počernická 425, 250 73  
RADONICE, dated 1 December 2018**

## **1. Scope**

- 1.1 These Business Terms and Conditions No. 2018/1 of the Provider (hereinafter referred to as the “**Terms and Conditions**”) stipulate certain rights and obligations established between the Provider and the Customer under the concluded Agreement, these Terms and Conditions constituting an inseparable part thereof.
- 1.2 Should the Terms and Conditions be in its any provision in conflict with any provision contained in other parts of the Agreement, the provision contained in other parts thereof shall take precedence.

## **2. Definition of Some Terms**

- 2.1 For purposes of these Terms and Conditions the following apply:
  - a) **Agreement** means the Framework Agreement on Providing a Crane concluded between the Provider and the Customer, these Terms and Conditions constituting an inseparable part thereof;
  - b) **Provider** means the company **Hanyš - Jeřábnické práce, s.r.o.**, Identification No./IČO/: 27243460, with the registered office Počernická 425, 250 73 RADONICE;
  - c) **Crane** means the machine determined for lifting and moving heavy and bulky loads.
- 2.2 Should these Terms and Conditions contain terms completely or approximately (and in context) identical to those mentioned in Articles I – IV of the Agreement (e.g. Determined Place, Provision Commencement etc.), it holds that such terms are identical to those mentioned in Articles I – IV of the Agreement.

## **3. Rights and Obligations of the Provider**

- 3.1 The binding business relationship is performed on the basis of the Agreement through separate binding and irrevocable Orders sent to the Provider (hereinafter referred to as the “**Order**”), and their acceptance by the Provider. By the acceptance the partial agreement on providing a crane is concluded (hereinafter referred to as the “**Partial Agreement**”). Any previous communications by the Provider, including a communication defined as an offer, is only indicative and the Provider shall not be bound thereby.
- 3.2 The Order may be made by the Customer by telephone, in written, by fax or electronically through e-mail. The Customer shall be obliged to confirm a telephone order within 24 hours in written, by fax or e-mail. Should a telephone Order from the Customer not be confirmed by any of the above mentioned means, the Provider shall be entitled, at its discretion, to accept the Order made in this way. In such case, the acceptance shall mean at least oral communication from the Provider to the Customer about the acceptance or such conduct of the Provider from which the acceptance unambiguously follows. Obligatory data in the Customer’s Order are as follows: business company or name and surname with an any amendment, as applicable, registered address or place of business, identification number, tax identification number, person authorized to act on behalf of the Customer and his/her handwritten signature.
- 3.3 The Provider undertakes to:
  - a) observe the procedures for a safe using of mobile cranes, including the system of safe work in driving, assembly, disassembly, operation and maintenance of mobile cranes;
  - b) provide the crane in proper condition, capable to manipulate loads and operate on roads according to applicable regulations and laws;
  - c) provide, together with the provision of the Crane, a qualified staff of the Crane for handling the Crane and loads;
  - d) provide upon the Customer’s request the following documents within three working days: certificate of value added tax registration, extract from Commercial Register, Trade Certificate, crane log, revision report, fastening tools certificate;
  - e) inform the Customer of the risks in the Defined Place and cooperate in ensuring safety and health protection at work.
- 3.4 Should the Provider be in default on performance of the obligations under the Agreement, the Provider shall be entitled to suspend the provision of the Crane until the obligation at issue has been fulfilled; the date and deadline by which the provision of the crane services according to the Order is to be completed (hereinafter referred to as the “**Termination of the Provision**”) shall be automatically shifted accordingly. The Termination of the Provision shall not be automatically shifted in case the Provider notifies the Customer that the extension is not possible for reasons of the Provider’s capacity. Should the due date for payment of the Price be binding on the Termination of the Provision in any way, the original (not shifted) Termination of the Provision shall continue to be valid for the purposes of the payment due date.

## **4. Rights and Obligations of the Customer**

The Customer undertakes and declares that:

- a) it shall pay upon request any costs incurred to the Provider due to any change of date and time of the Commencement or Termination of the Provision, change of the Determined Site, change of parameters of the load different from the original assignment, changes of the environment of the construction site compared to the original inspection due to natural, weather and other reasons;
- b) in case of the Customer’s rescission of the Partial Agreement pursuant to paragraph 8.2 of the Terms and Conditions it shall pay the Provider, beside others, factual costs incurred by the Provider in connection with this Partial Agreement (in particular the costs of preparation of the Crane, of transportation permit and of fuels). Should the Customer rescind the Partial Agreement less than 48 hours before the Commencement of the Provision, it shall pay the Provider, beside the costs as defined in the previous sentence, also a rescission fee in the amount of:
  - CZK 5,000 for Cranes with a capacity of 30t – 60t;
  - CZK 10,000 for Cranes with a capacity of 70t – 100t;
  - CZK 20,000 for Cranes with a capacity of 160t – 300t;
  - CZK 50,000 for Cranes with a capacity of 500t – 750t;
- c) unless agreed otherwise, the Customer shall ensure at its costs persons qualified for fastening works who shall be responsible for the method of fastening the load during manipulation of the Crane with loads, namely according to the work safety system and work safety instructions;
- d) unless agreed otherwise, it is not the Provider’s duty to provide special fastening tools or more persons present for manipulation (navigator; slinger; substitution of the Crane operators in case of works exceeding 8 working hours/per day);
- e) it is responsible for sufficient load and traffic capacity of the ground on the sites of footing and movements of the Crane on the Determined Site, for passable roads near the site of footing the Crane;
- f) it shall ensure at its costs land take, announcement of the machines parking (beside others the Crane) in places where relevant decrees and laws so require and at the same undertakes to pay any costs and fines connected with failure to comply with these Terms and Conditions;
- g) it shall provide the Provider any cooperation necessary to provide the Crane; should there be an obstacle on the Customer’s side, due to which the Provider cannot provide the Crane, perform or continue fulfilment of the Order, the Customer shall pay the Provider any costs connected and the rescission fee pursuant to paragraph 4 point b) of the Terms and Conditions;
- h) unless it makes legitimate reservations to an invoice issued by the Provider within 7 calendar days from the receipt of the invoice, it shall hold that it accepts the invoice in its full extent;
- i) the Customer or a person duly authorized by the Customer shall duly confirm even without the Provider’s call immediately (at the same day) after Termination of the Provision of the Crane a record on provision (operation) of the Crane. In case the Customer fails to do so or fails to insert legitimate reservations or disagreement with the completed data in the record, it holds that the Crane was provided by the Provider on time and property in compliance with the Agreement (including the Partial Agreement) and that the record on the Crane operation is in compliance with the performance of the Crane, i.e. that the Customer accepts the record on provision (operation) of the Crane in full and that any complaints in conflict with the record shall not be recognized;
- j) in case of an inspection performed by a technician of the Provider in the Determined Site the Customer shall comply with the requirement of the technician for preparation of a proper provision of the Crane, which shall be submitted by the technician in written or orally. Should the Customer fail to do so and an obstacle arises thereby which shall prevent a proper provision of the Crane, the Customer undertakes to pay the Provider a compensation in the amount as provided by paragraph 4 item b) of the Terms and Conditions and to compensate the Provider any and all incurred costs as well;
- k) it shall inform the Provider in written of the risks in the Determined Site and shall cooperate in ensuring safety and health protection at work on the Determined site. The Customer shall in particular ensure that its activities and work of its employees are organized and performed so that also the Provider’s employees are simultaneously protected, and the Customer shall also ensure cooperation in ensuring safe, harmless and health not threatening working environment for all employees on the Determined Site. The Customer may also coordinate implementation of measures to protect safety and health of all employees on the Determined Site and procedures to ensure them.

## **5. Insurance of the Provider**

The Provider declares that it is insured for damage caused during handling load during performance of crane works. Further information relating to the insurance is available on [www.hanys.cz](http://www.hanys.cz). In case of the Customer’s timely requirement for supplementary insurance the Provider undertakes to do so within reasonable time (should it be possible to manage it before the date of Termination of the Provision). All costs connected with this supplementary insurance shall be paid by the Customer.

## **6. Payment Terms**

# **BUSINESS TERMS AND CONDITIONS No. 2018/1**

**of the company Hanyš - Jeřábnické práce, s.r.o., Identification No./IČO/: 27243460, registered office Počernická 425, 250 73  
RADONICE, dated 1 December 2018 for general contracts**

- 6.1 The remuneration for provision of the Crane is covered by the Price. The Customer shall be obliged to pay the Price in the method and by the deadline stipulated in the Partial Agreement and in the Agreement.
- 6.2 In case of the Customer's default on payment of the Price or the Assumed Price the Customer shall be obliged to pay the Provider an interest on late payments amounting to 0.1 percent of the outstanding amount for each commenced day of default until full payment. In case the Price was not agreed, the outstanding amount according to the previous sentence shall mean the Assumed Price.
- 6.3 In case of the Customer's default on payment of monetary amounts other than the Price or the Assumed Price the Customer shall be obliged to pay an interest on late payments amounting to 0.1 percent of the outstanding amount for each commenced day of default until full payment.
- 6.4 Any contractual penalties, rescission fee or interest on late payments shall be without prejudice to the Provider's right to compensation for damage in its full amount.
- 6.5 Should the Customer be obliged to pay 100 percent of the Price or the Assumed Price, as applicable, as an advance payment by a date immediately preceding the Provision Commencement date, and should it fail to do so, the Provider shall not be obliged to provide the Customer the Crane by the agreed Commencement of the Provision (without the Provider being itself on default), in case the Customer's default on payment lasts. In case of the Customer's default on this payment the Provider is also entitled (even if the default is over) to shift (even one-sidedly) the date and time of the Commencement of the Provision and the date and time of the Termination of the Provision by any number of days (but not exceeding the number of days of the Customer's default on payment).

## **7. Liability**

- 7.1 The Provider is liable towards the Customer for damage and defects arisen due to or in connection with provision of the Crane only in case that the damage or defect was caused by breach of a legal obligation solely by the Provider and such breach has arisen through a fault of the Provider (subjective liability).
- 7.2 During works in the Determined Site, the Provider or the Crane crew shall follow instructions given by the Customer or persons authorized by the Customer. The Provider or the Crane crew is not obliged to examine the accuracy or suitability of such instructions in any way and in case of damage or defects occurred on the basis of such instructions the Customer shall be liable for the damage. Neither shall the Provider be liable for damage or defects caused by the fact that no inspection of the Determined Site was required prior to the commencement of the provision.
- 7.3 The Provider shall not be liable for damages caused to the Customer due to badly performed fastening or navigation works, should the fastening or navigation works be ensured by the Customer.
- 7.4 The Provider is not in delay in case the Customer has failed to ensure necessary cooperation for the Provider.

## **8. Rescission of the Partial Agreement**

- 8.1 Should the Customer breach any obligation arising from the Partial Agreement, the Provider shall be entitled to rescind the Partial Agreement without providing the Customer an additional deadline for compliance with the breached obligation. By rescission of the Partial Agreement the commitments arising from the Partial Agreement are cancelled from the beginning.
- 8.2 The Customer shall be entitled to rescind the Partial Agreement without the Provider's substantial breach of an obligation under the Agreement until the Commencement of the Provision; should the Customer do so less than 48 hours before the Commencement of the Provision, it shall pay the Provider a rescission fee determined in subparagraph 4, point b) of these Terms and Condition.
- 8.3 The rescission shall become effective by the day of delivery of the rescission notice to the other party. The Provider shall not be obliged to return to the Customer monetary performances accepted prior to the rescission with respective financial settlement for a case of termination of the Partial Agreement. This shall not apply in case that the Partial Agreement was rescinded due to substantial breach of the Partial Agreement by the Provider. A financial settlement is not a deposit and the parties explicitly exclude the provisions of Sections 1808 and 1809 of the Civil Code. The rescission shall be without prejudice to the right to compensation of the Price for already provided period for the Crane, claims for contractual penalties, claims for default interests, claims for damages and other rights and obligations stipulated by the Partial Agreement, the Agreement, the Terms and Conditions and by law.

## **9. Set-off and Assignment**

The Provider is entitled to set-off one-sidedly any its claim towards the Customer arising from the Agreement or the Partial Agreement against any claim of the Customer towards the Provider, without the Customer's previous consent. The Customer is not entitled to set-off its claim towards the Provider arising from the Agreement or the Partial Agreement against any claim of the Provider without the Provider's prior written consent. The Provider is entitled to assign its claim towards the Provider arising from the Agreement or the Partial Agreement to a third party without the Customer's prior consent. The Customer shall be not entitled to assign a right or claim arising from the Agreement or the Partial Agreement to a third party without or transfer any obligation under the Agreement or Partial Agreement to a third party without the Provider's prior written consent.

## **10. Force Majeure**

The Provider shall not be liable for failure to comply with any its obligation arising from the Agreement or Partial Agreement due to force majeure. As a force majeure shall be considered in particular war, fire, flood, grave natural anomalies, disruption of services, embargo, government measures, adaptations or restrictions, ban on import or export of goods and impossibility to procure deliveries of material, equipment or manufacturing facilities, disaster, explosion and also strikes, interruptions by employees or other problems with employees affecting disruptively production or transport, as well as impact of any other reasons on which the Provider has no influence. The Provider shall not be obliged to provide its services under the Agreement or Partial Agreement in case an insolvency proceeding has been initiated against the Customer or in case the Customer is not able to fulfil its monetary obligations.

## **11. Dispute Resolution**

The Provider and the Customer undertake to resolve any and all disputes or discrepancies arisen from these Terms and Conditions, the Agreement or the Partial Agreement or related to them preferably amicably. Should the Provider and the Customer fail to resolve any disputes or discrepancies amicably, any party may apply to a competent court in the Czech Republic, the local competence of which shall be determined in accordance with the seat of the Provider (within the meaning of Section 89a of the Civil Procedure Code). If the Customer is a consumer, it may file a petition for out-of-court settlement to an appointed authority for out-of-court settlements of consumer disputes, which is the Czech Trade Inspection Authority (address: Central Inspectorate – Department ADR, Štěpánská 15, 120 00 Praha 2, web: adr.coi.cz). If the Customer is a consumer, the arrangement on local competence according to this article shall not be applied.

## **12. Final Provisions**

- 12.1 The relationships between the Customer and the Provider are governed by generally binding legal regulations of the Czech Republic, primarily by Act No. 89/2012 Coll., the Civil Code. The Terms and Conditions constitute an inseparable part of the Agreement and of the Partial Agreement. The Terms and Conditions are valid and effective in the version currently attached to the Partial Agreement and replace in full the previous version of the Terms and Conditions. Should any provision of the Terms and Conditions, the Agreement or the Partial Agreement be found invalid or unenforceable, no effects shall be attributed to such a provision (in the extent in which it is invalid or unenforceable) in the broadest extent permitted by the Czech law and shall be considered as a provision which is not part of the Terms and Conditions, the Agreement or the Partial Agreement, all without any effect on the validity of the remaining provisions of the Terms and Conditions, the Agreement or the Partial Agreement. At the same time, the Provider and the Customer undertake to replace such invalid or unenforceable provision with another contractual arrangement within the meaning of the Terms and Conditions, the Agreement or the Partial Agreement, which will be valid, effective and enforceable.
- 12.2 The terms defined with a capital letter and contained in these Terms and Conditions have the same meaning attributed by the Agreement or the Partial Agreement and should be interpreted in compliance with these documents.
- 12.3 The Provider processes personal data in compliance with legal regulations, transparently, properly and to the extent necessary for the relevant purpose. Further information on personal data processing is available on [www.hanyz.cz](http://www.hanyz.cz).