

EMIL EGGER AG*: General terms and conditions

Field: Heavy goods logistics

Department: Transport and lifting equipment (TLE)

Issued/Valid from 01.01.2021

(replaces all previous editions)

* EMIL EGGER AG in our Terms and Conditions should also be understood to mean also the company **EMIL EGGER Romandie SA**. These Terms and Conditions shall be deemed to have been legally agreed with EMIL EGGER AG and/or EMIL EGGER Romandie SA without change.

In any case where no other written agreement signed by the client and the contractor expressly applies, heavy load manipulation tasks are – subject to applicable binding legal provisions – undertaken subject to the currently valid general terms and conditions for the transport and lifting equipment department (hereafter TLE) at EMIL EGGER AG; these can be found online at ete.ch. If supplementary or individual crane work or road transport is to be carried out, EMIL EGGER AG's separate general terms and conditions for, respectively, crane work and industry relocations, or road transports, apply; these can likewise be found online at ete.ch. If individual provisions are or become invalid, this shall not affect the validity of the remaining provisions. Any invalid provisions shall be replaced by provisions that have an equivalent economic effect to the invalid provision, or come as close as possible to doing so. St. Gallen is the agreed court of jurisdiction and arbitration. Swiss law applies exclusively. The term contractor is used below to refer to EMIL EGGER AG. The term client refers to the customer or entity making the order. No other meanings for client will be used. This also applies if the order or contract award refers to such conditions and the contractor does not expressly object to these conditions.

1. Subject of the contract

The term "lifting" – particularly without any specific linguistic context – shall always refer to moving and lowering heavy loads, primarily in and around construction sites and using special heavy load equipment such as strand jacks, skidding systems, a wide variety of support structures, etc.

The contractor is responsible for carrying out specific, precisely described lifting and/or moving/lowering procedures in accordance with the performance description in the relevant offer or *mutatis mutandis* in the authoritative contract confirmation or contractual agreement.

Written offers from the contractor that include different regulations or conditions have priority over these TLE T&Cs, should any contradictions arise.

2. Contractor obligations

The contractor ensures to the best of their knowledge and ability that the order is executed on time and with no defects.

If the client later comes to believe that there is a good reason to require additional work that has not been contractually agreed, or if planned lifting stages change from those in the offer or agreement, resulting in additional effort or costs (e.g. due to unexpected interruptions, delays in the construction programme, waiting times, strikes or other circumstances) that are not the fault of the contractor, then these costs are not included in the scope of services and the client will be invoiced separately for them.

The contractor is not obliged to carry out themselves an order that they have accepted, or individual work sections within the order. They have the right to award all the work or individual work sections to a third party and/or assign all rights and obligations from an accepted order to a third party.

3. Client obligations

In general, the client must ensure, at their own risk and cost, that all technical requirements necessary to ensure proper and safe completion of the order have been met; furthermore, where relevant, the client must keep these measures in place until completion of the order.

For the contractor to provide their services, the client must perform the following services/provide the following prerequisites at their own cost and risk and in a timely manner:

- Calculation or verification of the structural characteristics of the load and the temporary or final suspension system (attachment points, centre of mass) and the support beneath the load, e.g. foundation soil or support structures
- Survey of the structural condition of the load during the process, to ensure the necessary stability for the load
- Vehicle access to the construction site
- The necessary personnel for unloading
- Auxiliary personnel and assistance during our activities on the construction site

- Storage and subsequent distribution of the material and equipment to the work sites at the time of installation and for dismantling and reloading the lifting gear
- Lockable area for small equipment and tools
- Sanitary provision and access to common rooms and changing rooms
- Provision of a suitable level area on the construction site for pre-fabrication of strand cables, etc. if needed
- Provision of assembly material, tools, shackles and, if necessary, installation of the anchor points in the existing structure
- Earthworks, construction work, embedment work and scaffolding (incl. procuring construction materials)
- All concreting and mortaring, delivery and relocation of any required embedments in agreement with the contractor, etc.
- Provision of any required electrical connections, water points, pressure, heating, incl. all necessary connection points at each work site
- Sufficient lighting at all work sites, particularly for e.g. night work
- Crane with sufficient capacity for unloading, loading, assembling and dismantling the lifting gear, unless included in the contractor's offer
- All necessary lifting platforms, scaffolding and work platforms, including access to the lifting operations, and including safety equipment in accordance with the currently applicable regulations (e.g. CH = SUVA) and all special instructions from the contractor
- All measurement and preparation work for positioning the load in the final location
- Laying the skidding tracks, and, if necessary, socket or distributing concrete beneath the skidding tracks
- Assembling and dismantling the support structure
- Suitable connecting devices or embedments on the load according to contractor specifications
- Load calibration in order to determine its position and guide it into the final position (including all necessary corrections)
- Fixing the load in its final position
- An office space for construction site management on the part of the contractor
- Arrangement of machine erection insurance or comprehensive building contractor's insurance and/or load insurance
- Procurement of any and all necessary permits for the contractor's personnel – e.g. work permits, permits for overtime, night or Sunday work, immigration permits, etc.
- Building specification, risk analysis, any other documentation

The client is obliged to accept the services promptly once they have been informed that the work is complete. If defects are found which contractually lie within the responsibility of the contractor, these must be recorded and specified in a written report. If the contractor's services are accepted with no reservations, despite known or evident defects, the client's rights to rectification, substitution, reduction or withdrawal from the contract due to defects shall not apply.

If immediate acceptance is not possible, defect-free acceptance shall be considered to have taken place at the latest 10 days after completion has been reported.

If the contractor is delayed in delivering the equipment/starting the work (the agreed date in the order confirmation is authoritative) for reasons that lie within the responsibility of the client (e.g. delay regarding the preliminary work in Clause 3), the client shall be obliged to assume the downtime rent and any costs for material procurement, downtime, etc. Once the equipment has arrived on the construction site, 100% of the equipment rental rate applies as downtime rent, regardless of the reason.

The client does not have the right to transfer their rights or obligations from this contract to third parties without prior written agreement.

4. Price and payment conditions

The contractor's services are carried out for the prices specified in the relevant offer, order confirmation or contractual agreement. The prices are always understood to be net prices before discounts or VAT.

All invoices must be paid net on time. Unless the contractor specifies otherwise,

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payment is due within 30 days. Discounts or other reductions will be applied subsequently.

Other national requirements (VAT, customs fees and duties, etc.) or any other forms of taxes and duties, permissions or costs due to official documentation that arise in connection with completion of the contract must be paid separately by the client.

The contractor's offers are based on the material, personnel and transport costs at the offer date. Subsequent cost increases will be invoiced to the client.

The following surcharges apply to the personnel costs included in the offer:

- 50% for night work (from 20:00 to 06:00)
- 50% for Saturday work
- 100% for work on Sundays and public holidays

The client is not authorised to invoice for any counterclaims (e.g. services taken into consideration, damage claims, etc.), or to claim a right of retention. If the payment deadline is not met, the client is in arrears, even if no explicit overdue notice is issued. If the client is in arrears, then the contractor has the right to apply a late fee of 5%; this does not affect any existing legal rights or rights specified in this contract.

5. Contractor liability

The contractor works to the best of their ability to meet the agreed deadlines. If the contractor is unable to meet an agreed deadline for reasons which lie within their own responsibility, then, if the service is not completed by a further deadline specified in writing, the client has the right to claim for any damage demonstrably resulting from the failure to meet the deadline, up to a maximum of 5% of the total price of the service that was delayed. No further claims shall apply on any other legal basis, to the extent that this is legally permitted.

The contractor is not considered to have delayed if the services are not completed due to circumstances that do not lie within the contractor's responsibility. Such circumstances include all kinds of force majeure, including e.g. war, hostile acts, strikes, disruption to supplies of raw materials, customs problems, etc. In all such cases, the contractor is free from any liability, to the extent that this is legally permitted.

The contractor is responsible for careful completion of all contractual obligations in accordance with applicable good engineering practice. If the contractor breaches their obligations for reasons that lie within their own responsibility, they are obliged to make good all defective services. The contractor is liable for the resulting demonstrable damage, up to a maximum of twice the total price owed by the client for completion of the relevant order, however up to a maximum of CHF 500,000 per damage case. To the extent that this is legally permitted, the contractor is not liable for additional claims from the client, in particular claims for compensation of subsequent damages, etc., on any legal basis.

No liability is accepted if the client has failed to carry out the required services and meet the necessary preconditions on time.

Structural calculations, plans and drawings (collectively referred to below as "documentation") belonging to the contractor or third parties shall be used by the contractor for the sole purpose of drawing up an offer and preparing the work. The contractor will not check the documentation and takes no responsibility for its correctness or completeness.

6. Client liability

The client is liable for their errors and omissions and for the auxiliary personnel, equipment, subcontractors, etc. deployed or contracted by the client, thus in particular liable for any consequences and damages due to:

- Incorrect or incomplete information regarding the loads to be lifted/moved
- Incorrect or incomplete information regarding the carrying capacity of the ground or support structures
- Incorrect or incomplete preparation and specification regarding attachment points
- Permissions insufficient or not obtained

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- Other omissions regarding their obligations according to the offer or contractually related agreements, etc.

7. Insurance

The client acknowledges that the offer price only includes the premium for the contractor's public liability insurance. There is no insurance on the part of the contractor for the lifting gear, rental equipment, etc. The client is liable for all equipment belonging to the contractor that is damaged by the client. The client is obliged to obtain machine erection insurance or comprehensive building contractor's insurance and/or load insurance with explicit inclusion of the contractor's contractual services (including the load and property in custody and control) to a sufficient value, or to arrange that such insurance is obtained.

Property in custody and control refers to the load itself and any third-party objects that are in the custody of the contractor for the contractor to use/process, or that the contractor is using (e.g. existing structures). The client is obliged to provide the contractor on request with an appropriate confirmation of coverage from an internationally approved insurance company before work begins.

If the client wishes to waive arrangement of such an insurance policy, or is not able to approve this with the principal, then the client is obliged to inform the contractor of this fact in writing at least 30 days before start of the work, so that the contractor can insure their contractual work appropriately. The resulting costs will be invoiced to the client in addition to the price specified in the offer.

If no written information as described above is received, the contractor assumes that the client has obtained the necessary insurance, or has waived the insurance and is prepared to bear the resulting risks themselves and provide compensation equivalent to a proper and standard insurance.