

General Terms and Conditions of Brugg Lifting North America LLC (BRUGG LIFTING)

1. Scope of application and basic principles

a) Scope

- 1.1 These general terms and conditions (“GTC”) shall apply to all legal relationships (offers, contract negotiations, agreements, etc.) between Brugg Lifting North America LLC (also referred to as BRUGG LIFTING) (“BRUGG LIFTING”) and its clients (“CLIENTS”) concerning (i) the sale and delivery of products and works (“SUPPLIES”) and (ii) the provision of services such as assembly or assembly supervision (“SERVICES”) by BRUGG LIFTING to the CLIENT.
- 1.2 Unless expressly agreed otherwise, these GTC shall constitute an integral part of the legal relationships in existence between BRUGG LIFTING and the CLIENT, including in particular contracts. Any stipulations that depart from these GTC shall only be legally binding if expressly offered or expressly accepted by BRUGG LIFTING in writing.
- 1.3 By placing an order with BRUGG LIFTING, the CLIENT confirms, accepts and consents to the fact that the SUPPLIES and SERVICES are governed by these GTC. BRUGG LIFTING reserves the right to amend these GTC at any time. Any amendments shall take effect upon notification to the CLIENT in respect of all legal relationships established thereafter between BRUGG LIFTING and the CLIENT.
- 1.4 All of the CLIENT's general terms and conditions and other contract documents are hereby explicitly excluded unless BRUGG LIFTING expressly consents thereto in writing, even if such general terms and conditions or other documents of the CLIENT were included in the CLIENT's order or order confirmation or otherwise communicated to BRUGG LIFTING.
- b) Offers and the conclusion of contracts
- 1.5 BRUGG LIFTING's offers, price lists, product descriptions, brochures, plans etc. are not legally binding (in particular as regards the contractual characteristics of the SUPPLIES) and may be amended or revoked at any time, unless expressly specified otherwise in the relevant document.
- 1.6 Insofar as the offers of BRUGG LIFTING are non-binding, a contract shall only come into existence upon receipt by the CLIENT of written confirmation of acceptance of the order by BRUGG LIFTING (by written order confirmation or the signature of a written contract) or upon execution of the order by BRUGG LIFTING.
- 1.7 The SUPPLIES and SERVICES are conclusively listed in the written order confirmation. If no written order confirmation is issued, the relevant description shall be that contained in the contract signed by BRUGG LIFTING, or alternatively in the offer issued by BRUGG LIFTING.
- 1.8 If after an order has been confirmed that the SUPPLIES or SERVICES ordered cannot be delivered or performed respectively either in full or in part due to force majeure or for any

reasons beyond the control of BRUGG LIFTING (e.g. as a consequence of the failure to deliver or late delivery by a supplier of third party products), BRUGG LIFTING shall be entitled to withdraw from the contract either in full or in part. The CLIENT shall be informed of this fact by email and any payments already made for the SUPPLIES concerned shall be reimbursed to the CLIENT either in full (in the event of complete withdrawal) or in relation to the part of the SUPPLIES not delivered (in the event of partial withdrawal). In such cases, the CLIENT shall not be entitled to any further claims.

d) Form

- 1.17 No agreements or legal declarations between the parties shall be effective unless formulated in writing.

2. Prices and payment terms

- 2.1 The prices and payment terms shall be set out in the written order confirmation. The prices indicated shall be net prices in US Dollars, plus any statutorily applicable sales tax, use tax, value added tax, “Goods and Services Tax” (GST), or other comparable tax in the country of destination, unless the liability to account for and pay such tax is reversed to the CLIENT in the country of destination according to the reverse charge mechanism. In addition, prices are quoted “ex works” (EXW) at the registered office of BRUGG LIFTING, 3411 Turkey Mountain Road, Rome, GA 30161.
- 2.2 Invoices shall be issued at the discretion of BRUGG LIFTING either in advance or upon delivery. No deductions may be applied to invoice totals unless expressly agreed otherwise in writing. Offsetting against counterclaims is not permitted. Any unjustified discounts deducted will be invoiced.
- 2.3 The payment deadline is on the order acknowledgment and must be adhered to even in the event that contractual performance is delayed or that negligible parts of the SUPPLIES and/or SERVICES are still outstanding.
- 2.4 The place of performance for the purposes of payment shall be at the registered office of BRUGG LIFTING, as set forth above.
- 2.5 The due date shall also constitute a fixed payment date for the purposes of default. The CLIENT shall be automatically deemed to be in default without formal reminder in the event that invoices are not paid within the payment period and shall owe default interest of 8% per annum.
- 2.6 BRUGG LIFTING expressly reserves the right to claim further damages resulting from default and to withdraw from the contract and demand the return of the SUPPLIES pursuant to the Uniform Commercial Code as adopted and incorporated into Title 11, Chapter 9 of the Official Code of Georgia Annotated, or such other applicable law concerning the SUPPLIES, and to claim any additional damages as permitted by applicable law. In the event of payment default on the part of the CLIENT, BRUGG LIFTING shall be entitled to arrange for collection by a third party at the cost of the CLIENT.

3. Delivery periods and deadlines

- 3.1 The period for delivering the SUPPLIES or providing the SERVICES (“**DELIVERY PERIOD**”) shall commence after a contract is entered and as soon as all material prerequisites for the delivery of the SUPPLIES or the provision of the SERVICES have been fulfilled in BRUGG LIFTING’s view (e.g. receipt of advance payments, completion of administrative formalities, technical issues cleared up). DELIVERY PERIODS shall be deemed to have been complied with in the event that the SUPPLIES are made available to the CLIENT at the registered office of BRUGG LIFTING or the SERVICES have been provided prior to their expiry.
- 3.2 The DELIVERY PERIOD shall not start to run, or shall respectively be extended accordingly, in the event of any impediment that BRUGG LIFTING is unable to avoid despite having exercised due care or upon the occurrence of any circumstances that are beyond the control of BRUGG LIFTING. The foregoing shall be without prejudice to clause 1.8.
- 3.3 If the DELIVERY PERIOD is not complied with, the CLIENT may claim liquidated damages in respect of the delay, provided that BRUGG LIFTING was demonstrably responsible for the delay and a loss thereby arose for the CLIENT. Liquidated damages shall amount to 0.2 % of the contractual price for the part of the SUPPLIES or SERVICES that is delayed for each full week of delay, and shall be limited to a total of 5 % of the contractual price for the part in question. No entitlement to claim liquidated damages shall arise during the first two weeks of delay and the CLIENT shall not have any rights and claims in relation to any delay not exceeding two weeks. The CLIENT shall set a reasonable grace period for BRUGG LIFTING in writing once the maximum level of liquidated damages has been reached (5 % of the contractual price for the delayed part). If this grace period is not complied with due to reasons beyond the control of BRUGG LIFTING, the consequences of default shall be those provided for by law.
- 3.4 In the event that a particular deadline has been agreed to rather than a DELIVERY PERIOD, the deadline in question shall be regarded as the last day of the DELIVERY PERIOD. Clauses 3.1-3.3 (and 3.5) shall apply *mutatis mutandis*.
- 3.5 The CLIENT shall not be entitled to any rights and claims as a result of delayed provision of SUPPLIES or SERVICES, except as expressly specified in this clause 3. This limitation of liability shall not apply in the event of gross negligence or wilful unlawful intent by BRUGG LIFTING, or to the extent otherwise excluded by mandatory law.

4. Transfer of risk

Risk shall transfer upon delivery “ex works” (EXW) at the registered office of BRUGG LIFTING (INCOTERMS 2010).

5. Acceptance

- 5.1 The CLIENT shall examine the Supplies promptly upon receipt and notify BRUGG LIFTING in writing of any complaints relating to defects within 7 days of receipt of the SUPPLIES. The SUPPLIES shall be deemed to have been approved in the event that the CLIENT fails to conduct an examination and to complain concerning any defects in ac-

cordance with this clause 5.1.

- 5.2 If the SUPPLIES do not feature any defects or only negligible defects, the SUPPLIES shall be deemed to have been accepted upon completion of the examination.
- 5.3 The CLIENT’s rights in relation to defects shall be determined in accordance with clause 6.

6. Warranty

- 6.1 BRUGG LIFTING hereby warrants to the CLIENT that the SUPPLIES have no substantial defects in material and workmanship for a period of one (1) year from the time of delivery. ANY FURTHER PRODUCT WARRANTY AND WARRANTY OF TITLE IS EXPRESSLY EXCLUDED, UNLESS EXPRESSLY AGREED OTHERWISE IN THE WRITTEN ORDER CONFIRMATION AND/OR THE CONTRACT.
- 6.2 The warranty and liability of BRUGG LIFTING towards the CLIENT in relation to third party products shall be exclusively limited to the exercise by BRUGG LIFTING of warranty rights according to law or the contractual terms and conditions of the third party (e.g. GTC, warranty terms and conditions) at the cost of the CLIENT. In the event that the third party fails to comply voluntarily with its warranty obligations and liability, BRUGG LIFTING hereby assigns the warranty rights and liability remedies to the CLIENT for the purpose of enforcement. Apart from that, any warranty and liability of BRUGG LIFTING and its vicarious agents towards the CLIENT is excluded to the extent permitted by law.
- 6.3 In particular, BRUGG LIFTING shall not be liable for defects for which the CLIENT is at fault or arising in particular as a result of ordinary wear and tear (e.g. for consumable parts), inappropriate transportation and/or storage, incorrect assembly, the usage of the CLIENT’s own material, alterations or repairs carried out by the CLIENT or by a third party without the approval of BRUGG LIFTING, assembly or maintenance by the CLIENT or by a third party without the approval of BRUGG LIFTING, overloading, natural disasters, environmental damage or any other cause beyond the control of BRUGG LIFTING.
- 6.4 The warranty of BRUGG LIFTING requires written complaint by the CLIENT to BRUGG LIFTING concerning the defect within 7 days of receipt of the SUPPLIES (see also clause 5.1). Any defects discovered at a later stage must be objected to in writing with BRUGG LIFTING within 7 days of their discovery.
- 6.5 Unless explicitly specified otherwise, warranty claims shall become time-barred 12 months after the delivery of the SUPPLY in question. In the event that any SUPPLY is replaced or repaired by BRUGG LIFTING, the relevant 12-month period shall commence upon delivery of the original SUPPLY.
- 6.6 In the event that any defects are objected to, BRUGG LIFTING may thereafter at its choosing either inspect the SUPPLY in situ or request that the SUPPLY be returned to BRUGG LIFTING. BRUGG LIFTING shall examine the warranty claim and inform the CLIENT whether or not the claim invoked falls under the warranty. The CLIENT shall store the SUPPLY until the complaint has been definitively clarified.

- 6.7 Any involvement by BRUGG LIFTING in investigating or rectifying defects shall have no impact on the existence and scope of the warranty.
- 6.8 In the event of a warranty claim, BRUGG LIFTING shall at its own discretion either rectify any defects free of charge or replace the SUPPLY in full or in part. There shall be no entitlement to withdraw from the contract (rescission), to reduce the purchase price (reduction) or to substitute performance and/or damages.
- 6.9 In the event that a claim is not covered by the warranty, the CLIENT shall bear all costs arising for BRUGG LIFTING as a result of the assertion of the respective claim. This shall include in particular the costs of transportation, assembly and labour.
- 6.10 THE CLIENT SHALL NOT BE ENTITLED TO ANY RIGHTS AND CLAIMS IN RELATION TO DEFECTS OR THE ABSENCE OF ANY WARRANTED QUALITY (PROPERTIES) EXCEPT AS EXPRESSLY SPECIFIED IN THIS CLAUSE 6. This limitation of warranty claims and liability shall not apply in the event of gross negligence, unlawful intent or fraudulent concealment by BRUGG LIFTING, or to the extent otherwise excluded by mandatory law.

7. Services

- 7.1 The object and scope of the SERVICES shall be specified conclusively in the relevant contract. Additional terms and conditions may apply to the SERVICES, such as SERVICES provided by BRUGG LIFTING in relation to the assembly or monitoring of assembly of the SUPPLIES.
- 7.2 The CLIENT shall examine the SERVICES promptly after they have been provided and notify BRUGG LIFTING of any complaints in writing immediately and under no circumstances within more than 7 days from the provision of the SERVICES. In the event that the CLIENT fails to make such notification, the SERVICES shall be deemed to have been accepted.
- 7.3 Unless expressly agreed otherwise, BRUGG LIFTING shall be liable to the CLIENT only for performing the SERVICES with reasonable care, and thus shall not be liable for specific results, especially not in the case of consulting services related to the SUPPLIES. BRUGG LIFTING shall provide consultancy services to the best of its knowledge and belief, but does not warrant that the SUPPLIES are suitable for their intended usage by the CLIENT. The SERVICES of BRUGG LIFTING shall be based on the documentation of the CLIENT or of third parties made available. The CLIENT is responsible for ensuring that the documentation is up to date, complete and correct. BRUGG LIFTING does not accept any liability for deficient documentation or instructions. Otherwise, liability shall be determined in accordance with clause 10.
- 7.4 Clause 6 shall apply *mutatis mutandis* in the event that liability as to specific results is expressly agreed to by BRUGG LIFTING.

8. Returns

- 8.1 BRUGG LIFTING voluntarily grants the CLIENT the right to return any SUPPLIES ordered, provided that they are in

damaged condition. However, the right of return shall only be available if the SUPPLY returned is undamaged, does not display any signs of usage, and is returned by the CLIENT to BRUGG LIFTING in full (including all individual parts, accessories and packaging material) within 14 days of receipt of the SUPPLY (the relevant time being that of receipt by BRUGG LIFTING of the SUPPLY returned).

- 8.2. The right of return according to clause 8.1 shall expressly exclude all SUPPLIES that are custom-made for the CLIENT along with all SUPPLIES prepared or adjusted at the request of the CLIENT. In exceptional cases, BRUGG LIFTING may at its own discretion take back such SUPPLIES as a matter of goodwill; however, the CLIENT shall not have any right to insist on this.
- 8.3 SUPPLIES shall be returned at the cost and risk of the CLIENT. Following the receipt and examination of the SUPPLY, BRUGG LIFTING shall reimburse to the CLIENT the purchase price paid for the returned SUPPLY, excluding the costs of shipping and packaging.

9. Retention of title

The SUPPLIES shall remain the property of BRUGG LIFTING until the CLIENT has complied with the duty to make payment and BRUGG LIFTING has received in full all payments in accordance with this contract. The CLIENT shall be obliged to cooperate promptly in any action to uphold the ownership of BRUGG LIFTING. The CLIENT also authorizes BRUGG LIFTING to take such necessary action related to its right of ownership in the event that BRUGG LIFTING wishes such an entry to be made.

10. Liability and limitation of liability

- 10.1 ANY LIABILITY OF BRUGG LIFTING ARISING OUT OF OR IN RELATION TO A CONTRACT OR THE DEFICIENT PERFORMANCE THEREOF SHALL BE LIMITED TO A TOTAL OF 50% OF THE AGREED CONTRACTUAL PRICE. THIS SHALL INCLUDE IN PARTICULAR ANY CLAIMS RELATING TO DELAYED PERFORMANCE ACCORDING TO CLAUSE 3.3.
- 10.2 THE CLIENT SHALL NOT BE ENTITLED TO CLAIM COMPENSATION FOR INDIRECT, COLLATERAL AND CONSEQUENTIAL DAMAGES, LOSS OF PROFIT AND UNREALISED SAVINGS, IRRESPECTIVE OF THE LEGAL BASIS FOR CLAIMING SUCH DAMAGES. THE SAME SHALL APPLY FOR DAMAGES ATTRIBUTABLE TO CAUSES REGULATED UNDER CLAUSE 6.3 (OWN FAULT, ORDINARY WEAR AND TEAR, INAPPROPRIATE TRANSPORTATION, ETC.) AND FOR ANY ACTS OR OMISSIONS OF VICARIOUS AGENTS.
- 10.3 THE LIABILITY OF BRUGG LIFTING FOR THIRD PARTY PRODUCTS SHALL BE EXCLUDED OR LIMITED IN ACCORDANCE WITH CLAUSE 6.2.
- 10.4 ALL RIGHTS AND CLAIMS OF THE CLIENT UNDER OR IN RELATION TO THE CONTRACT OR ITS DEFICIENT PERFORMANCE, IRRESPECTIVE OF THE LEGAL BASIS, ARE EXPRESSLY AND EXHAUSTIVELY SPECIFIED IN THESE GTC. THERE SHALL BE NO FURTHER RIGHTS AND CLAIMS.

Georgia, Rome Division.

10.5 These limitations of liability shall not apply in the event of gross negligence or of unlawful intent by BRUGG LIFTING, or to the extent otherwise excluded by mandatory law.

12.2 Georgia law shall apply as between BRUGG LIFTING and its CLIENTS regardless of conflict of laws principles.

11. Other provisions

a) Involvement of third parties

11.1 BRUGG LIFTING shall be entitled to involve third parties in contractual performance. BRUGG LIFTING shall bear responsibility for the services of any third parties involved in the same manner as for its own.

b) Intellectual property rights

11.2 BRUGG LIFTING or any licensors shall retain all rights over all SUPPLIES and SERVICES, descriptions, brochures, plans, documents and data carriers, including rights under patent law and copyright or any other intellectual property rights. The CLIENT acknowledges these rights of BRUGG LIFTING or its licensors.

11.3 BRUGG LIFTING confirms that, as far as it is aware, the descriptions of SUPPLIES and SERVICES, brochures, plans, documents and data carriers provided to the CLIENT do not infringe any third party rights. However, BRUGG LIFTING does not provide any guarantee or warranty that the descriptions of SUPPLIES and SERVICES, brochures, plans, documents and data carriers provided to the CLIENT do not infringe any third party rights.

c) Data protection

11.4 BRUGG LIFTING processes particular personal data of its CLIENTS in relation to the contractual relationship or prior to entering into a contract. Data are processed by BRUGG LIFTING in accordance with the relevant provisions of the EU General Data Protection Regulation (GDPR), taking account of the relevant national data protection law. All relevant information relating to data processing is set out in the document entitled "Data protection guidelines concerning the general terms and conditions of BRUGG LIFTING NORTH AMERICA, which may be downloaded from the BRUGG LIFTING website on the page www.brugglifting.com/?lang=en and may also be made available to the CLIENT upon request.

d) Severability

11.5 Should any individual terms of these GTC be invalid or unenforceable, this shall not affect the validity of the remaining terms and of these GTC as a whole. The invalid or unenforceable term shall be replaced by a valid term that comes as close as possible to the economic purpose of the invalid or unenforceable term.

12. Jurisdiction and applicable law

12.1 Client acknowledges and agrees that any dispute or claim that CLIENT has against BRUGG LIFTING arising out of or in any connected with SUPPLIES or SERVICES provided by BRUGG LIFTING to CLIENT shall be exclusively litigated or resolved in the Superior Court of Floyd County, Georgia or the United States District Court for the Northern District of