General Terms and Conditions of HEAVYLOG Logistics Services GmbH

in particular for
transports, warehousing, crane services, shipping and receiving,
salvage work, as well as the supply of work platforms and forklift trucks

1. General
1.1 All services by HEAVYLOG Logistics Services GmbH – hereafter referred to as "HEAVYLOG" – are to be carried out in compliance with these General Terms and Conditions (GTC), published at www.heavylog.at. Customer’s GTC contradicting these GTC in one or more respects shall not be effective unless accepted in writing in each individual case and are only valid for the transaction for which they have been agreed. In the case of repeated service transactions (ongoing business partnership), the agreement made at the beginning of the business partnership suffices to assure further validity of these GTC.

1.2 All services by HEAVYLOG are rendered either in the form of provision or freight contract. Provision is the supply of machinery, with or without operating staff, to the Customer for carrying out work according to his instructions and disposition. All operating and warning notices included with the provision or freight contract shall be completely adhered to. If clarifications are required, then further consultation should be sought before work commences. A freight contract is made when HEAVYLOG is asked to supply machinery with operating staff for the implementation of work (services) according to its own instructions and disposition.

2. Placement of Orders:
2.1 All quotations by HEAVYLOG are subject to confirmation and have – unless otherwise stated – a validity period of 14 days after quotation date. Quotations by HEAVYLOG can only be accepted in their entirety. The acceptance of only part of the services described in a quotation is not permissible. Conversely, for lack of a mutual agreement, the Customer is obliged to accept only part of the services by HEAVYLOG if these are technically possible and achievable within the given workflow.

2.2 The contract is formed when HEAVYLOG accepts it in writing (also by fax or email). HEAVYLOG reserves the right to withhold acceptance of a contract offer for technical, economical, legal or operational reasons.

2.3 With acceptance of an offer, the Customer is obliged to send HEAVYLOG a company order confirmation confirming the acceptance of the contract offer (also by fax or as PDF by email). After sending the order confirmation, the Customer declares his full and unrestricted acceptance of the GTC relayed by HEAVYLOG and published at
and confirms the authority of the sender to transact. Upon request, the corresponding original must be sent by post to HEAVYLOG.

2.4 Changes to the assignment or side agreements require the written acceptance by HEAVYLOG and are only valid in each individual case. The same applies to later-issued supplementary orders, which are additionally invoiced. The GTC also apply to later-issued supplementary orders. Without express written confirmation, HEAVYLOG holds no liabilities for information obtained orally or over the telephone.

3. Obtaining Required Governmental Authorization, Procuration:

3.1 For lack of a mutual agreement, any governmental authorization required for order implementation will be obtained by HEAVYLOG on the Customer’s behalf and at the latter’s peril and risk. **The Customer expressly authorizes HEAVYLOG to undertake such necessary activity related to the order with the responsible authorities.** If requested by HEAVYLOG, the Customer is also obliged to undersign any separate, necessary authorization with an official company signature.

3.2. Unless otherwise stated in the offer, the offer’s price calculation is based on a standard government application without special requirements. Governmentally-prescribed requirements such as public ground storage costs, number of ancillary vehicles and security personnel etc. are not included in the price calculation. Changes in the scope of the order due to governmental requirements and prescriptions not expressly stated when the order was placed, and which result in increased overheads for HEAVYLOG, are invoiced separately. Upon the Customer’s request, HEAVYLOG will disclose – insofar as possible – nature and scope of the permissions usually required.

3.3 In the case that governmental authorization required for the implementation of commissioned services is not granted, HEAVYLOG retains the right of withdrawal and to invoice the costs for services rendered to date. While governmental procedures are pending, contractually-agreed deadlines are suspended. Agreed deadlines are moved according to the duration of the governmental procedure. In the case that governmental authorization is not granted despite the correct application, the Customer’s right to claim damages is expressly precluded within the scope of section 8.

4. Prices:

4.1 The prices cited in the offer are based on the information provided by the Customer for implementation of the order. The Customer is obliged to declare any special characteristics of the building site, loading/unloading location, crane location etc. If required and necessary, the Customer is obliged to instruct a building site inspection for the assessment of such characteristics.

4.2 Any cash payments submitted by HEAVYLOG for the obtainment of governmental authorizations are invoiced additionally. The same applies to overheads resulting from delays in the implementation of services not attributable to HEAVYLOG. Changes in
the scope of services, installation location, time and duration of the implementation of services and prescriptions of governmental requirements lead to subsequent billings, respectively, also where flat rates have been agreed. HEAVYLOG is entitled to adjust its prices should the actual piece weight and/or measurements, as well as other characteristics of the goods to be transported differ from the Customer’s declared particulars.

5. Order Implementation:

5.1 The Customer may not issue HEAVYLOG personnel with orders that differ in nature and scope from the originally-agreed assignment without the consent of HEAVYLOG management. The Customer is exclusively liable for damages caused during the implementation of services that are not attributable to persons associated with HEAVYLOG; this particularly applies to damages which are caused by issuing loading or unloading staff, crane operator or truck driver, with instructions and by implementing these (e.g. crane movements directed by another person in poor visibility, activity by a signalman or building site co-coordinator, directions given to a truck driver or crane operator etc.).

5.2 When placing an order, the Customer is obliged to declare, fully and bindingly, all corresponding weights, measurements, signal points and special features of the goods to be transported. Third-party information requested by the Customer shall be deemed the Customer’s. Should the Customer fail to comply with his duty to provide information and guidelines, then he is obliged to indemnify and compensate HEAVYLOG for all damages and disadvantages sustained thereby.

5.3 The Customer is obliged to maintain transport, lifting or salvage gear in a condition ready and appropriate for order implementation, to provide all technical requirements for order implementation at his own risk and expense and to continue maintenance procedures while the order is being implemented. The Customer shall assume liability and risk if the nature of parts, access road and place of action do not guarantee a proper and safe order implementation.

5.4 The Customer’s duty to provide information and guidelines entails the disclosure of all factors and features necessary for the implementation of a service and/or erection of a crane, particularly ground composition, bearing capacity of the proposed crane location, including access roads, all installations such as sewers, shafts, pipelines, cables and all other aspects, which are required to evaluate how the services are to be carried out.

5.5 The Customer is obliged to take all measures required for an evaluation of suitability and bears all costs relating to respective static calculations. Upon request, HEAVYLOG will provide various axle loads and support pressures.
6. Delays in Services:

6.1 Should order implementation be delayed due to reasons attributable to the Customer, then HEAVYLOG is entitled to bill the Customer for these respective outlays and additional expenditures.

6.2 Should order implementation be delayed due to reasons attributable to HEAVYLOG, then the Customer shall set a grace period of at least three weeks and demand in advance that HEAVYLOG fulfill these services. Any claims for damages resulting from these delays, particularly fines and other contractual penalties suffered by the Customer, can only be transferred to HEAVYLOG if HEAVYLOG was demonstrably notified of the possible consequences of such a delay, including the amount thereof, upon order placement. Otherwise, claims for damages are precluded within the scope of section 8.

6.3 If the Customer is in arrears with payments to HEAVYLOG, also where other orders are concerned, or fails to perform an activity necessary for order implementation, then HEAVYLOG is for its part entitled to withhold services.

7. Withdrawal from Contract:

7.1 A withdrawal by the Customer is permissible (i) upon transmission of mutually-agreed grounds in writing (ii) if HEAVYLOG do not meet their contractual obligation after a grace period of three weeks of which it has been notified by the Customer in writing and by recorded delivery.

7.2 Should circumstances arise during order implementation that gravely impede the performance of services, or if damages to objects and/or third-party property is likely or expected, then HEAVYLOG, by precluding all claims for compensation of any kind, is entitled to withdraw from the contract or suspend services until the Customer eliminates such impediments or risks, even if such a suspension causes delayed deadlines and/or a postponed completion date.

7.3 Arising waiting periods, as well as delays in machinery and personnel deployment not attributable to HEAVYLOG, e.g. installation approval, bad weather conditions, building-site specific delays, delayed delivery of transport or lifting gear and similar, shall be borne by the Customer also where flat rates have been agreed, and may cause delayed deadlines and a postponement of the agreed completion date.

7.4 In the case of sections 7.2 and 7.3, HEAVYLOG is entitled to bill the Customer for any services rendered to date – notwithstanding the chosen type of contract. Costs arising from downtime are also billed to the Customer where flat rates have been agreed.

7.5 When, between placement of order and implementation of services, changes occur in the Customer’s capacity to pay, or when circumstances become known that call the Customer’s capacity to pay into question, HEAVYLOG is entitled to demand an advance payment or to withdraw from the contract.
7.6 HEAVYLOG is further entitled to suspend services or withdraw from the contract should the Customer fail to effect payment of bills, or, respectively, when insolvency or compensation proceedings are instigated against him, or when a bankruptcy petition is declined due to the Customer’s lack of cost-covering assets. Upon withdrawal, by reserving the right to assert further claims, the costs for services rendered to date shall be due on a pro rata basis.

8. Liability and Warranty Terms:

8.1 Liability and warranty claims require the Customer to announce without delay in writing (also by fax or email) any faults or damages caused by HEAVYLOG. A complete declaration of the facts should be made within three working days of the occurrence of such faults or damages. HEAVYLOG shall be informed without delay in writing of any faults or damages that are not externally noticeable as soon as they are detected, at the latest within five working days after termination of the respective service. **If any faults or damages are not made known within the stated time periods**, then the Customer is obliged to accept the services rendered by HEAVYLOG **without further claims**.

8.2 All compensation claims directed against HEAVYLOG for whatever reason, particularly for nonperformance, misperformance, delay, encumbrances prior to or at contract formation, due to illegal actions or other legal reasons, are precluded if the Customer fails to prove that these damages by HEAVYLOG or persons associated with HEAVYLOG were caused by severely negligent or deliberate behavior (with the exception of damages to persons).

8.3 HEAVYLOG further accepts no liability for force majeure and consequential damages, compensation for lost profits, loss of interest or for damages connected with third-party claims.

8.4 In any case, HEAVYLOG’s liability is limited to the amount of 50,000.- Euros.

8.5 Instructors, signalmen, coordinators and other personnel provided by the Customer are not to be associated with HEAVYLOG, as well as personnel directly appointed by the Customer, foreman or construction-site supervisor. HEAVYLOG takes no liability for consultation or information services for which it has not been separately commissioned in writing.

8.6 The Customer takes note that a “crane-hook-load insurance policy” must be taken out for crane-hoisting work. Upon request, HEAVYLOG shall take out such a transport/goods-hoisting policy at the Customer’s expense. If the Customer takes out such an insurance policy himself, he shall make sure to reach an agreement with the respective insurer that exempts HEAVYLOG from rights of recourse (knock-for-knock waiver). In any case, the Customer is obliged to inform HEAVYLOG in writing if the value of goods to be hoisted and transported exceeds the amount of 50,000 Euros. Non-provision or incorrect provision of data, as well as the failure to acquire insurance coverage shall result in the Customer’s contributory negligence.
8.7 Liability extends to six months after order implementation. HEAVYLOG shall choose to fulfill its liability duties in terms of corrections, replacement of missing parts or reverse transaction of the order (repayment of paid fees) within four weeks after the claim is made. The Customer is obliged to set an appropriate grace period for the correction of faults or replacement of missing parts. The Customer shall not be entitled to plea of unperformed (not properly performed) contract.

9. Payment, Right of Offsetting, Place of Execution, Delayed Payment and Cancellation:

9.1 Invoices by HEAVYLOG are due for payment on receipt. A payment is considered received when HEAVYLOG can dispose of the amount paid.

9.2. Payments by the Customer are charged to his most recent payable account. Incoming payments are first of all used to cover accrued costs, expenses and interest for delay.

9.3 The Customer has no right to set off claims by HEAVYLOG unless his claims are accepted by HEAVYLOG in writing at the time of offsetting, or if they were already deemed legally valid. The Customer is not entitled to withhold payments due to incomplete services, warranty claims or faults.

9.4 HEAVYLOG’s headquarters shall be deemed place of payment and execution for Customer and HEAVYLOG.

9.5 If the Customer delays payment or is late rendering services necessary for order implementation, then HEAVYLOG is entitled to
- postpone the performance of its own services until delayed payments are received or respective services rendered,
- an appropriate extension of the time limit for completion,
- bring to account all or open payments relating to the order,
- charge interest for delay of 12% above the base rate of the Austrian Nationalbank, but at least 12 % annually,
- in the case of non-compliance, to withdraw from the contract after an appropriate grace period,
- charge an overdue notice fee of 20,00 Euros flat fee per transmitted reminder, as well a 5,00 Euros biannually for keeping the debt on file,
- demand compensation for the debt collection agency’s operating and collecting costs, which the Customer is obliged to replace up to the maximum amounts cited in the most up-to-date edition of the BGBI 1996/141.

9.6 If the Customer cancels the order placed with HEAVYLOG, even if only partially, prior to implementation of services, then, except where further claims are raised, he is obliged to compensate HEAVYLOG in the amount of 10% of the order value, but at least the sum of 1.500 Euros.
10. Governing Law, Place of Jurisdiction, Salvatorius Clause

10.1 The legal relationship between the Customer and HEAVYLOG shall be governed by Austrian Law, with the exception of reference norms of the Austrian International Private Law and with the exception of the UN Sales of Goods Law.

10.2 It is agreed that in the case of a dispute between the Customer and HEAVYLOG concerning the realization or validity of these GTC or their legal effects, as well as contracts on which these GTC are based, exclusive authority is given to the appropriate courts of Wien-Innere Stadt. HEAVYLOG is authorized to pursue claims at the court competent for the Customer’s registered office or branch.

10.3 If single clauses of this contract are or become deemed ineffective or contestable, or if this contract contains gaps, or should gaps develop, then the validity of the rest of the contract shall not be effected. It is agreed that the ineffective clause shall be replaced by an effective clause that corresponds as closely as possible in meaning and objective to the ineffective clause. In the case of gaps, provisions shall be agreed corresponding in content and objective to those that would have been agreed, had the contractual partners thought of the issues in advance.

Transport Terms

1. If not otherwise determined by the respective GTC, then HEAVYLOG’s transports are concluded based on CMR, with the exception of hauling-for-hire contracts that are not subject to CMR. Hauling-for-hire contracts are those in which the contractor provides the Customer with a manned vehicle, which the Customer may load and direct as he wishes. However, the provisions made in this contract, which differ from CMR, take precedence over CMR.

2. It is the Customer’s responsibility, upon order placement, or at the latest when the goods are released, to expressly draw the hauler’s attention to any hazards posed by the goods to be transported. Informing the driver thereof is not sufficient.

3. If the Customer changes the place of delivery according to Art. 12 of CMR, or if the goods are to be delivered to a recipient other than the one named in the bill of lading, then HEAVYLOG is to be compensated for any costs resulting therefrom. Carrying out such instructions must be possible at the time they are received and may neither disrupt the hauler’s usual business nor damage the recipient’s sender’s other shipments; the instructions must further not lead to a shipment being divided.

4. A transport shall be considered concluded when the recipient receives them. Required crane work at the recipient’s location is covered by other provisions set out by these GTC.

Warehousing and Storage

Warehousing and storage of goods, particularly salvage goods, which are required for order implementation, are subject to tariffs imposed by HEAVYLOG. In the case of an insurance claim, the Customer agrees to assign his claim for indemnification against the insurer to
HEAVYLOG to the extent of the scope of service, and HEAVYLOG agrees to accept this assignment. This assignment exempts the Customer from his obligation to effect payment only as long as the insurer effects payment to HEAVYLOG. HEAVYLOG is therefore entitled but not obliged to assert his claim for payment directly with the insurer. Until HEAVYLOG’s claims have been fully settled, HEAVYLOG is entitled to retain goods received or lent by the Customer or third parties during order implementation. It is agreed that our special warehousing and transshipment terms apply when storage, re-storage and/or warehousing extend beyond salvage.

**Warehousing and Transshipment Terms**

1. These warehousing and transshipment terms apply to all of HEAVYLOG’s industrial premises, facilities and transshipment areas. If not otherwise specified in the GTC, then regulations §§ 416 ff of the GTC, as well as regulations of the General Austrian Carrier Terms (AÖSp) in their most up-to-date edition, apply.

2. These warehousing and transshipment terms apply to the direct transshipment of goods as well as the indirect transshipment of goods with prior and subsequent storage, respectively, as well as mere warehousing within covered or uncovered storage areas.

3. The consequences resulting from incorrect or incomplete information shall be borne by the Customer, even when he is not directly responsible thereof. The Customer is obliged to disclose full, precise and correct information pertaining to length, weight and centre of gravity, as well as signal points of the goods to be transshipped or stored, since HEAVYLOG will not inspect weight, length or gravity point of the goods. Without a separate agreement in writing, transshipment of goods is reduced to a maximum weight of 30 tons. The Customer’s information pertaining to weight leads to the choice of hoisting gear and crane respectively, therefore the particulars need to be precise.

4. When the order is placed, the Customer is also obliged to draw attention, fully and in writing, to the nature and characteristics of the goods for transshipment or warehousing. Unless the Customer specifically requests a covered storage area, the goods will be stored in an uncovered area (open space) and subjected to climatic conditions. The Customer is obliged to disclose in writing if goods for transshipment show any reduced storability as well as special characteristics (e.g. in particular, flammability, explosion hazards, perishability, radioactivity, poisonous/odorous substances, specials storage requirements and similar).

5. The Customer is obliged to assure that the packaging is appropriate for storage. For damages or impairments caused by HEAVYLOG to stored goods, the liability terms of §§ 51 ff Asp, including liability restrictions and disclaimers, apply. If the AÖsp liability terms are not used for whatever reason, HEAVYLOG will pay compensation up to the maximum amount of 50,000.- Euros. The Customer will make it known in writing if a higher insurance coverage is necessary, and, if requested, a higher insurance amount will be actuated at the Customer’s expense.
6. Storage will be predominantly located in uncovered areas (open spaces), which cannot be fully closed off. Constant surveillance is neither possible during operating hours nor at night and weekends. Should goods be subjected to threats of theft, sabotage or other forms of encroachment, then the Customer is obliged to draw attention to this, and, if necessary, to instigate appropriate surveillance and/or security barriers at his expense.

7. HEAVYLOG reserves the right, for technical or operational reasons, to affect changes to the supplied storage areas, or to switch storage areas, and expects the Customer to grant his consent for such re-storaging activity.

8. For loading and unloading, as well as warehousing, a transshipment coordinator is appointed by HEAVYLOG, who may also be provided by a third party. The deliverer of goods (truck/train driver and similar) shall supervise loading/unloading activities and draw attention to stability issues during loading/unloading, as well as product-specific particulars of the goods to be handled. The transshipment coordinator shall pay attention to the necessary stability and alignment of truck and train carriage (truck/train driver) when loading/unloading. When loading, the persons loading and storing the goods shall advise where goods are to be placed on the transport vehicle. Upon loading of vehicles, HEAVYLOG will conduct and check any necessary lashing or securing suitable for transport of the goods.

9. Handling personnel provided by HEAVYLOG will help those responsible for vehicles with their loading tasks. Before handling or hoisting any goods, attention should be drawn to special characteristics, inertia, dangerous goods, shifting centers of gravity in liquids and other containers, as well as lifting points of goods (gravity centre) and disclosed to HEAVYLOG.

10. The AÖSp liability terms have been expressly agreed. The Customer is obliged to give proof if warehoused/transshipped goods were damaged or lost. If HEAVYLOG is found guilty, then the value of warehoused goods disclosed upon order placement will be replaced up to the maximum amount set by the AÖSp, or should they not apply, then up to the maximum amount of 50,000 Euros, and these maximum liability amounts shall also expressly apply to (knock-for-knock) waivers extending these provisions.

11. All liability claims against HEAVYLOG expire when the recipient or their representative (carrier) accepts the warehoused/transshipped goods without reserve. Liability claims for any losses shall therefore be made upon handover of goods at the latest and in writing.

12. If not otherwise agreed, then HEAVYLOG reserves the right to cancel all agreements at any time and without cause, giving a one month notice in writing by recorded delivery post to the address last known by HEAVYLOG. After the notice period, HEAVYLOG is entitled to store the goods elsewhere at the Customer’s expense, without further liability for handling, transport or storage. Furthermore, a premature termination of the agreement is permissible if
   - the warehoused goods pose a hazard to other goods or persons and no adequate hazard warnings were given,
the Customer is more than a month behind with payments for the agreed charges, despite written reminders,
- other essential contractual provisions on the Customer’s part have not been fulfilled despite written reminders.

13. HEAVYLOG’s entitlement to a legally regulated entitlement to the disposition of goods, according to provisions relating to commercial law of the Austrian Commercial Code, is not affected. The Customer further authorizes HEAVYLOG, in the case of payment arrears, binding on himself and his legal successors, to dispose of warehoused/transshipped goods, and to determine all necessary terms, particularly prices, payment and handover conditions and the issuing of statements and signatures in whatever way required.

**Special Terms for Work Platforms and Forklift Trucks**

1. The Customer is not entitled to pass on any machinery unless he has obtained written permission from HEAVYLOG. The Customer is liable for every utilization and deployment of the machinery by third parties.

2. The only persons authorized to handle the machinery are those aged 18 and over, who own the required driving/fork-lift truck license, who have received the appropriate instructions, and who, while operating the machinery, are not under the influence of drugs, medication or alcohol. The Customer shall make sure that qualified operating staff is available for the handover and issuing of instructions. If machinery cannot be deployed because of climactic or other factors not attributable to HEAVYLOG, then this falls under the Customer’s responsibility and cannot be held against HEAVYLOG.

3. The Customer is obliged to inform HEAVYLOG at least one day in advance of the conclusion of services to assure the collection of machinery at the conclusion of services and undertakes to make the machinery ready for collection.

4. Collection of machinery shall take place at the agreed place and in the presence of the Customer or his authorized representative.

5. Machinery is available for deployment Monday to Friday, at a maximum daily rate of nine hours.

6. When the handover certificate is accepted/signed by the Customer or his representative, then chance and danger in relation to the machinery pass on to the Customer. The Customer takes full liability for the machinery in his charge. Liability extends to all damages to persons, the machinery handed over and other damages caused by the machinery.

7. The machinery is not insured against theft, and the Customer shall be liable for any theft or damages by third parties, as well as breakdown claims by HEAVYLOG, even if the machinery was properly kept. The machinery, in any case, shall be secured against unlawful operation.

8. The Customer is liable for all damages to the machinery caused by himself or his employees, as well as for breakdown times caused by these damages. HEAVYLOG
recommends an insurance cover extension of the Customer’s employer’s liability insurance for the machinery while in the Customer’s care. The Customer is also liable for damages caused to third parties by operation of said machinery either by himself or his operating personnel.

9. The Customer undertakes to handle the machinery with care, to protect it from overstraining and to take notice of all legal provisions that relate to ownership, usage and maintenance of machinery and paraphernalia. The Customer bears any cleaning costs should the machinery be stained, as well as any resulting loss of business costs borne by HEAVYLOG.

10. HEAVYLOG instructs one or more of the Customer’s employees in the operation of the machinery. The Customer is obliged to make sure that only qualified personnel instructed by HEAVYLOG carry out operation of the machinery.

11. The machinery may only be used as intended. Work platforms and teleforklifts in work tray operation may not be used to hoist heavy materials or used for loads above the specified platform bearing capacity. Pulling lines with work platforms or teleforklifts in work tray operation is forbidden. Staining and damaging is to be avoided as best as possible. When abrasive work is to be carried out, then the machinery must be adequately covered and protected. Cleaning costs that arise from staining, as well as damages to tyres, will be invoiced at cost.

12. Depending on the type of machinery, the Customer is obliged to undertake a daily check of engine oil and cooling fluid levels, as well as the battery’s water levels and hydraulic oil levels, and if required, to amend low amounts with the appropriate substances at his own expense. Furthermore, the use of diesel-operated equipment demands a daily check of the air filter, which shall be cleaned when required. The Customer is liable for damages caused by inappropriate substances, air filters or low amounts of operating fluids. Fluids, which are not replaced by the Customer, are supplemented when the machinery is returned and invoiced at cost.

13. HEAVYLOG must be immediately informed of any arising faults or damages to the machinery and be supplied with machinery type and number and nature of the fault.

14. It is the Customer’s responsibility that the machinery is only erected in appropriate locations. The Customer is solely responsible for statics, ground conditions, as well as field of application.

15. If the machinery is not handed over in time due to reasons not attributable to HEAVYLOG, then the Customer is not entitled to claim damages. The same applies when the machinery breaks down during operation despite having been checked for functionality.

16. Risk handover takes places for the Customer only after proper return of the machinery and the hand-back certificate has been signed.

17. In the case of outdoor operations, the maximum permissible wind speeds need to be taken into account. Operation must cease immediately when permissible wind speeds are exceeded.

18. Operation of machinery is only permissible if carried out in compliance with the safety instructions.
As of September 2007