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	<b>GWGTC</b> (General Warranty- and Guarantee Terms and Conditions)	

## General Warranty- and Guarantee Terms and Conditions

### § 1 Objective and scope

- 1.1 These General Warranty- and Guarantee Terms and Conditions (hereinafter called Terms) shall apply to all agreements concluded by and between Penz crane GmbH (hereinafter called Penz crane) or its authorised dealers and workshops (both hereinafter called partner companies) and the customer.
- 1.2 The Terms apply for all internal legal relations between Penz crane and its authorised dealers and workshops.
- 1.3 The Terms apply directly and in full, unless otherwise explicitly agreed in writing. In the latter case, the Terms apply in a subsidiary manner (see section 11.6).
- 1.4 All existing general regulations concluded between Penz crane and the partner companies or the customers deviating from these Terms are replaced by these Terms, with the exception of Penz crane's General Terms and Conditions of Sale and Delivery.
- 1.5 These Terms are a supplement to Penz crane's General Terms and Conditions of Sale and Delivery whereas they have priority over them (see section 11.6 lit. d).

### § 2 Receipt of products, obligations to inspect the goods and notification of defects, proper storage

- 2.1 The recipient shall make an immediate inspection of the goods delivered. Any defects discovered shall be reported to Penz crane immediately, but no later than one week upon delivery (notice of defects).
- 2.2 The obligation to inspect the goods and to report defects (section 2.1) includes quality defects on the product, as well as the quantity of the delivery and its compliance with the order.

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- 2.3 Any transport damage shall be reported to the transport company and Penz crane within the same period (see section 2.1).
- 2.4 Any deliveries not complying with the order, as well as any other defects caused by Penz crane that were not identifiable prior to delivery shall be reported to Penz crane by the recipient immediately, but no later than three days commencing with the first opportunity to identify the defect.
- 2.5 Notification shall be made in writing (e-mail or fax is accepted as well). The recipient shall send all details about each qualitative and quantitative defect and name all affected products as well as the alleged reason. The notification and the enclosed form shall be filled out correctly and fully and sent to Penz crane.
- 2.6 In the event that such notification is not sent in time or is not detailed enough, the particular delivery is deemed to be properly executed by Penz crane and accepted by the recipient. If the recipient differs from Penz crane's contractual partner, the aforesaid also applies to the latter.
- 2.7 Regardless of the particular passing of risk, partner companies shall store Penz crane's products until further sale in a competent and correct manner, free of charge and in a way the products are protected against damage, theft and weather conditions, such as hail. The same applies to products that are claimed to be defect, provided that they do not have to be sent to Penz crane (section 7.2), and this obligation includes both warranty and guarantee claimants.
- 2.8 Delivery and hand-over of products by partner companies shall be made by qualified staff. This staff shall introduce the manual enclosed with the product, the spare parts catalogue and the handling of the product to the end customer properly.

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### § 3 Retention of title

- 3.1 Penz crane retains title to all products until all financial obligations have been performed in full.
- 3.2 In the event that a retention of title is in existence, partner companies and customers shall neither pledge the products sent by Penz crane or make them available to third parties, nor establish rights of third parties on these products. Further, they shall appropriately inform third parties about the title retention to secure the rights of Penz crane.
- 3.3 Reselling products subject to retention of title is only permitted when the purchase price is collected at the same time. If the purchase price is not paid immediately or in full to Penz crane, the reseller assigns all open claims against his customer to Penz crane (including interest and possible operating costs).
- 3.4 Unless Penz crane expressly declares otherwise, the basic legal relationship is not affected by claiming the retention of title.

### § 4 Warranty

- 4.1 Unless otherwise explicitly declared in writing, Penz crane honours warranty to its immediate contractual partners in accordance with these Terms and, subsidiarily, to the legal regulations.
- 4.2 Penz crane will honour its warranty obligation by delivering missing products, repairing or replacing defective products or price reduction upon written notice within eight weeks at its sole discretion. The warranty remedy to terminate the contract is waived by mutual consent.
- 4.3 The period of warranty shall be twelve months starting with the delivery date of the product. The same applies for a recourse according to § 933b ABGB (Austrian Civil Code), where the period for claims ends also one year after every single delivery to the recipient.

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## § 5 Manufacturer's guarantee

- 5.1 Irrespective of possible warranty claims, Penz crane grants the end customer (operator) a manufacturer's guarantee for certain components in accordance with these Terms.
- 5.2 Unless otherwise expressly agreed to in writing, the guarantee period is thirty-six months or 2.400 operating hours, whichever of the two conditions appears first. The guarantee period starts with the delivery of the product to the delivery address given to Penz crane by the customer.
- 5.3 An extension of this period requires a renewed guarantee by Penz crane in writing. The guarantee claimant shall request such renewed guarantee from the delivering company or from Penz crane in writing within two months prior to the end of the initial guarantee. A legal claim to this period extension does not exist. For the renewed guarantee (extension) all acceptance regulations that are current at the time of granting such promise, all General Terms and Conditions and rates of Penz crane are effective.
- 5.4 To avoid loss of guarantee rights, guarantee claims are to be made within four weeks upon occurrence of the guarantee case in writing; section 2.5 applies analogously.
- 5.5 Change of ownership does not affect the manufacturer guarantee.
- 5.6 The manufacturer's guarantee includes the exchange or repair of the components included in the guarantee (section 5.7). If the work is not carried out by Penz crane, the faulty component will be replaced at first. Compensation of the replacement or repair costs requires an expressly written consent by Penz crane which the customer shall demand in advance. The compensation for this work is limited to the internal cost rate and hourly rate of Penz crane (cost limit). If the repair costs exceed the value of the component that needs to be repaired, warranty can only be claimed for the exchange of the component including the verified costs for removal and installation to the cost limit.

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5.7 The manufacturer's guarantee solely includes the following load-carrying components that are not subject to natural wear and tear:

- a) Component "Base"
- b) Component "Column"
- c) Component "Lifting arm"
- d) Component "Articulated arm"
- e) Component "Jib extension"
- f) Component "Slewing cylinder body"
- g) Component "Outrigger extension"
- h) Component "Cylinder tube"
- i) Component "Three point linkage"

5.8 The following examples show components that are expressly excluded from the manufacturer's guarantee:

- a) Components and equipment chosen by the customer and purchased by Penz crane (e.g. pumps, operator seat, etc.), even if they were expressly approved by Penz crane to be used in the crane system;
- b) Components being exchanged regularly when undergoing maintenance services;
- c) Working and auxiliary materials, such as hydraulic fluid, filters, oils, greases and other lubricants;
- d) Seals and sealants;
- e) All wear and tear parts.

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## § 6 Conditions for meeting the warranty and guarantee requirements

- 6.1 Warranty and guarantee claims require the full payment of the product (when services are separate: payment of the particular delivery is required).
- 6.2 Warranty and guarantee claims require a notification of the defect or the guarantee case that meets all the formal requirements and is submitted in time.
- 6.3 Warranty and guarantee claims expire in case of incorrect handling / operating and when attempts to correct the defect are made on the product or on single components without the expressly written consent of Penz crane.
- 6.4 To avoid disproportionately high damage or when no reasons that justify a delay (e.g. force majeure, shortage of transport capacity, interruption or shortage of purchase of materials, insufficient technical framework conditions at the place where warranty or guarantee service shall be performed, etc.) are present, repairs, solely carried out by authorised experts, are justified after the expiry of eight weeks and upon notifying Penz crane in a formally correct manner and in time. The same applies when Penz crane expressly reject warranty or guarantee claims. In any case, the claimant shall inform Penz crane of the repairs in writing, prior to the repairs and in time and allow Penz crane or third parties appointed by Penz crane the possibility to discover the defect.
- 6.5 Other necessary conditions for meeting the warranty and guarantee requirements are in particular:
  - a) Professional removal and installation of the product or the component according to installation guidelines by Penz crane;
  - b) The strict adherence to all maintenance and service intervals required or recommended by Penz crane;
  - c) Maintenance and service works shall be carried out properly by Penz crane's own workshop or by service workshops authorised by Penz crane.

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- d) Oil change as in the manual and use of oils with cleanness level ISO 4406 19/16/13 (proportional and high pressure hydraulics  $p > 160$  bar).

## § 7 Processing

- 7.1 Penz crane examines incoming warranty and guarantee claims to ensure they have been made in the required form and in time. The notification and the enclosed form shall be filled out correctly and fully and sent to Penz crane.
- 7.2 In addition to that, the assertion of warranty claims requires the presentation of the alleged faulty products and component, unless another agreement has been made for the individual case. The products or components shall be cleaned and marked with the serial number of the particular crane, as well as the contact data of the warranty or guarantee claimant and shall be transmitted free of charge to Penz crane or a third party named by Penz crane for the individual case.
- 7.3 Penz crane or a hired expert third party examines whether warranty or guarantee can be claimed and will notify the warranty or guarantee claimant in writing.
- 7.4 The warranty or guarantee service is rendered by Penz crane's own workshop or an authorised workshop by Penz crane. Penz crane is entitled to entrust expert third parties with the warranty and guarantee claim process.
- 7.5 The costs for oil that needs to be refilled or changed during rendering the warranty and guarantee service, for wear parts that need to be replaced and that are excluded from the warranty and guarantee claim, or other repairs and inspections shall be borne by the claimant. In the event that other repairs and inspections that come under the guarantee are completed, the amount of repairs subject to compensation are determined according to the internal cost and hourly rates by Penz crane.

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- 7.6 The claimant grants Penz crane the right to, also repeatedly, review the complete crane system and its accessories in addition to the review of the faulty products and components by using the service of experts. The testing methods may be chosen freely. The testing and inspections are to be made, following prior notice, in a way that no relevant operational interruption of the crane system results from it.
- 7.7 In case of a warranty or guarantee claim, the claimant shall send all technical documents of the crane system without being asked (unless it was entirely produced by Penz crane) as well as all documents and results of tests performed on the crane system by himself or someone working on his behalf prior to or following the claim. Existing documents and results shall be transmitted with the assertion of the warranty or guarantee claim, while future documents and results shall be sent to Penz crane within fourteen days commencing with the date they are available. In both ways, Penz crane shall not be charged for this.
- 7.8 In the event that Penz crane accepts to honour warranty or guarantee by repair or exchange, the claimant shares the costs for the correction of faults according to a deductible separately agreed on. A possible price reduction shall be reduced by the deductible.
- 7.9 All products and components that were exchanged by products and components free of defects become property of Penz crane.

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## § 8 Limitations of liability

- 8.1 Penz crane does not honour warranty or guarantee and is not liable for defects or damage that were caused by improper or negligent installation, improper or negligent storage upon delivery, improper or negligent delivery, improper or negligent unloading process, improper or negligent further transport, improper or negligent handling, irrespective of its kind and whether or not partial, by the claimant or a third party. This limitation of liability includes all consequential damage due to the defect.
- 8.2 Further, Penz crane does not honour warranty or guarantee and is not liable for defects or damage that were caused by improper or negligent use, especially when the crane and/or its components were not operated according to the specifications issued by Penz crane or to the technical specification. This limitation of liability expressly includes all consequential damage due to the defect.
- 8.3 The claimant shall not make claims for minor defects or for defects and damage resulting directly or indirectly from negligence, especially consequential damage due to the defect. Property loss, especially loss of profits, is excluded from the warranty or guarantee claim.
- 8.4 The following cases show when Penz crane does not assume liability, warranty or guarantee claims and has no obligation to compensate:
- a) Damage or defects due to external influences, falling rocks, collisions or accidents of any kind;
  - b) Damage or defects due to wilful or malicious actions, especially illegal actions (e.g. criminal property damage, unauthorised putting into operation, etc.), or natural events (e.g. storm, hail, lightning strike, earthquakes, flooding, fire or explosion);
  - c) Damage or defects due to war events of any kind, strikes, lockouts, takeover or other sovereign acts;

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- d) Damage or defects for which a third party is liable or can be held liable, for whatever reason; This includes, in particular, guarantees for additionally purchased components by the manufacturer, as well as all liabilities of third parties that have performed modifications or expansions on the crane system or carrier vehicle upon delivery by Penz crane.
- e) Damage or defects caused if the crane system or components are loaded with anything (including all mechanical, physical or chemical influences) that exceeds the permitted loads determined by Penz crane or the manufacturer;
- f) Damage or defects caused by use of unsuitable lubricants and working materials, lack of oil or overheating;
- g) Damage or defects caused by changes of the original construction of the crane system or its components, installation of foreign or accessory parts that have not been expressly approved by Penz crane or the manufacturer;
- h) Damage or defects caused by not adhering to repair and service intervals, caused by disregard of the recommendations on correction of faults made by Penz crane experts or caused by improper repair and service works;
- i) Damage and defects due to the use of components apparently in need of repair, unless there is an expressly written consent by Penz crane allowing a temporary repair;
- j) Damage or defects due to personal negligence of the claimant as well as third party's acts or failures to act;
- k) For crane systems or components in the crane systems that were left with a changing group of people, even if only temporary, during the warranty and guarantee period;

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- 8.5 To avoid warranty or guarantee loss, the claimant shall use all products and components solely as intended and according to the user manual and all other product instructions given by Penz crane - all legal provisions and general technical guidelines and norms shall be complied with.
- 8.6 Warranty and guarantee do not include any transport costs or costs for test, measurement and adjustment works; the latter is solely included if it is directly connected to rendering warranty or guarantee services.
- 8.7 In the event that a product is manufactured by Penz crane due to construction details, layouts, drawings, samples and designs made by the customer or a third party, Penz crane assumes liability in accordance with these Terms and solely for the realisation according to the aforementioned information, but not for their technical accuracy.
- 8.8 In the event that the use of construction details, plans/drawings or patterns/designs violates any trademark rights, the customer indemnifies and holds harmless Penz crane, including all legal expenses and attorneys' fees.
- 8.9 Penz crane does not honour warranty or guarantee claims or can be held liable for repairs, changes or reconstructions on the existing crane system as requested by the customer.
- 8.10 Penz crane does not honour warranty or guarantee claims or can be held liable for the sale of used products or products of a third party.
- 8.11 Penz crane does not assume liability for assurances of third parties. For assurances of authorised dealers and service workshops these Terms apply as well. Additional assurances are not binding for Penz crane.

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## § 9 Place of jurisdiction, governing law and place of performance

- 9.1 Unless otherwise agreed in writing, place of performance shall be the registered office of Penz crane.
- 9.2 All legal relations in these Terms, including the issue of their coming into effect and of their effects prior to or following their coming into effect are governed by the laws of Austria, with the exception of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the reference norms of the Private international law.
- 9.3 All legal disputes resulting from or connected to these Terms, including the issue of their coming into effect and of their effects prior to or following their coming into effect are subject to the jurisdiction of the Courts in Leoben, Austria.

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## § 10 Notifications and confidentiality

10.1 Notifications concerning these Terms or notifications provided by law shall be done in writing (including fax or e-mail) unless another form has been agreed on. Notifications shall be sent to

Penz crane GmbH  
 Kundendienst  
 Bundesstraße 8  
 8753 Aichdorf / Fohnsdorf, Österreich  
 Fax: +43 (0) 3577 76 000 30  
 E-Mail: service@penz-crane.at

The date of sending shall determine whether a date was kept or not.

10.2 Any correspondence related to the legal relations of these Terms shall be made in German or English, whereas the German version has priority.

10.3 The parties shall keep confidential the content of all legal relations in these Terms, as well as all warranty and guarantee cases and the information accessed by claiming guarantee or warranty and/or by handling these cases, as well as all internal procedures. This information shall not be made available to third parties (Confidentiality clause).

10.4 Confidential information includes all information, as well as technical and economic data, about the crane systems of Penz crane and the know-how related to it, information about the Penz Group and their group companies, customers and partners.

10.5 The partner companies and customers shall transfer this confidentiality obligation to all employees, staff, partners or third parties that are included in processes connected to the legal relations, as well as to everyone involved in the process of warranty or guarantee claims.

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10.6 The confidentiality clause shall remain in full force and effect even if all warranty and guarantee claims are completed or dissolved, for whatever reason. This also applies when information is not confidential anymore due to a breach of the confidentiality clause.

## § 11 General provisions

11.1 Any changes, deviations and additions to these Terms shall be done in writing - whereas fax or e-mail are not accepted - and shall be signed by all parties of the legal relation. This also applies for the demand that written consent shall not be necessary anymore.

11.2 In the event that any provision of these Terms is invalid or becomes invalid upon entering into a legal relation, the parties shall replace this provision by a valid provision coming closest to the intention of these Terms. The same applies for unwanted gaps. This does not affect the other provisions.

11.3 All contractual partners of Penz crane as well as all warranty and guarantee claimants waive their right to offset own claims from whichever title or legal relation against those of Penz crane, and waive their right to withhold or reduce any owed services. The claimant is not entitled to withhold payments due to possible warranty or guarantee claims.

11.4 The contractual partners of Penz crane as well as all warranty and guarantee claimants are not entitled to pledge or assign possible claims against Penz crane, neither completely nor partially.

11.5 The contractual partners of Penz crane as well as all warranty or guarantee claimants shall transfer all obligations resulting from these Terms to all their contractual partners, especially when the operator of the crane system differs from the contractual partner.

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11.6 The basis of this legal relationship with Penz crane GmbH are the following documents ranked by their priority and supplementing each other while the aforementioned has priority over the latter one.

- a) The particular contract concluded by and between the partner company or the customer and Penz crane GmbH including all supplements and annexes mentioned in this contract;
- b) A possible framework agreement concluded by and between the partner company or the customer and Penz crane GmbH including all supplements and annexes mentioned in this agreement;
- c) These General Warranty- and Guarantee Terms and Conditions.
- d) Penz crane's General Terms and Conditions of Sale and Delivery.

Other general terms and conditions by Penz crane's contractual partner or warranty or guarantee claimants have no priority over the aforementioned documents (lit. a - d) and are not legally effective.