

**General Terms and Conditions**  
**(“GTCs”)**  
of  
THOR Knowledge Engineering GmbH

**1. MISCELLANEOUS**

- 1.1 THOR Knowledge Engineering GmbH is an Austrian limited company [*Gesellschaft mit beschränkter Haftung*] with its registered office in the political municipality of Ottensheim, registered on the Commercial Register of the Linz Regional Court at FN 480007 v (hereinafter, “**TKE**”) and on its website, <https://www.thor-ke.com/> (hereinafter, the “**Website**”), it offers an online tool for dimensioning hoist rope drums, particularly for indoor cranes, gantries and further similar cranes.
- 1.2 To the extent that these GTCs speak of entrepreneurs, entrepreneurs are defined as natural persons or legal entities or partnerships with legal personality for whom the operation forms a part of their business. Consumers and entrepreneurs are distinguished as defined in the Austrian Consumer Protection Act [“KschG”].
- 1.3 TKE expressly rejects any general terms and conditions of the entrepreneur deviating herefrom. General Terms and Conditions of the entrepreneur which deviate herefrom or supplement the present GTCs shall not be deemed incorporated into the parties’ contract, even if TKE does not expressly object to them. Any deviations or departures from these GTCs, any supplemental agreements or any terms and conditions of the entrepreneur which contradict these GTCs shall only be deemed valid if confirmed by TKE in writing.
- 1.4 TKE may amend the terms of these GTCs at any time without the need to state reasons for doing so. Amendments shall be communicated at least 30 days prior to their entry into force on TKE’s Website and (where applicable) by forwarding the contract text by email to counterparties who are already users (at the email address most recently communicated by the entrepreneur). Amendments to these GTCs shall be deemed accepted in respect of existing contracts where the entrepreneur does not object in writing by email to [admin@thor-ke.com](mailto:admin@thor-ke.com) within 30 days of receiving the aforementioned notification. In cases of timely objections, ongoing business relations shall continue to be performed on the basis of the GTCs agreed by the parties under the original contract.

**2. REGISTRATION**

- 2.1 In order to make use of the platform content, the user must register by indicating his/her personal data (e.g. name, email address, address).
- 2.2 Registration on the Website is free of charge to users.

- 2.3 The data provided at the time of registration must be complete and correct. The user must treat the access data provided in confidence and may not disclose it to third parties.
- 2.4 The user shall have no entitlement to conclude a contract with TKE. TKE reserves its right to refuse to register users, without the need to state reasons for this. In such case, the data forwarded by the user shall be promptly deleted.
- 2.5 Where the registration has not been fully carried out (e.g. due to missing personal data or a lack of consent to these GTCs), no contract between the parties shall arise or TKE shall be entitled to resile from the contract formed.
- 2.6 TKE is entitled to block or inactivate a user's account where there are grounds to assume that the person using the goods and services provided by TKE is not the registered user. No prior notice is required in such case, but TKE will notify the user regarding such action via the contact data indicated by the user and shall forward new access data to the user upon request, care of these contacts.

### **3. FORMATION OF CONTRACT, COMMENCEMENT OF CONTRACT**

- 3.1 By way of an initial step, the user shall enter the data required by TKE in order to calculate the dimensions for the hoist rope drum. On this basis, TKE draws up an overview drawing indicating the main dimensions. The user can then order the detailed drawings created on the basis of the overview drawings by pressing the button "Buy This Project" (hereinafter referred to as "**Purchase offer**" or "**Order**"). TKE accepts the Purchase offer by uploading the detailed drawings to the user's account (hereinafter referred to as "**Formation of Contract**"). This concludes the contract.
- 3.2 The preparation of the overview drawing by TKE does not constitute a binding offer.

### **4. COMPENSATION AND TERMS OF PAYMENT**

- 4.1 TKE shall have a claim to compensation (hereinafter, "**Compensation**").
- 4.2 The user may purchase a credit balance directly on the Website (hereinafter, "**Credits**") via the payment functions provided, i.e. Visa, SEPA direct debit, MasterCard and immediate cash transfer. The user may purchase such credits at any time. Where the user completes the order process and has no credits or where the user's credits are insufficient for the order in question, then prior to completing his/her offer, the user will have the option of purchasing (further) credits by using the "Buy credits" button.
- 4.3 Invoices and order confirmations are automatically forwarded only by email.

- 4.4 The value of the credits and the specific product prices are indicated on TKE's Website. However, TKE may modify its prices at any time. Changes to prices shall have no effect on contracts already in existence, but rather shall only enter into force at such time as a new contract is formed. Price changes are published on TKE's Website.
- 4.5 Where in the course of utilising the services provided on the Website, any (country-specific) fees or taxes are incurred, the user shall timely pay such fees or taxes and shall indemnify and hold TKE harmless vis-à-vis any third parties who may assert direct claims against TKE.
- 4.6 The user agrees and consents to validation by TKE or a third party (engaged by TKE) of the user's VAT ID number.

## **5. COPYRIGHT, GRANT OF RIGHTS**

- 5.1 TKE reserves for itself its rights of exploitation under its proprietary title and its copyright to overview sketches, the completed plans/dimensions and all further documents created, on an express and unlimited basis, but will grant the user a right of use thereto unlimited in time upon complete payment therefor.
- 5.2 TKE and the underlying software are protected by copyright and may not be used or modified without TKE's prior written consent beyond the right of use granted during the registration process/under these GTCs. Similarly, TKE's design and, in particular, the content provided on its Website and App (e.g. databases, photos, images, videos or texts) are protected by copyright and/or are subject to other laws for the protection of intellectual property and, unless otherwise indicated, are the sole property of TKE.
- 5.3 The user hereby undertakes that he/she shall not publish any information or content in respect of TKE whatsoever, as to which the user does not hold copyright.
- 5.4 The user is deemed to reserve his/her (copyright) rights to the information and content provided, but grants TKE a global, license-free and transferable right to fully use such content. In addition, the user is deemed to grant TKE the right to use his/her (user) name, company name and logo on its Website.

## **6. TKE'S RIGHTS OF CONTROL AND DELETION**

- 6.1 TKE is not obliged to monitor the content uploaded by users.
- 6.2 It shall be at TKE's discretion to store content and information from users and to disclose the same to third parties where permitted by law.
- 6.3 TKE is authorised to delete uploads which violate existing law or these GTCs. TKE shall furthermore be authorised to delete the user/the user's account disseminating such uploads. TKE

shall, in addition, be entitled to delete user uploads and user accounts without the need to specify reasons for this.

## **7. DUTIES OF USER**

- 7.1 The user shall bear sole responsibility for the information provided by him/her, in particular with respect to his/her personal data and email address, and undertakes that such information is truthful.
- 7.2 The user is himself/herself responsible for the parameters, data and figures provided by him/her in the course of any order procedure.
- 7.3 The user shall not use the services of the Website for any purposes which are prohibited by law or by these GTCs, and shall not attack/hack into TKE's system.
- 7.4 The user hereby warrants that he/she is over 18 years of age or is authorised to use the services based on the involvement of a parent or guardian.
- 7.5 The user is responsible for the content created and published by the user on the Website (hereinafter, "**Content**"). The user hereby undertakes that he/she shall not create, publish or disseminate any content or depictions in respect of TKE which constitute harassment, insult, discrimination, sexism, defamation, pornography, threats, glorification of violence, racism, right or left-wing extremism or which are otherwise morally objectionable or illicit (hereinafter, "**Prohibited Content**").
- 7.6 Any violation by the user of the Prohibited Content indicated and any misuse in any respect shall entitle TKE to itself remove the Content uploaded by the entrepreneur which is affected by this and/or to delete the TKE account or to block it (on an interim basis). TKE shall inform the user by email after having carried out such action. In the event of deletion, removal or blocking, the user shall have no right to create a different account under a different name.
- 7.7 The user hereby undertakes that he/she shall comply with the content prohibitions and shall not misuse the online services in any other way, and in particular shall not use them in order
- to disseminate junk mail, chain letters or other mass-messages (spam);
  - to operate pyramid schemes on the Website;
  - to communicate or promote criminal or illegal activities or to induce other entrepreneurs to engage in them;
  - to introduce files into TKE's system that are infected with viruses;
  - to disseminate copyright-protected data or works without authorisation, or to violate the Copyright Act or other laws in some other way.
- 7.8 The user hereby undertakes that he/she shall carefully handle his/her access data and, in particular, shall prevent unauthorised use of such data by third parties. The user shall be

responsible for the security of his/her password(s). Furthermore, the user undertakes that he/she shall promptly notify TKE upon detecting or suspecting any unauthorised access.

- 7.9 In the event of any justified suspicions of any unauthorised access, TKE shall be entitled to modify the access data of the user in question for security reasons or to exclude the user on an interim basis. TKE shall promptly inform the rightful user regarding this and regarding the further procedure to be followed. However, this duty of information may only be discharged if the user has provided an active, valid email address in the course of verification. The user shall himself/herself be responsible for ensuring that the email address indicated by the user is current and active.
- 7.10 The user hereby undertakes to comply with the applicable laws and these GTCs whenever using the Website.
- 7.11 All of the user's rights under this Contract shall be personal to the user and are non-transferable.
- 7.12 Unless the parties have otherwise agreed or have made an agreement to the contrary in these GTCs, none of the goods and services of TKE (and in particular, access to the personal TKE account and the drawings/plans prepared by TKE) may be copied, reproduced, sold onward, provided on a gratuitous or for-charge basis to third parties, or in any other way be directly used with the intention to generate income therefrom. The user shall be liable to TKE for any losses arising from unauthorised disclosure of access to TKE or to the drawings or the plans.

## **8. RIGHTS OF TKE**

TKE may discontinue the services offered on its Website at any time, without the need to specify reasons for this. No later than 30 days before the discontinuation of such services, the user shall be informed, and may during such time either redeem any credits which may be remaining or shall receive reimbursement of the money paid for such credits.

## **9. WARRANTY**

- 9.1 The statutory warranty provisions shall apply, but excluding the reversal of the burden of proof as provided by law. Thus, from the inception, the user shall bear the burden of proving that the defect already existed at the time of handing over.
- 9.2 TKE shall not assume any warranty for the satisfaction of the user's expectations from the online services offered by it.
- 9.3 Technical details and descriptions contained on the Website do not constitute any agreed or warranted characteristics of the services and are subject to a right of modification.

- 9.4 TKE includes products of manufacturers (e.g. ropes) in its design. The user may select amongst various products from various manufacturers. TKE itself inputs the manufacturers' product data into its system. TKE does not warrant either that the details are correct or that they are current nor that the products are available from the manufacturer.
- 9.5 TKE reserves the right to discharge the customer's warranty claim, at its option, by remediation, replacement, abatement of the price or rescission.
- 9.6 TKE does not warrant continuous error-free operation and permanent serviceability. Amongst other things, in connection with maintenance works, there may be temporary disruptions of availability. TKE shall not be liable for any losses resulting therefrom and incurred by the user, such as a result of erroneous or belated transmission, incorrect, incomplete or modified content and loss of data.
- 9.7 TKE shall provide technical support solely by email and its Website, but does not warrant the availability or the success of such support services.

## **10. LIABILITY**

- 10.1 TKE shall perform contracts in line with the generally recognised state of the art and principles of economy.
- 10.2 TKE does not assume any liability for deficient designs attributable to incorrect details (data, figures) entered by the user in the course of the Order process. The user shall himself/herself be responsible for the data and details provided by the user. TKE is not required to verify such details (for plausibility). TKE thus disclaims liability for all of the user's details.
- 10.3 TKE shall not be liable for any losses arising as a result of changes subsequently made by the user to the data and drawings calculated. TKE shall in all cases be deemed to have no liability from the time at which the user makes any modifications of his/her own to the calculated data and drawings.
- 10.4 TKE shall have no liability for content provided by manufacturers or other third parties on its Website, even where such content is directly entered and uploaded by TKE, on the basis of the manufacturer's or third party's details (see Sec. 9.4 of these GTCs). The user using the Website shall himself/herself be responsible for verifying product data from manufacturers or other third parties and/or assessing such product data on his/her own responsibility.
- 10.5 In addition to dimensioning hoist rope drums, TKE shall refer production companies to the user. In so doing, TKE is deemed to act strictly as an intermediary and has no relationship itself to the goods produced. Contracts for production must be entered into directly with the production entities. TKE therefore disclaims any and all liability in connection with production, and does

not provide any warranty in respect of defects and losses arising in the course of the provision of such goods (by the manufacturer).

10.6 To the extent that the written agreements between the parties or the mandatory provisions of applicable law do not otherwise provide, TKE hereby disclaims all claims for damages and all other claims by the client for reimbursement of expenses, irrespective of the legal basis thereof.

10.7 This limitation of liability shall not apply where a loss was caused by TKE's gross negligence or intentional act or omission. TKE's liability for slight negligence is hereby expressly disclaimed. Liability for personal injury remains unaffected hereby.

10.8 TKE's liability to the user is capped as to amount by the sum assured in effect under its policy of liability insurance. Where its liability insurer does not provide any cover, then TKE's liability to the user shall be limited to the contract value.

10.9 Any liability of TKE is excluded for the use of the product

10.9.1 in the following areas (except in the case of explicit special agreement of the user with TKE, whereby also in this case the liability of TKE is limited to a maximum of the amount of the liability insurance sum):

- Offshore installations
- Power plants (excluding hydropower plants), regardless of the type of energy or power
- civil engineering (including tunneling, railway construction, hollow structures such as tunnels, shafts or caverns, as well as landfills and contaminated sites); all other departments of civil engineering are covered by the insurance.
- Air traffic and ancillary activities related to air traffic (slope lighting, communication and the like)
- Mine operating
- Pipelines, whether laid on land or at sea
- Development, production and production of pharmaceutical, medical or medical products

10.9.2 In the following countries (without exception):

- USA
- Canada
- Australia

10.10 TKE hereby disclaims all liability for indirect losses, lost profits, losses of interest, frustrated savings, consequential and pecuniary losses (due to defects) or losses based on third party claims.

10.11 Claims for damages by the user may only be asserted in a judicial form within six months from the time of gaining knowledge of the loss and the tortfeasor, but in any event must be asserted within three years from the event giving rise to the claim. The user shall have the burden of proving that TKE was at fault.

10.12 TKE shall in no case be liable for *force majeure*, strikes, natural catastrophes and other circumstances beyond TKE's control or grounds for which TKE is not responsible and which delay its performance of any order.

10.13 TKE's systems are secured by such measures as are customary in the business sphere to prevent attacks by hackers and viruses. However, it is unable to exclude the risk of such attacks. TKE does not assume any liability for losses arising from hacker attacks.

## **11. ASSUMPTION OF CONTRACT AND THE USE OF THIRD PARTY GOODS AND SERVICES**

11.1 TKE is entitled to transfer its rights and obligations under this Contract to a third party in whole or in part.

11.2 TKE shall be entitled, in its free discretion, to execute the goods and services itself, to use eligible third parties as vicarious agents in performing the goods and services under the Contract and/or to substitute such goods and services for its own ("**Third Party Goods and Services**").

## **12. APPLICABLE LAW, JURISDICTIONAL VENUE**

12.1 The parties' relations shall be governed solely by Austrian law, excluding application of the United Nations CISG and the choice of law rules under International Private Law.

12.2 With respect to any and all disputes arising out of or in connection with these GTCs and/or all legal relations between TKE and its users, the parties hereby agree that exclusive jurisdiction shall be vested in the Courts of Linz with subject-matter jurisdiction thereof.

## **13. FINAL PROVISIONS**

13.1 In the event that any individual terms of these GTCs should be or become invalid, the remaining content of these GTCs shall not be affected thereby. The invalid provision shall be replaced by a provision which is valid in respect of consumers and is legally enforceable and comes the closest to the commercial purpose of the invalid provision. The foregoing shall apply *mutatis mutandis* to the filling of gaps in the parties' Contract.

13.2 No amendments, addenda or ancillary agreements to these GTCs shall be valid unless made in written form. The foregoing shall also apply to any agreement to depart from this requirement of form. In the event of conflicts between these GTCs and written agreements between the parties departing therefrom, the provisions of such agreements shall take precedence.

13.3 The German version of the General Terms and Conditions shall take precedence over the English translation thereof.

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