

General terms and conditions of rental agreement for the leasing of working platforms, construction machinery, construction equipment and industrial machinery

1. General - Scope

1.1 The present General Terms and Conditions of the Rental Agreement of the Lessor apply to all offers and rental agreements for the lease of working platforms, construction machinery, construction equipment and industry machinery; The terms and conditions of the rental agreement of the Lessee are hereby expressly rejected.

1.2 These General Terms & Conditions of the Rental Agreement also apply to future contracts concerning the lease of moveable property with the same Lessee, insofar as the Lessee is a contractor in accordance with Clause 1.6.

1.3 Individual agreements concluded with the Lessee in a particular case (including subsidiary agreements, supplements and modifications) always take priority over these Terms and Conditions of the Rental Agreement. Only agreements made in writing are valid.

1.4 Significant legal declarations and notifications, which must be handed to the Lessor by the Lessee after the conclusion of the contract, need to be made in writing in order to be effective.

1.5 Unless otherwise agreed, all rental agreement offers of the Lessor are non-binding and subject to alteration.

1.6 The underlying rental agreement, as well as these General Terms and Conditions of the Rental Agreement, apply to both a consumer (hereinafter called "consumer") and a contractor, a legal entity under public law or a special fund under public law, in accordance with § 310 Paragraph 1 Sentence 1 BGB (hereinafter called "contractor").

2. General rights and duties of Lessor and Lessee

2.1 The Lessor undertakes to lease the rental property to the Lessee for the agreed rental period.

2.2 The Lessee undertakes to only use the rental object for its intended purpose, to carefully observe, in particular, the accident prevention and health and safety regulations, as well as road traffic regulations, especially regarding the loading and transportation of the rental object, to pay the rent as agreed, to treat the rental property with due care, and to return it at the end of the rental period in a clean condition and with a full tank.

2.3 The Lessee is obligated to immediately notify the Lessor upon request of the respective location or place of use of the rental object, as well as any intended change of location or place of use.

2.4 If the Lessee wants to use the rental object in locks, on marine construction sites and during floods, in salt mines or for sandblasting operations, written consent must be obtained in advance from the Lessor.

3. Transfer of the rental object, default by the Lessor

3.1 The Lessor must transfer the rental object to the Lessee in a fault-free and operational state with a full tank, together with the necessary documents.

3.2 If the Lessor is responsible for a delay in the transfer at the start of the rental period, then the Lessee can demand compensation, if there is proof that he suffered damage as a result of the delay. Irrespective of Clause 5, in the case of simple negligence, the amount of compensation to be paid by the Lessor is restricted to a maximum of 10% of the net individual order value for each working day. After setting an appropriate period of grace, the Lessee can rescind from the contract, if the Lessor is still in default at this time.

3.3 If the Lessee is a contractor, the Lessor is also entitled in the case of a delay to provide the Lessee with a functional and equivalent machine to remedy the damage, if this is reasonable to the Lessee.

4. Defects during the handover of the rental object

4.1 The Lessee is entitled to duly inspect the rental object before the commencement of the rental period, and notify any defects. The Lessee bears the costs of an inspection.

4.2 If the Lessee is a consumer, the legal provisions for defects apply for the handover of the rental object. If the Lessee is a contractor, Clauses 4.3 and 4.4 apply, and the following also applies: Claims for noticeable defects at the handover, which significantly affect the intended use, can no longer be asserted, if they have not been immediately notified in writing to the Lessor after an examination. Other defects existing at the time of the handover must be notified immediately in writing after their discovery.

4.3 The Lessor must eliminate the defects notified in good time which were present during the handover at his own cost. At the discretion of the Lessor, he can also allow the defects to be remedied by the Lessee; then he shall bear the necessary costs. The Lessor is also entitled to provide the Lessee with an equivalent and functional rental object, if this is deemed reasonable by the Lessee. In the case of significant impairments to the rental object, the duty of payment of the Lessee is delayed by the time in which the suitability for the contractual use is ruled out. The Lessee only has to pay a reasonably reduced amount of rent for the period in which the suitability is impaired. An insignificant reduction of the suitability shall not be taken into account.

4.4 If the Lessor allows the appropriate grace period to lapse without correcting the defects existing at the handover, then the Lessee has the right to withdraw from the contract. The right of withdrawal of the Lessee also exists in other cases where the Lessor fails to eliminate a defect existing at the time of handover.

5. Limitation of liability of the Lessor

5.1 Further claims for damages vis-a-vis the Lessor, in particular compensation concerning damages, which the rental object itself did not incur, can only be asserted by the Lessee in the case of

- deliberate violation by the Lessor;
- grossly negligent breach by the Lessor or a deliberate or grossly negligent breach by a legal representative or vicarious agents of the Lessor;
- culpable violation of essential contractual duties insofar as the breach compromises the attainment of the purpose of the contract, with regard to foreseeable damage under a typical contract;
- damages arising from loss of life, physical injury or damage to health, based on a negligent violation by the Lessor or a deliberate or negligent violation by a legal representative or vicarious agents of the Lessor;
- if the Lessor is liable for personal injury or material damage to objects for private use under the Product Liability Act.

Apart from that, the liability for damages is excluded.

5.2 If, for reasons attributable to the Lessor, the rental object cannot be used by the Lessee according to the contract, as a result of non-performance or incorrect implementation of proposals and advice before or after conclusion of the contract, as well as other contractual subsidiary obligations, in particular instructions on the maintenance of the rental object, then the regulations of Clauses 4.3 and 4.4 (insofar as the Lessee is a contractor), as well as Clause 5.1 (where the Lessee is a contractor or consumer) shall apply accordingly, with the exclusion of further claims asserted by the Lessee.

6. Rental fee and payment, assignment as security for the rent due

6.1 The calculation of the rent is based on a working time of up to 8 hours a day. The invoicing is effected on the basis of a five-day week (Monday to Friday). The Lessor must be notified of weekend work, additional overtime and difficult conditions; they are also invoiced.

6.2 Unless otherwise stipulated, all prices are quoted exclusive of the statutory value added tax, if the Lessee is a contractor; if the Lessee is a consumer, all prices are quoted as end prices including the statutory value added tax.

6.3 The Lessor is entitled to demand an appropriate advance payment of the rental price from the Lessee at any time.

6.4 If the Lessee is a contractor, he is entitled to withhold payments or offset payments with counterclaims, only to the extent that his counterclaims are undisputed or have been legally upheld, or insofar as it relates to counterclaims ready for judgement in a pending legal proceeding.

6.5 If the Lessee defaults on the payment of an amount due by more than 14 calendar days after the issue of a written reminder, then the Lessor is entitled to collect the rental object and dispose of it elsewhere, after notifying the Lessee and without the necessity for legal action, at the expense of the Lessee, who must facilitate access to and removal of the rental object. Claims to which the Lessor is entitled under the contract remain unaffected; however, the amounts which the Lessor has obtained during the agreed contractual period from leasing the rental object elsewhere shall be discounted, after first deducting the costs arising from collecting and re-leasing the rental object.

6.6 If the Lessee is a contractor, amounts due shall be added to the current account for a reservation of title under a current account agreed for deliveries between the contracting parties.

6.7 The Lessor is entitled to demand a reasonable deposit from the Lessee as security at any time. The deposit can be interest-free (where the Lessee is a contractor) or interest-bearing (where the Lessee is a consumer).

6.8 The Lessee assigns its claims against the customer, on whose behalf the rental object is used, to the Lessor for the amount of the agreed rental price less the deposit received. The Lessor shall accept the assignment.

7. Work suspensions

7.1 Where work is suspended at the site for which the equipment was rented, due to circumstances neither attributable to the Lessee or its customer (for e.g. frost, flood, strike, internal unrest, war, official orders) for a minimum of ten consecutive days, then this period is regarded as a shutdown time from the 11th calendar day onwards.

7.2 The agreed term of lease is extended by the shutdown time.

7.3 For the period of suspension, the Lessee must pay the agreed percentage of the agreed monthly rent corresponding to that time, based on a shift time of 8 hours per working day; unless otherwise agreed, the standard rate is 75%; if the Lessee is a consumer, he is entitled to prove that this rate is not incurred or not incurred to this extent.

7.4 The Lessee must immediately inform the Lessor in writing of the cessation of activities and their resumption, and prove the suspension period upon request with documentation.

8. Lessee's obligation to provide maintenance

8.1 The Lessee is obligated,

a) to protect the rental object from overuse;

b) carry out appropriate and proper maintenance and care of the rental object at his own cost;

c) announce necessary inspection and repair work in good time and immediately have this work carried out by the Lessor. The Lessor bears the costs, provided the Lessee and his auxiliary agents can demonstrate that they have shown every reasonable care.

8.2 The Lessor is entitled to inspect the rental object at any time, and, upon prior agreement with the Lessee, to examine it or have it examined by an instructed third party. The Lessee is obligated to facilitate the examination for the Lessor or its instructed third party. The Lessor shall bear the costs of the examination.

9. Liability of the Lessee in the case of leasing with operating personnel

In the case of leasing the rental object with operating personnel, the operating personnel can only be employed for the operation of the rental object, and not for any other kind of work. In the event of damage caused by the operating personnel, the Lessor is only liable if he did not properly select the operating personnel. Apart from that, the Lessee is liable.

10. Termination of the rental period and return of the rental object

10.1 The Lessee undertakes to duly notify the Lessor of the intended return of the rental object (release notification).

10.2 The rental period ends on the day on which the rental object together with all its parts required for startup arrives in a proper and contractually agreed condition at the storage location of the Lessor or at another agreed destination, at the earliest however, upon expiry of the agreed rental period; the final part of Clause 6.5 applies accordingly.

10.3 The Lessee must return, or have ready for collection, the rental object in an operational and clean condition with a full tank; Clause 8.1 b) and c) apply accordingly.

10.4 The return delivery must take place during the normal business hours of the Lessor, so that the Lessor is able to check the rental object on this day.

11. Breach of the maintenance obligation

11.1 If the rental object is returned in a condition which suggests that the Lessee has not met his intended maintenance obligation provided under Clause 8, then the Lessee shall be obliged to pay compensation to the value of the rental price until such time as the maintenance work omitted in violation of the agreement has been completed. If the Lessee is a consumer, this only applies if the Lessee is liable for the breach of the maintenance obligation provided under Clause 8.

11.2 The Lessee must be notified of the scope of the defects and damages attributable to him, and be given the opportunity to check the defects and damages himself. The costs of the repair work required to eliminate the defects and damages must be paid by the Lessor to the Lessee for the estimated amount, where possible before the commencement of the repair work.

11.3 The rental object is deemed to have been returned to the Lessor's satisfaction if it has been returned on time and no immediate objection has been raised with regard to obvious defects within the meaning of Clause 10.4, and in other cases if no objection has been raised with regard to other defects within 14 calendar days of arrival at the agreed destination.

12. Other duties of the Lessee

12.1 The Lessee cannot transfer the rental object to a third party without the prior written consent of the Lessor, or assign rights from this contract or grant any kind of rights to the rental object.

12.2 If a third party asserts rights to the rental object by way of confiscation, seizure, or the like, then the Lessee is obligated to immediately inform the Lessor thereof in writing and make a verbal report beforehand, and notify the third party thereof without delay by means of a traceable written message.

12.3 The Lessee must adopt suitable measures to protect the rental object against theft.

12.4 The Lessee must inform the Lessor of all accidents and await instructions from the Lessor. The police must be consulted in the case of road accidents and upon suspicion of criminal offences (for e.g. theft, damage to property).

12.5 If the Lessee is culpable of a violation of the aforementioned provisions from 12.1 to 12.4, then the Lessee is obligated to compensate the Lessor the arising damage.

13. Termination

13.1 a) The rental agreement concluded for a defined rental period is basically non-terminable for both contracting parties.

b) The same shall apply for the minimum rental period within the framework of a rental agreement concluded for an uncertain period.

Upon expiry of the minimum rental period, the Lessee has the right to terminate the rental agreement concluded for an indefinite period by observing a period of notice of one day.

c) In the case of rental agreements for an indefinite period without a minimum rental period, the period of notice is

- one day, if the rental price agreed is per day

- two days, if the rental price agreed is per week

- one week, if the rental price agreed is per month

13.2 The Lessor is entitled to terminate the rental agreement without observing a period of notice

a) in the case of Clause 6.5;

b) where, following conclusion of the contract, the Lessor becomes aware that the entitlement to payment of rental charges is at risk due to the Lessee's inability to pay;

c) where the Lessee does not use the rental object or a part thereof as intended without the consent of the Lessor, or uses the rental object at another location outside the Federal Republic of Germany without the prior written consent of the Lessor;

d) in cases of breaches of Clause 8.1 and Clause 12.1.

13.3 If the Lessor makes use of the termination right to which he is entitled according to Clause 13.2, then Clause 6.5 in conjunction with Clauses 10 and 11 shall apply accordingly.

13.4 The Lessee can terminate the rental agreement without observing a period of notice, if the use of the rental property is not possible for the long term owing to reasons attributable to the Lessor.

14. Loss of the rental object

14.1 If, for reasons for which the Lessee is culpable, or if the Lessee is a contractor, for compelling technical reasons, it is not possible for the Lessee to fulfil his obligation according to Clause 10.3 to return the rental object, he shall be obliged to pay compensation.

15. Applicable law and jurisdiction

15.1 The present contract is subject to the law of the Federal Republic of Germany.

15.2 The place of fulfilment for all services arising from or in connection with the contract is the registered office of the Lessor or the office of its subsidiary which concluded the contract.

15.3 If the Lessee is a merchant, a legal entity under public law or a special fund under public law, the sole place of jurisdiction for all disputes arising directly or indirectly from the contract is the registered office of the Lessor, or, at his discretion, the office of the subsidiary which concluded the contract. However, the Lessor can also bring proceedings in the court with jurisdiction for the Lessee.