

# General Terms and Conditions of Hire Applicable to the Hire of Construction Machinery / - Equipment, Industrial Machinery and Commercial Vehicles of ROCKBIRD GmbH

## 1. General - scope

- 1.1 These General Terms and Conditions of Hire shall apply to quotations and hiring agreements for hiring any construction machinery, construction equipment, industrial machinery and commercial vehicles; any hirer terms and conditions of hire shall be expressly objected to.
- 1.2 These General Terms and Conditions of Hire shall also apply to any future contract or agreement concluded with the same hirer for hiring any movable property.
- 1.3 Any individual agreement made with a hirer in a particular case (including any subsidiary agreement, supplement or modification) shall take precedence over these General Terms and Conditions of Hire in every case.
- 1.4 To be effective, any legally relevant representation or notification to be made by the hirer to the lessor after the conclusion of the contract shall be made in writing.
- 1.5 Unless as otherwise indicated, any offer or quotation for any hiring agreement made by the lessor shall be deemed subject to change without notice.
- 1.6 Neither the underlying hiring agreement nor these General Terms and Conditions of Hire shall apply unless to entrepreneurs, legal entities under public law, or special funds under public law as defined in Section 310, Subsection 1, Sentence 1 of the German Civil Code (BGB).

## 2. Lessor's and hirer's general rights and obligations

- 2.1 The lessor shall agree to hire out the hired item to the hirer for the hiring period agreed.
- 2.2 The hirer shall agree to use the hired item only in accordance with its intended use, having due regard, in particular, to the pertinent accident prevention and safety-at-work regulations as well as to the traffic regulations, including but not limited to those concerning the loading and transport of the hired item, to pay the hiring charge as agreed, treat the hired item with care, and return the hired item in a clean condition and with a full fuel tank upon the expiry of the hiring period.
- 2.3 The hirer shall, upon request, immediately inform the lessor about the corresponding location or site of usage of the hired item as well as of any intended change in location or in the site of usage.

## 3. Transfer of hired item, delay of lessor

- 3.1 The lessor shall agree to transfer the hired item to the hirer in a perfect and serviceable condition, with a full fuel tank and with the documents required.
- 3.2 If, at the beginning of the hiring period, the lessor incurs in any delay with such transfer, the hirer shall be entitled to request loss compensation in the event that the hirer has suffered any demonstrable loss or damage due to any such delay. Notwithstanding item 5.1 hereof, the loss compensation to be paid by the lessor in case of ordinary negligence shall be limited to not more than the amount of the daily net rental price. After setting a reasonable deadline, the hirer may rescind the contract if the lessor continues to be in delay at that time.
- 3.3 In order to remedy the damage caused in case of delay, the lessor shall also be entitled to make a functionally equivalent hired item available to the hirer provided that this can be reasonably expected from the hirer.

## 4. Deficiencies upon the transfer of the hired item

- 4.1 The hirer shall be entitled to inspect the hired item and report any defect in good time before the hire start date. The expenses of any inspection shall be borne by the hirer.
- 4.2 No complaint shall be accepted for any defect which was detectable at the time of transfer and does not substantially impair the intended use unless such defect has been reported in writing to the lessor immediately after the inspection. Any other defect already existing at the time of transfer shall be reported in writing immediately after its discovery.
- 4.3 The lessor shall at its own expense correct any defect which has existed at the time of transfer and has been reported in good time. The lessor can, at its option, also have such correction performed by the hirer; the expenses required shall then be borne by the lessor. If reasonable for the hirer, the lessor shall also be entitled to make a functionally equivalent hiring item available to the hirer. In the event of any material impairment in the hired item, the hirer's liability to make payment shall

4.4

be postponed by the period of time during which its suitability for the contractual use is suspended. For the period of time during which suitability is reduced, the hirer shall only have to pay a rental fee which is reduced by a reasonable amount. Any insignificant reduction in suitability shall be disregarded.

The hirer shall be entitled to rescind the agreement if the lessor, through its own fault, has allowed a reasonable time extension, which had been set for the lessor to remedy a defect existing at the time of transfer, to elapse without fulfilment. Such right of rescission shall also be available to the hirer in any other event in which the lessor fails to remedy any defect existing at the time of transfer.

## 5. Limitation of the lessor's liability

5.1

The hirer may not claim any further damage compensation from the lessor, including but not limited to any claim for the compensation of any damage not caused in the hired item itself unless in the cases as defined below:

- Any wilful misconduct committed by the lessor;
- Any grossly negligent breach of duty by the lessor or any wilful or grossly negligent breach of duty committed by any legal representative or performing agent of the lessor;
- Any culpable non-observance of an essential duty under the contract where the fulfilment of the purpose of the contract is put at risk with regard to the foreseeable damage or loss typical of the contract;
- In the event of any injury to life, limb or health based on any negligent breach of duty committed by the lessor or based on any intentional or negligent breach of duty committed by a legal representative or performing agent of the lessor;
- In the event that the lessor is liable for personal injury or property damage in any privately used object under the German Product Liability Act.

Liability for damages shall be excluded in any other respect.

5.2

The provisions as set forth in items 4.3 and 4.4 as well as in item 5.1 hereof shall apply mutatis mutandis excluding any further claim of the hirer if the hired item cannot be used by the hirer as provided for in the agreement through any fault committed by the lessor due to any failure to perform or any defective performance of any proposal or consulting made or given either before or after agreement conclusion or any other subsidiary duty under the agreement, including but not limited to any instruction for the operator control and maintenance of such hired item.

## 6. Hiring charge and payment, assignment as security for the hiring charge due

6.1

The hiring charge shall be calculated based on a working time of up to 8 hours per day. Invoicing shall be based on a five-day working week (from Monday to Friday). Any work on weekends, any additional working hours or any assignment carried out under more severe conditions shall be notified to the lessor; these shall be invoiced in addition.

6.2

Unless as otherwise indicated, every price shall be deemed plus the statutory value-added tax.

6.3

The lessor shall be entitled to request reasonable advance payment for the hiring charge from the hirer at any time

6.4

No right to retain or offset any payment against any counterclaim whatsoever shall be available to the hirer unless if and where its counterclaim is uncontested or recognized by declaratory judgment or is ready for a decision in any proceedings pending in court.

6.5

If the hirer is behind schedule in the payment of any amount due by more than fourteen (14) calendar days after a written dunning notice, the lessor shall be entitled to collect the hired item or dispose of it in any other way at the hirer's expense without having any recourse to a court and after prior announcement, while the hirer shall grant access to the hired item and allow its removal. Any other rights to which the lessor shall be entitled under the agreement shall remain valid in other respects; any amount the lessor obtains during the agreed contractual period, e.g., by hiring out to another party, shall, nonetheless, be taken into account after deducting the costs caused by recovery and new hiring out.

6.6

Any sum due shall be posted to the account current with regard to an account-current reservation of title agreed for deliveries between the contracting parties.

- 6.7 The lessor shall be entitled to request a reasonable non-interest-bearing deposit as a security to be given by the hirer at any time.
- 6.8 The hirer shall, in the amount of the hiring charge agreed less any security deposit received, assign to the lessor the hirer's claims against its customer for whose order the hired item is used. The lessor shall accept such assignment.
- 6.9 Invoices may be sent by mail or e-mail at our discretion. The customer agrees to receive invoices electronically. Electronic invoices will be sent to the customer by e-mail in PDF format to the e-mail address provided. At the express request of the customer, the invoice dispatch can also be switched to delivery by mail at any time.
- 6.10 All future rental payments for long-term rental contained in the lessor's offer are calculated on the basis of the purchase prices for the corresponding machines at the time the offer is made to the lessee. This also applies to the amount of refinancing interest as the basis of the offer for future rental payments in long-term rentals.
- a) Change in machine purchase prices
- In view of the current price dynamics and the delivery problems when procuring components for production and the sharply changing production costs (energy, raw material and transport costs), changes in the sales prices by the manufacturer to the lessor cannot be ruled out even after the conclusion of the contract. If the respective sales prices from the manufacturer of the goods to the lessor should rise or fall after the conclusion of the contract and at the time of delivery, each of the two contracting parties has the right to demand that the other party enter into additional negotiations regarding the future rental price. The aim of these negotiations is to bring about an appropriate adjustment of the contractually agreed rental payments for the affected contractual machines to the current delivery prices as a basis for calculation through a joint agreement. For the assessment of the existence of a percentage increase or reduction in the delivery price, the corresponding letter of increase or reduction from the manufacturer to the Lessor after the conclusion of the contract is decisive.;
- b) Change in refinancing interest rates
- Due to any long delivery times of the machines for long-term rental, there may also be changes in the amount of the refinancing interest as a further basis for calculating the rental payments between the conclusion of the contract and delivery. The 12-month EURIBOR interest rate is used as a reference basis to assess the extent of the changes. The change in this reference value on the day the rental begins in relation to the day the contract is concluded is decisive. The landlord is entitled, at his reasonable discretion, to take into account any increases or decreases in the refinancing interest that occur after the conclusion of the contract, increasing or decreasing the rent and to take this into account when determining the rent for the tenant. Both parties agree that the resulting risk must be balanced fairly and in a spirit of partnership.
- 7. Idle time clause**
- 7.1 When work at the place of operation, for which the equipment has been hired, is suspended on account of any circumstance not under the control of the hirer or of the hirer's customer (e.g., for frost, flood, strike, civil disorder, acts of war, administrative rulings) on not less than ten (10) consecutive days, any such period shall be considered an idle time from its eleventh (11<sup>th</sup>) calendar day on.
- 7.2 The term of hire agreed for a specific period of time shall be extended by such idle time.
- 7.3 For such idle time, the hirer shall pay the agreed percentage of the monthly hire agreed and corresponding to such time based on a shift time of eight (8) hours per working day; the usual commercial rate of 75% shall apply unless otherwise agreed.
- 7.4 The hirer shall give immediate written notice to the lessor both of any suspension and of any resumption of work while providing documentary evidence for such idle time upon request.
- 8. Hirer's obligation to provide maintenance**
- 8.1 The hirer shall agree to:
- a) protect the hired item from any excessive stress whatsoever;
- b) perform proper and workmanlike care and maintenance on the hired item at the hirer's expense;
- c) announce in a timely fashion to and have any inspection or repair work carried out immediately by the lessor. The costs shall be borne by the lessor if there is evidence showing that the hirer and the hirer's personnel have taken every due care as required.
- 8.2 The lessor shall be entitled to visually inspect the hired item at any time, and to examine it itself or have it examined by an authorised agent after prior agreement with the hirer. The hirer shall agree to facilitate such inspection by the lessor or the lessor's authorised agent in every possible way. The expenses of such inspection shall be borne by the lessor.
- 9. Liability of the tenant, limitation of liability, excess**
- 9.1 In the event of breaches of the rental agreement, damage to the rental item or loss of the rental item, the Hirer shall be liable in accordance with the general liability rules. The Lessee is obliged to notify the Lessor immediately in text form if a rental device is lost or damaged.
- 9.2 The Hirer is free to limit this liability by paying a special fee to a deductible amount vis-à-vis the Rental Firm. By agreeing the liability limitation fee, the lessee's liability for each individual case of damage to the rental item (machine breakage) caused by negligent personal fault is limited to a deductible of the following scale:
- List new value of the appliance up to EUR 100,000.00:  
Deductible EUR 5,000.00
  - List new value of the device from EUR 100,000.00:  
Deductible EUR 7,500.
- In the case of demolition work, i.e. work with hydraulic hammers, demolition and sorting grabs, demolition shears, etc., double the deductible according to the above scale is agreed in the event of damage. Damage to the tires, chains and rubber belts of a rental item and glass damage are excluded from the above limitation of liability.
- 9.3 In the event of loss or theft of the rental object through no fault of the renter, the renter's excess shall be 25% of the list replacement value of the device, but no less than EUR 1,000.00. In the event of loss or theft of the rental object due to intent or gross negligence on the part of the renter, the replacement value of the rental object shall be paid in full.
- 9.4 The limitation of liability does not apply to damage caused to third parties by the use or defect of the rental item.
- 9.5 In the event of damage caused by the Hirer to third parties with the rental equipment and which is covered by motor vehicle liability insurance, the Hirer shall pay a maximum excess of EUR 1,500 per item of equipment and individual case of damage.
- 9.6 In the event of damage to the rental object caused by improper use - in particular by incorrect operation and overloading - or due to intent on the part of the hirer, the hirer must pay compensation in full. Tamping, hammering and compacting waste material, for example for transportation with grabs, are not permitted. This also includes damage caused by the use of the rental object for special purposes that endanger the rental object itself, such as in particular the use in tunnels or water construction sites or construction sites where the rental object comes into contact with salts, acids, alkalis or sewage sludge or the use for concrete spraying and sandblasting work, unless the lessor has given his express consent in text form. In the event of gross negligence causing damage, the Lessor shall be entitled to make a claim against the Lessee up to the amount of the total damage corresponding to the severity of the fault.
- 9.7 The contractual indemnification agreement as an ancillary service of the rental agreement may be terminated by either party for the future within one month of the conclusion of the negotiations on indemnification following the occurrence of an event of damage. The underlying rental agreement remains unaffected.
- 9.8 If no limitation of liability is agreed, the Hirer shall be liable for any damage to the rental equipment (regardless of whether caused by the Hirer or by third parties) and for loss or theft during the rental period. In this case, the Hirer is obliged to insure the equipment for the duration of the rental period against damage of all kinds, insofar as insurable, in favor of the Rental Firm and to submit the insurance cover note from the insurance company to the Rental Firm in accordance with the Rental Firm's form before the start of the rental period. The insurance certificate must be presented to the Lessor within 14 days at the Lessor's

request. In the event of damage, the Hirer must inform the Rental Firm immediately, stating the time and cause of the damage and the extent of the damage. If the Hirer insures the rental equipment for his own benefit, the Hirer hereby assigns his claim to the insurance benefit to the Rental Firm so that the latter can claim the damage directly from the insurance company. The Lessor accepts this assignment.

#### 10. Hirer's liability when hiring with operating personnel

When hiring the hired item together with operating personnel, such operating personnel may not be employed for any other work unless for operating the hired item. In the event of any damage caused by the operating personnel, the lessor shall not be liable unless the lessor failed to properly select such operating personnel. The hirer shall assume liability in other respects.

#### 11. Termination of the hiring period and return of the hired item

11.1 The hirer shall agree to advise the lessor of the intended return of the hired item in good time beforehand (notification of availability).

11.2 The hiring period shall terminate on the day on which the hired item including every part required for putting it into operation arrives in a proper condition and as defined in the agreement at the lessor's storage site or at another destination agreed but not earlier than upon the expiry of the hiring period agreed; the last half of the sentence in item 6.5 shall apply mutatis mutandis.

11.3 The hirer shall agree to return or have the hired item ready for collection in a serviceable and clean condition and with a full fuel tank; items 8.1 b) and c) shall apply mutatis mutandis.

11.4 Return delivery shall be made during the lessor's normal hours of business and in good time so as to enable the lessor to inspect the hired item still on that day.

#### 12. Failure to comply with the obligation to provide maintenance

12.1 If the hired item is returned in a condition indicating that the hirer failed to comply with its duty to provide maintenance as defined in item 8 hereof, the hirer shall, as compensation, be liable to make payment in the amount of the hiring charge until the completion of the repair or maintenance work the hirer failed to perform in breach of the agreement.

12.2 The extent of the defects or damage the hirer is responsible for shall be notified to the hirer and the hirer shall be given an opportunity for verifying them. The estimated amount of the costs of the repair work required for correcting any such defect or damage shall be indicated by the lessor to the hirer prior to the commencement of such repair work if possible.

12.3 The proper return delivery of the hired item shall be deemed acknowledged by the lessor if apparent defects have not been complained of immediately upon the timely return delivery as defined in item 10.4 or, otherwise, if no other defect has been reported within a period of fourteen (14) calendar days after the arrival at the place of destination.

#### 13. Other hirer duties

13.1 Without the lessor's written approval, the hirer must neither permit the use of the hired item, nor assign any rights from this agreement, nor grant any other rights of any kind whatsoever in the hired item to any third party.

13.2 If any third party claims any right to the hired item by way of seizure, attachment or in any similar way, the hirer shall be obliged to notify the lessor immediately in writing after prior verbal information, and send a demonstrable written notification of this without any delay to such third party.

13.3 The hirer shall take appropriate precautions so as to safeguard the hired item from theft.

13.4 In the event of any accident, the hirer shall notify the lessor thereof and wait for the latter's instructions. The police shall be called in the event of any traffic accident or suspicion of any criminal offence (e.g., theft, criminal damage).

13.5 In the event of any culpable failure by the hirer to observe the provisions as defined in items 12.1. through 12.4. hereinabove, the hirer shall compensate any loss or damage caused to the lessor by such failure.

13.6 Rental equipment is generally not permitted for use on public roads without registration (official license plate requirement). Attention is drawn to the lack of compulsory insurance against third parties.

#### 14. Termination

14.1 a) The hiring agreement concluded for a specific hiring period shall, in principle, be incapable of being terminated by notice by either contracting party.

b) The same shall apply to the minimum hiring period within the scope of a hiring agreement concluded for an indefinite period of time. After the expiry of the minimum hiring period, the hirer shall be entitled to terminate a hiring agreement concluded for an indefinite period of time by giving one day's notice.

c) For a hiring agreement concluded for an indefinite period of time but not providing for any minimum hiring period, the period of notice to terminate shall be as follows, depending on the hiring charge agreed:

- One day for a daily hiring charge;
- Two days for a weekly hiring charge;
- One week for a monthly hiring charge.

14.2 The lessor shall have the right to terminate the hiring agreement by announcement and without observing any period of notice

a) in the event as defined in item 6.5;

b) if it becomes apparent to the lessor after concluding the agreement that the lessor's claim to receiving hire payment is put at risk due to any lack in hirer performance;

c) if the hirer, without the lessor's consent, uses the hired item or any part thereof contrary to its intended use or moves it to any other place outside the Federal Republic of Germany without having the lessor's prior written consent;

d) in the event of any failure to comply with item 8.1 and item 12.1 hereof.

14.3 Item 6.5 shall apply mutatis mutandis in conjunction with items 10 and 11 hereof if the lessor makes use of the right of termination to which the lessor is entitled under item 13.2.

14.4 The hirer shall have the right to terminate the hiring agreement by announcement and without observing any period of notice whenever the use of the hired item is not possible for any reason under the lessor's control for a longer period of time.

#### 15. Loss of hired item

15.1 The hirer shall be obligated to pay damages if the hirer is not able to comply with the obligation incumbent on the hirer to return the hired item as defined in item 10.3 hereof either at the hirer's fault or for any compelling technical reason.

#### 16. Governing law and place of jurisdiction

16.1 This agreement shall be subject to the laws of the Federal Republic of Germany.

16.2 The place of performance applicable to any service arising from or in relation with the agreement shall be the lessor's place of business or the registered office of its branch establishment which has concluded the agreement.

16.3 If the hirer is a merchant, a corporate body under public law or a special fund under public law, the exclusive place of jurisdiction applicable to any dispute arising out of the contractual relationship, whether directly or indirectly, shall be either the lessor's place of business or, at the lessor's option, the registered office of its branch establishment which has concluded the agreement. The lessor shall, nonetheless, also be entitled to have recourse to the court of law competent for the hirer.