

General Contractual Terms and Conditions for the Business Area Construction Machinery & Equipment, Streif Baulogistik GmbH - Leasing Conditions

As at: 01.11.2008

1. Scope and Application

- 1.1 All of the Lessor's leasing agreements are governed exclusively by these General Leasing Conditions for the Business Area Construction Machinery & Equipment. These Conditions shall, without express declaration of such, be recognised as definitive and binding for the entire duration of the business relationship.
- 1.2 The Lessee's own Terms & Conditions shall not be binding on the Lessor except where the Lessor has expressly agreed to such terms.
- 1.3 Amendments, alterations or other supplementary agreements must be recorded in writing. The written form may not be replaced by the electronic form.
- 1.4 The present Lease Conditions shall apply to business people, legal entities under public law and to public assets pursuant to Art. 310, para. 1 German Civil Code.
- 1.5 Unless otherwise agreed, all of the Lessor's offers are subject to change.
- 1.6 Where within the scope of the lease relationship the Lessor also provides assembly services for the Lessee, such services shall be governed by the Lessor's General Conditions of Assembly.

2. Commencement of Lease Period

- 2.1 The lease period shall commence with the handover of the leased property to the Lessee or at the agreed time of handover at the Lessor's premises where the Lessee undertakes the transport himself.
- 2.2 Where a group of equipment (forming a single technical functional unit e.g. a crane) is leased, the lease period shall commence at the time that the entire unit is functional. Where a separate order has been made for equipment or elements, which are not capable of functioning by themselves, but which have been ordered by the Lessee in order to complement other units, the lease period shall commence as specified at No. 2.1 above, irrespective of their independent ability to function.
- 2.3 Where the Lessor delays in handing over the leased property, the Lessee may claim compensation where it is proven that he has suffered a loss. In the event of minor negligence on the part of the Lessor, the compensation shall be limited to a maximum sum corresponding to the daily net rental price for each working day. After an appropriate deadline has been set, the Lessee may withdraw from the Contract if, at such time, the Lessor is still behind schedule.

3. Handover of the Rental Property, Notification of Defects and Lessor's Liability

- 3.1 The Lessor shall hold the rental property in operational condition with the necessary documentation ready for despatch or for collection. The Lessee shall ensure the immediate and proper loading and unloading of the rental property at the building site. The Lessee retains the right to view the rental property at the Lessor's premises during an appointment agreed with the Lessor and to indicate any defects. Minutes of the handover will be recorded.
- 3.2 Obvious defects shall no longer be considered where the Lessor has not received a written notification of same within 2 working days from the risk transfer of the rental property.
- 3.3 The Lessor is obliged to remedy punctually notified defects. Alternatively, the Lessor may authorise the Lessee, where the latter is in agreement, to undertake any necessary repairs in his own name or have such repairs carried out. In this event the Lessor shall bear any costs incurred.
- 3.4 Damage claims against the Lessor, particularly with regard to the compensation of damage which has not been sustained by the rental property itself may only be made by the Lessee in the following cases:
 - deliberate action,
 - gross negligence on the part of the Owner/his organs or the Lessor's executives,
 - culpable injury to life, limb or health,
 - defects which are deliberately concealed by the Lessor or where he has given a guarantee that these do not exist
 - insofar as liability exists under the Product Liability Act for personal or material loss incurred by privately used objects.

In the event of culpable breach of major contractual obligations the Lessor shall also be liable for the gross negligence of non-executive employees and for minor negligence, the latter case being however limited to losses which are contract typical and may be reasonably anticipated. In all other instances liability is excluded.

- 3.5 The Lessee undertakes to deploy only professionally trained personnel. The Lessee is obliged to ensure that his specialist personnel are familiar with the handling of the leased property and that such handling is subject to the observance of all safety precautions. In the event that the Lessee and his specialist personnel are not familiar with a leased property instruction may be provided to the Lessee's personnel at the Lessor's premises.
- 3.6 The Lessee shall be responsible for damage to the leased property, to other objects or to persons caused by the culpable action of the Lessee or his agents.
- 3.7 Where the leased property is let together with operating personnel, such operating personnel may be deployed only to operate the leased property and not for other work. The Lessor shall be liable for damage caused by the operating personnel only in the event that he has not properly selected such operating personnel. In all other instances the Lessee shall be liable.

4. Calculation of Rental Fee and Payment

- 4.1 The agreed rent corresponds at all times and every month to 30 calendar days.
- 4.2 The calculation of the rent is based on the 8-hour use of the leased property per working day, with weekly use of 5 working days and monthly usage of 22 working days. The Lessor shall be notified of any usage above and beyond this specified usage. In this event, an additional rent shall be payable, amounting to 65% of the agreed rent unless otherwise agreed by the Contracting Parties. Where the Lessee uses the leased property in excess of the usual usage time and fails to notify the Lessor of such, or makes false declarations with regard to the usage time, he shall be obliged to pay the Lessor *pro rata* additional rent of 100%.
- 4.3 The rent is also payable subject to the terms of No. 4 where normal shift or usage time is not fully exploited or where 5 working days in a given week or 22 working days in a given month are not achieved.
- 4.4 The rent shall be payable monthly in advance on presentation of a corresponding invoice within 14 calendar days.
- 4.5 The Lessee shall be entitled to withhold or offset payments only where he has counterclaims which are undisputed by the Lessor or which are legally binding.
- 4.6 All prices stated are net and subject to VAT at the rate valid on the invoice issue date.

5. Shutdown Provision

- 5.1 Where work at the workplace for which the leased property is let is shut down because of circumstances beyond the control of the Lessee or the Lessee's client (for instance frost, floodwater, strike, domestic disturbances, war events, official directives) for a minimum of 6 successive days, this period shall be deemed shutdown time from the 7th day.
- 5.2 The lease period which has been agreed for a defined period may be extended with the approval of the Lessor by the duration of the shutdown.
- 5.3 During such shutdown period, the Lessee shall pay 63% of the corresponding rent agreed at this time.
- 5.4 The Lessee shall immediately inform the Lessor in writing of any suspension and resumption of work and shall provide documentary proof of any shutdown period on request.

6. Incidental Costs

6. The agreed monthly rent shall in particular not include any costs for consignment or loading, for assembly, disassembly and transport for incoming and return delivery, for operating and energy costs, for the presentation of work materials to Customs, for official licences or for personnel.

7. Lessee's Maintenance Obligation

- 7.1 At his expense, the Lessee shall:
 - a) protect the leased property in every way from overuse, observing legal regulations,
 - b) carry out the proper technical maintenance and care of the rental property in accordance with the manufacturer's operating and maintenance guidelines.
- 7.2 The Lessee shall have any necessary maintenance work carried out by the Lessor save where the Lessor has expressly determined some other means of remedy.
- 7.3 The Lessor is entitled to view the leased property at any time and, with the agreement of the Lessee, to examine it himself or have it examined by an agent. The Lessee is obliged to accommodate such examinations by the Lessor in every way during normal working hours. The costs of such examination shall be borne by the Lessor.

8. Termination of the Lease Period

- 8.1 Unless otherwise agreed, the leased property must be returned on the last day of the agreed lease period at latest. Otherwise the lease period shall end on the day on which the leased property with all of the parts required for operation are received at the Lessor's premises or at some other agreed place in full working order, but at earliest on expiry of the agreed lease period.
- 8.2 The Lessee shall give the Lessor two weeks' notice in writing of his intention to return the leased property.

9. Return Delivery of the Leased Property

- 9.1 Unless otherwise agreed the Lessee shall return the leased property to the place from which it was despatched.
- 9.2 Where the Lessor wishes return delivery to another place, he shall inform the Lessee accordingly in good time and shall bear any additional costs incurred.
- 9.3 The Lessee shall return the leased property in a complete, undamaged, operating and clean condition with a full fuel tank or shall have the leased property restored to this condition by the Lessor at the former's expense.
- 9.4 As a matter of principle the Lessee must return the leased property provided for use under this Contract. The Lessee shall insofar bear the burden of proof that the returned material is the leased property and not property of the Lessee or third parties.

10. Breach of Maintenance Obligation

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- 10.1 Where the leased property is returned in a condition which reveals that the Lessee has failed to meet his maintenance obligation specified at No. 7 above, he shall be liable to pay compensation for the period required by the Lessor to carry out the necessary maintenance work, amounting to the rent which would be due for such period. The rent shall be reduced by the amount of the Lessor's saved expenses. The Lessee is entitled to demonstrate that the Lessor has incurred a lesser loss.
- 10.2 The Lessor shall inform the Lessee in writing of the extent of defects and damage for which the latter is responsible and shall give the Lessee the opportunity to make his own investigations. The Lessor shall provide a quotation for the cost of the work required to remedy defects prior to commencement of such work.
- 10.3 The Lessee has the right to call in an independent expert. The costs of any expert report shall be borne by the Lessee.

11. Other Obligations of the Lessee

- 11.1. The Lessee shall make all adequate necessary arrangements to secure the leased property.
- 11.2 The Lessee may neither give the leased property to a third party nor transfer any type of rights to the leased property arising from this contract.
- 11.3 Where a third party asserts rights in the leased property through seizure, confiscation or similar, the Lessee is obliged to immediately notify the Lessor and to advise the third party of same by registered letter.
- 11.4 The Lessee shall immediately inform the Lessor of any accidents and shall await his instructions. In the case of traffic accidents and theft, the police are to be involved. Opposing claims shall not be conceded.
- 11.5 The Lessee shall use the leased property exclusively for the construction purpose (place of use) specified in the lease agreement.
- 11.6 Where the Lessee culpably breaches the terms of No. 11, he shall be obliged to compensate the Lessor for all damages thus incurred.

12. Insurance

- 12.1 The leased property is not insured. Motor vehicles are only covered by third party liability insurance.
- 12.2 Where the Lessee wishes to have insurance cover, this shall be agreed separately. In this event the Lessor shall assume the risk of damage for drivable and transportable equipment in accordance with the general terms for machine and comprehensive insurance for drivable and transportable equipment (ABMG 92) and for motor vehicles in accordance with the general terms for motor vehicle insurance (AKB) pursuant to their latest version at the time the contract is concluded.
- 12.3 In connection with his public liability cover, the Lessee shall advise his insurer of the deployment of the leased property and confirm that third party claims for damages arising out of the use of the leased property are covered, also in the event that such third party claims are directed at the Lessor. At the Lessor's request the Lessee shall furnish written confirmation of his public liability insurance cover.
- 12.4 The Lessee shall immediately inform the Lessor and, where necessary, his liability insurer, of any damage caused to the leased property.

13. Termination of the Lease Agreement

- 13.1 The lease agreement which is concluded for a specified term may not be terminated by either Party with notice. This does not affect the Parties' right to terminate on justified grounds.
- 13.2 The Lessor shall in particular be entitled to terminate the lease agreement without notice if
- the Lessee uses the leased property or a part thereof for some purpose other than that which is specified without the Lessor's approval, or
 - the Lessee does not use the leased property for the construction project (place of use) as specified at No. 11.5 above, or
 - bankruptcy proceedings are opened against the assets of the Lessee, or
 - the Lessee is in arrears with the payment of the rent by more than 14 calendar days.
- 13.3 The Lessee may terminate the agreement without notice where, on grounds for which the Lessor is responsible, the use of the leased property is not possible for more than 5 successive working days.
- 13.4 Where the Lessee terminates the lease agreement early, the minimum notice periods as specified at No. 8.2 above must be observed. Any further arrangements are to be mutually agreed by the Lessor and Lessee.

14. Loss of the leased property

Where the Lessee is culpably or for technical reasons unable to fulfill his obligation to return the property leased to him in accordance with No. 9.3 and 9.4., the Lessee shall be obliged to pay damages.

15. Security interest

The Lessee hereby assigns to the Lessor all current and future accounts receivable arising from the contracts for work and services with his clients with regard to all building sites where the leased property was used.

The Lessor hereby accepts the Lessee's declarations of assignment. Upon request by the Lessor the Lessee must prove each individual account receivable and inform his clients of such assignments and instruct

them to only pay them to the Lessor up to the amount of the outstanding claims. The Lessor shall be entitled at any time to also himself inform the clients of such an assignment and to collect the accounts receivable. However, the Lessor shall not make use of this power and not collect the accounts receivable as long as the Lessee fulfills his payment obligations. For the event that the Lessee shall collect the amounts of accounts receivable assigned to the Lessor, he now hereby already assigns his respective remaining accounts receivable to the amount of these amounts of accounts receivable. The right to the handing over of the collected amounts shall remain unaffected. The Lessee shall not be entitled to assign or pledge to third parties his accounts receivable from the respective client or to agree a prohibition of assignment with his client without the Lessor's approval. The Lessee must immediately inform the Lessor regarding an attachment or any other influencing of our rights by third parties. The Lessee must provide the Lessor with all documents necessary for an intervention and pay for any intervention costs incurred by the Lessor.

16. Place of Jurisdiction

Where the Lessee is a businessman, a legal entity under public law or a public asset, the place of performance and sole place of jurisdiction, summary procedures included, for both parties and for all current and future claims arising out of the business relationship shall at the discretion of the Lessor be either the place of the Lessor's head office, Essen, or the place at which the Lessor has a branch at the time the contract was concluded.

17. Other Provisions

German law shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.