



General Hire Contract Conditions (GHCC)

Status as per: 2019-01-01

§1 Area of application

1. These General Hire Contract Conditions apply for all our hire offers and hire contracts. These GHCC apply exclusively. Any conditions that diverge from these GHCC are hereby expressly rejected. These GHCC also apply when we make the hire items available to the customer without reservation in the knowledge of divergent conditions of the customer.
2. If we have a current business relationship with the customer, then these GHCC apply for all future hire contracts with the customer, unless other conditions are expressly included upon contract conclusion.

§2 Hire item

Our written hire offer is exclusively binding for the description of the nature and type of the hire item including accessories. All details regarding the condition of the hire item in our brochures, catalogs, advertising material or in correspondence prior to our hire contract offer as well as in reference to VDI type sheets apply only approximately unless they are expressly declared binding. This also applies to photos, drawings and other images.

§3 Place of use

The place of use is the location stated in our hire offer. Should the customer wish to change the conditions of use or the location of use, then our prior written agreement to this is required.

§4 Provision, contract period

1. Unless otherwise agreed in the individual case, we make the relevant hire item available for collection by the customer. Upon request, we also arrange transport of the hire item in the name of and on behalf of the customer.
2. In the case of contracts for several hire items, we are entitled to also provide the items of equipment individually and successively. In this case, each partial service provision constitutes an independent transaction.
3. The hire contract period starts upon provision for collection or dispatch of the relevant hire item. The hire period ends on the day on which the hire item with all the components necessary for its putting into operation and/or use arrive in a condition compliant with the contract at the hire location of the contract conclusion or at an agreed other location, however at the earliest upon expiry of the agreed hire period. In the case of unlimited hire contracts, a period of notice of 4 weeks and prompt return of the hire item are required.

§5 Delay

1. Should we be responsible for a delay, the customer shall be entitled to demand, as compensation for damage incurred due to the delay, a fixed sum per day of the delay. This sum shall be in the amount of 1/30 of the monthly net hire fee of the vehicle which due to the delay cannot be used or cannot be used according to the contract on time, however it shall be a maximum of 5% of the net hire fee for the agreed contract period. This limit does not apply in the case of grossly negligent behavior of legal representatives or management staff, intent, or statutorily mandatory liability for delay.



2. Should a delay occur and should the customer grant us a reasonable extension with an express written declaration that it will refuse to accept the service after expiry of the extension period, then the customer shall be entitled to terminate the hire contract, within the framework of the statutory provisions, upon expiry of the extension period without performance.

The granting of an extension period is not necessary if this is not required according to the statutory provisions. Upon our request, the customer shall declare within a reasonable period whether it will exercise its right to termination.

3. Subject to the provisions in § 18, no further rights of the customer due to delay, in particular compensation rights, exist.

§6 Acceptance of the contractual item, delay in acceptance

Upon provision of the relevant hire item for collection or dispatch, the customer is obliged to accept the hire item on the agreed date. Should the customer fail to observe this obligation, then it must bear the additional costs that result from this.

§7 Handling of the hire item, supervision and notification obligation

1. The customer must handle the hire item with care, observe the operating instructions as well as all safety instructions, and use the contractual item for the purposes intended. The customer must instruct persons who work with the hire item correspondingly and ensure that the driving license regulations are observed.
2. The customer must use correct operating materials (e.g. fuel) to operate the hire item. Should the use of incorrect operating materials result in negative effects of any kind for us, then the customer shall be liable to pay compensation to us.
3. The customer shall notify us immediately of loss of and/or damage to the hire item and/or its accessories.

§8 Servicing, maintenance

1. The customer must keep the hire item in a correct and operationally safe condition at all times during the contract period. The customer bears the energy costs for operation.
2. For the purpose of servicing, the customer regularly maintains the hire item and if necessary due to normal wear, immediately repairs it. The customer is not entitled to a replacement for the duration of the repair unless we are responsible for the vehicle failure. In the case of a hire period of more than 6 months, the customer bears the cost of typical wear repairs (e.g. tires, brakes) as well as servicing costs.
3. Should maintenance and/or repair work be necessary due to damage caused by violence, operating errors or similar causes for which the customer is responsible, then the customer shall bear the corresponding costs. This does not affect the obligation to pay the hire fee.

§9 Prohibition of transfer to third parties

The customer may not hire out, lend, lease or otherwise directly or indirectly transfer the hire item to third parties without our prior written consent.



§10 Liability in the event of loss and damage, replacement in the event of destruction of the contractual item

1. The customer is liable for damage to or loss of the hire item in as far as
 - we do not receive compensation from the machine failure insurance for damage incurred from loss of or damage to the hire item, pursuant to the following § 12 Sec. 1 of this GHCC
 - the hire item was stolen from the customer, or
 - we are not responsible for the loss or damage.
2. Should the hire item be destroyed, then we shall be entitled to continue the hire contract with a hire item of equivalent value.

§11 Operational risk

Upon transfer of the hire item, the customer becomes the holder of the vehicle and is responsible for all obligations resulting from this status. The customer must, at its own cost, ensure compliance with existing laws, regulations and administrative acts, especially observance of the driving license regulations, as well as road traffic and tax regulations. In this respect, the customer must hold us harmless against all claims of third parties. Using industrial trucks in public traffic is not permitted unless the industrial truck is equipped and insured in accordance with the StVZO (Road Traffic Act).

§12 Machine failure

1. The customer insures the hire item for the contractual period against transport damage, theft, fire, water damage and machine failure by taking out a machine failure insurance policy for the new value at the time of transfer. At our request, the customer provides evidence of the insurance cover. Furthermore, the customer hereby already transfers the rights from this insurance policy to us. We hereby accept this transfer.
2. Should the customer violate this insurance obligation according to Section 1, or should we not become the owner of the rights from the relevant machine failure insurance, then we shall be entitled, in order to safeguard compensation and restoration rights irrespective of further-reaching rights, to declare outstanding hire fees to be immediately due in as far as this does not exceed the damage amount.

§13 Hire fee, payment

1. The agreed hire fee applies as from the time of provision for collection or dispatch. The statutory value-added tax applicable on the day of invoicing is added to this.
2. The hire fee is based on a utilization for a maximum of 125 operating hours per month. Should the monthly utilization time of the vehicle increase during the hire period, then the customer shall immediately notify us of this as well as the probable conditions of use. For every hour that exceeds the operating hours (per month), a hire fee of 1% of the agreed net monthly hire fee is charged.
3. The hire fee is payable without deductions immediately after the customer receives the invoice. In the event of a hire period longer than 30 calendar days, the hire fee shall be charged monthly. In this case, the monthly rates shall be paid continuously in advance on the due date.
4. We only accept payment orders and checks after special agreement and only as conditional payment, but not instead of payment. Bills of exchange must be discountable. The customer will be charged for any collection and discount expenses.
5. Payments must exclusively be paid to us. Payment is only considered made when we have received the amount.
6. The customer transfers to us its claims against its customer on whose order it uses the hire item, to the amount of the agreed hire fee less any deposit received. We hereby accept this transfer.



§14 Termination without notice

Both contracting parties are entitled to termination of the hire contract without notice for important grounds. We have this right in particular if

- a) the customer is in default for two monthly payments,
- b) the customer transfers the hire item to a third party without our consent,
- c) the customer violates obligations specified in this hire contract to a significant extent and continues to do so after a warning.

§15 Claims for material defects

1. The customer must notify us immediately of any defect found, with an exact description.
2. At our discretion, we either repair or replace free of charge all hire items proven to have defects, taking into account the provisions in § 15 Section 4 below. The customer grants us a reasonable period of time and opportunity for subsequent performance on site. We are released from the obligation for subsequent performance to the extent of the statutory regulations. No rights to claim for defects exist in the event of only insignificant deviation from the agreed or usual condition or usability.
3. We bear the costs incurred for the subsequent performance. This does not apply if our expenses, especially travel and transport expenses, are increased because the hire item has subsequently been transferred to a different location to the place of performance.
4. Should subsequent performance be unsuccessful, or should we fail to observe a deadline set by the customer for subsequent performance, then the customer shall be entitled to reduce the hire fee (reduction) or to demand termination of the contract without notice. At our request, the customer notifies us within a reasonable period which right it will exercise.
5. Further-reaching rights of the customer due to or in connection with defects or defect claims, on whatever legal basis, only exist according to the provisions in §18.
6. We are not responsible for all consequences from the following circumstances: unsuitable or incorrect use, in particular overloading, faulty assembly or putting into operation by the customer or third parties (except by our subcontractors), wear or wear typical for use, incorrect or careless handling, failure to carry out maintenance or maintenance according to regulations or our operating instructions, unsuitable operating materials, replacement materials, incorrect construction work, unsuitable foundations, chemical, electro-chemical or physical influences.
7. Should the customer or third parties carry out unprofessional alterations or repairs on the hire item without our express consent, then no claims for defects shall result for consequences that arise from this.
8. We do not provide any service life or other guarantees for our hire items. Therefore, no guarantee character can be derived from our descriptions, assurances or other statements, neither before nor during contract conclusion.
9. Should one of our statements intentionally or unintentionally have a guarantee character, we shall only be liable up to the extent that the guarantee protects the customer from the damage incurred.



§16 Return

1. The customer returns the hire item to us after expiry of the contract at its risk and cost in a cleaned and correct condition. We are entitled to remove at the customer's expense any damage for which we are not responsible, alterations to the hire item and significant soiling.
2. Should the hire item be returned prematurely, the customer shall be obliged to pay the hire fee which we would have charged if the contract had been concluded on the basis of a shorter hire period.

§17 Enforcement measures

The customer must notify us immediately in writing of all enforcement measures and other orders by third parties directed against a hire item we own, and will provide us with copies of any seizure orders and records. Furthermore, the customer undertakes everything possible to prevent the aforementioned measures. Should we institute third-party proceedings pursuant to § 771 ZPO (German Code of Civil Procedure), the customer shall be obliged to reimburse us for the court and out-of-court costs if the enforcing party is unable to do so.

§18 Liability

1. The following terms apply for compensation claims due to, in addition to and instead of performance, irrespective of the legal grounds (in particular due to consulting errors, breach of contractual obligations, defects, prohibited action), as well as for reimbursement and indemnity claims (hereinafter referred to as compensation claims). The regulations for default (§ 5) have precedence.
2. We are not liable for compensation claims against us, in particular for consequential damage such as loss of profit, damage due to interruption of business, loss of production and utilization, or for indirect damage. This restriction does not apply in the following cases:
 - Intent
 - Gross negligence by statutory representatives or senior managers, whereby the liability is restricted to compensation for the foreseeable damage typical for this kind of contract.
 - Within the scope of a guarantee, whereby the liability is restricted to the extent that the guarantee protects the customer from the damage incurred
 - Injury to life, limb or health
 - Claims under product liability law
 - Culpable breach of an essential contractual obligation. However, in the event of minor negligence, the liability is restricted to compensation for the foreseeable damage typical for this kind of contract. Essential contractual obligations are obligations that protect the customer's legal positions which are essential to the contract, i.e. which the content and purpose of the contract grant the customer. Further essential contractual obligations are those whose fulfilment is essential for the correct performance of the contract and upon whose fulfilment the customer can rely.
 - In other cases of a mandatory statutory liability.
3. The aforementioned regulations do not lead to a reversal of the burden of proof.
4. Further rights, in particular rights to exemption on first demand, are excluded.



§19 Place of performance, place of jurisdiction, applicable law

1. The customer must immediately notify us of any change in its residential or business address as well as changes to its legal form and the company liability conditions.
2. The place of performance is Bad Waldsee.
3. The place of jurisdiction for all disputes is Bad Waldsee if the customer is a registered trader, a legal entity under public law, a special asset body under public law, or if the customer has no place of jurisdiction in Germany.
4. German law as applied between domestic contracting parties shall apply exclusively to all legal relations between us and the customer.