



DATA ACT – SUPPLEMENTAL TERMS AND CONDITIONS on access to and use of data

of

HKL BAUMASCHINEN GmbH,

Lademannbogen 130, 22339 Hamburg

(“HKL”)

1. Scope

- 1.1 These Data Act Supplemental Terms and Conditions shall govern the conditions under which HKL makes data available to the hirer, together with HKL’s own use of such data. These Data Act Supplemental Terms and Conditions shall apply insofar as HKL, in respect of data generated or collected by the relevant rental object, acts as a data holder within the meaning of Regulation (EU) 2023/2854 of 13 December 2023 on harmonised rules on fair access to and use of data and amending Regulation (EU) 2017/2394 and Directive (EU) 2020/1828 (the ‘**Data Act**’).
- 1.2 HKL’s obligations under these Data Act Supplemental Terms and Conditions shall apply only to the extent that HKL is deemed to be a data holder within the meaning of the Data Act. Where the manufacturer of the hired item (and not HKL) is the data holder within the meaning of the Data Act, any claims by the hirer regarding data access shall be directed against the manufacturer. Upon request, HKL shall provide the hirer with the identity and contact details of the manufacturer, insofar as such information is known to HKL.
- 1.3 Save as otherwise defined in these Data Act Supplemental Terms and Conditions, the definitions set out in Article 2 of the Data Act shall apply to these Data Act Supplemental Terms and Conditions.
- 1.4 In the event of any conflict between these Data Act Supplemental Terms and Conditions and:
 - HKL’s General Terms and Conditions of Hire or the General Terms and Conditions of Hire for Consumer Hire;
 - the Special Terms and Conditions of Hire for Rental Vehicles;



- the Special Terms and Conditions of Hire for Room Systems (including the summary of the user's obligations); and
- the Supplemental Terms and Conditions for the Hire of Power Generators,

these Data Act Supplemental Terms and Conditions shall take precedence.

2. Pre-contractual information

Insofar as HKL collects or generates product data or related service data within the meaning of the Data Act in connection with the hirer's use of the connected product, HKL shall inform the hirer of such data processing prior to the conclusion of the contract. The pre-contractual information is based on the information provided to HKL by the manufacturers of the respective rental items and is available in its current version on the HKL website via the following link: <https://www.hkl-baumaschinen.de/infocenter/agb-und-mietbedingungen>.

3. Data Disclosure

- 3.1 The data to be made available pursuant to this Agreement shall comprise all readily available product data and related service data within the meaning of the Data Act, as set out in the pre-contractual information under Clause 2 (the "**Data**"). The nature and scope of the Data may vary depending on the rental item. If, during the term of this Agreement, HKL receives information from the manufacturer of the relevant connected product regarding a change to the data to be provided under the Data Act, HKL shall amend the pre-contractual information set out in Clause 2 accordingly. HKL shall notify the hirer separately of any material changes to the Data to be made available.
- 3.2 HKL shall make the Data available to the hirer free of charge and in at least the same quality as that available to HKL, in a comprehensive, structured, commonly used and machine-readable format, together with the metadata necessary for the interpretation of such Data, insofar as HKL has such metadata available. HKL shall be under no obligation to process, interpret or provide separate explanations of the Data or metadata.
- 3.3 At the hirer's request, HKL shall also make such Data available to a third party designated by the hirer (a "**Data Recipient**").
- 3.4 HKL shall ensure that the Data can be made available to the hirer easily, securely and without undue delay, as soon as it is available to HKL, in accordance with Clause 3.5.
- 3.5 HKL shall inform the hirer separately of the conditions governing data access in the pre-contractual information referred to in Clause 2. Where necessary and provided



that HKL has the relevant resources and information at its disposal, HKL shall provide the hirer with the resources and further information required for data access.

- 3.6 The hirer shall have the right to lodge a complaint with the competent authority pursuant to Article 37 of the Data Act in respect of any breach of the provisions of Chapter II of the Data Act.
- 3.7 Where the provision of Data in a specific case would breach statutory security requirements and, therefore, lead to serious adverse effects for the health or safety of natural persons, HKL shall be entitled to refuse to provide such Data. In such circumstances, HKL shall inform the hirer of the reasons for such refusal.
- 3.8 HKL may unilaterally amend the data specifications or access rules where such amendment is justified by its general business operations, including, without limitation, in the event of technical changes resulting from a security vulnerability in the product line, or changes to the infrastructure or software used. In such cases, HKL shall inform the hirer within a reasonable period following the decision to make such amendment.
- 3.9 If the hirer requests the making available of Data to a Data Recipient, HKL shall be entitled to refuse to make available personal data relating to third parties, provided there is no lawful basis for such disclosure under applicable data protection law. In such circumstances, the hirer who is not also the data subject within the meaning of applicable data protection law, shall be required to specify the legal basis under data protection law for the processing in connection with such disclosure together with any request for the making available of Data.
- 3.10 The hirer acknowledges that HKL's performance of its obligations under this Clause 3 may be dependent upon the cooperation of the relevant manufacturers. To the extent that HKL is unable to perform its obligations under this Clause 3 despite having used reasonable endeavours, owing to a lack of cooperation from the manufacturer, HKL shall be released from such obligations.

4. Disclosure of Trade Secrets

- 4.1 Insofar as the Data to be made available pursuant to Clause 3 constitutes trade secrets of HKL or trade secrets may be derived from such Data (collectively, the "**Trade Secrets**"), the hirer shall be obliged to maintain the confidentiality of such Data. Where the hirer receives such Data in the course of its business activities, the hirer shall also require its employees, subcontractors and freelancers to comply with this Clause 4.
- 4.2 If the hirer repeatedly breaches the confidentiality agreement in relation to such Data, HKL may refuse to make available Trade Secrets when transferring the Data. HKL shall also be entitled to take further security measures to protect Trade Secrets.



- 4.3 Where the Data constitutes Trade Secrets of HKL or third parties, the hirer shall take appropriate measures to protect them. If HKL demonstrates that the hirer has failed to implement or maintain such measures, HKL shall be entitled to withhold or suspend the making available of the Trade Secrets in question until such time as the hirer has restored the contractual protection of the Trade Secrets concerned. HKL shall notify the hirer and the competent authority of this and shall provide the hirer with a copy of the notification sent to the authority. In this case, the hirer is obliged to take or restore the necessary technical and organisational measures without delay.
- 4.4 HKL shall also be entitled to take appropriate technical or organisational measures itself to protect its own Trade Secrets or those of third parties which are made available to the hirer. Provided that such measures have not been agreed between the parties, HKL shall ensure that the hirer's access to and use of the Data are not impaired as a result.
- 4.5 If the measures taken in accordance with Clauses 4.3 and 4.4 are insufficient to protect a specific Trade Secret, HKL may additionally:
- a) unilaterally strengthen the protective measures relating to the Trade Secret in question, provided that such measures are compatible with HKL's obligations under this Agreement and do not adversely affect the hirer; or
 - b) agree further protective measures with the hirer. If the parties fail to reach agreement on the necessary additional measures within a reasonable period and there are documented grounds for the necessity of such measures, HKL may suspend the making available of the Trade Secret in question.
- 4.6 HKL may, in exceptional circumstances, cease the making available of certain Data entirely if, owing to extraordinary circumstances, there is a high probability that the data holder would suffer serious economic damage as a result of the making available of a specific, identified Trade Secret to the hirer, notwithstanding the implementation of protective measures by both HKL and the hirer.
- 4.7 Where the hirer is contractually or legally entitled to make available Data constituting Trade Secrets to third parties, the hirer shall inform HKL of this prior to such making available, specifying the Data concerned and providing the identity and contact details of the third party.

5. Obligations of the Hirer

- 5.1 The hirer shall not use the Data in any of the following ways:



- a) to develop a competing product that competes with the leased item, or to make available the Data to third parties for such purpose;
- b) to derive insights about the economic situation, assets and production methods of the manufacturer or the data holder;
- c) to make available the Data to third parties that are designated as gatekeepers pursuant to Article 3 of Regulation (EU) 2022/1925; this shall apply in particular to the input of the Data into such gatekeepers' AI systems, if they use the input data for training purposes;
- d) to use the Data received for purposes that contravene Union law or applicable national law.

5.2 The hirer shall not use coercive measures to obtain access to the Data. Furthermore, the hirer shall not exploit any gaps in the data holder's technical infrastructure designed to protect the Data.

5.3 The hirer shall not alter, disable or remove any technical or organisational measures that HKL has implemented in accordance with Clause 4.3, save with HKL's prior written consent.

6. Use of Data by HKL

6.1 HKL shall be entitled to use the Data for its own purposes. In particular, HKL uses the Data for the following purposes:

- a) the performance of the hire agreement with the hirer or activities in connection with the agreement, in particular the monitoring of the use of the hired item in accordance with the agreement;
- b) the provision of support or the rectification of defects, insofar as HKL is legally or contractually obliged to do so;
- c) the monitoring and maintenance of the functionality, security and protection of the hired item, the software or the related service;
- d) the improvement of the functionality of all products offered by HKL or related services;
- e) the development of new products or services by HKL or by third parties on HKL's behalf;



- f) the combining of such Data with other data or the creation of derived data for lawful purposes, including the sale or other provision of such aggregated or derived data to third parties, provided that such data does not enable the identification of the specific data transmitted by the software to the hirer or enable third parties to derive such data;
 - g) the optimisation of fleet management, dispatching, resource planning and business processes;
 - h) the undertaking of predictive maintenance, security analyses and theft prevention;
 - i) the development, provision and marketing of data-based products and services;
 - j) the preparation of aggregated analyses on efficiency, usage, sustainability and market comparisons;
 - k) the integration into internal systems and use for the strategic management of HKL's business.
- 6.2 Where such data sets contain personal data relating to third parties, HKL shall use such data in accordance with applicable data protection law and, in particular, Regulation (EU) 2016/679 (the “**GDPR**”). HKL shall be solely responsible for obtaining any necessary consent from such third parties.
- 6.3 HKL shall not use the Data to derive insights about the hirer's economic situation, assets and production methods, or regarding the hirer's use of the services under the main agreement or related services, or in any other manner that could adversely affect the hirer's commercial position in the markets in which the hirer operates.
- 6.4 HKL may make available non-personal data to third parties in accordance with these Data Act Supplemental Terms and Conditions if:
- a) the third party uses the Data solely for the following purposes:
 - (1) assisting HKL with the purposes set out in Clause 6;
 - (2) pursuing the purposes set out in Clause 6.1 together with HKL or with special purpose entities;
 - b) and HKL contractually obliges the third party:



- (1) not to use the Data in any manner that exceeds the use permitted under point (a);
- (2) not to use the Data in any unauthorised manner as set out in Clause 6;
- (3) to protect the Data by means of security measures equivalent to those used by HKL.

6.5 HKL may, furthermore, at any time make use of processing services, including, without limitation, cloud computing services (IaaS, PaaS and SaaS), hosting services or similar services, to achieve the purposes, set out in Clause 6.

6.6 HKL shall take appropriate security measures in respect of the Data, taking into account the state of the art in science and technology. The hirer shall not alter or remove such technical security measures unless HKL has given its prior written consent.

7. Transfer of Use Rights

7.1 If the hirer transfers the use of the hired item to another natural or legal person in such a way that the hirer no longer holds such rights (for example, by way of subletting, insofar as this is permitted under the General Terms and Conditions of Hire), the provisions of this Clause 7 shall apply (such person being a “**Subsequent User**”).

7.2 The hirer shall ensure that its rights and obligations under this Agreement are transferred in full to the Subsequent User and, where necessary, shall obtain HKL’s consent to any required assignments. HKL shall not refuse to provide the necessary cooperation or declarations of consent without reasonable cause.

7.3 Furthermore, the hirer shall be obliged to notify HKL forthwith of the transfer and the identity of the Subsequent User and to provide HKL with a copy of all contractual agreements with the Subsequent User.

7.4 HKL’s rights to product data or related service data generated prior to the transfer to the Subsequent User shall remain unaffected hereby, and HKL’s rights in respect of such data shall continue unchanged.

7.5 If a breach by the hirer of the obligations set out in Clauses 7.2 and 7.3 results in HKL using or disclosing product data or related service data without a contract with the Subsequent User, the hirer shall indemnify HKL against all claims by the Subsequent User arising from the use of such data.



8. Termination

- 8.1 The term of these Data Act Supplemental Terms and Conditions shall correspond to the hire period agreed between the parties.
- 8.2 HKL shall not retrieve any Data recorded or generated from the date of termination of this Agreement. Notwithstanding the foregoing, even following termination of this Agreement, HKL shall be entitled to use and make available Data recorded or generated prior to such date in accordance with the provisions of these Data Act Supplemental Terms and Conditions.

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