

## **General Terms and Conditions of Rental of HKL BAUMASCHINEN GmbH (HKL)**

### **I. General, scope of application**

1. These General Terms and Conditions of Rental (hereinafter also referred to as the "**Terms of Rental**") apply to all current and future rentals and to all related transactions between HKL and the lessee. In the case of the rental of vehicles (lorries, flatbed trucks, tipper vehicles, vans, off-road vehicles, cars), HKL's Special Terms and Conditions of Rental for Vehicles shall apply in addition. In the case of the rental of room systems, HKL's Special Terms and Conditions of Rental for Room Systems also apply. In the case of the rental of power generators, the "Supplements concerning Power Generators" also apply in addition to these Terms of Rental.
2. For the purposes of these Terms of Rental, the rental object is any individual item which HKL provides to the lessee for use within the Federal Republic of Germany (hereinafter: "**Contract Territory**") in fulfilment of a rental agreement.
3. HKL does not recognise any general terms and conditions of business of the lessee that conflict with or deviate from these Terms of Rental unless HKL expressly agrees to their validity in writing. HKL's Terms of Rental also apply if HKL carries out the rental to the lessee without reservation in the knowledge that the lessee's general terms and conditions conflict with or deviate from HKL's Terms of Rental.
4. Individual agreements made with HKL in individual cases (including ancillary agreements, supplements and amendments) always take precedence over these Terms of Rental. A written agreement or confirmation from HKL in writing or text form (e.g. by e-mail) is decisive for the content of such agreements.
5. References to the applicability of statutory provisions in these Terms of Rental are for clarification purposes only. Even without such clarification, the statutory provisions shall therefore apply, unless they are directly amended or expressly excluded in these Terms of Rental.

### **II. Offer and conclusion of contract, equivalent rental object**

1. Offers from HKL - of whatever type and form - are merely invitations to the lessee to submit offers on his/her part. In such cases, the offer to conclude a contract with HKL only lies in the written or verbal order placed by the lessee, provided that these offers are marked or designated as non-binding or subject to confirmation. The lessee is bound by his/her order for ten days.
2. A contract is only concluded by means of an order confirmation (= as a rule the rental agreement) from HKL in writing or text form or by means of the handover of the rental object from HKL to the lessee. The order confirmation or the rental agreement from HKL determines the content and scope of HKL's contractual performance.
3. Unless expressly agreed otherwise with the lessee, HKL is entitled to provide the lessee with a functionally equivalent rental object instead of the ordered rental object.

### **III. Rental period**

1. The rental period begins on the day agreed between HKL and the lessee. The minimum rental period is one day; in the case of room systems (e.g. containers, construction trailer, construction fences), shoring and formwork, the minimum rental period is 30 calendar days.
2. The lessee is obliged to take delivery of the rental object on the agreed date and at the agreed time. If the lessee does not take delivery of the rental object at the agreed time, HKL may withdraw from the contract in accordance with the statutory provisions or terminate the contract - also with immediate effect - and rent the rental object to another party. HKL is entitled to demand compensation from the lessee for any damage arising from the lessee's default.
3. The lessee's right of use ends with the expiry of the agreed rental period, provided this was firmly agreed in writing at the time of rental. If the lessee continues to use the rental object after the end of his/her authorisation to use it ("exceeding of the rental period"), the rental contract shall not be extended as a result. If the lessee has recognisably given up possession of the rental object, HKL is entitled, but not obliged, to collect it and to enter the place of use of the rental object for this purpose. The lessee is obliged to pay HKL compensation amounting to one day's rent for each additional day of use or non-return. Any discounts in accordance with HKL's graduated rental price list do not apply in the event that the rental period is exceeded. The assertion of further damages is not excluded.
4. If the parties have not firmly agreed the duration of the rental period at the time of rental, the rental contract ends when the rental object is returned, provided the lessee notifies HKL of the imminent return of the rental object at least three working days ("Return Period") in advance in text form. In the case of room systems, shoring and formwork, the Return Period is 14 calendar days. Without prior notification of the impending return, the rental period continues after the return of the rental object and does not end until the expiry of the Return Period. The statutory provisions apply to terminations by HKL, although the period of notice must at least correspond to the Return Period applicable to the lessee. The right of termination of both parties for good cause remains unaffected.

#### IV. Handover and return of the rental object and transport (transport costs and transport risk)

1. Unless expressly agreed otherwise in writing, the rental object will be handed over to the lessee at the respective HKL Rental Station where it was rented by the lessee. The lessee must then arrange for the transport of the rental object to the place of use, including the loading and unloading of the rental object, at his/her own expense and risk. If HKL's employees assist with the loading and/or unloading, they act in this respect as the lessee's vicarious agents (Section 278 of the German Civil Code). In this respect, the lessee is in particular responsible for ensuring that the load, aids and equipment (accessories) are secured in road traffic in accordance with VDI guidelines 2700 and 2701 (load securing on road vehicles) and that the slings used to secure the load (e.g. belts or chains) also comply with the aforementioned VDI guidelines.
2. HKL or a transport company commissioned by HKL will only transport the rental object to the place of use specified by the lessee at the expense of the lessee after prior written agreement with HKL. In addition to the transport costs, HKL shall charge the lessee a risk surcharge of 5% of the transport costs for the risks associated with the transport.
3. The binding return inspection (acceptance) for any damage only takes place after the return of the rental object at the respective HKL Rental Station. This also applies if HKL carries out the return transport itself. Employees of a transport company commissioned by HKL to carry out the return transport are not entitled to carry out a return inspection (acceptance) or otherwise make legally binding declarations on behalf of HKL. However, in addition to the written duty of notification to the HKL Rental Station contained in Clause IV. 6., the lessee is obliged to notify HKL's transport staff or the transport company of any damage/defects when handing over the rental object for return transport.
4. HKL shall hand over the rental object to the lessee in a roadworthy and technically flawless condition. The lessee must check the rental object for its roadworthiness, operability and any defects on handover. In the event that the lessee also intends to use the rental object on public roads, he/she must check in particular whether the rental object has the equipment required for this and whether the lessee has all documents required for this.
5. The lessee is obliged to return the rental object at the end of the rental period within HKL's core opening hours (Mon. - Fri. 07:00 - 15:30 hrs, in the period from April to December inclusive Mon. - Thurs. 07:00 - 16:30 hrs and Fri. 07:00 - 15:30 hrs) at the respective HKL Rental Station where the rental took place (hereinafter: the "**Rental Station**") in a cleaned condition, unless HKL expressly agrees in writing to return the equipment within a different period or to a different location. If HKL agrees to the return at a different location, HKL shall arrange for the rental object to be collected and the rent shall cease to be payable on expiry of the Return Period (cf. Clause III. 4). The lessee's duty of care for the rental object remains in force until HKL collects the rental object.
6. The lessee must inform HKL in full of any damage/defects to the rental object when returning it. If third parties (transport companies) or HKL carry out the return transport, the lessee must also inform the HKL Rental Station from which the rental was made in writing of any damage/defects to the rental object, irrespective of his/her obligation to notify HKL in accordance with Clause IV. 3. sentence 4.

#### V. Rent

1. The rent owed by the lessee is determined as a calendar day's rent (hereinafter: "**Daily Rent**") on the basis of HKL's currently valid graduated rental price list. The Daily Rent is based on the normal shift time of up to eight operating hours. If the lessee exceeds this daily shift time, HKL shall charge the lessee an additional 1/8 of the applicable daily rate for each additional hour. Falling short of the daily shift time in accordance with sentence 2 does not reduce the Daily Rent. If weekend days (Sat. - Sun.) or public holidays fall within the rental period, the Daily Rent is not owed for these days, provided the lessee does not use the rental object on these days. If the lessee also uses the rental object on weekend days or public holidays, the Daily Rent shall also be owed on these days in accordance with the above sentences 1 - 4. The above sentences 2 - 6 do not apply to the rental of room systems, shoring and formwork.
2. All prices quoted by HKL are exclusive of the statutory value added tax applicable at the time.
3. The rent is solely the lessee's consideration for the possibility of using the rental object within the Contract Territory. HKL shall invoice the lessee separately for all other costs for transport, assembly, fixing, fuel and operating materials, cleaning and limitation of liability (cf. Clause XIV.) (hereinafter: "**Ancillary Costs**");

#### VI. Notification of defects and claims for defects

1. The lessee must notify HKL immediately in writing of any defects that occur during the rental period. Defects for which the lessee is not responsible shall be remedied by HKL at its own expense.
2. Claims by the lessee based on obvious defects are excluded unless the lessee notifies HKL of the defect at the time of handover.
3. HKL accepts no liability for the lessee being able to use the rental object provided compliant with the contract in accordance with his/her ideas and for the purpose he/she intended.

## VII. Duties of the lessee, use of the rental object

1. The lessee shall be responsible for the operation of the rental object in compliance with the statutory provisions and the occupational health and safety and accident prevention regulations. He/she must use the rental object for its intended purpose and in accordance with customary practice within the Contract Territory and read the operating instructions before putting it into operation. The lessee may only use the rental object with the attachments and accessories provided by HKL.
2. Repair and maintenance work as well as any repairs and technical modifications shall be carried out exclusively by HKL.
3. Fuelling the rental object with unsuitable fuels, such as biofuel, rapeseed oil and heating oil, is not permitted, unless a corresponding admixture to the normal fuel is carried out due to legal regulations.
4. If the rental object is a self-propelled, pneumatic-tyred working machine (e.g. mobile excavator, wheel loader) or a wheel dumper, the lessee is responsible for obtaining and carrying the official permit required for the use of public roads and paths if HKL does not have such a permit for the rental object. The costs of applying for a permit from the competent authority shall be borne by the lessee. Before a permit has been granted, the lessee is prohibited from using public roads and paths with self-propelled, pneumatic-tyred working machines and wheel dumpers. Infringements constitute (i) an offence against the regulations on the part of the lessee, which may be punished by a fine, and (ii) a breach of the rental contract with HKL. The lessee is obliged to indemnify HKL as vehicle holder against any claim by the authorities for the unauthorised use of public roads and paths.
5. The lessee undertakes to have the rental object operated only by professionally trained persons who are familiar with the proper handling of the rental object or objects of a comparable kind and who have all the necessary permits and authorisations under public law - in particular the necessary driver's licence for the Federal Republic of Germany. The lessee assures that he/she or the persons employed by him/her have the knowledge and skills necessary for the proper operation of the rental object. HKL does not owe the lessee any advice on the use and operation of the rental object beyond the usual provision of the operating instructions.
6. If the lessee intends to use the rental object on weekend days or public holidays, he/she must inform HKL of this in writing before concluding the rental contract and no later than three working days before the intended use, giving precise details of the intended days of use. If the lessee fails to notify HKL in good time or if prior notification was not possible, HKL cannot guarantee a repair service on weekend days or public holidays if defects occur. If no prior notification was given, the lessee is obliged to give subsequent notification in any case. The above sentences do not apply to the rental of room systems or to the rental of shoring and formwork.
7. The use of the rental object outside the Contract Territory and any transfer of use to third parties is not permitted without HKL's express prior written consent. The lessee hereby assigns his/her claims against third parties arising from a permissible or impermissible transfer of use to HKL as security. HKL accepts this assignment. The lessee shall reimburse HKL for any costs and expenses incurred by HKL in pursuing and asserting the claims against such third parties.
8. The lessee must notify HKL immediately of any theft/loss of or damage to the rental object (hereinafter collectively: "**Damage**") and take all measures necessary to minimise the Damage and preserve evidence. Furthermore, he/she is obliged to support HKL at all times in the best possible way in the further processing and clarification of the Damage. In the event of theft or Damage caused by third parties, the lessee must also report the matter to the police without delay.
9. In the event of seizure or other enforcement attempts by third parties with regard to the rental object, the lessee must draw attention to HKL's ownership and inform HKL immediately.
10. The lessee is responsible for the on-site requirements for the delivery and removal, assembly and commissioning of the rental objects, including any foundations that may be required. The lessee bears the risk of the stability of the rental object and must obtain any necessary official permits and inform HKL of any risks.
11. The lessee must keep the rental object safe and - as far as possible - protect and secure it from harmful weather and unauthorised interference by third parties, in particular through theft, damage and unauthorised commissioning (duty of care). The duty of care applies - irrespective of the duration of the rental contract - until the rental object is returned to the HKL Rental Station or, in the event of a return transport carried out by HKL, until the rental object is collected from the agreed collection location.
12. HKL is entitled at any time to inspect the rental object itself or have it inspected by an authorised representative if changes are suspected or if a risk to the rental object is suspected.
13. If the lessee uses HKL's personnel to fulfil his/her obligations or to assist him/her, he/she shall indemnify HKL against all claims by his/her client or third parties resulting from the use of personnel.

### VIII. Terms of payment, set-off, right of retention

1. Unless otherwise agreed in writing, the rent and the anticipated Ancillary Costs are due immediately and payable in advance. HKL shall invoice the Ancillary Costs actually incurred separately after the end of the rental period.
2. HKL accepts payments in cash, by EC and credit card, by SEPA direct debit and by bank transfer. After the end of the rental period, HKL can set-off any deposits that may have been paid against any outstanding claims HKL may have against the lessee.
3. A payment by the lessee by bank transfer shall only be deemed to have been made on the day on which it is unconditionally credited to HKL's business account.
4. The lessee is only entitled to set-off with undisputed, legally established or such counterclaims that originate from the same contractual relationship.
5. The lessee is only entitled to exercise a right to refuse performance or a right of retention in relation to claims by HKL in an amount that is in reasonable proportion to his/her counterclaims. Moreover, the exercise of a right of retention is only permitted if the lessee's counterclaim is based on the same contractual relationship with HKL.

### IX. Default in payment, damage caused by default

1. If the lessee is in arrears with a payment in whole or in part for more than five working days or if an application is made for the opening of insolvency proceedings against his/her assets, HKL may, without prejudice to other rights
  - make all claims arising from a financing or repayment agreement immediately due and payable, insofar as the default concerns obligations of the lessee arising from these agreements and
  - withhold all deliveries and services from contracts that have not yet been fulfilled or not yet completely fulfilled.
2. In the event of default, HKL is entitled to demand interest on arrears from consumers in the amount of 5 percentage points and from entrepreneurs in the amount of 9 percentage points above the respective base interest rate. HKL can also demand compensation for delay from entrepreneurs in the amount of at least EUR 40.00 (Section 288 para. 5 German Civil Code). HKL reserves the right to claim higher damages for delay from both consumers and entrepreneurs.

### X. Assignment for security

1. To secure all future claims of HKL arising from the business relationship, the lessee assigns to HKL his/her current and future claims against the clients for whom the lessee uses the rental object. Claims that are subject to the extended retention of title of a supplier of the lessee are transferred to HKL at the time at which they are no longer covered by the extended retention of title. HKL accepts this assignment. On request, the lessee will provide HKL with a list of the assigned claims, including their amount, due date and the address of the lessee's client (third-party debtor).
2. In the event of good cause and after prior warning and setting of a reasonable period of grace, HKL is entitled to disclose the assignment by way of security to the third-party debtors, to dispose of the assigned claims and to collect them from the lessee's client. An important reason exists in particular if the lessee is in default of payment to HKL. The period of grace must be calculated in such a way that the lessee can raise objections or pay the amounts owed. In the event of an application for the opening of insolvency proceedings against the assets of the lessee, no period of grace is required.

### XI. Transfer by way of security

If the assignment by way of security in accordance with Clause X. is not sufficient to secure the fulfilment of HKL's current and future claims against the lessee, HKL may also demand that the lessee assign goods up to 120% of the outstanding HKL claim as security.

### XII. Liability of HKL

1. Claims by the lessee for damages and reimbursement of futile expenses against HKL, its executive bodies and legal representatives and/or vicarious agents (hereinafter collectively: "**HKL**"), irrespective of the legal grounds, in particular due to breach of the contractual obligation and/or tort (hereinafter: "**Claims for Damages**"), are excluded.
2. This does not apply if HKL is guilty of intent or gross negligence and/or in the event of a breach of material contractual obligations. Material contractual obligations are obligations the fulfilment of which makes the proper performance of the contract possible in the first place and compliance with which the lessee regularly relies on and may rely on.
3. In the cases of paragraph 2, HKL is liable in accordance with the statutory provisions. In the event of a breach of material contractual obligations due to simple negligence, however, the scope of liability is limited to compensation for the foreseeable damage typical of the contract.
4. The above limitations of liability do not apply if HKL is compulsorily liable, e.g. for damage resulting from loss of life, physical injury or damage to health.

### XIII. Commencement of the limitation period, duration of the limitation period

The statutory provisions apply to the limitation period for any claims by HKL against the lessee and by the lessee against HKL. If damage to the rental object has been recorded by the police (cf. Clause VII 8.), however, the limitation period for Claims for Damages by HKL against the lessee shall not begin to run until HKL has had the opportunity to inspect the investigation file. However, the limitation period begins at the latest six months after the return of the rental object by the lessee or the collection of the rental object by HKL. In the event that the file is inspected, HKL shall inform the lessee without delay of the time at which the file is inspected.

### XIV. Liability of the lessee

1. The lessee shall be liable to HKL for any damage to the rental object unless the lessee proves that he/she is not responsible for the breach of duty. The lessee's liability also includes any consequential damage, in particular towing costs, expert fees, loss of rent and pro rata administrative costs.
2. The lessee shall be liable without limitation as to the amount if he/she or his/her representatives have caused the damage to the rental object **intentionally**. The lessee is also liable to an unlimited extent for all breaches of traffic and regulatory regulations (e.g. the German Road Traffic Regulations (= StVO)) and other statutory provisions (e.g. due to interference with possession, injury to persons or damage to third party property), insofar as HKL is not responsible for these. In the event of the rental of vehicles or vehicle combinations whose dimensions, axle loads or total weights actually exceed the limits generally permitted by law when in use, as well as vehicles whose design does not allow the driver a sufficient field of vision (e.g. self-propelled working machines with pneumatic tyres such as mobile excavators and wheel loaders), the unlimited liability of the lessee shall apply in particular for damage to roads and their facilities as well as to railway installations, railway vehicles, other railway objects and properties. The lessee is not entitled to object to any liability in this respect on the grounds that the condition of the road did not meet the particular requirements of the use he/she was making of it. The lessee shall indemnify HKL against all fines and warnings, fees and other claims for compensation on the grounds of such infringements or damage which the authorities or other third parties claim from or against HKL.
3. For damage to the rental object caused by **simple negligence** and **gross negligence**, the following applies:

a) Contracts for the rental of rental objects with a replacement value of at least EUR 1,500 include a limitation of liability in favour of the lessee (cf. letters b) and c) for further conditions and details). The scope of the limitation of liability is based on the principles of an insurance policy on the basis of the "*General Conditions for Machinery and Hull Insurance of Mobile or Transportable Equipment*" (*Allgemeine Bedingungen für die Maschinen- und Kaskoversicherung von fahrbaren oder transportablen Geräten*, ABMG) in the currently valid version of the non-binding announcement of the German Insurance Association (Gesamtverband der Deutschen Versicherungswirtschaft e.V., GDV). The limitation of liability only covers those items, risks and damages which are deemed to be insured according to the ABMG, but not those items, risks and damages which are merely described there as "*additionally insurable*".

b) HKL requires the lessee to pay a fee for the limitation of liability in accordance with HKL's valid price list. The fee shall be shown separately in the order form and shall be payable from the date of commencement of the rental up to and including the date of return of the rental object for each calendar day or part thereof in the amount of the full Daily Rent. In the event of use under difficult conditions - in particular in the case of demolition work - the fee payable shall be doubled. The lessee is obliged to draw HKL's attention to such operations when concluding the contract.

From the time of payment of the fee, the lessee's liability to HKL for damage to the rental object that is subject to the ABMG is limited, in the event of damage caused by **simple negligence**, to the amounts stated in the following four groups (A - D) per damage event (= deductible) as follows:

- Group A: Limitation of the lessee's liability to Euro 750.00 deductible
- Group B: Limitation of the lessee's liability to Euro 1,500.00 deductible
- Group C: Limitation of the lessee's liability to Euro 2,500.00 deductible
- Group D: Limitation of the lessee's liability to Euro 4,000.00 deductible

HKL will inform the lessee of the deductible applicable to the respective rental object (groups A - D) for damage caused by simple negligence in the order confirmation (= in most cases the rental agreement). The lessee's liability limit in accordance with the aforementioned groups A - D for damage caused by simple negligence (deductible) is doubled in the event that the rental object is used under difficult conditions, in particular for demolition work.

c) In the event of **gross negligence**, the amount of the lessee's liability shall be determined by the severity of the fault. The liability of the lessee in the event of gross negligence is therefore not limited to the deductible set out in clause XIV. 3. b).

d) The above limitations of liability in the case of simple negligence (cf. paragraph b)) or in the case of gross negligence (cf. paragraph c)) require, in addition to the payment of the applicable fee, the fulfilment of the lessee's obligations to cooperate, clarify and/or mitigate Damages (cf. clause VII. 8.).

e) The lessee shall in any case be liable to HKL without limitation for damage to the rental object for which the lessee

is responsible and which is not subject to the ABMG. A limitation of the lessee's liability in accordance with the ABMG does not exist, for example, for damage to the rental object caused by floods or by sinking or silting up as a result of the particular dangers of use on hydraulic construction sites. Likewise, there is no limitation of liability of the lessee for tyre damage to the rental object, unless the tyre damage is the consequence (consequential damage) of a property damage to other parts of the insured rental object insured in accordance with the ABMG. The above sentence applies accordingly to damage to rubber tracks of excavators on which they move. There is also no limitation of liability for damage that occurs during transport of the rental object that is not carried out by HKL or a transport company commissioned by HKL or that occurs during a transfer of use of the rental object to third parties that is not permitted in accordance with Clause VII. 7.

f) Insofar as the lessee has to pay a deductible in accordance with the above provisions of this Clause XIV.3, the following shall apply: If, on the basis of the contractual modalities of a respective existing insurance contract, HKL has to bear a share of the Damage which is lower in amount than the deductible to be paid by the lessee under this provision, the deductible to be paid by the lessee in the specific case of Damage shall be reduced to the share of the Damage to be borne by HKL.

g) HKL is entitled, at its own discretion, either to have a damaged rental object repaired at its own expense or to report the damage to HKL's respective insurer for the purpose of settling the claim.

4. Rental objects with a replacement value of less than Euro 1,500.00 must be insured by the lessee at his/her own expense for the benefit of HKL as beneficiary of the insurance contract against damage (fire, theft, loss and damage) for the duration of the rental period. If the lessee fails to comply with this obligation, he/she must reimburse HKL for all damage resulting from this breach of duty.
5. The liability risk of the lessee arising from the use of the rental object is generally not insured. Liability insurance cover exists only in exceptional cases, insofar as this is required by law. This is in particular not the case for self-propelled working machines whose maximum speed does not exceed 20 km/h. If there is no liability insurance cover for the rental object, the lessee must take out liability insurance at his/her own expense against the risks arising from the use of the rental object. If the lessee does not comply with this obligation, he/she is also obliged to compensate HKL for any resulting damage. If the rental object is a self-propelled working machine with pneumatic tyres (e.g. mobile excavator, wheel loader) whose maximum speed exceeds 20 km/h, participation in public road traffic is only permitted if the rental object is provided with an official licence plate. The use of such a rental object without a licence plate is an administrative offence which can be punished with a fine of up to two thousand euros.
6. As a precaution, the lessee assigns to HKL any claims against the damage insurance in accordance with Clause XIV. 4. Furthermore, the lessee assigns to HKL his/her claims against the liability insurance in accordance with Clause XIV. 5. insofar as HKL is liable to third parties for damage caused by the operation of the rental object by the lessee. HKL accepts the aforementioned assignments.
7. All insurance policies taken out by HKL and limitations of liability granted to the lessee in accordance with Clause XIV. 3. apply exclusively to the use of the rental object within the Contract Territory.

#### **XV. Place of performance, place of jurisdiction**

1. The law of the Federal Republic of Germany shall apply.
2. The place of performance for all claims is the registered office of the respective HKL Rental Station, unless otherwise agreed in writing or text form.
3. If the lessee is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the place of jurisdiction for all disputes arising from this contract shall be Hamburg-Mitte. The same applies if such a lessee has no general place of jurisdiction in the Federal Republic of Germany or his/her place of residence or usual abode is unknown at the time the action is brought. HKL shall also be entitled to sue the lessee at his/her place of business/residence.

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