

Terms and Conditions for the Rental of Pipeline Construction Machinery

All offers and orders are subject exclusively to the following contractual conditions. The Lessor's offers are non-binding and subject to change without notice. Placed orders only become binding upon written confirmation from the Lessor. Ancillary agreements, supplements and amendments require written confirmation by the contracting parties in order to be effective. It is only possible to waive the written form in writing.

1. The contracting parties' general rights and obligations

1. The Lessor undertakes to provide the Lessee with the rented item for the agreed period of time, cf. Section 2 (1).
2. The Lessee undertakes to
 - to pay the rental fee as agreed,
 - to carefully observe the relevant accident prevention and industrial safety regulations as well as road traffic regulations,
 - to have the rented item operated by trained specialist personnel, to protect it from overuse and to use it only as intended; untrained staff or staff from employment agencies are not permitted.
 - to always inspect the condition of the rented item before beginning work by checking the water and oil levels, the tyre pressure and the lubrication,
 - to only put an rented item that is fit for service into operation,
 - to ensure proper and professional daily care and maintenance,
 - to treat the rented item properly and to return it at the end of the rental period cleaned and with the same tank level as at the time of acceptance,
 - not to refuel with biodiesel (RME) or fuel oil – also as admixture.
3. The Lessee undertakes to notify the Lessor of the respective location or place of use of the rented item and to coordinate the relocation of the rented item with the Lessor.
4. The Lessee acknowledges that the rental equipment is equipped with a telematic monitoring system, which enables interactive information exchange via a radio-controlled network for monitoring or, if necessary, controlling the activities of the rental equipment. Personal data is not collected, transmitted or processed.

2. Delivery of the rented item, Lessor's default

1. The Lessor shall make the rented items available for shipment in an operational and faultless condition for collection at the respective named location at the agreed commencement of the rental period or shall bring them to the specified place of use in accordance with the contractual agreement at the expense and on the account of the Lessee. The risk of transport shall pass to the Lessee upon collection / shipment or return. The Lessee is also responsible for the return transport to the agreed destination at its own expense.
2. If the Lessor is in default of delivery at the beginning of the rental period, the Lessee may demand compensation. In the event of slight negligence on the part of the Lessor, the compensation for each working day shall be limited to a maximum of the amount of the daily rental price. Instead of demanding compensation, the Lessee may withdraw from the contract after setting a reasonable grace period and threatening to withhold performance if the Lessor is still in default at this point in time.

3. Defects in the rented item upon delivery

1. The Lessee is entitled to inspect the rented item in good time before the start of the rental period and to give notice of any defects. The costs of an inspection shall be borne by the Lessee. If the rented item is accepted without complaint, delivery is deemed to be proper and defect-free. An acceptance/delivery protocol must be prepared.
2. Defects that are identifiable upon delivery and that significantly impair the intended use may no longer be reported if they were not reported to the Lessor in writing immediately after inspection. Any other defects already existing at the time of delivery must be reported in writing immediately after discovery.
3. The Lessor shall repair any defects notified in good time which were present at the time of delivery. The costs of repairing such defects shall be borne by the Lessor. The Lessor can also have the repair carried out by the Lessee. The Lessor is also entitled to provide the Lessee with a functionally equivalent rented item. In the event of substantial impairments of the rented item, the Lessee's payment obligation shall be postponed by the necessary repair time.
4. Should the Lessor fail to repair a defect that exists at the time of delivery within a reasonable grace period granted to it due to its own fault, the Lessee has a right of withdrawal. The Lessee's right of withdrawal shall also exist in other cases of the Lessor's failure to repair a defect that exists at the time of delivery.

4. Lessee's service, insurance

1. Lessee is responsible for the correct and timely (interval) maintenance of the equipment according to the maintenance manual. The provision of service parts such as oil- and air filters, etc. (at request offered by Lessor) is not included in the rental price. The rental price includes however:
 - a) all wear and tear repairs resulting from the proper use of the rented item,
 - b) ongoing inspections and monitoring, if desired by Lessor
2. Not included in the service:
 - a) filter for protective ventilation,
 - b) chisel breakage,
 - c) all operating materials (lubricants and fuels), as well as their disposal,
 - d) operating personnel,
 - e) loading and unloading, freight, transport for outward and return
3. The Lessee shall take out comprehensive insurance for the rented items. The insurance shall cover damage to the rented item caused by fire, vandalism and theft. The Lessee is responsible for any additional claims. For all damages caused by the Lessee or its vicarious agents through negligence, gross negligence, intent or culpability, the Lessee is liable to pay compensation to the Lessor. In this case, the Lessor's obligation to provide a replacement shall not apply. The deductible for the insurance is EUR 7,500.00 per claim. For machines used in demolition, the excess is EUR 9,500 per claim. In the event of theft, a deductible of 10%, min. EUR 5,000.00, - and max. EUR 30,000.00 - must be paid to the Lessor as a deductible.

5. Lessor's limitation of liability

1. Further claims for damages against the Lessor, in particular compensation for damages not incurred to the rented item itself, may only be asserted by the Lessee in the event of gross negligence on the part of the Lessor. In all other cases, any liability is excluded.
2. If, through the Lessor's fault, the rented item cannot be used by the Lessee in accordance with the contract as a result of non- or fault implementation of suggestions, advice and other contractual ancillary obligations existing before or after conclusion of the contract – in particular operating and maintenance instructions for the rented item –, the provisions of Section 3 (3) and (4) as well as Section 5 (1) shall apply mutatis mutandis to the exclusion of further claims by the Lessee.

6. Rental price and payment, assignment to secure the rent due

1. The rental flat rate is calculated on the basis of a working time limited to 200 working hours per month. Invoicing for each calendar day will be according to following formula: agreed monthly rental rate/30 days. The Lessor must be notified immediately of any deployment under difficult or different working conditions; they will be invoiced separately.
2. The additional hours per month (depending on the type of contract) are regarded as additional hours and invoiced separately. The additional hours shall be notified to the Lessor monthly or, in the case of shorter contractually agreed rental periods, immediately after the end of the rental period and shall be documented at the Lessor's request.
3. The Lessee only has a right of retention and right of set-off in the event that the Lessee has counterclaims that are undisputed by the Lessor or are legally binding, but not in the case of disputed counterclaims.
4. The rental fee is due immediately after receipt of the invoice without any deduction. All taxes or duties levied outside Germany are the sole responsibility of Lessee. If the Lessee is more than 14 calendar days in arrears with the payment of a due amount after a written reminder, or if a bill of exchange or cheque submitted by the Lessee was protested, the Lessor is entitled without recourse to a court of law and after notice to collect the rented item at the expense of the Lessee, who shall facilitate access to the rented item and its removal, and to dispose of it otherwise. The claims to which the Lessor is entitled under the contract remain valid; however, the amounts which the Lessor has achieved or could have achieved within the agreed term of the contract, for example by renting the item elsewhere, shall be settled after deduction of the costs incurred by the retrieval and new rental.
5. If an advance payment arrangement has been agreed, this shall apply for the entire rental period and shall also apply to subsequent rentals until another payment arrangement has been made. In the case of a advance payment agreement, the Lessee is automatically in default of payment if it does not pay the advance payment invoice immediately upon receipt. In this case, the Lessor can collect the rented item without further reminder or announcement and dispose of it otherwise.
6. Due amounts shall be included in the current account with regard to a reservation of title in the current account agreed between the contracting parties for deliveries.
7. The Lessee shall assign to the Lessor its claims against its client, for whose order the rented item is used, in the amount of the agreed rental price less the deposit received. The Lessor accepts the assignment.

7. Interruption of the rental period

1. Interruptions in the rental caused by the Lessee do not lead to a rent reduction or do not constitute important grounds for termination, they do not create any entitlement to suspensions or reductions in the payment of rental fees.

2. The Lessor is obliged only to the contents of its service. Operational or weather-related shut-downs are at the Lessee's expense and do not affect either the basis or amount of the concluded rental agreement.

8. Lessee's maintenance obligation

1. The Lessee is obligated,
 - a) to protect the rented item against overuse in any way;
 - b) to carry out the proper and professional maintenance and care of the rented item at its own expense;
 - c) to announce necessary inspection and repair work in good time and to have it carried out immediately by the Lessor.
2. The Lessor is entitled to inspect the rented item at any time and, after prior consultation with the Lessee, to inspect it itself or have it inspected by an agent. The Lessee is obliged to facilitate the Lessor's inspection in every way. The costs of the inspection shall be borne by the Lessor.
3. At the request of the Lessee, the Lessor shall provide the construction machine with a radio. The Lessee is responsible for registering with the radio licence fee authority.
4. The Lessor is obliged to adhere to the manufacturer's specifications when refuelling the rental machine. The proportion of biodiesel must not exceed 5 %. The Lessee is liable for consequential damage due to improper refuelling.
5. The attachment of the Lessee's own fixtures to the construction machines provided by the Lessor must be expressly approved by the Lessor.

9. Termination of the rental period and return of the rented item

1. The Lessee is obliged to notify the Lessor in good time of the intended return of the rented item (free notification).
2. The rental period ends on the day on which the rented item arrives at the Lessor's storage location or at another agreed destination in an orderly and contractual condition with all parts required for its commissioning, but at the earliest upon expiry of the agreed rental period.
3. The Lessee must return the rented item or have it ready for collection in an operational and cleaned condition with the same tank level as when it was delivery, Section 8. (1) (b) and (1) (c) apply mutatis mutandis.
4. The return must take place during the Lessor's normal business hours at a time that allows the Lessor to inspect the rented item on the same day.

10. Violation of the maintenance obligation

1. If the rented item is returned in a condition that indicates the Lessee has not fulfilled its maintenance obligation as provided for in Section 8, the Lessee is obliged to pay the rental fee as compensation until the repair work not carried out in breach of contract is completed.
2. The extent of the defects and damages for which the Lessee is responsible shall be notified to the Lessee, and it shall be given the opportunity to carry out an inspection. The Lessor notify the Lessee of the estimated costs of the repair work required to remedy the defects, if possible before the start of the repair work.
3. The proper return of the rented item shall be deemed accepted by the Lessor if apparent defects were not reported immediately in the event of timely return within the meaning of Section 9 (4) and, in the case of other defects, within 14 calendar days of arrival at the destination.

11. Lessee's additional obligations

1. The Lessee may neither transfer the rented item to a third party nor assign rights from this contract or grant rights of any kind to the rented item.
2. Should a third party assert rights to the rented item through confiscation, seizure or the like, the Lessee is obliged to notify the Lessor immediately by registered letter and to inform the third party of this by registered letter.
3. The Lessee shall take appropriate measures to protect the rented item against theft.
4. The Lessee must inform the Lessor of all accidents and await its instructions. The police must be called in in the event of traffic accidents or theft.
5. If the Lessee culpably violates the above provisions (1) to (4), it is obliged to compensate the Lessor for all damages resulting from this.

12. Termination

1.
 - a) A rental agreement concluded for a specific rental period is generally irrevocable for both contracting parties.
 - b) The same applies to the minimum rental period under a rental agreement concluded for an indefinite period. At the end of the minimum rental period, the Lessee has the right to terminate the rental agreement concluded for an indefinite period with one day's notice.
 - c) With regard to rental agreements for an indefinite period without a minimum rental period, the period of notice is as follows
 - one day, if a daily rental price,
 - two days, if a weekly rental price,
 - one week, if a monthly rental pricehas been agreed.

2. The Lessor is entitled to terminate the rental agreement without notice after announcement
 - a) in the case of Section 6 (5);
 - b) if, after conclusion of the contract, the Lessor becomes aware of facts indicating a substantial reduction in the Lessee's creditworthiness;
 - c) if the Lessee, without the consent of the Lessor, does not use the rented item or part thereof as intended or moves it to another location;
 - d) in cases of violations of Section 8 (1)
3. If the Lessor makes use of the right of termination to which it is entitled under (2), Section 6 (5) in conjunction with Sections 10 and 11 shall apply mutatis mutandis.
4. The Lessee is entitled to terminate the rental agreement without notice after announcement if use of the rented item is not possible for a longer period of time owing to reasons for which the Lessor is responsible.

13. Loss of the rented item

1. Should it not be possible for the Lessee for any reasons, even if it is not responsible for them, to comply with the obligations incumbent on it to return the rented item, it is obliged to notify the Lessor of this immediately and to pay damages. The amount of damages shall be determined on the basis of the replacement value of an equivalent rented item.

14. Other obligations

1. Should any provision of this contract be invalid, this shall not affect the remaining provisions of this contract.
2. The Lessor reserves the right of ownership to cost estimates and other documents; they may not be made accessible to third parties.
3. If the Lessee is a registered trader, corporate body under public law or special fund under public law, the place of performance and exclusive place of jurisdiction for both parties and for all claims – also for summary proceedings and summary bill enforcement proceedings – is the Lessor's head office or – at its option – the registered office of a branch office that concluded the contract. The Lessor may also take legal action at the Lessee's general place of jurisdiction.

Stand Januar 2019

