

## **General Terms and Conditions of Hire of BENNINGHOVEN, Branch of Wirtgen Mineral Technologies GmbH**

### **1. Scope of applicability**

1.1 All offers to hire goods shall be subject exclusively to these General Terms and Conditions of Hire. Any conflicting or differing terms and conditions of a lessee shall not be recognised. This shall also apply if the lessor delivers the goods to the lessee unconditionally in full knowledge of the lessee's conflicting or differing terms and conditions. Deviations from these Terms and Conditions of Hire shall only be effective if confirmed in writing by the lessor.

1.2 These Terms and Conditions of Hire shall apply to all future transactions of a similar nature with the same lessee even if not agreed again explicitly.

1.3 The lessor's Repair and Installation Terms and Conditions shall also apply to services involving on-site installation.

### **2. Offer and formation of a contract**

2.1 All offers made by the lessor are non-binding unless explicitly stated otherwise. Cost estimates are non-binding. Initial offers or cost estimates shall be provided free of charge unless otherwise agreed. The lessor reserves the right to charge an appropriate fee for additional offers or cost estimates, as well as for design work, if a hire contract is not entered into.

2.2 A hire contract shall not enter into force until the lessor has provided written confirmation. Changes, additions or ancillary agreements also require written confirmation by the lessor.

2.3 Documents included in the offer such as images, drawings, weights and dimensions are approximate guides only unless they are expressly designated as binding.

2.4 The lessor shall retain all property rights and copyrights to images, drawings, cost estimates, calculations and other documents. They must not be made available to third parties without the lessor's prior express written consent. They must be returned to the lessor without undue delay

(i) if a hire contract is not entered into or

(ii) once the hire contract has been performed in full.

2.5 If the lessor temporarily lends the goods (e.g. for demonstration or bridging purposes), the provisions of the hire contract shall apply with the necessary modifications.

### **3. Period of hire**

3.1 Unless otherwise agreed, the period of hire shall begin when the goods are delivered to the lessee (see Item 8.1). If the contracting parties have not agreed on a specific end date, the lessee and lessor shall agree a standard hire period in days, weeks or months that begins when the goods are delivered or on the agreed date. If no agreements are made, the standard hire period shall be one month.

3.2 If the hired goods are not returned to the lessor when the standard hire period ends, the hire contract shall be extended automatically by a period corresponding to the standard hire period, unless this contract is terminated in good time before the expiry of the standard hire period or a subsequent additional hire period. Notice of termination shall be given in good time if it is received by the lessor three working days (where the standard hire period is measured in days), one week (where the standard hire period is measured in weeks) or one month (where the standard hire period is measured in months) before the end of the standard hire period.

3.3 Notice of termination must be given in writing; reasons need not be specified.

3.4 Once the hire contract ends, the lessee must return the hired goods in an orderly, i.e. clean and complete,

condition without undue delay. The goods must be returned in their entirety, i.e. including all additions and equipment components, in a clean, undamaged condition.

3.5 The lessee shall bear the costs incurred from any defects and damage to the hired goods going beyond normal wear and tear and/or caused by improper use.

3.6 If the lessee continues using the hired goods after the contract has been terminated, this shall not constitute an extension of the hire contract. There shall be no tacit extension of the hire contract. If the lessee fails to return the hired goods once the hire contract ends, the lessor may demand the agreed hire charge, by way of compensation, for the period in which the hired goods are withheld, or if a hire charge was not agreed, the standard local hire charge. The lessee hereby waives any right of retention – for any reason whatsoever.

3.7 If the lessee defaults on payment, the lessor shall be entitled to charge interest on arrears. The interest rate for the year shall be eight percentage points above the base rate. The base rate changes on 1st January and 1st July each year by the percentage points by which the reference variable has increased or decreased since the last change in the base rate. The reference variable is the interest rate of the European Central Bank's latest main refinancing operation before the first calendar day of the half year in question. If the lessor proves the damage caused by default was greater, it may assert a claim for this. However, the lessee is entitled to prove the damage caused by default was less.

3.8 If the lessor becomes aware of any circumstances that impair the lessee's creditworthiness, all deferred receivables must be paid immediately. In such cases, the lessor may also insist on advance payment or the rendering of security.

### **4. Hire charge and payment of the hire charge**

4.1 The hire charge shall be calculated by days, weeks or months according to the agreed standard hire period (Item 3.1). The hire charge shall be based on the normal working hours for a month, i.e. a maximum of eight hours of use per day. If the usage time calculated on this basis is, or is likely to be, exceeded by more than 5%, the lessor may amend the hire charge in accordance with the expected or actual usage time. The lessee must notify the lessor without undue delay of any expected or actual additional use of the hired goods.

4.2 The hire charge does not include VAT. The contracting parties shall endeavour to avoid unnecessary expenses and breaches of fiscal and customs provisions. The lessee must, therefore, provide all necessary information where required. It must be ensured in any case that the lessor receives the full hire charge without deductions. Charges, taxes or customs duties shall be borne by the lessee.

4.3 The hire charge does not include the wear of wear parts. The lessor is entitled to charge the lessee for wear costs according to the use of wear parts.

The costs of wear to wear parts shall be charged based on information about wear recorded in inspection checklists or comparable records. The costs shall be calculated as a percentage based on the current selling price of the wear parts in question plus any work time incurred. Other costs for operating and repairing the hired goods during the hire period shall be borne by the lessee.

4.4 The lessor shall issue invoices for the hire charge. The lessor is entitled to issue partial invoices during the standard hire period. If the standard hire period is measured in days or weeks, the lessor is entitled to issue invoices at weekly intervals. If the standard hire period is measured in weeks or months, the lessor may

issue partial invoices at monthly intervals. The amount of the partial invoices shall be calculated pro rata.

4.5 The lessor is entitled to demand advance payments. If the lessor demands an advance payment for the standard hire period before the goods are delivered, it may refuse to surrender the goods until it has received the advance payment.

4.6 The hire charge shall be payable in full no later than eight days after the invoice date.

4.7 The lessee shall not be entitled to offset, retain or reduce the hire charge unless the lessee's counterclaims are undisputed by the lessor or have been established as legally binding. This shall apply, with the necessary modifications, to the assertion of warranty claims.

4.8 Any fees, contributions or other charges payable under public law that are levied during the contract due to the hire, possession or use shall be borne by the lessee. This shall also apply to any inspections ordered by the authorities. Should claims be made against the lessor or should the lessor be required to make advance payments in such cases, the lessee must reimburse the lessor for the costs.

4.9 Delays to the delivery of the hired goods due to force majeure and events that make delivery difficult or impossible for the lessor, such as war, terrorist attacks, import and export restrictions, strikes, lockouts or official orders, including those that affect the lessor's own suppliers or subcontractors, shall not give the lessee the right to terminate the hire contract unless otherwise agreed. The lessor shall notify the lessee of the start, end and expected duration of the aforementioned circumstances where possible.

4.10 The lessor shall not be considered in default if the lessor provides the lessee with a replacement by the contractually agreed delivery date until the actual goods are delivered, provided the replacement meets the lessee's technical and functional requirements in all material respects and the lessor bears all costs for providing the replacement goods.

4.11 If the lessor is in default and this causes damage for the lessee, the lessee shall be entitled to demand lump-sum compensation. This compensation shall amount to 0.5% for each full week of the delay, but in total no more than 5% of the value for that part of the performance which cannot be used on time or in accordance with the contract as a result of the delay. No further claims for compensation due to default are permitted.

## **5. Obligations of the lessee**

5.1 The lessee shall

- not overload the hired goods in any way and ensure they are used properly, in particular by trained specialist staff;
- have the hired goods serviced and maintained at regular intervals at its own cost by the lessor or a third party engaged by the lessor;
- follow the maintenance, care and usage instructions of the lessor and/or manufacturer of the hired goods;
- arrange for the lessor or a third party engaged by the lessor to undertake inspections at regular intervals in accordance with standard specifications (e.g. using a service record) at the lessee's cost;
- arrange for the lessor or a third party engaged by the lessor to properly and professionally undertake the required repair work to maintain the hired goods, using original spare parts, throughout the hire period at the lessee's cost – this provision shall apply, with the necessary modifications, for wear parts – and

- comply with and fulfil all legal and administrative provisions concerning the possession, use or maintenance of the hired goods.

The lessee shall indemnify the lessor from third-party claims arising from culpable failure to observe these obligations.

5.2 On request, the lessee shall grant the lessor or its agents access to the hired goods at any time during standard business hours by arrangement in order to inspect the use and operational readiness of the hired goods. Each party shall bear any direct or indirect costs it incurs from this.

## **6. Sub-letting**

6.1 The lessee may only sublet the hired goods to a third party, assign rights from this contract or grant rights of any kind whatsoever to the hired goods with the lessor's prior written consent.

6.2 The lessee shall be responsible for any fault of a third party it has permitted to use the hired goods to the same extent as for its own faults and shall treat said fault as its own.

6.3 The sub-lessee must be informed that it can only acquire the hired goods with the owner's (lessor's) consent. Upon signing the sublease contract, the sub-lessee shall confirm in writing that it is aware of the ownership relationships and the requirement to obtain the lessor's consent in the event of any planned acquisition of the hired goods. The lessee must notify the lessor without undue delay of the sublease contract's termination.

## **7. Seizure of the hired goods etc.**

7.1 In the event of orders from higher authorities, confiscations, seizures or the like, regardless of whether these are instigated by an authority or a private party, the lessee shall disclose the ownership relationships verbally and in writing without undue delay and shall notify the lessor thereof without undue delay, providing all necessary documents.

7.2 The lessee must notify the lessor without undue delay if a compulsory sale or sequestration is applied for concerning the property on which the hired goods are located.

7.3 The lessee shall bear the costs for all measures to remedy such intervention.

## **8. Transfer of risk**

8.1 The risk shall be transferred on the contractually agreed delivery date or actual delivery date, whichever occurs first. When the machine is delivered, a checklist or delivery record shall be drawn up to establish the condition of the machine. The lessee shall cooperate in the preparation of such documents when the machine is delivered. To this end, the lessee or an authorised employee or third party shall be present at the delivery. If they are not present, the delivery of the machine shall be as recorded by the lessor.

8.2 The risk of damage to and deterioration of the hired goods shall transfer to the lessee upon delivery of the hired goods. If the lessee defaults on acceptance as per Item 293 of the German Civil Code, delivery shall still be deemed to have taken place.

The delivery location (place of performance) shall always be the lessor's business premises, regardless of whether the hired goods are shipped by the lessor, delivered to the lessee's business premises or place of use by the lessor or a third party engaged by the lessor, or collected by the lessee itself or a third party engaged by the lessee.

If the hired goods are at a different location before the hire period begins or before delivery takes place (e.g. the premises or place of use of a previous lessee or the manufacturer) and are shipped or transported to the lessee from there by the lessor or an affiliated company or authorised third party, or the lessee or a third party engaged by the lessee collects the hired goods from

another location, that location shall be equivalent to the lessor's business premises.

8.3 The lessee shall bear the costs of any startup and maintenance work required due to damage that occurs after the transfer of risk. This shall also apply in the event of theft or other loss or damage/substantial deterioration that makes repairs not financially viable. In such cases, the lessee must pay the lessor compensation for the fair value of the lost goods.

8.4 The lessee shall cease to bear the risk once the hired goods are returned to the lessor's business premises when or after this contract ends (actual return date).

The return location shall always be the lessor's business premises, regardless of whether the hired goods are shipped by the lessee, delivered to the lessor's business premises by the lessee or a third party engaged by the lessee or collected by the lessor itself or a third party engaged by the lessor.

If the lessee ships or transports the goods to another location (for example, the place of use of a subsequent lessee or buyer) on the lessor's instructions, or the lessor or an authorised third party collects the goods from the lessee and transports them to a location other than the lessor's business premises, this shall be equivalent to the lessor's business premises.

8.5 If shipping is delayed or does not take place due to circumstances not attributable to the lessor, the risk shall be transferred to the lessee from the date on which notice is given of readiness for shipping or acceptance.

8.6 If the lessee defaults on delivery or breaches other obligations to cooperate, the lessor shall be entitled to demand compensation for the damage it incurs including any additional expenses, in particular costs incurred due to the delivery delay.

#### **9. Liability of the lessee**

9.1 The lessee shall be liable for the operational risk associated with the hired goods.

9.2 If third parties assert compensation claims against the lessor or an affiliated company of the lessor based on personal injury or damage to property – on any legal grounds whatsoever – due to the operational risk associated with the hired goods, the lessee shall indemnify the lessor from all claims and costs within their internal relationship.

9.3 In the event of damage of any kind whatsoever, the lessee shall notify the lessor without undue delay of the course of events, extent of the damage and parties involved and provide all required information.

#### **10. Lessor's liability for defects and compensation**

- The lessor shall only be liable for all compensation claims of the lessee that are not governed in this contract – irrespective of the legal grounds on which they are based –, in particular compensation for damage not relating to the hired goods themselves
- in the event of malicious intent,
- in the event of gross negligence by the lessor's managing board or executives,
- in the event of culpable loss of life, personal injury or damage to health,
- in the event of defects which the lessor maliciously conceals or which the lessor has guaranteed the absence of,
- in the event of defects in the hired goods in cases where liability exists under the Product Liability Act (Produkthaftungsgesetz) for bodily injury and property damage to items used in a private context.

In the event of a culpable breach of essential contractual obligations, the lessor shall also be liable for gross negligence on the part of non-executive employees and

for slight negligence, but in the latter case limited to damage which is reasonably foreseeable and typical for this kind of contract.

Any and all further claims, in particular liability for consequential damage, shall be excluded.

#### **11 Machine and public liability insurance**

11.1 The hired goods and their operation must be insured.

11.2 Machine insurance may be taken out by the lessee or lessor by agreement.

If the contracting parties agree that the lessee is to take out the machine insurance or if the contracting parties have not reached an agreement, the lessee shall take out machine insurance (which must also cover the transportation risk) at replacement value, including all ancillary costs, against all risks including fire, natural hazards, vandalism, theft, transportation, etc. to the lessor's advantage for the duration of the hire period or provision period.

The lessee hereby assigns to the lessor its current and future rights and claims against its machine insurer under the insurance for which it has accepted the burden of insurance. The lessor hereby accepts such assignment.

The lessor's insurance must include the following provisions, which the insurer must confirm:

- The policyholder/lessee shall not hold rights in its own name that are granted to the lessor under the insurance contract. The lessor alone shall be entitled to hold such rights, in particular the right to accept compensation, even if the lessor is not in possession of the insurance certificate.
- The policyholder must not cancel the insurance or reduce the amount insured and must continue the insurance unchanged unless the lessor gives its written consent to a different procedure and the policyholder has submitted this declaration of consent to the insurer, which must take place at least one month before expiry in order to be valid. The lessor is entitled, but not obliged, to pay the insurance premium due.

11.3 The following shall apply to public liability insurance:

In any case, the lessee shall insure the operational risk associated with the hired goods (liability insurance) at its own cost.

11.4 Before the hired goods are delivered, the lessee shall present a suitable insurance certificate or certificates to prove that the hired goods are covered by business liability insurance and, where the lessee has undertaken to take out machine insurance, machine insurance for the term of the contract. The required insurance certificate(s) must contain all necessary information on the type, extent and duration of the insurance in question.

Any failure to provide insurance certificates in whole or part upon delivery of the hired goods shall entitle the lessor to withhold the hired goods until the outstanding insurance certificates are provided. If the lessor does not exercise its retention right, the lessee shall provide the lessor with the required insurance certificate(s) without undue delay, and at the latest within ten working days after delivery of the hired goods. If the insurance certificate(s) is/are not provided, the lessor shall be entitled to take out the required insurance at the lessee's cost. Until the insurance certificate is provided or the required insurance is taken out by the lessor at the lessee's cost, the lessee shall be liable – subject to Item 10 of these Terms and Conditions of Hire – for all damage, including consequential damage, arising for any reason whatsoever associated with the lack of agreed insurance.

In the event of retention, the lessor shall be entitled to demand payment of the agreed hire charge from the start of the hire period.

11.5 The lessee must bear any deductibles due under the insurance policies in the event of a claim, regardless of whether the insurance was taken out by the lessee or lessor.

11.6 In the event of a criminal offence relating to the hired goods (theft, including theft of individual parts, embezzlement, damage to property, etc.), the lessee must report said offence to the authority responsible (public prosecutor, police) without undue delay and notify the lessor of this without undue delay. If the hired goods cannot be recovered due to the criminal offence (in particular theft or embezzlement) and there is no insurance cover in whole or part – for any reason whatsoever –, the lessee shall be liable irrespective of which party is at fault and must pay the lessor the fair value of the hired goods at the time of the theft or embezzlement. The fair value shall be equal to the amount payable by the lessor in order to purchase equivalent goods.

## **12. Termination without notice**

The lessor is entitled to terminate the hire contract without notice if

- the lessee falls into arrears in whole or part on a lease payment or another specially agreed payment for more than five banking days,
- the lessee does not meet the obligations in Item 5,
- the lessee sublets the hired goods to a third party without prior written permission (Item 6),
- the lessee assigns rights from this contract to a third party without permission or grants rights to the hired goods to third parties without the lessor's permission,
- the lessee makes changes to the hired goods within the meaning of Item 13 without the lessor's consent,
- significant circumstances become known that call into question the lessee's performance of this contract, such as suspensions of payments, protests of a bill, enforcement measures or insolvency.

## **13. Changes to the hired goods**

Changes to the equipment, particularly attachments, installations and removals, must not be made without the lessor's consent. If changes are made with consent, the lessee must restore the goods to their original condition at its own cost when the hire contract ends.

## **14. Limitation period**

The limitation period for all claims by the lessee – for any reason whatsoever – shall be 12 months. The statutory periods shall apply to any compensation claims in accordance with Item 10.

## **15. Rights to software/data protection**

15.1 If the hired goods include software, the lessee shall be granted a non-exclusive right to use the software supplied including its documentation on the hired goods for which the software is intended. It is not permitted to use the software on more than one system.

15.2 The lessee may only reproduce, rework or translate the software, or convert the object code into the source code, to the extent permitted by law. The lessee shall not remove the manufacturer's information, particularly copyright notices, nor change it without the lessor's express prior consent.

15.3 All other rights to the software and documentation, including copies, shall be retained by the lessor or software vendor. The software shall not be sub-licensed nor passed on to third parties in any other form.

15.4 The lessor shall not be liable for integrated software, or software to be installed in future (including in

the form of upgrades or updates) if the lessee does not use the software properly. Cases of improper use shall be, in particular, those in which the lessee or a third party

- erases, changes or otherwise influences the machine parameters of the hired goods without the lessor's written consent, thereby potentially impairing the functionality of the hired goods;
- installs software (including in the form of an upgrade or update) that the lessor has not authorised for the applicable machine type that the lessee has in its possession;
- installs software (including in the form of an upgrade or update) that the lessor has authorised for the applicable machine type while the engine is running, or without monitoring the hired goods throughout the installation, upgrade or update process, continuously checking the goods' behaviour and keeping personnel at a safe distance.

15.5 The lessor shall be entitled to equip the hired goods with Fleet View and similar systems (e.g. WITOS). Such systems shall store machine data (e.g. on ongoing operations or standby times) and transmit it to the lessor. The lessor is entitled to analyse and process the data free of charge and to use it without limitation for internal purposes unless the lessee expressly objects to this. Data may be passed on to third parties, for example for reference and comparison purposes, provided it is in anonymised form or the lessee gives its express consent to this when requested.

15.6 If personal data is stored during an installation, upgrade or update, the following shall apply:

The lessor warrants it shall comply with data protection regulations. In particular, where personal data is disclosed for software installation purposes, it shall not be passed on to third parties and shall be processed and used internally only in order to fulfil the contract. Such data shall be erased as soon as it is no longer required. Should erasure be contrary to statutory retention periods, the data shall be blocked rather than erased in accordance with applicable statutory provisions.

Where necessary under data protection provisions, the lessee shall obtain the required written declarations of consent of the individuals whose personal data is required in order to fulfil the contract before the contract in question is concluded.

## **16. Third-party property rights**

16.1 The lessor shall only be liable for breaches of third-party rights due to the lessee's use of the hired goods if such use was in accordance with the contract and for the intended purpose.

16.2 If a third party asserts claims against the lessee because use of the hired goods infringes the third party's rights, the lessee must notify the lessor without undue delay. The lessor shall be entitled, but not obliged, to avert the asserted claims at its own cost where admissible. The lessee shall not be entitled to recognise the third-party claims before it has given the lessor reasonable opportunity to avert the third-party rights by other means.

16.3 Item 10 shall apply additionally for compensation claims and claims for reimbursement of expenses.

## **17. Export control**

17.1 Any provision of the hired goods outside the country in which the lessor has its registered office shall be conditional upon there being no national or international export control provisions, such as embargos or other sanctions, that conflict with the provision. The lessee undertakes to produce all information and documentation that is required for the export or shipment. Delays due to export inspections or clearance proceedings shall invalidate agreed handover dates. If required

approvals are not granted or if the provision is unsuitable for approval, the contract shall be deemed not to be concluded with respect to the items concerned.

17.2 The lessor is entitled to terminate the contract without notice if necessary in order to comply with national or international statutory provisions.

17.3 In the event of termination pursuant to Item 17.2, the lessee shall not be permitted to assert compensation claims or other rights on grounds of the termination.

17.4 The lessee shall not be authorised to use or sublet the hired goods abroad if such use or sub-letting conflicts with national and international export control law.

**18. Applicable law, jurisdiction, severability clause**

18.1 The contractual relationship between the lessor and lessee shall be subject exclusively to the law of the country in which the lessor is domiciled.

18.2 The sole place of jurisdiction for any and all disputes arising from the contractual relationship between the lessor and lessee, including for claims from bills of exchange or cheques, shall be the court with jurisdiction in the place of the lessor's registered office. However, the lessor, at its due discretion, is entitled to take action against the lessee at the latter's general place of jurisdiction.

18.3 Should one or more provisions or part of a provision of these Terms and Conditions of Hire be or become invalid for any reason whatsoever, this shall not affect the validity of the remaining provisions. The lessee and lessor shall replace the invalid provisions or partial provisions with provisions that are legally admissible and mostly closely correspond to the economic intention of the original provision. This shall apply, with the necessary modifications, to any unintended loopholes.

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