

# **General Terms and Conditions of Business of Wimmer Maschinentransporte GmbH**

## **for the hire of lifting platforms and stackers General Terms and Conditions of the German Federal Working Group Heavy Transport and Crane Work AGB-BSK Platforms and Stackers, as at 2014**

### **1. Application scope**

- 1.1 Work platforms (platforms) and industrial trucks (forklift and telescopic stackers etc.) are hired out exclusively on the basis of the following General Terms and Conditions of Hire. Contradicting or deviating terms and conditions of the Lessee are explicitly refuted. In continuing business relations with contractors the once-only explicit referral to these General Terms and Conditions of Hire suffices also for future contractual relations.
- 1.2 These General Terms and Conditions of Hire apply towards consumers as well as towards contractors, corporate bodies under public law and special funds under public law, unless a distinction is drawn in the respective clause. Clauses that apply towards contractors also apply towards corporate bodies under public law and special funds under public law.

### **2. Proposal, Contract conclusion, Hire price**

- 2.1 A contract first comes into being when the order is confirmed in writing.
- 2.2 The prices stated in the order confirmation shall be binding. The hire rate shall consist of the equipment costs only and without operating personnel – excepting those cases in No. 4 – and without fuel or energy costs. Unless explicitly agreed otherwise, the stated hire prices relate exclusively to a maximum daily period of use of nine hours per calendar day, unless explicitly agreed otherwise. Operation over two or more shifts is only permitted after prior arrangement with us and with our written consent.

### **3. General terms of use**

- 3.1 The Lessor shall be obligated to provide to the Lessee, for the period stated in the hire contract, a reliable and roadworthy hire device which is tested and approved according to Technical Inspection Association (TÜV) standards and § 10 Industrial Safety Regulation (BetrSichV) for the contractually agreed purpose.
- 3.2 The Lessee – unless this is a consumer – shall bear the responsibility for ensuring that the requested hire device is suitable for the purpose for which it is hired. On request, the Lessor provides working diagrams, load curves and other technical specifications for the individual hire devices to enable the suitability of the devices to be determined.
- 3.3 However, the Lessee has no entitlement to a specific hire device unless a separate agreement has been made. The Lessor shall at all times be entitled to select a hire device which is technically equivalent and at least equally suitable for the operational requirements of the Lessee.
- 3.4 The Lessee bears sole responsibility for trouble-free accomplishment of the work he intends to carry out, ensuring unrestricted access to land and premises, obtaining all necessary official permits and cordoning off the area(s) in question, and ensuring that the hire item can be used safely with regard to ground conditions, the environment and other operational risks. The Lessee shall be obligated to inform the Lessor, without special request, of the presence of buildings and obstacles in the operating area, such as underground canals, conduits, shafts, trenches, underground car parks and any weight restrictions applicable to road structures etc. and/or, if the Lessee is operating the equipment himself, he shall be obligated to independently find out about such obstacles prior to starting the works he intends to undertake.
- 3.5 The Lessee has no claim for damage compensation if the hire item cannot be deployed punctually due to reasons for which the Lessor is not answerable. The same applies if despite prior functionality inspection the hire item fails during use for no fault of the Lessor. Unless contractually agreed otherwise, the Lessee bears the costs of the downtime during which the hire item cannot be deployed due to bad weather or due to other circumstances for which the Lessor is not answerable.
- 3.6 Work platforms may only be used to carry persons within the scope of the respective permitted maximum load. Work platforms may not be used for pulling loads or cable assemblies or similar. This kind of work is therefore strictly prohibited. Exempt from this are lifting platforms with power-lift systems for simultaneous load transport specifically approved for this purpose. Industrial conveyors may not be used to carry persons unless they are specifically approved and prepared for this purpose.

### **4. Terms of use with specialist operating personnel**

- 4.1 In the case of hire with specialist operating personnel, the Lessor shall provide a trained operator together with the hire

item. Hire devices which are rented together with specialist personnel may only be operated by these personnel.

- 4.2 For the period of the hire, the specialist operating personnel shall work exclusively for and under the instruction of the Lessee within the context of a service procurement contract. Lessor is therefore only liable for the provided operating personnel according to the principle of fault in selecting an agent.
- 4.3 If it is contractually agreed that the Lessor is to deliver and collect hire devices, this shall be understood to be exclusively to/from the construction site, insofar as this site can be accessed by the towing vehicle. The agreed transportation price shall especially not include setting up and equipping the work platform on the construction site, or in rear courtyards or rooms etc.
- 4.4 Transportation of self-propelled hire devices outside the construction site shall be undertaken exclusively by the Lessor.

## **5. Conditions of use for self-drivers**

- 5.1 Self-drive devices shall only be hired out on condition that the Lessee and/or the Lessee's operating personnel are aged 18 or over and fulfil the applicable occupational health and safety protection laws and accident prevention regulations. Instruction regarding the operation of the hire devices shall only be given on presentation of valid proof of competence and – if necessary – a valid driving licence.
- 5.2 Only those persons we have instructed shall be entitled to operate the hire item and the Lessee must have explicitly authorised them to do so.
- 5.3 When the hire item is handed over the Lessee will be given the vehicle documentation, operating instructions, maintenance notes and an information leaflet concerning the action to be taken in case of accident. Before first operation of the equipment Lessee is obligated to inform the operating personnel in a suitable manner about the contents of all provided documents and must order these persons to observe all instructions concerning industrial and health safety contained therein.
- 5.4 The Lessee undertakes to handle the hire item with care, not to overload it, and to observe all statutory provisions in connection with the possession or use of the hire item and pertaining equipment, in particular with regard to the applicable industrial safety and accident prevention regulations. In the case of rough work, the hire item must be adequately covered and protected against dirt. This applies especially in the case of painting and decorating, welding and cleaning work using acids. The hire item may not be used in close proximity to areas where painting or sandblasting work is being carried out, nor may it be exposed to extreme heat or cold.
- 5.5 The hire item may not be sublet or transferred to third parties without prior written permission. Furthermore, the Lessee shall not be entitled to move the hire item to a site of operation other than that specified in the hire contract.
- 5.6 The Lessee is obligated to check the operating consumables and the water level of the battery on a daily basis and to replenish these where necessary at his own expense. The Lessee shall be liable for damage caused as a result of insufficient quantities of operating consumables.

## **6. Terms of payment**

- 6.1 The hire charges must be paid as from the time when the hire item leaves our depot until its return. Transport of the hire item from the depot to the site of operation and back shall – if carried out by the Lessor – be charged according to the actual time spent at the agreed hire rates and/or at agreed flat rates. The accounting shall be based on the order confirmation and the hire rates and/or hourly rates stated therein. Each day of hire or part thereof shall be charged at the full rate.
- 6.2 The agreed device hire rates shall be payable strictly net with no deductions on receipt of the invoice. Statutory default interest shall be charged if the payment deadline is overrun.
- 6.3 The Lessor shall be entitled to request a reasonable advance payment prior to provision of the hire device and/or to request reasonable instalment payments during the hire period.
- 6.4 In the event that the Lessee fails to meet his payment obligations under the hire contract or if damage to the hire item is suspected, the Lessor shall have the right to gain access to the site of operation at which the hired device is located and to take possession of the hire device by way of self-remedy.
- 6.5 The Lessor is moreover entitled to withhold any outstanding services until arrears are paid. The Lessor may as he chooses either refuse to continue to provide hire devices until the corresponding contract value is paid in full or, at his own option – without the Lessee being entitled to claim any compensation – withdraw wholly or partially from performance of the contract and charge a flat rate of 25% of the contract value, insofar as the Lessor can prove higher damages or the Lessee can prove that no or significantly lower damages were incurred.
- 6.6 The Lessee shall only be entitled to offset if his counterclaims are undisputed or have been established as final and absolute. The Lessee shall only be entitled to exercise a right of retention if his counterclaim is based on the same contractual relationship.

## **7. Warranty**

- 7.1. The Lessee must inform the Lessor without delay of any defect or any interruption in the operation of the hire item during the period of deployment and shall immediately shut down the hire item if necessary. The period for giving notice of defects shall be deemed to have been observed if notice of a defect is sent promptly.
- 7.2. The Lessor shall be obligated to remedy any reported faults or malfunctioning of the hire item as soon as is technically and practically possible, insofar as the Lessor is responsible for such faults or malfunctioning.
- 7.3. All warranty rights of the Lessee shall be forfeit if defects are not notified promptly.

## **8. Liability; Insurance**

- 8.1. The hire item passes into the custody of the Lessee as from the moment it is handed over to him. The Lessee bears the cost of all damage caused to the hire item as a result of its use. The period of assumption of risk by the Lessee shall not end until the device is duly returned and the return inspection report is signed. On acceptance of the hire item, the Lessee shall assume the entire operational risk for the duration of the hire contract and shall in particular warrant that the ground conditions at the site of operation are such that they permit safe use of the hire item. In this respect, the Lessee shall indemnify the Lessor against third-party claims within the internal relationship. This shall also apply in the event that recourse is sought against Lessor under the Environmental Damage Act (USchadG) or other comparable public-law, national or international regulations, insofar as the Lessor did not cause the damage with intent or through gross negligence.
- 8.2. Unless agreed otherwise, the Lessor takes out machinery breakdown and comprehensive insurance which also insures the material usage interests of the Lessee and includes the Lessee under the coverage offered by the machinery breakdown and comprehensive insurance policy. The Lessee must however bear the contractual deductible per damage claim in every case.
- 8.3. In otherwise, the Lessee shall be liable for all damage that he or his operating personnel cause to the hire item, and for all downtime arising as a result. In case of doubt, the costs for repairs and downtime shall be charged to the Lessee on the basis of the opinion of a sworn publicly accredited expert.
- 8.4. The Lessee shall be liable in each case and to the full extent for all damage caused by any one of the following as a result of using the hire item, whereby recourse to the provider of the machinery breakdown and comprehensive insurer is permitted:
- a) any accident or damage to the hire item caused through gross negligence or wilful conduct,
  - b) damage to superstructures caused by failure to observe the clearance height,
  - c) damage caused by failure to observe the safety and deployment conditions or due to unsuitable anti-theft measures,
  - d) unauthorised subletting of the hire item, or letting to unauthorised persons,
  - e) in all other cases in which the insurer provides no coverage under the machinery breakdown and comprehensive insurance contract.
- 8.5. The machinery breakdown and comprehensive insurance policy taken out by the Lessor (section 8.2) does not include liability insurance to cover the business operation risks of the Lessee. Hire devices subject to mandatory official registration shall only have liability insurance cover within the scope of statutory compulsory liability insurance and with the prescribed minimum amounts of coverage. It is therefore strongly recommended that the Lessee extend the coverage offered by his business liability insurance to include the hired device for the duration of hire.
- 8.6. The Lessee may assert further claims for compensation against the Lessor, to the full extent, in particular compensation for damage not sustained to the hire item – irrespective of the legal grounds – only in the event of
- a) wilful conduct or gross negligence
  - b) culpable injury to life, limb or health
  - c) defects which the Lessor has maliciously concealed or which the Lessor has guaranteed do not exist
  - d) cases where liability exists under the Product Liability Act (ProdHaftG) for bodily injury and property damage to privately used items.
- In the event of culpable breach of essential contractual obligations, the Lessor shall also be liable for minor negligence, but limited to damage which is reasonably foreseeable and typical for this kind of contract. Further claims shall be excluded.

## **9. Further obligations of the Lessee**

- 9.1. No claims whatsoever of the Lessee may be assigned, whether with regard to performance, any kind of warranty or otherwise to compensation.
- 9.2. If a third party should assert rights in the hire item by way of confiscation, levy of execution or the like, the Lessee shall be obligated to notify the Lessor immediately in writing and to inform the third party in writing of the property rights of the Lessor.
- 9.3. The Lessee must take reasonable steps to protect the hire item against theft.

- 9.4 The Lessee must inform the Lessor in the event of any accidents and – except in the case of impending danger – await instructions from the Lessor. The police must be involved in cases of road accidents or theft.
- 9.5 If the Lessee culpably fails to abide by the above provisions (sections 9.1 to 9.4), he shall be obligated to pay compensation for all damages incurred by the Lessor as a result, unless said damages are covered by a statutory compulsory insurance policy.

## **10. Termination of the hire contract**

- 10.1 The Lessor shall be entitled to declare the hire contract terminated without observing a notice period if
- a) the Lessee is in default for more than 14 calendar days after a written reminder has been issued or a cheque or bill of exchange from the Lessee is protested.
  - b) it first becomes apparent after conclusion of the contract that the entitlement to be paid the hire fee is at risk due to inability to pay on the part of the Lessee.
  - c) the Lessee uses the hire item or a part thereof for a purpose other than the intended purpose or moves the item to another site or transfers it to unauthorised third parties without our permission.
  - d) if the Lessee culpably violates the provisions under section 5.4 and sections 9.1 to 9.4.
- 10.2 The Lessee may terminate the hire contract without observing a notice period if the hire item cannot be used due to circumstances for which the Lessor is answerable.

## **11. Return**

- 11.1 On expiry of the hire period the Lessee shall be obligated to return the hire item to the Lessor at the agreed location in the same condition as it was in when accepted by the Lessee, with the exception of normal wear and tear to the hire item sustained through use in accordance with the contract.
- 11.2 Unless agreed otherwise, the hire item must be returned during the usual hours of business of the Lessor at a time which is early enough to allow the Lessor to inspect the hire item for functionality and damage on the same day. If the hire item is returned outside usual hours of business or parked at the Lessor's depot without prior notice, this shall be at the expense and own risk of the Lessee. The Lessee shall remain responsible for ensuring safe custody of the hire item until it is accepted back by the Lessor.

## **12. Concluding provisions**

- 12.1 Should any provision of these terms and conditions of hire be or become invalid or impracticable, this shall not impair the validity of all other provisions or agreements herein. Section 139 of the German Civil Code (BGB) shall be waived in this respect.
- 12.2 For all disputes arising in connection with the contractual relationship, including claims for bill of exchange and cheque receivables, if the Lessee is a merchant, a corporate body under public law or a special fund under public law, legal proceedings may as the Lessor chooses also be initiated before the court with jurisdiction over the head office of the Lessor or the branch office of the Lessor which is conducting the hire process.
- 12.3 It is agreed that the hire contracts concluded between the contracting parties shall be subject to German rental law, even if the site of operation of the hire item or the registered office of the Lessee are located outside Germany.
- 12.4 All disputes arising from or in connection with this contract or concerning its legal force shall be settled by an ordinary court of law.