

General Terms and Conditions of Hire for Working Platforms and Industrial Conveyors

(AGB-BSK Platforms and Stackers 2008)

PREAMBLE

The German Federal Working Group Heavy Haulage and Crane Work (BSK) recommends but does not require that its members apply the following General Terms and Conditions of Hire for Working Platforms and Industrial Conveyors in business with their customers/contractors. The addressees are free to either follow this recommendation or use other general terms and conditions of business.

1. Scope of application

1.1 Working platforms (platforms) and industrial conveyors (fork lift and telescopic stackers, etc.) are hired out exclusively on the basis of the following General Terms and Conditions of Hire. Contradicting or differently worded terms and conditions of the lessee are explicitly refused. In constant business relations with entrepreneurs, the explicit reference to these General Terms and Conditions of Hire once only also suffices for future contract relations.

1.2 These General Terms and Conditions of Hire apply with regard to consumers as well entrepreneurs, legal persons under public law and special funds under public law, unless a distinction is made in the respective clause. Clauses applicable for entrepreneurs also apply for legal persons under public law and special funds under public law.

2. Offer, contract conclusion, hire price

2.1 A contract first comes into being when an order is confirmed in writing.

2.2 The prices stated in the order confirmation are binding. The hire tariff is purely the device costs without the costs of operating personnel and without fuel or power costs. Unless explicitly agreed otherwise, the stated hire prices relate exclusively to a maximum daily deployment time of nine hours per calendar day. Operation over two or more shifts is only permitted by prior arrangement with us and requires our written approval.

3. General conditions of deployment

3.1 The lessor is obligated to provide to the lessee a safely operable and roadworthy hire item tested and approved according to TÜV (*Technical Inspection Authority*) standards and UVV (*Accident Prevention Regulations*) for the contractually agreed deployment purpose and for the time period stated in the hire contract.

3.2 The lessee – except consumers – bears the responsibility that the desired hire item is suitable for the deployment foreseen by the lessee. In order to determine whether a hire item is suitable, the lessor provides on request working diagrams, load curves and other technical data of the individual hire devices.

3.3 However, unless specially agreed otherwise, the lessee is not entitled to a specific hire device. The lessor is at all times entitled to select a technically equivalent hire device at least just as suitable for the deployment requirements.

3.4 The lessee bears sole responsibility for trouble-free execution of the work he intends to carry out, unrestricted access to properties and premises, all necessary official permits and cordoning measures, as well as for the safe deployment of the hire item with regard to ground conditions, environmental and other operational risks. Without being specially requested to do so, the lessee is obligated to inform the lessor of structures and impediments in the deployment area such as underground canals, conduits, basement garages and possible weight limits of road structures, etc, or if the lessee is a self-driver he must inform himself about these circumstances before work commences.

3.5 The lessee is not entitled to claim damage compensation if the hire item is not deployed punctually for no fault of the lessor. The same applies if despite prior examination of its functionality the hire item fails during deployment for no fault of the lessor. If the hire item cannot be deployed due to adverse weather conditions or due to other circumstances for which the lessor is not answerable, then unless contractually agreed otherwise the stoppage time is borne by the lessee.

3.6 Working platforms may only be deployed to carry persons within the scope of the respective maximum load. Working platforms may not be deployed for pulling loads or conducting lines or similar. This kind of work is therefore strictly prohibited. Ground conveyors may not be deployed to carry persons unless they are specially authorised and prepared for this purpose.

4. Conditions of deployment with specialist operating personnel

4.1 In the case of hire with specialist operating personnel, the lessor provides an operator trained to use the hire item. Hire items hired with a specialist operator may only be operated by that person.

4.2 For the duration of the letting the specialist operating personnel is active within the framework of a service procurement contract exclusively for and under the instruction of the lessee. The lessor is therefore only liable for the provided operating personnel according to the fundamentals of responsibility for selection.

4.3 If the lessor delivers and collects the hire devices by agreement, this is exclusively to/ex construction site inasmuch as the site can be reached by the tractor vehicle. The agreed transport price especially does not include setting up and equipping the working platform on the construction site, in rear courtyards, rooms, etc.

4.4 Movements of self-propelled hire devices beyond the construction site are undertaken exclusively by the lessor.

5. Conditions of deployment for self-drivers

5.1 Self-drive devices are only hired out on the condition that the lessee or his operating personnel is at least 18 years of age and fulfils the applicable occupational safety and accident prevention regulations. Instruction in operating the hire devices is only given if valid proof of ability and – if necessary – valid driving license is presented.

5.2 Only those persons instructed by us are entitled to operate the hire item and must confirm this in writing (pursuant to accident prevention regulations).

5.3 When the hire item is handed over, the persons assigned by the lessee are given the vehicle documents, operating instructions, servicing instructions and directives concerning actions to be taken in case of accidents. Before taking into operation, the operating persons are obligated to acknowledge the entire contents of all documents handed over and to observe all instructions.

5.4 The lessee commits to use the hire item carefully, not to overload it and to observe all statutory stipulations in connection with possession or use of the hire item and the equipment items, especially the applicable accident prevention regulations.

In case of rough work the hire item must be sufficiently covered over and protected against soiling. This applies particularly in case of painting, welding and cleaning work with acids. The hire item may not be deployed in the proximity of lacquering and sand-blasting work, nor may it be exposed to extreme heat or cold.

5.5 Subletting or giving the hire item to third parties without written approval is prohibited. Furthermore, the lessee is not entitled to move the hire item to a place of deployment other than that named in the hire contract.

5.6 The lessee is obligated to inspect the operating supplies and battery water level daily and if necessary replenish these at his own cost. The lessee is liable for damages caused due to insufficient operating supplies.

6. Terms of payment

6.1 The rental must be paid as from the time at which the hire item departs our yard until it returns there. Transport of the hire item from our yard to the place of deployment and back will – inasmuch as carried out by the lessor – be charged according to the actual time taken at the agreed rental rate or according to agreed flat rates. Accounting basis is the order confirmation and the hire tariffs or hourly rates stated therein. Each started day of hire is charged as a full day.

6.2 The agreed device rent is payable on invoice receipt purely net without any deduction. Statutory default interest is charged if the payment due date is overrun.

6.3 The lessor is entitled to demand an appropriate advance down payment before providing the hire item or payments on account during the rental period.

6.4 If the lessee fails to fulfil his payment obligations from the hire contract or if damage to the hire item must be expected, the lessor is entitled to access the deployment site at which the hired device is situated and to take possession of the hire device by way of self-remedy.

6.5 The lessor is moreover entitled to withhold any possibly outstanding performances until payments in arrears are made. The lessor may at his own discretion either refuse to continue providing hire items until the contract value is fully paid or – without any compensation entitlement of the lessee whatsoever – withdraw wholly or partially from fulfilment and charge a flat rate of 25% of the contract value as compensation inasmuch as the lessor evidences higher damage or the lessee evidences that no or considerably less damage was incurred.

6.6 The lessee is only entitled to netting rights if his counterclaims are established with lawful finality or are uncontested. The lessee is only entitled to exercise a withholding right if his counterclaim is founded in the same contract relationship.

7. Notice of defect

7.1 The lessee must notify the lessor immediately of every defect or usage disruption of the hire item during the deployment and, as the case may be, immediately shut down the hire item.

7.2 Inasmuch as he is answerable for them, the lessor is obligated to remedy reported damages or operating disruptions of the hire item as quickly as technically and organisationally possible.

7.3 All warranty rights of the lessee are forfeit if the defect is not reported immediately.

8. Liability, Insurance

8.1 The hire item is in the custody of the lessee as from the point in time at which it is handed over. The lessee must bear all damages caused due to the deployment. The risk for the lessee first ends when the device is properly returned and the return protocol is signed. With acceptance of the hire item, the lessee assumes the entire operating risk for the duration of the rental and especially warrants that the ground circumstances at the deployment site allow the hire item to be deployed safely. In this respect the lessee indemnifies the lessor in the internal relationship against third party claims. This also applies in case of recourse to the lessor pursuant to the Environmental Damage Act (USchadG) or other comparable public law, national or international regulations, inasmuch as the lessee did not cause the damage intentionally or in gross negligence.

8.2 Unless agreed otherwise, the lessor takes out a machine and collision damage insurance which also insures the material usage interest of the lessee and which includes the lessee in the machine and collision damage insurance cover of the policy. However, in every case the lessee must bear the contractual deductible per damaging event.

8.3 In otherwise, the lessee is liable for all damages he or his operating personnel cause to the hire item, as well as for all stoppage times arising as a result. In case of doubt, the repair and stoppage costs will be charged to the lessee on the basis of the opinion of a sworn publicly appointed expert.

8.4 The lessee is liable in every case and to the full extent for all damages from using the hire item due to the following causes, whereby recourse to the machine and collision damage insurer is admissible:

- a) every accident or damage to the hire item caused wilfully or in gross negligence,
- b) damages to structures caused due to not observing the headroom clearance,
- c) damages due to not observing the safety and deployment conditions or due to unsuitable anti-theft measures,
- d) unauthorised subletting of the hire item, letting the hire item to unauthorised persons,
- e) in all other cases in which there is no contractual coverage by the machine and collision damage insurer.

8.5 Liability insurance for the operating risk of the lessee is not included in the machine and collision insurance policy taken out by the lessor (section 8.2). Liability insurance cover only exists for machines subject to official approval within the framework of the statutory liability insurance and with the stipulated minimum coverage amounts. The lessee is therefore urgently recommended to extend the coverage of his business liability insurance for the hired device for the duration of the rental.

8.6 The lessee can only assert further-reaching damage compensation claims against the lessor, especially compensation of damage not suffered by the hire item, to the full amount – for whatever legal reasons – in case of

- a) wilful conduct or gross negligence,
- b) culpable injury to life, limb or health,
- c) defects maliciously concealed by the lessor or which the lessor guaranteed do not exist,
- d) or in case product liability law stipulates liability for injury to persons or for material damage to privately used items.

In case of culpable breach of essential contract duties, the lessor is also liable for minor negligence, but limited to the reasonably foreseeable damage typical for this type of contract. Further-reaching claims are excluded.

9. Further obligations of the lessee

9.1 Any claims of the lessee whatsoever, whether for fulfilment, for any kind of warranty or otherwise for damage compensation, may not be assigned.

9.2 If a third party should assert rights in the hire item by way of confiscation, attachment or the like, then the lessee is obligated to notify this to the lessor immediately in writing and to inform the third party in writing of the proprietary rights of the lessor.

9.3 The lessee must take suitable measures to secure the hire item against theft.

9.4 The lessee must report all accidents to the lessor and – except in case of pending hazard – must wait for instructions from the lessor. Traffic accidents and theft must be reported to the police.

9.5 If the lessee culpably offends against the foregoing provisions (section 9.1 to 9.4), then he is obligated to compensate all damages the lessor incurs as a result, unless said damages are covered by a statutory liability insurance policy.

10. Terminating the hire contract

10.1 The lessor is entitled to declare the hire contract ended without observing a period of notice if

- a) after written reminder the lessee is more than 14 days in default with payment or if protest is lodged against a cheque or bill of exchange submitted by the lessee.
- b) it is first recognisable after contract conclusion that the entitlement to be paid rental is at risk due to inability of the lessee to perform.
- c) the lessee uses the hire item or a part thereof in any way other than for the proper intended purpose or brings it to another place or lets to unauthorised third parties.
- d) the lessee culpably offends against section 5.4 and sections 9.1 to 9.4.

10.2 The lessee can terminate the hire contract without observing a period of notice if the hire item cannot be used for reasons for which the lessor is answerable.

11. Return

11.1 On expiry of the hire term the lessee is obligated to return the hire item to the lessor at the agreed place in the same condition as he accepted it, except for the wear and tear usual for the contractual use.

11.2 Unless agreed otherwise, the hire item must be returned during the usual hours of business of the lessor so that the lessor is able to inspect the hire item on that day for functionality and damages. Returning the hire item outside the usual hours of business or parking the hire item on the premises of the lessor without prior notice is at the cost and own risk of the lessee. The lessee bears the duty of custody for the hire item until it is accepted back by the lessor.

12. Concluding provisions

12.1 Should a provision in these terms and conditions of hire be or become invalid or impracticable, this shall not impair the validity of all other provisions or agreements. In this respect § 139 German Civil Code (HGB) is regarded as null and void.

12.2 In all contentions arising from the contractual relationship, also for cheque and bill of exchange protests, if the lessee is a qualified merchant, a legal person under public law or a special fund under public law the lessor may at his own discretion also submit complaint at that court with jurisdiction at the head office or the branch office of the lessor executing the rental.

12.3 It is agreed that the hire contracts concluded between the contract parties are governed by German rental law, even if the place where the hire item is deployed or the registered place of business of the lessee is outside Germany.

12.4 All contentions from or in connection with this contract or concerning its lawful validity shall be settled by a proper court of law.