

GENERAL RENTAL TERMS AND CONDITIONS OF TRACTO-TECHNIK GMBH & CO. KG

I. General, Scope of Application

1. These General Rental Terms and Conditions (hereinafter referred to as "Rental Terms") apply to all rental agreements between TRACTO-TECHNIK GmbH & Co. KG (hereinafter referred to as "TRACTO") and the lessee for the rental of machinery and equipment (including the respective accessories) from TRACTO's product portfolio. These terms shall also apply to, and serve as a framework agreement for, all future similar rental contracts with the lessee for the rental of machinery and equipment from TRACTO's product portfolio, without TRACTO having to refer to the Rental Terms again in each individual instance.
2. These Rental Terms shall apply only if the lessee is an entrepreneur within the meaning of Section 14 para. 1 of the German Civil Code ("BGB"), a legal person under public law or a special fund under public law.
3. In this Rental Terms, the term rental item refers to each individual item that TRACTO provides to the lessee for use under the rental agreement.
4. Any conflicting, supplementary or deviating terms and conditions of the lessee (including, but not limited to, the lessee's general terms and conditions) shall only apply if and to the extent that TRACTO has expressly agreed to their application. These Rental Terms shall also apply even if TRACTO, with knowledge of the lessee's conflicting, supplementary or deviating terms and conditions, unconditionally rents the rental item to the lessee.
5. Any individual agreements made with TRACTO on a case-by-case basis (including side agreements, addenda, and amendments) shall always take precedence over these Rental Terms. With respect to the content of such agreements, a written contract or the confirmation from TRACTO in writing or text form (e. g., by e-mail) shall be dispositive.
6. References to the applicability of statutory provisions in these Rental Terms are for clarification purposes only. The statutory provisions shall apply regardless of such references, except where they are directly amended or expressly excluded in these Rental Terms.

II. Offer and Conclusion of Contract, Equivalent Rental Item

1. Unless otherwise indicated, offers made by TRACTO, regardless of their type and form, are non-binding and merely requests to the lessee to submit an offer. In such cases, the lessee's offer to conclude a contract with TRACTO shall only be deemed to exist in the order placed by the lessee, whether in written or text form (e. g., e-mail) or verbally, unless the order is labelled or designated by the lessee as non-binding or subject to change. TRACTO may accept the binding offer of the lessee within ten days of receipt.
2. TRACTO may accept the lessee's offer to conclude a contract by sending an order confirmation in written or text form (usually the rental voucher) to the lessee or by handing over the rental item to the lessee.
3. Unless expressly agreed otherwise with the lessee, TRACTO is entitled to provide the lessee with a functionally equivalent rental item instead of the agreed rental item, provided that TRACTO has a substantial, objectively justified reason for changing the rental item, which was not foreseeable for TRACTO at the time of conclusion of the contract, and the change is reasonable for the lessee. The provision of another functionally equivalent rental item is reasonable for the lessee, especially if the work intended by the lessee for which the rental item is to be used can be carried out in every respect equally and without restriction using the substitute rental item.

III. Obligation to accept the Rental Item, Rental Period and Termination

1. The rental period begins on the day agreed between TRACTO and the lessee. The minimum rental period is one day.
2. The lessee is obliged to accept the rental item at the agreed place and time. If the lessee does not accept the rental item at the agreed place and time, TRACTO may, in accordance with the statutory provisions, rescind or terminate the contract, if necessary with immediate effect, and rent the rental item to another party. TRACTO may claim compensation from the lessee for any damages and/or additional expenses arising from the lessee's default, in accordance with the statutory provisions.
3. The lessee's right of use will end upon the expiration of the agreed rental period, provided the rental period has been explicitly agreed between the parties. Ordinary termination of the rental agreement is excluded during the agreed term. The right of both parties to terminate the rental agreement at any time for good cause remains unaffected. If the lessee continues to use the rental item after the expiry of the agreed rental period (hereinafter referred to as "Rental Period Overrun"), the rental agreement shall not be extended as a result. If the lessee has recognisably given up possession of the rental item, TRACTO shall be entitled, but not obliged, to collect or take possession of the rental item. In the event that TRACTO has not already taken possession of the rental item after the lessee has given up possession, the lessee shall be obliged to pay TRACTO compensation in the amount of one day's rent for each additional day of use or non-return. Any discounts according to TRACTO's graduated rental price list shall not apply during the Rental Period Overrun. TRACTO's right to claim further damages remains unaffected.
4. If the parties have not explicitly agreed on the duration of the rental period, the rental agreement shall end through termination by either party or by the return of the rental item by the lessee, provided that the lessee notifies TRACTO in text form of the imminent return of the rental item at least three working days (hereinafter referred to as "Return Period") in advance. Without prior notification of the imminent return, the rental period shall continue after the return of the rental item and shall only end upon expiry of the Return Period. The termination period is three working days. The right of both parties to terminate the rental agreement at any time for good cause remains unaffected.

IV. Handover and Return of the Rental Item and Transport (Transport Costs and Transport Risk)

1. Unless expressly agreed otherwise in writing, the rental item shall be handed over to the lessee at the TRACTO rental station where the lessee rented the item (hereinafter referred to as "Rental Station"). The lessee shall subsequently be responsible for the transport of the rental item to the place of use, including the loading and unloading of the rental item, at its own expense and risk; this shall also apply if TRACTO employees assist with the loading and/or unloading at the request of the lessee. In particular, the lessee shall be responsible for ensuring that the rental item is adequately secured during transport in accordance with the relevant generally recognised rules of technology, and that the securing of the load and transport is carried out in compliance with the statutory regulations.
2. TRACTO, or a transport company commissioned by TRACTO, will undertake the transport of the rental item from the Rental Station to the specified place of use, at the lessee's expense, only after prior agreement with TRACTO.
3. TRACTO shall hand over the rental item to the lessee in a roadworthy and operational condition. Upon handover, the lessee shall inspect the rental item for road safety, operability and obvious defects. If the rental item is suitable for use on public roads and paths and the lessee intends to use the rental item on public roads and paths, the lessee must specifically verify that the rental item has the necessary equipment and that the lessee has the required documents to carry with it.

Clause VIII. 4. remains unaffected.

4. A mandatory return inspection will be carried out when the rental item is returned. This binding return inspection to check for any damage shall only take place after the rental item has been returned to the Rental Station. This shall also apply if TRACTO or a transport company commissioned by TRACTO carries out the return transport on behalf of the lessee. Employees of TRACTO who carry out the transport, or employees of a transport company commissioned by TRACTO for the return transport, are not authorised to carry out a binding return inspection or otherwise make legally binding declarations on behalf of TRACTO. However, in addition to the written notification obligation contained in Clause IV. 6., the lessee shall be obliged to notify TRACTO's transport personnel or the transport company of any damage/defects when handing over the rental item for return transport.
5. The lessee shall be obliged to return the rental item in a clean condition at the end of the rental period, if this has been explicitly agreed, or otherwise in accordance with the announced return, taking into account the Return Period, within the core opening hours of TRACTO (Mon - Fri 07:00 - 15:30) at the Rental Station, unless TRACTO expressly agrees to a return within a different period or at a different location. Even if TRACTO has agreed to the return of the rental item at a different location, the lessee remains obliged to observe the Return Period in accordance with Clause III. 4., unless the parties have agreed otherwise.
6. The lessee must notify TRACTO of any damage/defects to the rental item that the lessee has not already reported in accordance with Clause VII. 1. upon return of the rental item. If third parties (transport companies) or TRACTO carry out the return transport on behalf of the lessee, the lessee must also notify TRACTO in writing of any damage/defects to the rental item at the Rental Station, irrespective of its obligation to notify TRACTO in accordance with Clause IV. 4.

V. Rent, Deposit

1. The rent owed by the lessee shall be determined as a calendar day rent (hereinafter referred to as "Daily Rent") based on TRACTO's graduated rental price list valid at the time the contract is concluded. The Daily Rent is based on the normal shift time of up to eight operating hours per day. If the lessee exceeds this daily shift time, TRACTO shall charge the lessee an additional 1/8 of the applicable daily rate for each additional hour. If the daily shift time according to sentence 2 is not exceeded, the Daily Rent shall not be reduced. If weekend days (Saturday and Sunday) or public holidays fall within the rental period, the Daily Rent shall not be owed for these days, provided that the lessee does not use the rental item on these days. However, if the lessee uses the rental item on weekend days or public holidays, the Daily Rent shall also be owed for these days in accordance with sentences 1 – 4 above. The lessee must notify TRACTO accordingly in accordance with Clause VIII. 7.
2. The prices stated in TRACTO's current graduated rental price list are subject to the applicable statutory VAT.
3. The rent constitutes the sole consideration of the lessee for the ability to use the rental item during the rental period. TRACTO shall invoice the lessee separately for all additional costs relating to transport, assembly, fuel, operating materials and cleaning, based on the price list valid at the time the contract is concluded (hereinafter referred to as "Ancillary Costs").
4. Any deposit agreed between the parties shall be paid by the lessee upon conclusion of the rental agreement. The deposit shall be repaid to the lessee after the proper return of the rental item, unless and insofar as it is offset against TRACTO's claims in accordance with Clause IX. 2.

VI. Rental Suspension

1. If the rental item cannot be used by the lessee for at least ten consecutive working days due to circumstances for which neither the lessee nor TRACTO is responsible (e. g., strike, civil unrest, frost, acts of war, official orders, etc.), this period shall be deemed to be a rental suspension from the 11th working day onwards.
2. If the rental period has been agreed for a specific time, it shall be extended by the period of the rental suspension. The right of the parties to terminate the rental agreement at any time for good cause remains unaffected.
3. The lessee shall pay 75% of the agreed rent for the period of the rental suspension, based on a working day shift time of 8 hours. However, TRACTO must allow the value of any expenses saved to be credited.
4. The lessee shall notify TRACTO immediately of the occurrence of any circumstances that make it impossible to use the rental item within the meaning of Clause VI. 1., as well as of their cessation, and provide TRACTO with evidence of this upon request.

VII. Notification of Defects and Claims for Defects

1. The lessee must notify TRACTO in writing immediately of any defects that occur during the rental period. Any other statutory notification obligations of the lessee with regard to the rental item remain unaffected. TRACTO shall remedy any defects for which the lessee is not responsible at its own expense.
2. If the lessee fails to notify TRACTO in accordance with Clause VII. 1., it shall be obliged to compensate TRACTO for any resulting damage. Insofar as TRACTO was unable to provide relief as a result of the failure to notify, the lessee shall not be entitled to reduce the rent, claim damages or terminate the contract without first setting a reasonable period of time for TRACTO to provide relief pursuant to Section 543 para. 3 sentence 1 BGB.
3. TRACTO assumes no liability for the lessee being able to use the rental item, provided in accordance with the contract, in line with its expectations and for the intended purpose. Clause VI. remains unaffected.

VIII. Obligations of the lessee, Use of the Rental Item, Official Authorisation

1. During the rental period, the lessee is responsible for the operation of the rental item in compliance with the statutory provisions as well as the occupational health and safety and accident prevention regulations. The operation and use of the rental item must be in accordance with its intended purpose and customary practice. The lessee must read and adhere to the operating or user manual provided by TRACTO before using and operating the rental item. The lessee may only use the rental item with the attachments and accessories provided by TRACTO.
2. Any repair and maintenance work, as well as any repairs and technical modifications to the rental item, shall be carried out exclusively by TRACTO (or by a third party authorised by TRACTO).
3. It is not permitted to refuel the rental item with unsuitable fuels, such as biofuel, rapeseed oil or heating oil, unless a corresponding admixture to the normal fuel is required by law.
4. If the rental item is suitable for use on public roads and paths, the lessee intends to use the rental item on public roads and paths, and an official permit is required for this at the place of use of the

rental item, the lessee shall be responsible for obtaining and carrying this permit, unless TRACTO already has such a permit for the rental item and has handed it over or notified the lessee of it upon conclusion of the contract. The lessee shall bear the costs of applying for such a permit from the competent authority. The lessee is prohibited from using the rental item on public roads and paths before the necessary authorisation has been granted. Violations may constitute (i) an administrative offence by the lessee, which may be punished with a fine, and (ii) a breach of the rental agreement with TRACTO. The lessee must indemnify TRACTO against any claims made by the authorities due to culpable unauthorised use of public roads and paths.

5. The lessee shall be responsible for obtaining any official authorisations required at the place of use of the rental item for the execution of the work intended by the lessee with the rental item (e. g., earth drilling). Upon TRACTO's request, the lessee shall submit the required authorisations to TRACTO.
6. The lessee undertakes to have the rental item operated only by professionally trained persons who are familiar with the proper handling of the rental item or items of a similar type and who hold all the necessary public law permits and authorisations, particularly any necessary driving licence, at the place of use of the rental item. The lessee assures that it or the persons deployed by it have the necessary knowledge and skills for the proper operation of the rental item. TRACTO does not owe the lessee any advice on the use and operation of the rental item beyond the provision of the operating instructions.
7. If the lessee intends to use the rental item on a weekend day or public holiday, it must notify TRACTO in writing before concluding the rental agreement, but no later than three working days before the intended use, specifying the intended days of use and the place of use in detail. If no such notification is made within the period specified in the previous sentence, the lessee must notify TRACTO immediately.
8. Any transfer of use to third parties is not permitted without the express prior written consent of TRACTO.
9. The lessee must notify TRACTO immediately of any theft, loss or damage to the rental item (hereinafter referred to collectively as "Loss Event") and must take all reasonable and necessary measures to minimise the damage and preserve evidence. Furthermore, at all times, the lessee is obliged to support TRACTO in the further processing and clarification of the Loss Event to the best of its ability. If the rental item is stolen or damaged intentionally by a third party, the lessee must also report it to the police immediately.
10. If the rental item is subject to seizure or other enforcement attempts by third parties, the lessee must point out TRACTO's title to the rental item and inform TRACTO immediately.
11. The lessee shall keep the rental item safe and, as far as possible, protect and secure it, in particular against harmful weather conditions and unauthorised interference by third parties, such as theft, damage and unauthorised use (duty of care). The duty of care applies, irrespective of the duration of the rental agreement, until the rental item is returned to the Rental Station or, in the case of a return transport carried out by TRACTO, until the rental item is collected from the agreed collection location.
12. In the event of suspected alterations or endangerment of the rental item by the lessee (e. g., due to use contrary to the contract or neglect of the duty of care), TRACTO shall be entitled to inspect the rental item itself or have it inspected by an authorised representative at any time during normal operating hours or shift times, after giving notice to the lessee.
13. If, at the lessee's request, TRACTO's personnel assist the lessee in fulfilling its obligations towards TRACTO, TRACTO's personnel shall act as vicarious agents of the lessee pursuant to Section 278 BGB. Clause IV. 1. remains unaffected.

IX. Terms of Payment, Offsetting, Right of Retention

1. Unless otherwise agreed in writing, the rent and Ancillary Costs shall be due immediately upon conclusion of the rental agreement and payable in advance in the agreed amount. TRACTO will invoice the actual Ancillary Costs incurred separately after the end of the rental period.
2. Payments shall be made by the lessee to TRACTO in cash or by bank transfer to an account specified by TRACTO. After the end of the rental period, TRACTO may offset any deposit lodged by the lessee against any outstanding claims it has against the lessee.
3. Payment by the lessee via bank transfer will only be considered as having been made on the date on which TRACTO's account has been credited without reservation.
4. The lessee may only offset any counterclaims it has against TRACTO if they are not disputed by TRACTO or have been legally established.
5. The lessee may exercise a right to refuse performance or a right of retention against claims by TRACTO to the extent that is in reasonable proportion to its counterclaims. Furthermore, the lessee may only exercise a right of retention if its counterclaim arises from the same contractual relationship with TRACTO.

X. Payment Default, Default Damage

1. If the lessee is more than five working days in default of payment, in whole or in part, or if an application is filed to open insolvency proceedings over its assets, TRACTO may, without prejudice to other rights, withhold all deliveries and services from the affected rental agreement until the lessee has made the outstanding payment.
2. Any outstanding payments by the lessee shall bear interest at the applicable statutory default interest rate during the period of default. In addition, TRACTO may demand a lump sum of EUR 40.00 in the event of default (Section 288 para. 5 BGB). TRACTO reserves the right to claim higher damages caused by default.

XI. Security Assignment

1. To secure all existing and future claims by TRACTO against the lessee arising from and in connection with the rental agreement, the lessee hereby assigns to TRACTO its current and future claims against the client(s) for whom the rental item is being used. Insofar as these claims are subject to the extended retention of title of a supplier of the lessee, they shall only be transferred to TRACTO once they are no longer covered by the extended retention of title. TRACTO accepts this assignment. Upon request (in particular if there is good cause pursuant to Clause XI. 3.), the lessee shall provide TRACTO with a list of the assigned claims, including their amount, due date and the address of the lessee's client(s) (third-party debtor(s)).
2. TRACTO shall be obliged to release the rights from the security assignment if TRACTO is satisfied with regard to all claims against the lessee secured thereby. At the request of the lessee, TRACTO shall also be obliged to release a proportionate amount at TRACTO's discretion prior to the satisfaction of all of TRACTO's claims against the lessee secured by the security assignment, insofar as the realisable value of the assigned claims plus the realisable value of other security interests of TRACTO exceeds the secured claims by more than 10%.

3. In addition to TRACTO, the lessee remains authorised to collect the claims. However, TRACTO is authorised to disclose the security assignment to the third-party debtors, to dispose of the assigned claims and to collect them from the lessee's client(s) if there is good cause and after prior warning and setting a reasonable additional period of time. Good cause shall be deemed to exist in particular if the lessee defaults on payment to TRACTO. The additional period of time must allow sufficient time for the lessee to raise objections or pay the amounts owed. An additional period of time is not required if an application is made to open insolvency proceedings over the assets of the lessee.

XII. Liability of TRACTO

1. Unless otherwise stipulated in this Clause XII., claims by the lessee against TRACTO for damages or reimbursement of futile expenses, regardless of the legal grounds, are excluded.
2. The exclusion of liability set out in Clause XII. 1. shall not apply insofar as TRACTO is liable due to intent or gross negligence, or in cases of injury to life, limb or health, or breach of material contractual duties. Material contractual duties are those duties the fulfilment of which makes the proper performance of the contract possible in the first place and is a fact upon which the lessee routinely relies and can be expected to rely.
3. In the cases of Clause XII. 2., TRACTO shall be liable in accordance with the relevant statutory provisions. However, in the event of a simple negligent breach of a material contractual duty by TRACTO, the scope of liability shall be limited to compensation for foreseeable damages that are typical for the contract.
4. TRACTO's strict liability under Section 536a para. 1 BGB for defects that were present when the contract was concluded is excluded, unless these defects relate to characteristics expressly warranted by TRACTO.

XIII. Liability of the Lessee

1. From the handover until the proper return of the rental item, the lessee shall be liable to TRACTO, in particular for any damage to the rental item for which the lessee is responsible. This liability of the lessee for damages for which it is responsible also includes any consequential damages resulting therefrom, such as towing costs, expert fees, loss of rental income, and proportional administrative costs. Loss of rental income will be calculated at the Daily Rent rate for each day that the rental item is unavailable to TRACTO for rental. The provision in Clause III. 3. sentence 7 shall apply accordingly to loss of rental income. However, the lessee may prove that TRACTO has incurred no loss, or a lower loss, due to loss of rent than the Daily Rent payable by the lessee. Upon the objective impossibility of returning the rental item, TRACTO's claim for compensation for loss of rental income expires. The assertion of further damages by TRACTO remains unaffected.
2. From the handover until the proper return of the rental item, the lessee shall also be liable for any damage arising from the use or operation of the rental item, unless this is due to defects in the rental item itself. In particular, the lessee shall be liable for all violations of traffic and regulatory provisions (e. g., the German Road Traffic Regulations) and other statutory provisions (e. g., disturbances of possession, injury to persons or damage to third-party property), unless these are attributable to TRACTO. The lessee shall indemnify TRACTO against all third-party claims (including, but not limited to, fines and penalties, fees and other compensation claims) asserted

against TRACTO in relation to the rental item, if and insofar as these third-party claims are based on a fault of the lessee or its vicarious agents, or for which the lessee is responsible.

XIV. Obligation of the Lessee to take out Insurance

1. Unless TRACTO waives this in writing for individual cases, the lessee must insure the rental item against damage (fire, theft, loss and impairment/breakage) at its own expense, naming TRACTO as the beneficiary of the insurance contract for the duration of the rental period. The lessee must provide TRACTO with proof of insurance at any time upon request, by presenting the policy or a confirmation of insurance. If the lessee fails to fulfil this obligation, it shall be obliged to compensate TRACTO for any damages resulting from this breach of duty.
2. Furthermore, unless TRACTO waives this in writing for individual cases, the lessee must take out liability insurance at its own expense against the risks arising from the use of the rental item. The lessee must provide TRACTO with proof of insurance at any time upon request, by presenting the policy or a confirmation of insurance. If the lessee fails to fulfil this obligation, it shall be obliged to compensate TRACTO for any damages resulting from this breach of duty.
3. As a precaution, the lessee assigns to TRACTO any claims against the damage insurance pursuant to Clause XIV. 1. Furthermore, the lessee assigns its claims against the liability insurance pursuant to Clause XIV. 2. to TRACTO, insofar as TRACTO is liable to third parties for damage resulting from the lessee's operation of the rental item. TRACTO accepts the aforementioned assignments.

XV. Place of Performance, Applicable Law, Place of Jurisdiction, Miscellaneous

1. These Rental Terms and the contractual relationship between TRACTO and the lessee are subject exclusively to the laws of the Federal Republic of Germany.
2. The place of performance for all claims is the Rental Station, unless otherwise agreed in writing or in text form.
3. If the lessee is a merchant within the meaning of the German Commercial Code, a legal person under public law or a special fund under public law, the exclusive – also international – place of jurisdiction for all disputes arising from the contract shall be Lennestadt. The same shall apply if such a lessee has no general jurisdiction in the Federal Republic of Germany, or if its place of residence or habitual abode is unknown at the time the legal action is filed. However, TRACTO is also entitled, at its option, to file legal action at the lessee's courts of general jurisdiction.
4. Should one or more of the above provisions of these Rental Terms be or become invalid, the validity of the remaining provisions shall not be affected thereby. Any invalid provisions shall be replaced by the relevant statutory provisions, if any. However, insofar as adherence to the contract as a whole would cause an unreasonable hardship for TRACTO or the lessee, even taking into account the amendments provided for in sentence 2 above, the contract as a whole shall be invalid.
5. Insofar as reference is made to the written form in these Rental Terms, the text form is also sufficient to fulfil the form requirement.