

General Contracting Terms and Conditions of Willenbrock Fördertechnik GmbH & Co. KG for Leasing and Associated Servicing

1. Scope

(1) These General Contracting Terms and Conditions apply to all contracts for leasing and associated servicing between Willenbrock Fördertechnik GmbH & Co. KG (hereinafter, the "Lessor") and its customers (each hereinafter a "Lessee"), but only with respect to entrepreneurs, legal persons under public law, and special funds under public law that at the time of contract conclusion are exercising a commercial or an independent professional activity. Separate general business terms and conditions are applicable to other deliveries and services provided by the Lessor.

(2) The Lessee's general business terms and conditions are applicable if they have been expressly acknowledged by the Lessor in writing.

2. Subject of contract

(1) These General Contracting Terms and Conditions address the terms and conditions under which the Lessee leases leased machines from the Lessor.

(2) The Lessor conveys the leased machine to the Lessee in exchange for payment of the lease price.

(3) The chassis number of the leased machine is indicated on the delivery note when delivered. Together with the order confirmation, it forms the component of the lease.

3. Contract conclusion and contract term

(1) The Lessor's offer is non-binding and subject to change until such time as the contract comes into effect.

(2) The contract comes into effect through a separate written agreement or through execution of the order by the Lessor. The contract is based solely on the content of any written agreement or order confirmation and by these General Contracting Terms and Conditions.

(3) The term of the lease is agreed upon separately. In this regard, leasing takes place per calendar day, calendar week, or calendar month.

(4) The term of the lease begins at the time that the leased item is delivered to the Lessee. The day of delivery is considered to be the first lease day and the day of return (receipt by the Lessor), the last lease day.

4. Place and purpose of use

(1) Unless expressly agreed otherwise, the leased machine is to be used solely at the Lessee's facility and solely for transport within the facility.

(2) If the leased machine should be used at a different location and/or for a different purpose of use, the Lessor's prior approval is necessary, as is a potential modification of the leasing and servicing instalment. The Lessee undertakes to enable the Lessor to inspect the leased machine at any time, provided that this takes place during the Lessee's business hours.

5. Rental charge, payment terms, default

(1) The monthly rental charge is agreed upon separately.

(2) The rental charge is understood to be per calendar day, calendar week, or calendar month.

(3) The rental charge is net of applicable value-added tax.

(4) The rental charge is due eight calendar days after the invoice date, net without deduction.

(5) If the Lessee is in default, it must pay default interest at the statutory rate. If the Lessor demonstrates greater damage, it may demand compensation of same. For its part, the Lessee is entitled to prove that the Lessor suffered no or substantially less damage as a result of payment default.

(6) The Lessee is entitled to a right of set-off only if its counterclaims are uncontested, have been acknowledged by the Lessor, or have been reduced to an enforceable judgment. In addition, it is authorised to exercise a right of retention if its counterclaim is based on the same contractual relationship.

(7) The basis for the rental price is always one-shift use of the leased machine, up to 100 operating hours per calendar month. The Lessor reserves the ability to separately invoice for operating hours in excess thereof.

6. Servicing (optional)

(1) Provided that same is expressly agreed upon in writing, the Lessor provides servicing for the leased machine in accordance with the arrangements in this Section 6.

(2) In accordance with the servicing level agreed upon in the order confirmation, the Lessor provides maintenance and repair for the leased machine during the term of the lease pursuant to the manufacturer's maintenance and repair instructions and regularly performs testing pursuant to FFZ, FEM 4.004 (formerly, UVV testing).

(3) In particular, in connection with the servicing level agreed upon in the order confirmation, the Lessor provides the maintenance and repair work on the leased machine specified therein.

(4) The following additional expenses are charged separately to the Lessee pursuant to the respectively applicable Willenbrock service-charge rates:

- a) expenses incurred by the Lessor as a result of a heavily soiled leased machine,
- b) expenses incurred by the Lessor as a result of waiting times for which it is not responsible (in accordance with mutually agreement on date).

(5) Following report of damage to a leased machine, the Lessor deploys its customer service team during its regular business hours (Monday through Thursday, from 7:00 a.m. to 4:15 p.m., and Friday, from 7:00 a.m. to 3:45 p.m., other than on legal holidays). If damage is reported outside of normal business hours, the Lessor's response time (deployment of customer service team) first begins with the start of the Lessor's next normal business hours. Deployments by the Lessor outside of normal business hours are invoiced separately pursuant to the respectively applicable Willenbrock service-charge rates. This also applies where the Lessee reports damage during normal business hours but the Lessor's actual servicing is provided outside of normal business hours.

(6) Unless expressly agreed otherwise, the contractor's compensation for servicing is based on the respectively current Willenbrock service-charge rates, which in each case are set by the contractor for a calendar year.

7. Duties of the Lessee

(1) If the Lessor is engaged by the Lessee to perform maintenance and repair work, the Lessee provides the Lessor at no charge with all necessary resources (particularly, electricity, pressurised air, light), the cleaned leased machine, all machinery necessary for maintenance and/or repair, and a suitable work space.

(2) The Lessee is obligated to treat the leased machine with care, to keep it in a clean, proper condition, and to operate it only up to the maximum load-bearing capacity indicated on the load plate.

(3) The Lessee must care for and monitor the leased machine pursuant to the manufacturer's guidelines. The Lessee must protect the leased machine against over-use in any manner.

(4) Only the Lessor and its agents are entitled to perform repairs and modifications (particularly, attachments and installations) to the leased machine, as well as to remove labels that have been attached by the Lessor and/or the manufacturer.

(5) In addition, in the case of a battery-operated leased machine, the guidelines of the battery and charging-device manufacturer must be complied with. The Lessee ensures at its own expense prior to the start of each work shift, in particular, that

- a) the battery electrolyte level is checked and topped up,
- b) the battery's charge is not below its minimum level,
- c) the battery surface is clean,
- d) visual check in the case of super-elastic tyres.

Unless expressly agreed otherwise, the Lessee also ensures that the leased machine's battery is regularly filled with demineralised water.

(6) In the case of a leased machine with a combustion engine, the Lessee arranges at its own expense also for daily care pursuant to the operating manual and monitors, particularly prior to the start of work of each shift (depending on the machine type and model), the following:

- a) check of fluids, topping them up where needed (oil, grease, water),
- b) check of tyre pressure for inflated tyres,
- c) visual check in the case of super-elastic tyres.

If consumption (point a) is outside of manufacturer specifications, the Lessor must be notified immediately.

(7) The leased machine may be operated only by trained or instructed persons.

(8) The Lessee may consign the leased machine for use by a third party only with the Lessor's express permission.

(9) The Lessee must protect the leased machine outside of working time against the effects of weather. In addition, the Lessee is responsible for suitably guarding the leased machine.

(10) The Lessee is liable for damage to the leased machine for which it is responsible that is caused by failure to comply with the duties in this Section 7, as well as for damage to the leased machine caused by normal wear and tear.

(11) In the event of damage to the leased machine for which the Lessee is responsible, the Lessor is released from its leasing and servicing duties until the damage is eliminated, without losing its claim to preservation of the leasing and servicing instalment. Repair work and delivery of replacement parts performed by the Lessor as a result of such damage are invoiced to the Lessee separately pursuant to the respectively applicable Willenbrock service-charge rates.

(12) The Lessee disposes of accumulated used oil.

(13) If the Lessee determines that the leased machine has defects, it must immediately notify the Lessor thereof upon discovery of the defect. In the event of material defects and/or defects that interfere with the operating safety of the leased machine and/or the operating personnel, the Lessee must in addition discontinue operation immediately upon discovery of the defect.

(14) Unless expressly agreed otherwise, the Lessee assumes the capacity of holder of the leased machine (within the meaning of section 7 of the German Road Traffic Act (StVG)). The Lessee arranges at its own expense for the necessary insurance coverage (inter alia, liability insurance) for use of the leased machine.

8. Delivery, exchange, and return

(1) The Lessor undertakes to properly hand over the leased machine.

(2) At the Lessee's request, the Lessor instructs the operating personnel about the leased machine at no cost at the time it is handed over.

(3) The costs for delivery and return are for the account of the Lessee. This applies to and from the place of use. The Lessee bears the transport risk.

(4) The Lessee must inspect the leased machine immediately upon delivery for defects and, if defects are ascertained, immediately object to them with the Lessor.

(5) The Lessor is entitled to exchange the leased machine during the term of the lease at its own expense with a machine of the same type or with a machine that corresponds to the requirements for the leased machine agreed upon at the time of contract conclusion.

(6) At the end of the lease term, the Lessee must return the leased machine, including accessories, cleaned and in a condition that corresponds to use in conformity with the contract. Prior to returning the leased machine to the Lessor, a hand-over check takes place together with the Lessee at the place of use. In the process, the leased machine is reviewed for completeness and functioning, and all material components are inspected for damage that exceeds typical wear and tear under normal operation in accordance with its age and/or that is attributable to impact or to use not in conformity with the contract.

(7) If the Lessor identifies damage, it documents this in writing and prepares a cost estimate. Elimination of the damage is then invoiced to the Lessee pursuant to the respectively applicable Willenbrock service-charge rates.

9. Liability

(1) The Lessor is not liable for damage incurred as a result of use of the leased machine by the Lessee in breach of contract, particularly as a result of improper use, improper treatment, use by unauthorised persons, treatment by unauthorised persons, and/or impact. In addition, the Lessor is not liable for lack of availability of the leased machine or for damage suffered by the Lessee or third parties as a result, unless the Lessor is responsible for the lack of availability. In all other respects, the Lessor is liable in the case of wilful misconduct or gross negligence, as well as in the case of fraud, personal injuries, or assumption of a guarantee of quality or under the German Product Liability Act (*Produkthaftungsgesetz*) in the statutory amount. The Lessor is liable in the case of simple negligence, provided that a material contractual duty (cardinal duty) was breached, for damage that is foreseeable and typical for the contract, but not more than the total of the leasing and servicing instalments for one month for the corresponding leased machine. In all other respect, the Lessor's liability is excluded.

(2) Claims against the Lessor for compensation of damage or compensation of fruitless expenses are prescribed after one (1) year, unless the claims are based on injury to a person and wilful misconduct, fraud, a guarantee, or gross negligence exists.

(3) The Lessee undertakes to insure the leased machine at its own expense in the replacement value against fire, theft, and water damage. In addition, the Lessee must obtain sufficient liability insurance (business liability and, if necessary, special liability) for the leased machine at its own expense.

10. Machinery breakage flat rate (optional)

As an option, the Lessor offers the Lessee the conclusion of a machinery breakage flat rate for the leased machine. The conclusion of such a machinery breakage flat rate, in connection with which a Lessee deductible can also be agreed upon, must be agreed upon separately. In the case of disproportionate damage trends, the Lessor may terminate the machinery breakage flat rate with three months' notice. The machinery breakage flat rate (if agreed upon) is concluded on the basis of the "General Terms and Conditions for the Machinery Breakage Flat Rate" (version: 22 August 2014). The General Terms and Conditions for the Machinery Breakage Flat Rate can be viewed on our website.

11. Termination without notice

(1) The right to terminate the lease without notice for cause remains unaffected.

(2) In the case of termination without notice, the Lessor is entitled to enter the Lessee's business premises and to immediately pick up the leased machine. The Lessee must facilitate the surrender of the leased machine. Exercise of the claim to surrender does not affect the Lessor's claims under the lease for instalment arrears and/or compensation of damage.

12. Ownership/subleasing

(1) The Lessee does not acquire ownership or ownership-like right to the leased machine in any form. The Lessee is prohibited from allowing a third party to use the leased machine, subleasing it, selling it, pledging it, lending it, assigning it for the purposes of security or otherwise encumbering it, or assigning the lease or the claims under this lease.

(2) In the event of a lien or other compulsory enforcement measures by third parties that concern a leased machine, the Lessee is obligated to immediately notify the Lessor thereof and to turn over to it all documentation necessary for preserving it rights.

(3) The Lessor has the right to assign or pledge the leased machine to subsidiaries, banks, or leasing companies.

13. Place of performance

The Lessor's registered office is the place of performance for all services to be provided under this contract, unless a different place of performance was agreed upon in writing in a given case.

14. Place of jurisdiction and applicable law

Provided that the Lessee is a merchant, the Lessor's registered office is the place of jurisdiction for all legal disputes arising under the contract. The law of the Federal Republic of Germany is applicable, under exclusion of the United Nations Convention on Contracts for the International Sale of Goods.

15. Other general provisions

(1) Amendments and supplementations of the contract must be made in writing. That also applies to a waiver of the requirement of written form.

(2) Sending by email or fax conforms to written form, other than for legally binding declarations.

(3) Applicable to transport contracts are the German Freight Forwarders' Standard Terms and Conditions (ADSp), in the current version.