

# General Terms and Conditions for Rental of Equipment of Plasser Robel Services GmbH

## § 1 Scope of Application

1. These General Terms and Conditions for Rental of Equipment ("GTCRent") of Plasser Robel Services GmbH ("PRS", "Lessor") apply to the rental of track construction equipment ("Equipment") from PRS. The GTCRent only apply if the Lessee is an entrepreneur (Section 14 of the German Civil Code [*Bürgerliches Gesetzbuch/BGB*]), a public-law entity or constitutes a public-law special asset.
2. The GTCRent apply to the exclusion of any other provision or rule. Any conflicting, deviating or supplementary general terms and conditions of the Lessee are nonbinding on PRS, even if PRS does not expressly object to them or the Lessee declares that it intends to rent the Equipment only subject to its own general terms and conditions.
3. These GTCRent as amended from time to time shall apply as a master agreement, including future rental contracts, without PRS being required to refer to the same in the individual case.
4. To the extent that individual agreements have been made with the Lessee in individual cases, these shall take precedence over these GTCRent. A written contract and/or written confirmation of PRS shall be decisive for the content of such agreement.
5. Legally relevant declarations and notifications to be made by the Lessee to PRS after conclusion of the contract must be made in writing to be effective.
6. Any references to the applicability of statutory provisions only serve the purpose of clarification. Accordingly, the statutory provisions apply even without such clarification unless they are directly modified or expressly excluded by these GTCRent.
7. To the extent that the written form is prescribed by these GTCRent text form and application of the rule of interpretation of Section 127 (2) *BGB* are excluded.

## § 2 Use of the Equipment

1. The Equipment is rented out for use in normal construction site operations. Use of the Equipment in an open cast mine rail network must be approved in writing in advance and agreed in the rental contract.
2. Subletting or any other use for any other purpose or aim is forbidden.
3. The manufacturer's operating instructions, also with regard to prescribed fuels and operating materials (e.g. oil, grease), and the statutory rules applicable to the use of the Equipment must be observed.

## § 3 Handing over and return of the Equipment

1. The Equipment is handed over at the place of reception specified in the contract. If no place of reception is specified, the place of reception shall be the place where the transfer actually took place.
2. A handover record must be prepared to evidence the transfer. The proper condition of the Equipment and any existing defects must be documented. The record must be signed by both parties. It is binding upon both parties.
3. The Equipment, including accessories, must be returned at the agreed date and place of return during the Lessor's business hours, however no later than by 12 a.m.. Where no place of return has been agreed, the place of return is deemed to be the place of reception specified in the contract. If no place of reception is specified, the place of reception shall be the place where the return actually took place.
4. The return process must be documented in a return record. The proper condition of the Equipment and any existing defects must be documented. The record must be signed by both parties. It is binding upon both parties.
5. In the event that the Lessee fails to observe the return deadline the Lessee must, without prejudice to any further liability in accordance with § 8 hereunder, pay compensation for the period exceeding the time limit of 1.5 times the daily rent per day or part thereof.
6. The Lessor may, for good cause, demand that the Equipment be returned earlier at some specific time or immediately by terminating the rental contract without notice.

## § 4 Duties of the Lessor

1. Handover of the Equipment, transfer of risk  
The Lessor shall keep the Equipment in a proper and operational state with the required documents ready for collection by the Lessee. The risk of deterioration or theft of the Equipment is transferred upon signing the handover protocol.
2. Maintenance  
As a rule, maintenance of the Equipment, except for cleaning, is incumbent on the Lessor.  
In all other respects, § 5 (Duties of the Lessee) shall apply.
3. Revisions and deadlines  
At the beginning of the rental relationship the Lessor is obliged to inform the Lessee of any revisions and deadlines during the lease period.
4. Repairs  
The Lessee must notify the Lessor without undue delay if the Equipment needs to be repaired during the rental period to ensure proper and/or safe operation. The Lessor will then determine the further course of action and notify the Lessee in a timely manner. Proven costs incurred must be borne by the Lessor unless the Lessee is liable in accordance with § 8 (Liability of the Lessee).
5. Permanent loss of the Equipment  
If the Equipment is lost for good before transfer to the Lessee, the Lessor shall be released from its obligation to fulfill the rental contract. Any claims for damages by the Lessee are excluded.

## § 5 Duties of the Lessee

1. Use of the Equipment  
The Lessee is obliged to treat the Equipment with due care and in accordance with the state of the art.
2. Rent for Equipment  
The rent is determined in the rental contract or the then applicable price list of the Lessor. Rent must be paid plus VAT at the then applicable rate. The agreed rent covers single-shift operation with a maximum of 10 operating hours per completed calendar day of the rental period. For the rental of tamping machines, rent is not only based on one-shift operation, but also on the number of additional tamping insertions per shift. Additional compensation per operating hour/kilometer/tamping insertion will be agreed separately in the rental contract.  
The Lessor reserves the right to increase the rent for Equipment used in multi-shift operation or under similarly extreme conditions as is appropriate. The Lessee is obliged to notify the Lessor of such conditions on its own initiative.  
The Lessor is entitled to claim further damages if the Lessee acted without the Lessor's consent or contrary to the Lessor's instructions, or if the Lessor proves that the Lessee has covered longer distances.  
Costs for fuel and refueling service are at the expense of the Lessee if the Equipment is not returned with a full tank.
3. Notification duty  
The Lessee is obliged to notify the Lessor of any defects occurring on the Equipment during the rental period, which must be removed by the Lessor. Failure to notify the Lessor releases the Lessor from its duty to remove the defect. The Lessee is liable for any damage that could have been avoided by a timely notification of the defect.
4. Train drivers  
The train drivers hired by the Lessee must hold a valid train driver's license for the Federal Republic of Germany on the public rail network and be registered with a licensed railroad undertaking (*EVU*). The relevant documents must be presented at the request of the Lessor.
5. Authorized operators  
The Equipment may only be operated by the Lessee, operators from among its staff or operators specified in the rental contract. The Equipment operators chosen by the Lessee must be qualified and trained to operate the Equipment. The Lessee must prove this to the Lessor in writing. The relevant railroad regulations must be observed. The Lessee is responsible for the acts of any Equipment

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operator as if they were its own. Any provision of the contract benefiting the Lessee is also applicable in favour of the respective authorized Equipment operator.

## 6. Track access charge

The Lessee must bear all costs in connection with charges levied for the use of the rail network and fulfill any co-operation duties required in connection with the levying of the charges.

## 7. Parking the Equipment

As long as the Equipment is not in use, it must be kept fully secured, locked and closed. When leaving the Equipment, Equipment keys and papers must be carried along and kept inaccessible to unauthorized persons. The Lessee shall choose the place for the Equipment in such a way that the Equipment is protected from vandalism or other damage. Special legal or official regulations for the parking of rail vehicles must be observed.

## 8. Use abroad

The Lessee is given the Equipment only to be used within the Federal Republic of Germany. If the Lessee wishes to use the Equipment outside Germany, this must be communicated to and agreed with the Lessor prior to the rental contract. Use outside the EU is not permitted.

## 9. Maintenance

If maintenance within the meaning of § 4 paragraph 2 is not possible for the Lessor due to the location the Equipment and the rental period, maintenance is to be agreed with the Lessor and carried out in accordance with the maintenance intervals specified by the Equipment manufacturer. The same applies to technical inspections and acceptance tests of the Equipment.

## 10. Revisions and deadlines

The Lessee is obliged to tolerate any revision activities due during the rental period, and to have them carried out by the Lessor at the Lessor's expense.

## 11. Operating supplies

Any consumables and operating materials (e.g. fuel, engine oil, hydraulic oil, cooling water) must be provided by the Lessee as specified by the manufacturer. To ensure the serviceability of the Equipment, fill levels must be checked regularly, depending on the actual use, and in accordance with the manufacturer's specifications. The decisive criterion is the actual fill level.

## 12. Duties of the Lessee in case of accidents

The Lessee must send the Lessor without undue delay a comprehensive and true written report of any accident that occurs. The Lessee is obliged to support the Lessor and its insurers in their claim management and provide them with any information necessary to clarify the claim and to determine the liability situation.

## § 6 Terms of payment

1. Unless otherwise agreed between the Lessee and the Lessor in the rental contract, the Lessor is entitled to demand a down payment on the rent upon conclusion of the rental contract prior to handover of the Equipment of up to the amount of the anticipated final price. For rentals exceeding 4 weeks, the rent must be paid in intervals of 4 weeks in advance. The remaining amount is due for payment without deduction upon return of the Equipment to the Lessor.
2. The Lessee herewith assigns to the Lessor as security, upon taking over the Equipment, its claims against its clients for whose order the Equipment is used, in the amount of the agreed rent less any security deposit received. The Lessor herewith accepts the assignment.
3. The Lessor is entitled to demand a security deposit up to the amount of 1% of the original value of the Equipment before the start of the rental period. No interest is paid on this amount. The security deposit becomes due for repayment upon return of the Equipment in compliance with the terms of the contract, and the Lessor shall be entitled to set off any outstanding claims it has from the rental relationship up to their respective amounts.
4. The Lessee is entitled to withhold payments only to the extent that its counterclaims are undisputed or non-appealable.
5. The Lessee's right to set off counterclaims from another legal relationship is limited to claims that are undisputed or non-appealable.

## § 7 Termination

1. A rental relationship agreed for a definite period of time cannot be terminated by either party.
2. Each party to the contract may terminate the rental relationship without notice for good cause. A good cause is deemed to exist, in particular, if the Lessee fails to pay its rent for more than 14 days for an interval or in the event of the Lessee's substantial or continued non-compliance with its obligations under § 5 hereunder.

## § 8 Liability of the Lessor

1. The Lessor endeavours to warrant that the Equipment is in flawless condition and to provide reserved Equipment as agreed. Unforeseeable and unavoidable events and events beyond the Lessor's control and events for which the Lessor is not responsible, such as force majeure, pandemics, war, terrorist attacks and natural disasters, release the Lessor from its obligation to fulfill the contract for as long as such event persists.
2. Subject to the provision in the following paragraph, the Lessor's statutory liability is limited as follows:
  - a) as to the amount, the Lessor is liable for damage typically foreseeable at the time of the conclusion of the contract and for the slightly negligent breach of an essential contractual obligation the fulfilment of which is indispensable for the proper performance of the contract and which the Lessee can reasonably expect to be fulfilled (essential obligations under the rental contract);
  - b) the Lessor is not liable for the slightly negligent breach of non-essential obligations arising from the contract.This also applies to any personal liability on the part of employees, representatives, organs and agents [*Erfüllungsgehilfen* as defined in Section 278 BGB] of the Lessor.
3. The limitation of liability stated in the preceding paragraph does not apply in cases of mandatory statutory liability (in particular under the Product Liability Act), or in the event of the assumption of a guarantee or damage resulting from an injury to life, body or health due to the Lessor's negligent non-compliance with a duty or intentional or negligent non-compliance on the part of the Lessor's agent.
4. No other or further liability is assumed. In particular, the Lessor does not assume any liability for items that were left behind or forgotten upon return of the Equipment.

## § 9 Liability of the Lessee

1. The Lessee is liable as provided for by law for damage to the Equipment and loss, destruction or theft of the Equipment, including Equipment parts and accessories, occurring during the rental relationship. The Lessee shall also be liable for its employees and agents, including deployed operating personnel.
2. If the Lessee is responsible for damage to, loss, destruction or theft of the Equipment, it must compensate the Lessor for any damage incurred, such as repair costs, replacement value, consequential damage, such as disposal costs or towing costs. In the event of loss or theft, the end date of the rental contract is the date stated as the date of loss given in the police report, provided that the Lessee reported the theft to the police upon discovery without undue delay. If the Equipment is let to a third party, authorized or unauthorized, the Lessee is liable for compliance with this contract and the conduct of the third party just as for its own conduct.
3. The Lessee is liable for the operating risk emanating from the Equipment unless the risk is attributable to a defect in the Equipment.
4. The Lessee assumes unlimited liability for any violations of traffic and public regulations and other statutory provisions, to the extent that no fault can be attributed to the Lessor.
5. The Lessee is liable for any damage caused to the Equipment due to incorrect or insufficient refueling or supply of fuel and lubricants on its part.

## § 10 Insurance

1. The Equipment is insured under a comprehensive Equipment insurance policy taken out by the Lessor. In the event of damage, the Lessee shall pay the deductible in the amount of € 10,000, insofar as the Lessee has culpably violated one or more of the

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obligations specified in § 5 or if the Lessee has caused damage intentionally or through gross negligence.

2. The Equipment is insured in accordance with the then applicable conditions of the General Railway Act (*AEG*), Sections 14-14d.
3. Notwithstanding the foregoing, the Lessee shall maintain its own liability insurance in accordance with the conditions in Sections 14-14d *AEG*. Such confirmation must be provided prior to the start of the rental period.

## § 11 Limitation periods

1. Claims for compensation made by the Lessor due to modification or deterioration of the Equipment are subject to a limitation period of 12 months, starting upon return of the Equipment. The limitation period commences no later than six months after the return of the Equipment.
2. Claims on the part of the Lessee for reimbursement of expenses are subject to a limitation period of 12 months following termination of the rental relationship.
3. Any other contractual claims for damages by the Lessee are subject to a limitation period of 12 months, calculated from the statutory commencement of the limitation period pursuant to Section 199 (1) *BGB* unless damage is attributable to injury to life, body or health of the Lessee or in cases where the Lessor or its agent have caused damage intentionally or through gross negligence.

## §12 Final provisions

1. Any legal relationship between PRS and the Lessee is governed exclusively by the laws of the Federal Republic of Germany; the provisions of UN Sales Convention (CISG) are excluded.
2. If the Lessee suspends payments, if a provisional insolvency administrator is appointed or insolvency proceedings are opened over the Lessee's assets, PRS will be entitled to rescind the contract in whole or in part or to terminate the contract. In addition, PRS is entitled to the rights pursuant to Section 321 *BGB*.
3. If the Lessee is a merchant [*Kaufmann*] as defined in the German Commercial Code [*HGB*], a public-law entity or constitutes a public-law special asset, the registered office of PRS shall be the exclusive, including international, place of jurisdiction for all disputes directly or indirectly arising out of the contractual relationship. However, PRS is also entitled to take legal action at the Lessee's general place of jurisdiction or at a special place of jurisdiction, unless Clause 11.4 applies.
4. If at the time a party institutes proceedings the Lessee has its registered office neither in the European Union nor in Switzerland, Norway or Iceland, all disputes arising in connection with the relevant rental contract or regarding its validity shall be finally settled in accordance with the Arbitration Rules of the German Institution of Arbitration [Deutsche Institution für Schiedsgerichtsbarkeit e. V./DIS]; recourse to the ordinary courts of law is excluded. According to the DIS Arbitration Rules the arbitral tribunal shall consist of a single arbitrator for amounts in dispute up to EUR 100,000 and of three arbitrators for higher amounts in dispute. The place of arbitration shall be Munich. The language of the arbitration proceedings shall be German. The law applicable to the case shall be as defined in § 11.1.
5. Any modifications of and amendments to these GTCRent and/or ancillary agreements must be made in writing. This shall also apply to a waiver of this writing requirement.
6. PRS employees are not authorized to amend or deviate from the contents of the contract. This does not apply to organs or *Prokuristen* [authorised officers pursuant to Sec. 49 *HGB*] of PRS or to persons authorised by the same to do so.
7. If any of the above provisions is or becomes ineffective, the validity of the remaining provisions shall not be affected. The parties shall replace the ineffective provision by a provision that comes as close as possible to the economic success previously pursued.

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