

General Rental Terms and Conditions for Railway Construction Machinery of Plasser Robel Services GmbH

Sec. 1 – Scope of application

1. These General Rental Terms and Conditions ("GRTC") of Plasser Robel Services GmbH ("PRS", "Rental Company") shall apply to the rental of railway construction machinery ("Rental Object") by PRS. These GRTC shall only apply if the renter is an entrepreneur (section 14 of the German Civil Code (BGB)), a legal entity under public law or a special fund under public law.
2. These GRTC shall apply exclusively. Any general terms and conditions of the renter in conflict with, deviating from or amending these GRTC shall not be binding on PRS, even if PRS does not expressly object to them or if the renter declares that he/she/it only wishes to rent in accordance with his/her/its own general terms and conditions.
3. These GRTC shall also apply in their respective version as a framework agreement for future rental contracts without PRS having to refer to them again in each individual case.
4. To the extent that individual agreements have been made with the renter in individual cases, those shall take precedence over these GRTC. The content of such agreements shall be governed by a written contract or written confirmation given by PRS.
5. Any declarations and notifications relevant in law to be made by the renter to PRS following the conclusion of the contract shall require written form to be effective.
6. Any references to the application of statutory provisions are for clarification purposes only. The statutory provisions shall therefore apply even without any reference to them, unless they are directly amended or expressly excluded in these GRTC.
7. To the extent that written form is stipulated in these GRTC, the text form and the application of the rule of interpretation under section 127 (2) BGB shall be excluded.

Sec. 2 – Handover and return of the Rental Object

1. The Rental Object shall be handed over at the place of handover specified in the contract. If no handover location is specified, the handover location shall be at one of the two PRS maintenance depots, i.e. Freilassing or Leverkusen-Opladen.
2. Handover shall be documented in a handover protocol. The contractual condition as well as any existing defects shall be documented. The protocol shall be signed by both parties. It shall be binding on both parties.
3. The Rental Object shall be returned with accessories at the end of the rental period at the specified return location during the Rental Company's normal business hours. If no place of return was specified, the place of handover shall be deemed to be the place of return.
4. Return shall be documented in a handover protocol. The contractual condition and any existing defects shall be documented. The protocol shall be signed by both parties. It shall be binding on both parties.
5. If return is not made in due time in accordance with this no. 3, the renter shall – for the time in excess, for each day or part thereof – pay a contractual penalty of 1/15 of the monthly rent.

Sec. 3 – Rental Company duties

1. The Rental Company shall keep the Rental Object in a contractual condition including the required documents ready for pick-up by the renter. Upon signing the handover protocol, the risk of deterioration or theft of the Rental Object shall devolve to the renter.
2. The Rental Company shall – at the start of the rental relationship – be obliged to inform the renter of any overhauls and periodic inspections necessary during the rental period

Sec. 4 – Renter duties

1. The renter shall operate the Rental Object in accordance with generally accepted good engineering practice and with the usual care and attention as well as in compliance with the operating manual and the manufacturer's specifications respectively. The manufacturer's operating instructions shall be complied with – in particular with regard to the use of prescribed fuels and operating materials (e.g. oils, greases) – as well as with the statutory provisions applicable to the use of the Rental Object.
2. The renter shall notify the Rental Company immediately of any defects and damage occurring to the Rental Object during the rental period. The renter shall be liable for damages to the extent that they could have been avoided by timely notification of a defect.
3. The renter shall ensure that the traction unit drivers (Triebfahrzeugführer) and authorised machine operators (Maschinenführungsberechtigte) deployed have all the necessary qualifications. The renter shall fulfil all legal reporting and other obligations in connection with the driving of the vehicle on his/her/its own responsibility. The renter shall, for the duration of the rental agreement, ensure that the Rental Object is registered with the vehicle register of the railway undertaking ("RU") he/she/it avails himself/herself/itself to provide railway transport services or to ensure traction.
4. The renter shall bear all costs incurred in connection with the use of the Rental Object, in particular through the use of the rail network, and shall fulfil all obligations to cooperate required in connection with the charging or the collection of fees.
5. The renter shall park the Rental Object so as to protect it against access by third parties, in particular against vandalism or other damage. Special legal or official provisions for the parking of rail vehicles shall be observed.
6. The Rental Object shall be provided to the renter for exclusive use within the Federal Republic of Germany.
7. The renter shall be obliged to tolerate any necessary overhauls and periodic inspections that fall within the renter's rental period and to have them carried out by the Rental Company. During this period, the renter shall not be obliged to pay rent. It follows that, for each calendar day on which the Rental Object cannot be used, the rent shall be waived in the amount of 1/30.
8. The renter shall provide all consumables and operating materials (e.g. fuel, engine oil, hydraulic oil, cooling water) required for the operation of the Rental Object and regularly check their levels with regard to operability of the Rental Object in accordance with the manufacturer's specifications. The renter shall ensure that the consumables and operating materials used comply with the manufacturer's specifications. Costs for fuel and refuelling services shall be borne by the renter if the Rental Object is not returned with a full fuel tank.
9. The renter shall be obliged to notify the Rental Company immediately in text form of any accident. The renter shall be obliged to assist the Rental Company and its insurers and to provide them with any information required to clarify the event of damage and determine the liability situation.
10. Handover and return of the Rental Object shall be performed by the renter. The renter shall bear all costs thus incurred, in particular for the transfer.
11. The renter shall keep a logbook documenting the use of the Rental Object and send it to the Rental Company at regular intervals, at least once a week or at the request of the Rental Company.
12. The renter shall provide the Rental Company with access to the Rental Object during normal business hours and tolerate any inspection of the condition of the Rental Object provided that the Rental Company announces this in text form at least 5 working days in advance.

Sec. 5 – Vehicle Maintenance

1. The Rental Company shall carry out any necessary overhauls and periodic inspections at its own expense.
2. The renter shall, professionally and by qualified personnel, carry out and document any safety-related checks, ongoing maintenance pursuant to the maintenance schedule (in particular lubrication, replacement of wearing parts, usual visual inspections) and minor repairs arising in the normal course of use on his/her/its own responsibility.
3. Other repair and maintenance work shall be carried out by the Rental Company on its exclusive responsibility if and to the extent that this is necessary to ensure the intended use by the renter.
4. The renter shall bear the costs incurred in accordance with this no. 2 and no. 3 if and to the extent that the Rental Company proves that the renter is responsible for the underlying damage or defect. In particular, the renter shall be responsible for the culpable use of the rented property in breach of the contract and for the breach of the obligation to notify in accordance with section 4 no. 2.
5. In the case of (i) a total economic loss of the Rental Object, (ii) impossibility of repair or (iii) the loss of the Rental Object (in each case: "economic loss"), the contract for the Rental Object shall end without the need for termination upon an expert whom the parties shall designate by amicable agreement, acting as an arbitrator in analogous application of sections 317 et seqq. BGB, establishing such economic loss. To the extent that an amicable agreement regarding an expert is not reached within a reasonable period of time, the parties already agree to the use of a representative of the respective manufacturer, e.g. Plasser & Theurer Austria or ROBEL Baubahnmaschinen, as an expert. The expert's decision shall be binding on the parties.
6. If and to the extent that the renter is responsible for the economic loss of the Rental Object, the renter shall reimburse the Rental Company for the damage caused by the economic loss of and the premature termination of the rental relationship regarding the lost Rental Object. The same shall apply to the Rental Company to the extent that it is responsible for the economic loss.
7. If the Rental Object is already lost before it is handed over to the renter, the Rental Company shall be released from its obligation to fulfil the rental contract. Any claims for damages by the renter shall be excluded.

Sec. 6 – Rental price payments

1. The renter shall pay the rent stipulated in the rental agreement. Such rent shall be paid plus applicable statutory value added tax. The stipulated rent shall cover single-shift operation with a maximum of 10 operating hours per shift started. Any use beyond the single-shift operation specified in the rental agreement ("**additional use**") shall only be permitted if and to the extent that the parties have stipulated additional remuneration corresponding to such use. In the absence thereof, a contractual penalty of 20% of the monthly rent payable shall be incurred for each case of additional use.
2. The rent shall be invoiced on the 20th of the current calendar month and shall be paid within 21 days without deduction.
3. The renter shall be released from the obligation to pay the rent to the Rental Company 48 hours following proper notification in accordance with section 4 no. 2, if and for as long as the Rental Object cannot be used for reasons for which the Rental Company is responsible. As a result, for each calendar day on which the Rental Object cannot be used, the rent shall be waived in the amount of 1/30.
4. The renter shall not be entitled to offset any claims against the Rental Company's payment claims except where such claims are undisputed or are established as being final and binding.

Sec. 7 – Termination

1. No party shall be entitled to give notice of termination in accordance with the usual procedure (ordentliche Kündigung) if the rental relationship has been entered into for a fixed term.
2. Either party may terminate the rental relationship for cause (außerordentliche Kündigung) with immediate effect. The rental company shall be deemed to have good cause in particular (i) if the renter is in default with the payment of rent for a period of more than 30 days (ii) if the renter is in a significant way or on a continuing basis in breach of his/her/its obligations under section 4 or (iii) in the case of the renter's insolvency or the rejection of insolvency proceedings against the renter's assets for lack of assets.
3. Any termination shall require written form.

Sec. 8 – Rental Company's liability

1. Subject to the stipulations in the following paragraph, the Rental Company's statutory liability shall be limited as follows:
 - a) the Rental Company's liability shall be limited in amount to the damage typically foreseeable and to simple negligent breach of duties the fulfilment of which is essential for the proper performance of the contract in the first place, and on compliance with which the renter may regularly rely (essential obligations arising from the rental contract);
 - b) the Rental Company shall not be liable for simple negligent breach of insignificant duties arising from the contractual obligation. This shall also apply to the personal liability of the Rental Company's employees, representatives, bodies and persons it avails itself to perform its obligation (Erfüllungsgehilfen).
2. The limitation of liability indicated in the above paragraph shall not apply in cases where mandatory statutory liability is provided for (in particular under the Product Liability Act) or where a guarantee has been assumed or in the event of damage resulting from injury to life, limb or health due to a negligent breach of duty by the Rental Company or from an intentional or negligent breach of duty by a person the Rental Company availed itself to perform its obligation (Erfüllungsgehilfe).
3. Any further liability of the Rental Company shall be excluded.

Sec. 9 – Renter's liability

1. The renter shall be liable in accordance with the statutory provisions on liability, in particular for damage to the Rental Object, including loss, destruction or theft for which he/she/it, his/her/its staff and the persons he/she/it avails himself/herself/itself to perform his/her/its duties are responsible, as well as for all breaches of traffic and administrative rules and other contractual or statutory provisions for which he/she/it is responsible.
2. Moreover, the renter shall be liable for compliance with his/her/its obligations under this contract by third parties to whom he/she/it makes available the Rental Object – whether authorised or unauthorised – as for his own conduct.
3. The renter shall be liable for the operational risk arising from the Rental Object, unless it is attributable to a defect in the Rental Object or unless such risk is mandatorily assigned to the Rental Company by law.

Sec. 10 – Insurance

1. The Rental Object shall be insured by the Rental Company to the usual extent e.g. physical damage insurance (Kaskoversicherung) and third-party liability insurance (Haftpflichtversicherung).
2. This notwithstanding, the renter shall maintain additional customary and necessary insurance, in particular any insurance stipulated by law, at his own expense. The renter shall provide the Rental Company with evidence of these insurances upon request.

Sec. 11 – Final provisions

1. The law of the Federal Republic of Germany shall exclusively govern all legal relationships between PRS and the renter to the exclusion of the provisions of the Convention on Contracts for the International Sale of Goods (CISG).
2. Where the renter is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law, the exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the registered office of PRS in Munich. However, PRS shall also be entitled to bring an action at the general place of jurisdiction (allgemeiner Gerichtsstand) of the renter or at a special place of jurisdiction (besonderer Gerichtsstand).
3. Any amendments and addendums to these GRTC as well as side agreements shall require written form. This shall also apply to any waiver of this written form requirement.
4. Any existing or future invalidity of one of the above provisions shall not affect the validity of the remaining provisions. In this case, the contracting parties shall – in a legally permissible manner – replace the invalid provision with a provision that comes closest to it in economic terms. The same shall apply to the completion of an unintended gap.