

§ 1 General rights and duties of the contracting parties, start of the rental period

1. KLEMM Bohrtechnik GmbH, hereinafter referred to as the Lessor, undertakes to provide the rented item to the Lessee for use for the agreed rental period. The rental relationship starts on the date of the agreed delivery or hand-over of the item to the carrier and ends on the date on which the item is returned to the place specified by the Lessor. Deviating arrangements must be agreed in writing.

2. The Lessee undertakes to use the rented item only for the intended purpose, to carefully observe the relevant accident prevention, health and safety and road traffic regulations, to pay the rental charge as agreed, treat the rented item in a regular manner and return it in a clean condition with a full tank of fuel at the end of the rental period.

3. The Lessee undertakes to immediately notify the Lessor of the current location and/or place of use of the rented item respectively.

§ 2 Hand-over of the rented item, delay by Lessor, passing of the risk

1. The Lessor must hand over the rented item in working order with the documents required for operation (operating manual).

2. If the Lessor delays the handover of the rented item at the beginning of the rental period, the Lessee may demand compensation. In case of simple negligence on the part of the Lessor, the maximum compensation is restricted to the amount of the daily rental charge for each workday.

3. The risk passes to the Lessee as soon as the rented item is handed over to the carrier, forwarding agent or Lessee, depending on whether the item is sent or collected by the Lessee. From the time when the risk passes, the Lessee is obliged to take out an insurance against fire, theft, transport and machinery breakdown for the rented item and to furnish proof thereof to the Lessor prior to collection/dispatch by means of a risk coverage certificate.

§ 3 Defects upon handover of the rented item

1. The Lessee is entitled to inspect the rented item in due time before renting it and to notify any defects. The Lessee pays the costs of such inspections.

2. Upon handover, a handover report shall be issued which must be signed by the Lessee and the Lessor. Any defects discovered shall be recorded therein.

Other defects existing upon handover shall be notified in writing immediately after discovery.

3. The Lessor shall rectify defects notified in due time which existed upon handover. The Lessor pays the costs for the rectification of such defects. The Lessor is also entitled to provide a rented item with equivalent functions to the Lessee. If the rented item had a defect upon handover which rules out or restricts its suitability for use as intended in the contract, the Lessee shall pay only a reasonably reduced rental charge for the period in which the suitability is impaired.

4. If the Lessor is responsible for allowing an additional reasonable period granted to it to rectify a defect existing at the point in time of the handover to elapse fruitlessly, the Lessee shall have a right of withdrawal. The Lessee's right of withdrawal also applies in other cases of failure by the Lessor to rectify a defect existing at the point in time of the handover.

§ 4 Limitation of liability of the Lessor

1. Claims for damages against the Lessor, in particular compensation for damages that did not occur to the rented item itself, may only be asserted by the Lessee in the event of:

- gross negligence on the part of the Lessor, its legal representatives or vicarious agents;
- culpable breach of essential contractual duties insofar as the achievement of the contract purpose

is endangered by this with regard to foreseeable damages that are typical for the contract, - damages associated with death, physical injury or an impairment of health that is based on a negligent breach of duty by the Lessor or an intentional or negligent breach of duty by a legal representative or vicarious agent of the Lessor, or - the Lessor being liable for personal injuries or material damages to objects in private use pursuant to the Product Liability Act.

Liability is excluded in other respects.

2. In the event that, due to the fault of the Lessor, the Lessee's rented item cannot be used in accordance with the contract as a consequence of the failed execution, or incorrect execution of, advice and recommendations provided before or after conclusion of the contract and other ancillary contractual duties, in particular instructions regarding the use and maintenance of the rented item, the provisions set out in Section 3 (3) and (4) and Section 4 (1) shall apply accordingly to the exclusion of further claims by the Lessee.

§ 5 Rental charge and payment, assignment as security for the rental charge due

1. The rental charge agreed in the rental contract is based on the working hours specified in the contract. Additional working hours and complicated assignments must be notified to the Lessor; these shall be charged in addition on reasonable conditions.

2. The statutory VAT is charged separately and must be paid in addition by the Lessee.

3. The agreed monthly rental charge is payable in advance or according to a separate agreement to be made.

4. The Lessee only has a right of retention and set-off for its counterclaims which are uncontested by the Lessor or have been declared legally valid by a court of law. It does not have any such right for contested counterclaims.

5. If the Lessee is in delay with the payment of an amount due for more than 14 calendar days after a written request for payment, the Lessor shall be entitled, after having given notice, to collect the rented item without recourse to the court and dispose of it otherwise at the expense of the Lessee, who must permit access to the rented item and its collection. The claims to which the Lessor is entitled under the contract will continue to exist; however any amounts which the Lessor has possibly obtained or could have obtained within the agreed term of the contract by letting the rented equipment elsewhere shall be taken into account after deduction of the costs of the collection and re-letting of the rented item.

6. Amounts due shall be added to the current account for a reservation of title under a current account agreed for deliveries between the contracting parties.

7. The Lessee shall assign to the Lessor its claims against the Customer on whose behalf the rented item is used at the amount of the agreed rental charge, less the deposit received. The Lessor accepts the assignment. The assignment is made to secure the claims of the Lessor and is made only on account of performance.

§ 6 Idle plant costs

1. The rental period is not extended automatically if idle periods, e.g. caused by public holidays at the place of use, arise for the Lessee. Likewise, this does not affect the amount of the rental instalments. The Lessee shall pay all costs incurred in this connection.

§ 7 Maintenance duty of the Lessee

1. The Lessee is obliged

- a) to protect the rented item against excess stress in every possible manner;
- b) to professionally carry out the maintenance and care of the rented item as appropriate at its expense;
- c) to announce necessary inspection and repair work in due time and to have this carried out by the Lessor without delay. The Lessee shall pay the costs.

2. The Lessor is entitled to inspect the rented item at any time and, after prior coordination with the Lessee, to examine it itself or to have it examined by a party authorised to do so. The Lessee is obliged to facilitate such examination for the Lessor in every possible manner. In particular it shall permit access to the place of use or obtain a permit required from third parties without delay upon demand. The Lessor shall pay the costs of such examination.

3. Annexes, conversions and other modifications of the rented item may only be effected after the prior written approval of the Lessor.

§ 8 Start and end of the rental period and return of the rented item

1. The rental relationship starts on the date when the item is delivered or handed over to the forwarder as agreed.

2. The Lessee is obliged to announce the intended return delivery of the rented item to the Lessor in due time in advance (notification of availability).

3. The rental period ends on the date on which the rented item arrives at the storage site of the Lessor or another agreed destination with all the parts required for putting it into operation in due condition and in a state agreed in the contract, however upon the expiry of the agreed rental period at the earliest.

4. The Lessee must return or make available for collection the rented item in a clean state, in working order and with a full tank. Insofar as necessary servicing and maintenance based on § 7 No. 1 b or the necessary inspections and repairs based on § 7 No. 1 c must be carried out, such work shall be carried out by the Lessee at its expense before the return of the item.

5. The return delivery must be carried out during the customary hours of business of the Lessor in such a manner that the Lessor is able to examine the rented item on the same day.

§ 9 Liability of the Lessee

1. From the point in time of the handover to the point in time of the proper return of the rented item within the meaning of Section 8, the Lessee shall be liable for all damage to the rented item for which it is responsible or for any loss of the rented item, including parts and accessories, for which it is responsible. Furthermore, the Lessee shall be liable for any consequential costs for the Lessor resulting from such damage, in particular removal costs, expert fees, loss of rent and pro-rata administration costs. The damages for loss of rent shall be calculated on the basis of the daily rent for each day on which the rented item is not available to the Lessor for rental. The Lessee shall be entitled to provide proof that the Lessor incurred no damages or lesser damages.

2. Insofar as the Lessee bears the operational risk for the rented item, the Lessee shall cover the costs of all damages in connection with operation of the rented item incurred by the Lessee itself, the Lessor or third parties. The Lessee undertakes to release the Lessor from all liability regarding any third-party claims arising from operation of the rented item. This shall also apply in the event that a claim is made against the Lessor due to a violation of public law regulations by the Lessee for the reimbursement of costs for substitute performance, other fees and contributions arising from the operation of the rented item..

§ 10 Further duties of the Lessee

1. The Lessee may not provide the rented item to a third party or assign rights under this contract or grant rights of any kind to the rented item to a third party.

2. Should a third party assert rights to the rented item through seizure, attachment or similar rights, the Lessee is obliged to immediately report this to the Lessor by registered letter and to notify the third party thereof by registered letter.

3. The Lessee may use the rented item solely in the country agreed for such use and is not entitled to transport the rented item to a country other than the agreed country of use.

4. The Lessee must take suitable measures to protect the rented item against theft.

5. The Lessee must notify the Lessor of all accidents and await its instructions. Traffic accidents and theft must be reported to the police. The Lessee shall notify the Lessor of any other defects and damage without delay.

6. If the Lessee is responsible for infringing one of the above provisions from 1. to 5., it is obliged to compensate the Lessor for all damage that the Lessor suffers as a result thereof.

7. If the Lessee is at fault for failing to immediately notify the Lessor of a defect in the rented item and this causes damage to the rented item, the Lessee is obliged to compensate this damage.

§ 11 Termination

1. a) Notice of ordinary termination is not possible for either party for a rental contract concluded for a specific rental period.

b) The same applies to the minimum rental period within the framework of a rental contract concluded for an indefinite period. After the expiry of the minimum rental period, the Lessee is entitled to terminate the rental contract concluded for an indefinite period with a notice period of one day.

c) In the case of rental contracts for an indefinite period without a minimum lease period, the period for ordinary termination is as follows:

- one day if the rental charge is agreed per day
- two days if the rental charge is agreed per week
- one week if the rental charge is agreed per month.

2. The Lessor is entitled to give notice of extraordinary termination of the rental contract without observing a notice period particularly

- a) if the Lessee delays payment of an amount due for more than 14 calendar days after receiving a written reminder;
- b) if the Lessee, without the consent of the Lessor, does not use the rented item or a part thereof as intended or takes it to a different location;
- c) in cases of infringements of § 7 No. 1. if this entails any danger to the rented item.

3. The Lessee may give notice of extraordinary termination for good cause without observing a notice period after the expiry in vain of a reasonable period granted for remedial action if it is not granted use of the rented item in due time or it is subsequently deprived use thereof for reasons for which the Lessor is responsible.

§ 12 Data recording device, data usage

12.1. KLEMM reserves the right to equip the contractual objects with a data recording device (below "Recorder") and to operate the recorder in order to monitor the technical functionality and technical parameters of the contractual objects as well as to enable and facilitate the administration of the required maintenance, repair and service work. The customer hereby expressly allows KLEMM along with its affiliates and Proemion GmbH (below "Affiliates") to call up, download and save the data material generated in this manner at any time, either manually or using appropriate data transmission devices (e.g. via mobile network), and to use and analyse this data material within the scope of the following conditions. If the parties have not concluded a corresponding written contract (e.g. a teleservice agreement), however, KLEMM and the affiliates are not obligated to do so. If data will be called up manually, the customer will grant KLEMM, the affiliates and/or their authorised representative(s) unrestricted access to the contractual objects for an unlimited time.

12.2. The analysis of data helps KLEMM and the affiliates primarily to review the technical functionality and technical parameters of the contractual objects, to fulfil their own guaran-

tee obligations properly and to improve service quality and enhance product development.

12.3. KLEMM and the affiliates undertake to treat all construction equipment, construction production and construction service data as strictly confidential, and agree not to transfer these data to third parties or use them for purposes other than those outlined above. This does not apply insofar as KLEMM or the affiliates are obliged to transfer the data due to statutory regulations or due to official or court orders, or if the disclosure of data is necessary to defend their rights and fulfil their obligations (e.g. in a legal dispute).

12.4. Insofar as KLEMM or the affiliates also process personal data at the customer's request (e.g. the name of the respective equipment operator) and provide this for the customer to read out based on a corresponding written contract (e.g. a teleservice agreement), all parties involved undertake to ensure strict compliance with the applicable regulations concerning the protection of personal data and will establish corresponding contractual regulations concerning data processing carried out by KLEMM or the affiliates. The customer may withdraw consent to the processing of personal data by KLEMM or the affiliates at any time with future effect.

12.5. If the customer hands over the contractual products to a third party (e.g. to an affiliate or during the resale or leasing of the contractual products), the customer must ensure by written agreement that the third party is obliged to comply with the provisions stipulated in Clause 12 of this document.

§ 13 Other provisions, partial invalidity, place of jurisdiction, applicable law

1. Should a provision of these Terms be invalid or unenforceable, this shall not affect the validity of the remaining provisions of these Terms. Instead, the contracting parties undertake to replace the invalid or unenforceable provision with a valid or enforceable provision that comes as close as possible to the commercial and non-material expectations of the parties.

2. Should a provision of this contract be invalid or impractical, this shall not affect the validity of the contract in other respects. Instead the contracting parties undertake to replace the invalid or impractical provision with a valid or practical provision which most closely approximates the commercial and non-material notions of the parties.

3. If the Lessee is a registered merchant, a legal entity under public law or a special public trust, the place of performance and exclusive place of jurisdiction for both parties and for all claims – also for actions in summary procedures and special procedures deciding claims arising out of a bill of exchange – is the principal place of business of KLEMM Bohrtechnik GmbH or – at its choice – the domicile of its branch office which concluded the contract. KLEMM Bohrtechnik GmbH may also bring action at the place of general jurisdiction of the Lessee.

4. The contract is governed at all times by the laws of the Federal Republic of Germany to the exclusion of the UN Sales Convention (CISG), even if the purchaser has its domicile or residence abroad.