

## Rental Conditions for Machinery and Equipment of BAUER Maschinen GmbH (BMA) Effective 01.01.2012

### § 1 General rights and duties of the contracting parties

1. BMA undertakes to provide the rented item to the Renter for use for the agreed rental period.
2. The Renter 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 rent as agreed and treat the rented item in a regular manner.
3. The Renter undertakes to immediately notify BMA of the current location and/or place of use of the rented item respectively.

### § 2 Handover of the rented item, delay by BMA

1. BMA must hand over the rented item in working order with the documents required for operation (operating manual).
2. If BMA delays the handover of the rented item at the beginning of the rental period, the Renter may demand compensation. In case of simple negligence on the part of BMA, the maximum compensation is restricted to the amount of the daily rent for each workday.

### § 3 Defects upon handover of the rented item

1. The Renter is entitled to inspect the rented item in due time before renting and to notify any defects. The Renter pays the costs of such inspections.
2. Upon handover, a handover report shall be issued which must be signed by the Renter and the Lessor. Any defects discovered shall be recorded therein. Other defects existing upon handover shall be notified in writing immediately after discovery.
3. BMA must rectify defects notified in due time which existed upon handover. BMA pays the costs for the rectification of such defects. BMA is also entitled to provide a rented item with equivalent functions to the Renter. If the rented item had a defect upon handover which rules out or restricts its suitability for use as intended in the contract, the Renter shall pay only a reasonably reduced amount of rent for the period in which the suitability is impaired.
4. If BMA is responsible for allowing an additional reasonable period granted to it to rectify a defect existing upon handover to pass by in vain, this shall not affect the Renter's right of termination.

### § 4 Limitation of liability of BMA

1. Claims for damages against BMA, in particular compensation of damage which did not occur on the rented item itself, can only be asserted by the Renter in case of:
  - intent or gross negligence on the part of BMA;
  - a culpable breach of essential contractual duties if the achievement of the object of the contract is jeopardised, in terms of the typical, foreseeable damage under the contract;

- damage based on death, physical injury or an impairment of health which is based on a negligent breach of duty by BMA or an intentional or negligent breach of duty by a legal representative or vicarious agent of BMA.
2. Liability of BMA is excluded in other respects.
  3. If the rented item cannot be used as intended as a result of the culpable breach of duties to inform, advise and other ancillary duties, the provisions under § 3 No. 3 and 4 as well as § 4 No. 1 apply accordingly, excluding any further claims of the Renter.

### § 5 Rental price and payment, assignment as security for the rent due

1. The rent 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 BMA; these shall be charged in addition on reasonable conditions.
2. The statutory VAT is charged separately and must be paid in addition by the Renter.
3. The invoice is payable on receipt strictly net.
4. The Renter may only retain and offset counterclaims from the claims of BMA if these are uncontested or have been declared legally valid by a court of law. The Renter may not offset contested counterclaims.
5. 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.
6. The Renter shall assign to BMA its claims against the customer on whose behalf the rented item is used at the amount of the agreed rental price, less the deposit received. BMA accepts the assignment. The assignment is made to secure the claims of BMA and is made only on account of performance.

### § 6 Idle-plant costs

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

### § 7 Maintenance duty of the Renter

1. The Renter 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 BMA without delay. The Renter shall pay the costs.
2. BMA is entitled to inspect the rented item at any time and, after prior coordination with the Renter, to examine it itself or to have it examined by a party

authorised to do so. The Renter is obliged to facilitate such examination for BMA 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. BMA shall pay the costs of such examination.

#### **§ 8 Liability of the Renter if machinery/equipment is rented with operators**

If the rented item is rented with operators, the operating personnel may only be used to operate the rented item, not to perform other work. In the event of any damage caused by the operators, BMA shall accept liability only if it did not select the operators in a proper manner. Otherwise the Renter shall be liable.

#### **§ 9 Commencement and end of the rental period and return delivery of the rented item**

1. The rental relationship commences on the date when the item is delivered or handed over to the forwarder as agreed.
2. The Renter is obliged to announce the intended return delivery of the rented item to BMA 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 BMA 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 Renter 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 necessary inspection and repair work based on § 7 No. 1 c must be carried out, such work shall be carried out by the Renter at its expense before returning the item.
5. The return delivery must be carried out during the customary hours of business of BMA in such a manner that BMA is able to examine the rented item on the same day.

#### **§ 10 Breach of the maintenance duty**

1. If the rented item is not returned in a state described in § 9 Nos. 3 and 4 at the end of the rental period, the Renter is obliged to continue paying the rent as compensation until the state in breach of contract ends. The Renter is entitled to furnish evidence that damage did not in fact occur or did not occur at the amount of the rent.
2. The Renter shall be notified of the extent of defects and damage for which it is responsible and it shall be given the opportunity to verify this. BMA shall notify the Renter of the estimated costs of the maintenance work required to rectify the defects before the commencement of the repair work as far as possible.

#### **§ 11 Further duties of the Renter**

1. The Renter 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 Renter is obliged to immediately report this to BMA by registered letter and to notify the third party thereof by registered letter.
3. The Renter must take suitable measures to protect the rented item against theft.
4. The Renter must notify BMA of all accidents and await its instructions. Traffic accidents and theft must be reported to the police. The Renter shall notify BMA of any other defects and damage without delay.
5. If the Renter is responsible for infringing one of the above provisions from 1. to 4., it is obliged to compensate BMA for all damage which BMA suffers as a result thereof.
6. If the Renter 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 Renter is obliged to compensate this damage.

#### **§ 12 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 Renter 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 rental period, the period for ordinary termination is as follows:
  - one day if the rental price is agreed per day;
  - two days if the rental price is agreed per week;
  - one week if the rental price is agreed per month.
2. BMA is entitled to give notice of extraordinary termination of the rental contract without observing a notice period particularly
  - a) if the renter delays payment of an amount due for more than 14 calendar days after receiving a written reminder;
  - b) if the Renter does not use the rented item or a part thereof as intended or takes it to a different location without the consent of BMA;
  - c) in cases of infringements of § 7 No. 1 if this entails any danger to the rented item.
3. The Renter 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 BMA is responsible.

### § 13 Loss of the rented item

If through its own fault or for compulsory technical reasons it is impossible for the Renter to observe the duty incumbent on it under § 9 No. 3 to return the rented item, it shall be obliged to pay damages.

### § 14 Other provisions

1. Verbal agreements have not been made. Amendments and supplements to the contract must be in writing to become effective. The same applies to the cancellation of the contract and the written form requirement.
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 Renter 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 head office of BMA or – at its choice – the domicile of its branch office which concluded the contract. BMA may also bring action at the place of general jurisdiction of the Renter.

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