

## General Terms of Hire of SENNEBOGEN Maschinenfabrik GmbH

### § 1 General obligations of the Renter

1. The Renter undertakes only to use the rented property as agreed, to comply with the pertinent safety regulations and the industrial safety regulations as well as the road traffic regulations with due care, to pay the rental charges as per agreement, to treat the rented property in an orderly manner and to return it following the expiry of the rental period cleaned and refuelled.
2. The Renter undertakes to inform the Hirer of the respective location or work location of the rented property.

### § 2 Start of rental period

1. The rental period shall commence on the day on which the equipment, with all the parts required for its commissioning, has been handed over to a carrier. In the event that the Renter is required to collect the equipment this shall be at the time determined for the provision or take-over.
2. The danger shall pass to the Renter on collection by the Renter, or on the hand-over to the Renter.

### § 3 Hand-over of the equipment, notification of defects and liability

1. The Hirer is to dispatch the equipment refilled and in a flawless and operational condition, including the necessary documents, or make it available for collection. The Renter is free to inspect the equipment in good time prior to forwarding/collection and to provide notification of defects that may apply. The cost of the inspection shall be borne by the Renter.
2. The Renter is to provide the Hirer with written notification of apparent defects within a period of one week. Otherwise the rental property shall be deemed as per contract. The period shall commence upon the hand-over of the equipment to the Renter, in the case of forwarding upon the hand-over to the carrier.
3. The Hirer is to rectify defects for which notification was provided in good time and which were present during the hand-over. The cost of rectifying such defects shall be borne by the Hirer. The Hirer may also have the rectification carried out by the Renter, in which case the Hirer shall carry the necessary costs. The Hirer is also entitled to make available to the Renter rented property equipped with functions of the same standard. In the case of proven loss of use due to considerable detrimental effects to the rented property, the agreed rental price shall be reduced at a ratio of the required repair period to the respective calculated rental period.
4. If the Hirer culpably allows an additional period of time of reasonable length granted to him, with regard to rectifying an initial defect, to lapse, the Renter shall be entitled to withdraw from the contract. The right of withdrawal shall also apply to other cases of failure on the part of the Hirer to rectify initial defects.
5. If the Hirer has defaulted with regard to forwarding or providing equipment for collection, the Renter may demand compensation as from seven (7) calendar days following the start of the delay. For each workday it shall at most be the amount calculated in § 6, sub-section 3. This limitation on liability does not apply in the case of gross negligence on the part of the Hirer. Instead of demanding compensation, after granting an additional period of time of reasonable length and threatening to refuse performance, the Renter may withdraw from the contract if the Hirer continues to be in default at this time.
6. The Renter may only lodge further-reaching claims for damages against the Hirer, in particular compensation for damage not in conjunction with the rented property, in the case of
  - gross negligence on the part of the Hirer,
  - culpable violation of key contractual obligations, insofar as achieving the contractual purpose is jeopardised, regarding damage that is foreseeable and typical of such contracts,
  - damage as a result of a threat to life and limb that is attributable to a negligent breach of obligations on the part of the Hirer or the wilful or negligent breach of obligations on the part of a legal representative or vicarious agent of the Hirer,
  - if the Hirer is liable in accordance with the Product Liability Act for personal damage or material damage to privately used items.In other respects liability is excluded.
7. If the rented property cannot be used by the Renter as per agreement due to actions on the part of the Hirer as a result of the failure to provide suggestions, advice and honour other accessory obligations, or the incorrect provision/honouring of these, that apply prior to or following the conclusion of contract - in particular instructions regarding operating and maintaining the rented property – the regulations of § 3, nos. 5 and 6, shall apply accordingly by way of exclusion of further claims on the part of the Renter.

### § 4 Work time

1. The normal daily shift working time of up to 8 hours in the case of 5 workdays per week is taken as a basis with regard to calculating the rental charges.
2. Subject to § 6 the rental charges shall also fall due if the normal shift working time is not fully utilised or the number of workdays per week does not amount to 5.

### § 5 Calculation and payment of rental charges

1. Insofar as nothing to the contrary is agreed, the specified rental charges are to be paid by the Renter to the Hirer in each case monthly and in advance.

2. Each additional hour in accordance with § 4, sub-section 1, shall be payable at 1/8 of the daily rental charges plus VAT.
3. Contrary to § 284 III of BGB<sup>1</sup>, the Renter shall be deemed to have defaulted in payment on receipt of a reminder. The Hirer is entitled to charge interest on arrears in the sum of 5% above the base lending rate (§ 288 I of BGB).
4. If a period is set for the Renter in which to pay, payment of the rental charges must be effected at such a time. As from the time at which the period for payment is exceeded the Renter shall be under obligation to pay interest on the outstanding rental charges at 5% above the base lending rate (§ 288 I of BGB) without the necessity of a reminder.
5. If the Renter is in default of payment for longer than 10 calendar days with payment of a due amount following a written reminder, or if a bill of exchange submitted by the Renter is protested, the Hirer shall be entitled to collect and otherwise dispose of the equipment at the Renter's cost without resorting to courts of law. The Renter is to allow for access to the equipment and its removal. The claims to which the Hirer is entitled from the contract shall remain in place. However, amounts that the Hirer has generated within the agreed term of contact, for example by way of other hiring out, shall be counted towards the accounts receivable due from the Renter following deduction of the costs incurred as a result of the collection or subsequent renting out.
6. The right of retention and the right to set off on the part of the Renter shall only apply in the case of undisputed or res judicata counterclaims of the Renter, but not in the case of disputed counterclaims.
7. The agreed rental charges are to be construed as not including the cost of loading and unloading, freight and transportation in the case of deliveries and return deliveries, provision of fuel and personnel.
8. If the equipment is returned in an orderly manner as per agreement directly to a subsequent rental customer, the Renter shall be required to merely carry such transport costs, at most, however, the transport costs to the originally agreed place of destination.

#### **§ 6 Decommissioning clause**

1. If work is suspended at the place of work, for which the equipment has been hired, as a result of circumstances for which neither the Renter nor its Principal are responsible (e.g. frost, flooding, strikes, civil strife and events involving war) for at least 10 successive days, this time shall be deemed decommissioned time as from the 11th calendar day.
2. The rental period specified for a certain time shall be extended by the decommissioned time.
3. For the decommissioned time the Renter shall be required to pay 75% of the daily, weekly or monthly rental charges agreed upon in accordance with this time by taking a basis in accordance with § 4, sub-section 1, plus VAT.
4. The decommissioned time does not affect the obligation to insure. The costs attributable in this respect shall be borne by the Renter.
5. The Renter is to inform the Hirer in writing not only of the discontinuation of work, but also of the resumption of work, and on request furnish proof of the decommissioned time by way of documents.

#### **§ 7 Care and obligation to carry out maintenance on the part of the Renter**

1. The Renter undertakes,
  - a) to protect the rented property against over use in all respects;
  - b) to ensure that the equipment is maintained and cared for in a proper and workman-like manner;
2. The Hirer is entitled to inspect the rented equipment at any time, and following a prior agreement with the Renter to examine it or have it examined by a representative. The Renter is under obligation to facilitate the examination for the Hirer in all respects. The cost of the examination shall be borne by the Hirer. Furthermore the Renter is under obligation following consultation to make the equipment available to the Hirer for maintenance work. Insofar as the Renter does not make the equipment available for tests and maintenance work within the Hirer's normal hours, Monday to Friday from 07.00 a.m. to 5.00 p.m., the Renter shall be required to carry the additional cost of overtime, night work, weekend work and other additional charges in accordance with the Hirer's price list.
3. The Renter is under obligation to inform the Hirer of the equipment's operating hours in each case on the first workday of the month.

#### **§ 8 End of the rental period**

1. The Renter is under obligation to inform the Hirer of the intended return of the equipment at least four weeks prior to the return delivery.
2. The rental period shall end on the day on which the equipment, together with all its parts required for commissioning, arrives at the Hirer's storage facility in an orderly condition as per agreement, or at a different agreed place of destination, at the earliest, however, upon expiry of the agreed rental period.
3. The Renter is to return the rented property refuelled and in an operational and cleaned condition, or keep it ready for collection.
4. The return delivery is to be carried out during the Hirer's normal hours in good time so that the Hirer is able to inspect the rented property on the same day.

#### **§ 9 Violation of the liability to provide maintenance**

1. If the rented property is returned in a condition which gives rise to the fact that the Renter has not honoured its liability to provide maintenance work specified in § 7, the Renter shall be under obligation to pay

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<sup>1</sup> German Civil Code

compensation in the sum of the rental charges up to the end of the repair work that was not performed in breach of contract.

2. The Renter is to be informed of the scope of defects and damage for which it holds responsibility, and it is to be given the opportunity to verify such defects or damage. The Hirer is to inform the Renter of the estimated cost of repair work required to rectify the defects as far as possible prior to the start of the repair work. If there is a disagreement regarding the equipment's condition and the repair time and costs, the equipment is to be inspected by a technical expert. The technical expert is to draw up an expert opinion in this respect. The cost of the technical expert shall be borne by the Renter.

#### **§ 10 Special obligations on the part of the Renter**

1. The Renter may neither hire out the equipment to third parties nor assign rights resulting from this contract or grant any kind of rights to the equipment.  
Solely authorised SENNEBOGEN dealers shall be granted the right to resell to third parties.
2. In the event that a third party asserts rights to the equipment by action of court by way of confiscation, seizure or the like, the Renter shall be under obligation to notify the Hirer by way of a registered letter and inform the third party of this by way of a registered letter.
3. The Renter is to undertake suitable measures to safeguard the rented property against theft.
4. In the case of any accidents the Renter is to inform the Hirer and wait for its instructions. The police are to be informed in the case of traffic accidents and theft.
5. If the Renter culpably violates the aforementioned provisions, it shall be under obligation to provide the Hirer with compensation for any damage caused as a result of such action.

#### **§ 11 Termination**

1. As a general rule the hire contract entered into for a definite period of time may not be terminated by any contracting party.
2. The same applies to the minimum rental period as part of a hire contract entered into for an unlimited period of time. Following the expiry of the minimum rental period, the Renter shall be entitled to terminate the hire contract entered into for an unlimited period of time by serving four (4) weeks' notice by way of a registered letter insofar as a different period is not agreed upon by the parties. The period shall commence on receipt of the registered letter by the Hirer.
3. The Hirer shall be entitled to terminate the hire contract without notice if
  - a) a case of § 5, no. 5, applies,
  - b) following conclusion of contract the Hirer becomes aware that the entitlement to payment of rental charges is jeopardised by a lacking ability to pay on the part of the Renter,
  - c) the Renter uses the rented property, or a part thereof, contrary to the agreement and without the Hirer's approval, or forwards it to a different location,
  - d) the Renter violates its obligations resulting from § 7, no. 1.
4. If the Hirer makes use of the right of termination to which it is entitled, §5, no. 5, shall be deemed applicable in conjunction with §§ 9 and 10 accordingly.

#### **§ 12 Other provisions**

1. Agreements or supplementary information pertaining to the contract are subject to the written form.
2. In the event that any provision of this contract is invalid, this shall not affect the other provisions of the contract.
3. The Hirer's registered office is deemed the place of performance.
4. Straubing is deemed the sole place of jurisdiction – which also applies to legal action taken in summary proceedings and summary bill enforcement proceedings – if the Renter is a general merchant, a public law entity or special public assets for both parties and for all current and future claims resulting from the business association. The Hirer may also bring an action at the Renter's general place of jurisdiction.

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