



General Terms and Conditions of Cramo AG (hereinafter: CRAMO) for the rented of construction machinery and construction equipment (Version: 01/07/2016)

1. Commercial terms, quotation, contract conclusion

- 1.1. The leasing of any construction machinery and construction equipment shall be governed solely by these commercial terms. We hereby expressly object to any of our business partners' commercial terms which deviate from our Terms and Conditions herein.
- 1.2. Lease agreements shall be deemed validly concluded only after CRAMO's written confirmation thereof. Any amendments, modifications, and collateral agreements shall be deemed valid only after CRAMO's written confirmation thereof.
- 2. Take-over of the equipment, complaints about defects, liability**
- 2.1. On take-over of the equipment, the Lessee shall examine the equipment to ensure its operational and faultless condition, and to immediately notify any defects to CRAMO in writing. Claims for obvious defects will not be accepted unless notified in writing to CRAMO within three (3) calendar days from the equipment's date of pick-up or arrival at its place of destination.
- 2.2. In cases where a defect for which CRAMO is responsible was notified in due time, the Lessee shall have the right to reduce the lease fee proportionately for the duration of the equipment's failure. Any further warranty claims by the Lessee, specifically any claims for compensation for damages, consequential damages, non-contractual claims – with the exception of claims concerning injuries to life, limb or health – shall be excluded, except in cases where CRAMO has acted with gross negligence or intent.
- 2.3. If CRAMO behind schedule supplying the equipment, the Lessee shall not be entitled to claim compensation for damages caused by the delay except in cases where CRAMO is guilty of at least gross negligence. In this case the Lessee has the option, in lieu of demanding compensation, to grant CRAMO an adequate period of grace with rejection warning in writing, and to withdraw from the contract after fruitless expiry thereof.
- 2.4. CRAMO has the right to supply to the Lessee, for leasing by the Lessee, alternative equipment approximately equivalent in terms of function, in lieu of the contractually agreed equipment.

3. Working hours, authorization

- 3.1. Calculation of the lease fee is based on the regular working hours, to wit up to eight (8) hours per day, five (5) working days per week, and a maximum of 22 working days per month. Any periods of equipment use above and beyond the foregoing will be deemed as overtime and will be charged separately. Any damages caused by excessive use of the equipment will be compensated by a 75% surcharge in addition to the agreed lease fee, except in cases where the Lessee provides evidence of lesser damage. CRAMO reserves the right to pursue the enforcement of further claims for damages.
- 3.2. CRAMO may at any time inspect the equipment during normal business hours, either at the Lessee's premises or at the deployment location, and check the condition of the equipment.

4. Lease calculation/lease billing, ancillary costs, and lease payment

- 4.1. The agreed lease fee shall apply solely to the rented equipment. Lessee shall, in addition to the lease fee, be liable to payment of all ancillary costs (notably the costs for loading & unloading, transportation, installation, consumables, cleaning, etc.), in each case subject to the value added tax at the statutory rate applicable at the time. Unless otherwise agreed in writing, the lease fee and the ancillary costs shall be payable in advance. For each reminder sent after a default has occurred, the customer shall be liable to reimbursing the administrative expenses by paying the sum of 10.00 Euros in each case.
- 4.2. In case of Lessee's failure to pay the lease fee as per the agreement, or in case of Lessee's default on other payments, or in case of Lessee's breach of a contractual provision such as notably threats to CRAMO's title to the rented equipment, deterioration of the Lessee's financial circumstances, cessation of payment, protest of a check or bill of exchange, etc., CRAMO may repossess the equipment readily and at the Lessee's expense. In such a case, Lessee agrees to grant CRAMO access to the equipment and the removal thereof. Lessee's contractual obligations shall remain unaffected even in case of CRAMO's repossession of the equipment. CRAMO reserves the right to pursue the enforcement of further claims for damages.
- 4.3. The retention of payments or the set-off of payments against CRAMO's claims shall be possible only in cases where the Lessee's counterclaim has been recognized as legally valid.

5. Limitation of liability, deductible, self-insurer

- 5.1. As a result of the agreement for limitation of liability compensation, Lessee's liability for each individual damaging event affecting the rented object (machine breakdown) will be limited to a deductible calculated according to the following scale:
Official replacement value of the equipment up to € 10,000.00: Deductible € 1,000.00
Official replacement value of the equipment up to € 50,000.00: Deductible € 2,500.00
Official replacement value of the equipment up to € 100,000.00: Deductible € 5,000.00
Official replacement value of the equipment over € 100,000.00: Deductible € 7,500.00
In case of damages to the rented item caused by Lessee's improper use (specifically improper operation and excessive strain) or by Lessee's wilful misconduct or gross negligence, Lessee shall be liable to payment of damages in the full amount.
- 5.2. In case of non-culpable loss or theft of the rented property, Lessee's deductible shall be 25% of the equipment's official replacement, but shall in no case be less than € 1,000.00. Lessee shall be charged for the entire official replacement value in cases where said replacement value is less than € 1,000.00. Lessee is obliged to immediately notify CRAMO and the competent police station of any loss or theft of the rented property. In case of loss or theft of the rented item as a result of Lessee's wilful misconduct or gross negligence, Lessee shall reimburse CRAMO for the full amount of the rented item's replacement value.
- 5.3. In cases where no limitation of liability was agreed, Lessee's liability shall extend to any damages sustained by the rented equipment (regardless of whether such damage was caused by the Lessee or by third parties) as well as to any loss or theft of the rented equipment during the leasing period. In that case, Lessee will be under obligation to ensure the equipment against damages of all kinds – insofar as they are insurable – in the Lessor's favour for the duration of leasing period, and to provide CRAMO with the insurance company's cover note before the start of the leasing period. If a damaging event occurs, Lessee shall immediately notify CRAMO, stating the time and cause of the damaging event as well as the scope of the damaging event. If the Lessee insures the rented equipment in its own favour, Lessee hereby assigns any of its claims to the insurance benefits to CRAMO, thereby allowing CRAMO to claim compensation for the damage directly from the insurance company. CRAMO hereby accepts such assignment.

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- 5.4. The limitation of liability does not apply in case of damages caused deliberately by the Lessee or its vicarious agents, or in case of damages sustained by third parties as result of the use or defect of the rented item.

6. Lessee's duties, prohibition on subleasing, agreed place of work

- 6.1. It is the Lessee's duty to treat the rented equipment properly and in accordance with the contract, notably to protect it against overstress of any kind, and to ensure that the equipment is serviced and maintained in a technically appropriate and professional manner. Lessee undertakes to observe all regulations and technical rules mandatory for the equipment's use.
- 6.2. Lessee undertakes to immediately notify CRAMO of any repair requirements, regardless of their nature. Lessee shall not, without CRAMO's prior written approval, have any repairs performed to the rented object, or alter the rented object by making additions, modifications or installation, or remove any labelling from the rented object. Lessee shall procure, at its own expense, any official special permits as may be required for the deployment of the rented items.
- 6.3. Lessee shall not, without CRAMO's prior written approval, sub-lease the rented equipment or surrender it for use by third parties in any other manner. Lessee also shall not, without CRAMO's prior written approval, move the rented equipment to any locations other than the deployment location agreed in the contract.
- 6.4. Lessee is also obliged to ensure that the rented equipment will be operated only by appropriate and qualified professionals. Consumables, cleaning agents, etc., shall be checked periodically, shall be in compliance with CRAMO's regulations, and shall be of perfect quality at all times. Outside of the working hours, Lessee shall protect the equipment against weather influences and shall have it adequately guarded. Lessee agrees to notify CRAMO well in advance of any factory-prescribed inspections of the rented item, and shall ensure access to the equipment during the regular working hours.
- 6.5. In case of third-party seizure of the rented item (confiscation, seizure, etc.), Lessee shall notify CRAMO without undue delay and shall advise such third party of CRAMO's ownership of the rented item. Any intervention costs will be charged to the Lessee. In case of breach of the obligation to notify, Lessee shall compensate CRAMO for any resulting damage.

7. Leasing period, termination

- 7.1. In case of a firmly agreed leasing period, ordinary termination of the contract will be precluded. The same shall apply to the agreed minimum leasing period in case of a lease agreement concluded for an indefinite period of time. After expiry of the minimum leasing period, Lessee may terminate a lease agreement concluded for an indefinite period of time by giving
 - one (1) day's notice if the lease rate was agreed for a daily basis
 - two (2) day's notice if the lease rate was agreed for a weekly basis
 - two (2) week's notice if the lease rate was agreed for a monthly basisin each case giving notice in writing.

- 7.2. In the event of Lessee's default in payment or deterioration of Lessee's financial situation, or if CRAMO, after concluding the agreement, becomes aware of facts which seriously undermine Lessee's creditworthiness, CRAMO may terminate the lease agreement without notice and may readily repossess the rented equipment at Lessee's expense. The same applies if Lessee is in violation of its contractual duties despite a written warning, or if Lessee, without CRAMO's prior written consent, moves the rented equipment to a location other than the deployment location agreed in the contract, or if Lessee fails to use the rented equipment in accordance with its intended use.

8. Repair

- If Lessee fails to return the equipment in an orderly and/or contractually agreed condition, CRAMO may have the equipment repaired immediately at Lessee's expense. In addition to the costs for the repair, CRAMO also reserves the right to pursue further claims to compensation.

9. Data privacy protection, sales tax details

- 9.1. Both the Lessee's and the collecting party's personal data will be collected, processed and used by CRAMO for the purposes of conclusion, implementation, or termination of the contract. Any use of such data for advertising purposes will be limited strictly to CRAMO's own advertising. Transmission of such data to other third parties will be limited strictly to the extent necessary for performance of the contract, e.g. for billing purposes to the Lessee's credit card company. Any use of such data over and above the foregoing shall be subject to a legal permit or a declaration of consent.

- 9.2. **Notice pursuant to Section 28 sub-section (4) of the Federal Data Protection Act [BDSG]:** The Lessee has the right at any time to object to the processing or use of its data for advertising or market research purposes. Any objections shall be addressed to: Cramo AG, Emeranstrasse 49-51, 85622 Feldkirchen, email: deutschland@cramo.com.

- 9.3. CRAMO has the right to regularly and permanently identify the location and the technical equipment data of the rented item by means of a global positioning system (GPS) even without special cause, and to collect, store and use the data thus obtained. The Lessee and the driver hereby grant their consent to such tracking. If either the Lessee or the driver revokes its consent retroactively, CRAMO will be entitled to terminate the contract without notice and to immediately collect the equipment.

- 9.4. Lessee shall be obliged, for sales tax purposes, to disclose whether it uses the rented construction machinery and equipment from the place whence it operates its enterprise (cf. Section 3a sub-section (2) Sentence 1 of the Value Added Tax Act [USTG]), or whether the leasing performance is alternatively exported to any of Lessee's business establishments located abroad (cf. Section 3a sub-section (2) Sentence 2 of the Value Added Tax Act [USTG]). Lessee is obliged to furnish proof of its VAT-taxable entrepreneurial status by disclosing its valid VAT ID No. (if domiciled in the EU), or by otherwise furnishing a certificate of entrepreneurial status from its competent foreign tax authorities (if domiciled in a third country).

10. Miscellaneous provisions

- 10.1. All legal relationships between CRAMO and the customer shall be governed exclusively by the laws of the Federal Republic of Germany. Place of performance is the respective rental depot.
- 10.2. Exclusive place of venue for any disputes with general merchants, legal entities under public law, and persons without any court of general jurisdiction in the country of residence, shall be Munich. The same shall apply for disputes with persons who, after contract conclusion, relocate their place of residence or ordinary domicile outside of Federal Republic of Germany or whose place of residence or domicile is unknown at the time of the legal action being filed.
- 10.3. Should individual provisions of this agreement or parts thereof be or become ineffective either wholly or in part, the effectiveness of the agreement shall remain unaffected in all other respects. The ineffective provisions shall be replaced by effective provisions which as closely as possible approximate the factual, legal and economic intentions of the ineffective provisions as well as of the agreement per se. The same steps shall be taken in case the contract shows any unforeseen loopholes.