



General terms and conditions for the rental and lease of foundation equipment (2009) Unmanned rental and lease

Clause 1. Foundation equipment

Foundation equipment is understood to mean all equipment, tools, machines and aids that are intended for or that are used in foundation work. Hereinafter the term 'lease object' shall be used.

Clause 2. Applicability

These General Terms and Conditions apply to all rental and lease agreements that have been or are to be concluded for the rental and lease of foundation equipment.

Clause 3. Lease price

- 3.1 The lease price is payable in respect of the full lease term and shall be calculated on the basis of the agreed hour, day or week.
- 3.2 The lease price is not payable if no work is performed using the leased item on Sundays, generally recognised holidays or on mandatory (scheduled) days off in connection with a reduction in working hours under a Collective Labour Agreement and during time needed for repair work to repair damage to the lease object arising during the lease term, unless this damage occurred due to intent, serious culpability or gross negligence on the part of the lessee.
- 3.3 Unless explicitly agreed otherwise in writing by the lessor and the lessee, the lease price shall always include:
 - the costs of loading and unloading incurred on the lessor's site;
 - the costs of usual wear and tear of the lease object.
- 3.4 Unless explicitly agreed otherwise in writing by the lessor and the lessee, the lease price shall not include the following costs and these shall be payable by the lessee:
 - costs of fuel and lubricants and anything needed for daily maintenance and normal use;
 - the costs of transport for the delivery and the return of the leased object;
 - the costs of loading and unloading at the work site;
 - the VAT that is payable.

Clause 4. Health & Safety and the environment

- 4.1 The lessor guarantees that the leased object meets the requirements and standards laid down by the law or usage, in relation to health & safety and the environment.
- 4.2 On concluding the agreement the lessee can lay down additional requirements if the circumstances or work site require such. If other circumstances arise during the lease term, the lessor can lay down additional requirements, which should be specified further. In such a case the lessor is entitled to additional payment.

Clause 5. Lease term

- 5.1 Before the lease term commences the lessee should identify himself with a valid identity document. The only identity documents accepted are a passport or a driving license.
- 5.2 The lessee should be sufficiently creditworthy and should submit evidence of his registration with the Chamber of Commerce.
- 5.3 The lease term shall commence on the date or time of the delivery on which the leased object is received in a properly maintained condition and shall end on the date or time agreed for the return. Alterations to or extensions of the lease term are subject to agreement.

Clause 6. Delivering the leased object

- 6.1 The lessor is required to make the operational leased object available to the lessee in a properly maintained condition on the date or time of delivery. If the lessor is responsible for the delivery, the lessor shall also guarantee a proper delivery.
- 6.2 The lessor shall assist in loading the leased object if the lessee arranges the delivery of the leased object.
- 6.3 The lessee shall help in unloading and taking delivery as quickly as possible of the leased object, if the lessor arranges the delivery of the leased object.
- 6.4 If it appears that the leased object has been improperly delivered and/or it emerges that it is not operational, the lessee should notify the lessor of such forthwith, but no later than within 24 hours.

Clause 7. Use and instructions

- 7.1 The lessee shall only use the leased object for the work and for the number of work hours stipulated in the agreement. Other use, more extended use and subleasing by the lessee is not permitted, unless the written consent of the lessor is obtained beforehand. The lessee shall arrange for the day-to-day maintenance and for minor repairs to be carried out.
- 7.2 The lessor is required to provide instructions for use. The lessee is required to follow these instructions.

Clause 8. Damage to the leased object

- 8.1 Damage to the leased object shall be understood to mean damage to, loss of or missing of the leased object.

- 8.2 The lessee is required to report all damage and defects, visible or otherwise, that emerge during the (extended) lease term to the lessor forthwith, but no later than within 24 hours.

Clause 9. Liability for damage to the leased object

- 9.1 Damage to the leased object that arises during the lease term is for the account of the lessor insofar as this is covered under clauses 3.1.2 et seq. (Comprehensive Hull Coverage) of the 'General Terms and Conditions of the Dutch Bourse Policy for Earth-Moving Equipment 1991'. All damage not covered by said policy is payable by the lessee.
- 9.2 The lessor shall always be liable for damage to the leased object if and insofar as this damage arises due to the failure of the leased object to meet the requirements and standards in relation to health & safety and the environment as referred to in clause 4.1.

Clause 10. Liability for third party damage

- 10.1 The lessee is liable for all damage caused by and/or with the leased object during the lease term.
- 10.2 The lessor is always liable for damage caused by and/or with the leased object to third parties if and insofar as this damage arises due to the failure of the leased object to meet the requirements and standards in relation to health & safety and the environment as referred to in clause 4.1.
- 10.3 In relation to the position of any cables and pipes the lessee is expected to have made a KLIC (Cable and Pipeline Information Centre) report or to provide plans and instructions relating to the precise position.

Clause 11. Liability insurance

- 11.1 The lessee shall take out liability insurance in good faith, also on behalf of the other users, under which the financial consequences of the following incidents are insured:
 - cases where persons are killed, incur physical injury, become psychologically disturbed or otherwise suffer impairment to their health;
 - cases of material damage or loss of property as a result of which third parties incur a loss of assets; caused with or by:
 - the leased object;
 - items on or in the leased object or that have fallen off the leased object;
 - items linked to the leased object or which have been removed after being linked and have not yet been placed at the location intended therefore.
- 11.2 The insured amount shall be at least EUR 2,500,000, per incident.
- 11.3 If the leased object is a motor vehicle in respect of which insurance is mandatory under the Dutch Civil Liability Insurance (Motor Vehicles) Act (WAM), this insurance should meet the requirements under the WAM in addition to the requirements under clauses 11.1 and 11.2.
- 11.4 The lessor shall provide the lessee with a copy of the policy on request.
- 11.5 All insurance payments shall be made to the injured party or injured parties.

Clause 12. Returning the leased object

- 12.1 The lessee is required to have the leased object ready for removal or to remove (or instruct such removal of) the leased object at the agreed location on the agreed date or time in the same condition as that referred to in clause 6.1, except for normal wear and tear.
- 12.2 The leased object should be returned with a full fuel tank. On failure to do so the leased object will be refuelled at the current fuel price by the lessor and this will be settled against the final lease instalment.
- 12.3 Any cleaning costs and costs of removal of polluted soil shall be settled against the final lease instalment.
- 12.4 The lessee shall assist in the loading of the leased object if the lessor arranges for the leased object to be collected.
- 12.5 The lessor shall assist in the loading of the leased object if the lessee arranges for the leased object to be returned.

Clause 13. Payment

- 13.1 Unless explicitly agreed otherwise in writing amounts payable to the lessor shall be paid with no discount and without setting off debts within thirty (30) days after the invoice date.
- 13.2 Invoices should be sent at least once a month.
- 13.3 All judicial or extrajudicial costs of collection of amounts payable to the lessor shall be payable by the lessee.

Clause 14. Interest and penalties

- 14.1 All claims of the lessor shall be payable immediately in the event of bankruptcy or suspension of payment on the part of the lessee, and in the event of an attachment order on lessee's assets.

- 14.2 If the payable claim or claims is or are not paid within the agreed term the statutory commercial interest shall be payable by the lessee on the claim or claims as soon as the payment term expires.
- 14.3 The provisions of the previous subclauses of this clause shall not affect the right to claim damages.

Clause 15. Cancellation and termination

- 15.1 Unless agreed otherwise in writing between the lessor and the lessee, the lessee has the right to cancel the agreement with due observance of a notice period of one week.
- 15.2 If the lessor fails to meet its obligations relating to the timely and proper delivery or the assistance in the loading as referred to in clause 6 as well as if the lessor fails or refuses to receive the leased object at the end of the lease term, the lessee has the right to deem the agreement to be terminated, without any notice of default or court intervention being required, without prejudice to its right to damages.
- 15.3 If the lessee fails to meet its obligations under these terms and conditions, the lessor has the right to deem the agreement to be either fully or partly terminated, without any notice of default or court intervention being required, without prejudice to its right to damages. In such an event the lessor is entitled to remove the leased object immediately (or to instruct such removal). The lessor shall notify the lessee of the termination as soon as possible.

Clause 16. Disputes

- 16.1 The rental and lease of foundation equipment agreement and these General Terms and Conditions that are part thereof shall be governed exclusively by Dutch law.
- 16.2 All disputes, also including a dispute that is seen as such by only one party, that arise further to the agreement or further to agreements stemming therefrom between the lessor and the lessee, shall be heard by the Arbitration Board for the Construction Industry. Disputes that fall within the jurisdiction of the Subdistrict Court can be brought before the competent Dutch court by either party.

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