



## General Terms and Conditions of Leasing for Drilling Machines and Piling Implements

Of Company M2 GmbH, Georg-Alber-Str. 17, D-86529 Schrobenhausen / Germany and Tidestraße 13, 26388 Wilhelmshaven / Germany and

Company M2 Rental GmbH, Tidestraße 13, 26388 Wilhelmshaven / Germany

(hereinafter referred to as "M2")

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### § 1 Scope of Application, Contract Language

- 1) These General Terms and Conditions shall apply to all business acts and legal relations between M2 as Lessor and its customers (hereinafter called "Lessee"). M2 will only become active for Lessees being entrepreneurs within the meaning of Paragraph 14 German Civil Code (BGB). By confirming these General Terms and Conditions of Leasing the Lessee confirms acting as entrepreneur within the meaning of Paragraph 14 German Civil Code (BGB).
- 2) By conclusion of contract the Lessee confirms that he leases the leased article (hereinafter referred to as "LA") in his own name and on his own account.
- 3) M2 renders all service regarding leasing of drilling machines and piling implements only on the basis of these General Terms and Conditions of Leasing.
- 4) The contract language is German. A supply of documents in other languages by M2 represents only a non-binding service. If these documents were issued in German and a foreign language, the German version takes priority in the event of discrepancies, uncertainties and contradictions.

### § 2 General Rights and Obligations

- 1) M2 agrees to provide the LA to the Lessee for contractual use within the agreed term of lease.
- 2) The Lessee agrees to use the LA only for the purpose as per contractual agreement. Any change of the contractual purpose of use is only valid with prior agreement of M2 in writing. There is no right to the granting of this change of contractual purpose.

### § 3 Beginning of Leasing, Non-Acceptance, Changes of Lease Contract, Handover, Transfer of Risk, Leasing Term

- 1) The leasing begins with the day as agreed in the contract. On this day the leasing will begin, even if the Lessee fails to pick up the LA at this day for reasons being outside of M2's sphere of influence or if the Lessee fails to provide a possible contractual security deposit.
- 2) If the Lessee refuses to accept the LA at the agreed date he has to pay the contractual lease price completely.
- 3) Changes of the lease contract before beginning of the contractual term of lease are possible by request of the Lessee. Any changes of lease contracts have to be applied for by the Lessee in writing. An amendment fee will be charged by M2 at cost. The Lessee agrees to bear the cost difference between original and changed contract.
- 4) M2 is obliged to transfer the LA to the Lessee at the contractual beginning of leasing and at the contractual handover location.
- 5) M2 is obliged to transfer the LA to the Lessee in operational condition including all documentation being necessary for its operation.
- 6) Upon handover of the LA, M2 will provide a written handover certificate. In this certificate all visible defects and complaints which have to be eliminated by M2 are included. The handover certificate will then be signed by both Lessee and M2. M2 is entitled to provide the Lessee with a functionally equivalent LA as a replacement instead of eliminating defects in the LA. Minor defects existing at the time of handover that do not impair the Lessee's operations and can also be resolved without impairing the Lessee's operations shall not delay the handover.
- 7) Defects recognised at the time of handover which significantly impair the intended use can no longer be objected to if they have not been reported to M2 in writing immediately after inspection. Other defects already existing at the time of handover must be reported in writing immediately after discovery.
- 8) All risks are transferred to the Lessee upon handover of the LA to the Lessee, including the risks of destruction, loss, theft, deterioration, damage or premature wear, unless this is due to the fault of M2. This shall not apply in the case of wear in accordance with the contract.
- 9) If a specific term has been agreed for the leasing, the lease contract ends with expiry of the agreed term.



#### **§ 4 Termination**

- 1) If no specific duration has been agreed for the lease contract, either party may terminate the leasing in compliance with the contractually agreed notice periods.
- 2) M2 is entitled to terminate the lease contract without notice for good cause. Claims for compensation by the Lessee will not be admitted in these cases. The claim for compensation for any damage resulting from the above-mentioned reasons remains unaffected. This also applies in the event of default of payment on the part of the Lessee.
- 3) Terminations must be made in writing to be effective.

#### **§ 5 Leasing, Interim Invoices, Invoices in Electronic Form, Lease Price, Downtime, Reminder Costs, Offsetting, Reduction**

- 1) The Lessee is obliged to pay the contractually agreed lease price including additional costs plus VAT at the legally applicable rate on the contractually agreed due dates.
- 2) M2 is authorised to issue interim invoices. Like the final invoice, these are payable in accordance with the contract.
- 3) The Lessee agrees that invoices from M2 will only be sent in electronic form.
- 4) The days of handover and return will be charged to the Lessee as full leasing days.
- 5) The contractually agreed lease price is valid for a maximum of 8 operating hours per day. The Lessee must inform M2 of longer operating times and 1/8 of the daily rate will be charged for each commenced operating hour.
- 6) M2 is entitled to charge the Lessee a lump sum for the visual inspection, preparation and follow-up work of the LA. The amount of the lump sum is regulated in the lease contract.
- 7) The Lessee must apply in writing to M2 in advance for an intended downtime of the LA. In doing so, he must prove that this downtime is due to the construction site. The lease price for a downtime is 50% of the daily lease price. A maximum of 5 machine downtime days are permitted per month. Any authorisation to reduce the lease price is subject to M2 only. The Lessee has no claim in this respect.
- 8) The Lessee is not entitled to offset claims of M2 arising from the lease contract with counterclaims from other contractual relationships or to assert a right of retention or right to refuse performance, unless the counterclaim or the right of retention / right to refuse performance is undisputed, recognised or legally established in terms of reason and amount. The right to a lease price reduction shall only exist if it is undisputed or has been stated legally binding. The Lessee's right to assert counterclaims, lease price reductions or set-offs or to reclaim unjust enrichment in accordance with §§ 812 ff. BGB remains unaffected by this.

#### **§ 6 Transport of the LA**

- 1) If the LA is collected by the Lessee from the contractually agreed handover location in accordance with the contractual agreements, M2 must be presented a valid transport licence in accordance with the relevant statutory regulations, insofar as such a licence is required. The vehicle intended by the Lessee for transport must be suitable for the LA, in particular with regard to payload, load securing and load centre of gravity. The Lessee is solely responsible for providing suitable material for securing the load (lashing material, tension chains, anti-slip mats, etc.). When the LA is collected by the Lessee, the Lessee (or the carrier appointed by the Lessee) shall be responsible for securing the load together with M2 (or the loading personnel appointed by M2). The Lessee shall bear all costs for transport, loading and unloading.
- 2) If the LA is brought to the place of handover by M2 in accordance with the contractual agreements and if changes to the routing envisaged by M2 arise as a result of official requirements to be complied with by M2 and this results in additional expenditure for which M2 is not responsible, this additional expenditure shall be paid by the Lessee in addition to the contractually agreed lease price. If necessary, this will be invoiced separately by M2. The same applies to additional costs incurred due to police escorts and / or traffic control measures, etc.
- 3) The above provisions shall apply accordingly to the transport of the LA to the place of return.

#### **§ 7 Use of the LA by the Lessee, Right to Inspect, Protection against Damage**

- 1) The LA must be handled and used properly, with care and in accordance with the recognised rules of technology. The Lessee must observe M2's instructions regarding the use of the LA. This applies in particular to instructions, installation and operating manuals. The LA must be protected by the Lessee from overuse in every way.
- 2) The Lessee is obliged to observe and comply with all accident prevention and health and safety regulations relating to the LA, as well as with the relevant road traffic regulations and all other regulations, laws and technical rules applicable to the use of the LA.
- 3) The Lessee is prohibited to use the LA for the reception/storage and transport of hazardous goods, unless otherwise expressly agreed in writing.



- 4) The contractually agreed location of the LA may not be changed without the prior written consent of M2, to which there is no entitlement.
- 5) The Lessee must notify M2 in writing in advance if the LA is to be used abroad. Use abroad is only permitted after approval by M2, to which the Lessee is not entitled. A separate written contract is required for abroad leasing.
- 6) If M2 intends to inspect the LA, M2 shall be entitled to do so at any time. The same shall apply after prior consultation with the Lessee if M2 wishes to inspect the LA or have it inspected by an authorised representative. The Lessee shall facilitate, enable and support the inspection of the LA by M2 in every way.
- 7) The Lessee is obliged to take suitable measures to protect the LA from any damage (bad weather, frost, etc.); the same applies to protection against theft.

## **§ 8 Operating Personnel**

### **8.1 Operation by the Lessee's Personnel**

If it has been agreed in the lease contract that the LA will be operated by the Lessee's personnel, the following provisions shall apply:

- 1) Operation of the LA by the Lessee's personnel is only permitted after qualification test and instruction of the future operating personnel by M2 personnel or by personnel of the LA manufacturer.
- 2) Any change of operating personnel must be notified to M2 in advance and must be authorised by M2 beforehand. If the Lessee deploys his own personnel, he is obliged to inform M2 immediately of any circumstances restricting the performance of the personnel. Further operation of the LA is then only possible after approval by M2.
- 3) If the Lessee deploys his own operating personnel, the Lessee shall be responsible for all damage, also during the assembly and disassembly of the LA.

### **8.2 Operation by M2 Personnel**

Insofar as the provision of operating personnel by M2 has also been agreed in the lease contract, the following provisions shall apply:

- 1) M2 shall provide the operating personnel required to operate the LA to the contractually agreed extent for the duration of the leasing.
- 2) The operating personnel shall be deployed by the Lessee in accordance with his operational requirements, whereby the Lessee shall have the right to issue instructions within the framework of the integration of the operating personnel into the organisational structure of the Lessee for the term of lease.
- 3) The Lessee is obliged to use the operating personnel only to operate the LA and for no other purposes or work. The Lessee must instruct and supervise the operating personnel comprehensively regarding the activities to be carried out with the LA. The Lessee must inform the operating personnel of any particularities (e.g. soil contamination, pipework, etc.).

## **§ 9 Maintenance, Servicing, Repairs, Service Flat Rate, Costs for Lubricants and Operating Materials, Checking Oil Levels**

- 1) The Lessee must notify M2 immediately of any necessary maintenance, servicing and repair work. These measures shall be carried out or arranged by M2. The costs of the necessary servicing, maintenance and repair work are not included in the lease price and shall be borne by the Lessee in addition to the lease price. The costs to be borne by the Lessee shall be invoiced to him by M2 in addition to the lease price. Insofar as service and repair measures relate to damage that is not attributable to the Lessee's leasing use or his sphere of risk, the Lessee shall not be obliged to bear the costs of these service and repair measures. The same applies to the costs of a complete replacement that becomes necessary because a repair is no longer possible with economically reasonable means.
- 2) All costs for accident prevention regulations inspections / qualified person inspections, maintenance and service work on the LA are covered by the M2 service flat rate, which is to be paid by the Lessee.
- 3) The costs for lubricants and operating materials are to be paid by the Lessee. He is obliged to use only technically suitable and authorised products with regard to the LA.
- 4) The Lessee must check the oil levels of the LA daily. The service intervals and operating instructions specified by the manufacturer apply here.

## **§ 10 Defects, Damage, Replacement, Accidents, Loss, Theft, Lump-Sum Compensation**

- 1) The Lessee is obliged to notify M2 immediately of any defects or damage to the LA.
- 2) M2 shall be entitled at any time to provide the Lessee with a functionally equivalent LA as a replacement.



- 3) The Lessee is obliged to notify M2 immediately of any accidents involving the LA, first by telephone and then in writing (accident report).
- 4) In the event of an accident involving the LA, the Lessee must help to clarify the damage, answer questions and may not leave the location of the accident until M2 has been able to make all determinations to assess the damage.
- 5) In the event of theft or damage to the LA, the Lessee is obliged to preserve the necessary evidence.
- 6) In the event of culpable loss of or damage to LA and material, M2 shall be entitled to charge the Lessee a flat-rate compensation for the replacement procurement in addition to the costs of the corresponding new part.
- 7) In the event of damage and insurance by M2, the Lessee must ensure that the damage is averted and minimized. He must follow M2's instructions as far as reasonable and support M2 in determining and settling the damage.

#### **§ 11 Liability of M2**

- 1) The fault-based warranty liability of M2 in accordance with §536 a BGB due to initial material defects of the LA is excluded.
- 2) Claims for damages by the Lessee in other respects, including those arising from pre-contractual obligations and tort, can only be asserted if they are based on intent or gross negligence on the part of M2 or its agents or on the negligent breach of an essential contractual obligation (cardinal obligation) by M2 or its agents or on the absence of a warranted characteristic of the LA or on mandatory legal liability on the part of M2 or its agents.
- 3) In the event of a breach of an essential contractual obligation (cardinal obligation), M2's liability shall be limited to the foreseeable damage typical of the contract. M2's liability for excess damages is therefore excluded in this case. Essential contractual obligations (cardinal obligations) are those whose fulfilment is essential for the proper execution of the contract and on whose performance the contractual partner can regularly rely (in particular, e.g. the obligation to hand over the LA on time).
- 4) The above provisions shall apply accordingly to M2's liability for reimbursement of futile expenses.
- 5) All exclusions and limitations of liability in favour of M2 contained in these General Terms and Conditions of Leasing shall not apply to damages resulting from injury to life, body or health. In this case, M2 shall be liable without limitation. This also applies to the liability of M2 for its agents.
- 6) The suitability of the LA for the intended operation is not assessed or guaranteed by M2.
- 7) M2 shall not be liable for consequential damages, loss of profit or personnel costs.
- 8) In the event of slight negligence, M2 (including agents and/or legal representatives) shall not be liable for financial losses.

#### **§ 12 Liability of the Lessee / Non-Contractual Use / Compensation for Use**

- 1) The Lessee is generally liable in accordance with the general liability rules. Accordingly, the Lessee is not liable if he is not responsible for the breach of duty.
- 2) The Lessee shall be fully liable for all offences against traffic and regulatory regulations and other legal provisions. He shall indemnify M2 against all fines and warnings, fees and other costs that authorities or other bodies levy from M2 for such offences. In this case, M2 is entitled to charge the Lessee compensation for the administrative costs.
- 3) During the term of lease, the Lessee shall be liable for any deterioration or destruction of the LA that is not in accordance with the contract, unless M2 is responsible for the non-contractual deterioration or destruction.
- 4) If the Lessee does not have repairs, maintenance or inspections concerning the LA carried out by M2 or does not report problems to M2, he shall be liable for any damage incurred.
- 5) The Lessee must bear all costs arising from non-contractual use.
- 6) If the LA is not lettable by M2 due to damage, missing parts or late return, the Lessee must pay M2 compensation for use.

#### **§ 13 Legal Duty to Maintain Safety**

The obligation to ensure the legal duty to maintain safety of the LA lies with the Lessee from the moment of the transfer of risk.



#### **§ 14 Changes to the LA by the Lessee**

The Lessee is not entitled to make any changes to the LA, including changes to any existing labelling, including by affixing its own labelling, stickers, symbols, etc. Any changes nevertheless made by the Lessee will be completely reversed by M2. The costs for this shall be borne by the Lessee. Structural alterations to the LA by the Lessee (e.g., through additions or accessories) are not permitted without the written consent of M2. The Lessee has no right to such approval. If the Lessee makes structural changes to the LA without written approval from M2, this will result in M2 being released from liability. In this case, the Lessee shall be solely liable for any resulting damage.

#### **§ 15 Transfer of Use to Third Parties**

The Lessee is not authorised to transfer use to third parties, in particular to subleasing. Anything to the contrary shall only apply if M2 has given its prior written consent to the transfer of use, which M2 is not obliged to do.

#### **§ 16 Access by Third Parties, Enforcement, Prohibition of Assignment**

- 1) In the event of court or official orders (e.g. confiscation / distraint), the Lessee is obliged to point out M2's ownership immediately and to notify M2 accordingly, handing over all necessary documents.
- 2) If claims are asserted against the Lessee out of court or in court, the Lessee is obliged to notify M2 immediately after the claim has been asserted.
- 3) If the Lessee incurs claims for compensation due to third-party access, he shall assign these to M2. M2 accepts the assignment.
- 4) In the event of claims asserted in court, it shall be left to M2 to conduct the legal dispute. M2 is entitled to appoint a lawyer on behalf of the Lessee, who must be authorised by the Lessee and provided by him with all necessary information and requested documents.
- 5) The Lessee is obliged to inform M2 immediately if an application is made for the forced sale or forced administration of the location of the LA or for the distraint of the Lessee's assets.
- 6) If third parties take possession of the LA by distraint, confiscation or on the basis of other rights, whether authorised or unauthorised, or assert these rights, the Lessee is obliged to inform M2 immediately. He must reimburse M2 for all costs of recovery and, at M2's request, make reasonable advances for legal costs.
- 7) The Lessee is not authorised to assign claims arising from the lease contract to third parties or to authorise third parties to collect claims or assert claims arising from the lease contract.

#### **§ 17 Insurances**

- 1) The Lessee is obliged to take out public liability insurance for the LA and, in the case of transport by the Lessee, also transport insurance for the transport and return transport to an appropriate extent for personal injury and damage to property, or to extend any existing insurance accordingly.
- 2) Machinery breakdown insurance must be taken out before use and will be arranged by M2. The costs for this will be charged to the Lessee and are to be borne by the Lessee. The general excess is € 10,000.00 per claim; this also applies to damage in the event of loss due to theft, burglary, robbery or embezzlement. The excess is to be borne by the Lessee in the event of damage.
- 3) All insurance policies relating to the use of the LA must be maintained during the use of the LA. The existence of such insurance must be proven to M2 by the Lessee upon request by submitting copies of the insurance certificates, declarations and insurance conditions. The insurance policies must be taken out at replacement value.
- 4) In the event of insurance by M2, M2 shall be entitled to fulfil or defend against claims for damages asserted against the Lessee on his behalf and to make all declarations deemed appropriate for this purpose within the scope of its best judgement.
- 5) The Lessee must take out insurance against theft, vandalism and damage resulting from non-contractual use of the LA for the duration of its use.
- 6) If the Lessee takes out further insurance policies at his own expense, he must assign all current and future claims to M2. M2 accepts the assignment.
- 7) In the case of insurance policies relating to the use of the LA and taken out by the Lessee, the Lessee is obliged to pay the respective insurance premium. If he does not fulfil this obligation, he must pay all costs resulting from this damage in the event of a claim.

#### **§ 18 Termination of the Term of Lease, Culpable Offence, Return, Final Repair**



- 1) The Lessee is obliged to return the LA, including all documents provided to him, at the end of the term of lease to the contractually agreed return location in a fully fuelled condition and ready for operation in accordance with the contract. For this purpose, the LA must be completely cleared, cleaned and, if necessary, decontaminated in accordance with the applicable regulations. The LA must be free of any third-party rights, in particular free of rights of retention.  
If the Lessee was also permitted to receive/store/transport hazardous goods in accordance with the lease contract, the Lessee is obliged to carry out proper decontamination of the LA in accordance with existing legal regulations and must document the fulfilment of this obligation to M2 in writing by sending a written certificate of non-objection from a cleaning facility approved for this purpose. In the event of culpable violation, M2 may demand payment of a contractual penalty as well as compensation for further damages (e.g. lump-sum compensation for processing costs) and compensation for use in the amount of the lost lease price for the duration of the withholding.
- 2) Upon return of the LA, M2 shall prepare a report in which all damage and complaints, i.e. the scope of the necessary final repairs, are recorded and determined. The Lessee has the right to be present when the report is issued, to check the report and, if necessary, to request justified changes. The report is then signed by M2 and the Lessee, regardless of whether or not the Lessee exercises his right to be present when the report is issued. The final repair shall be carried out and arranged respectively by M2. The costs of the final repair shall be borne by the Lessee, unless the damage and complaints are not attributable to the Lessee's use or his sphere of risk. They shall be invoiced separately by M2.
- 3) If no agreement can be reached on the scope and cause of defects upon return of the LA, either party may request the LA to be inspected by an expert appointed by the Chamber of Industry and Commerce responsible for M2. In the event of a resulting holding time, M2 shall be entitled to charge the Lessee for the costs of the corresponding loss of use of the machine.
- 4) If, at the request of the Lessee, the LA is to be returned to a location other than that agreed in the contract, the additional costs incurred as a result shall be borne by the Lessee.
- 5) The leasing shall not be extended indefinitely at the end of the term of lease if the Lessee continues to use the LA and one of the contracting parties does not object to this continuation. Article 545 BGB does not apply.
- 6) In the event of late return, the daily lease price including all additional charges must continue to be paid and the Lessee must pay for any damage caused by culpable late return.
- 7) Upon return, the Lessee bears the full burden of proof that the LA is free of defects and complete, including all accessories that may have been leased.

#### **§ 19 Return for Good Reason**

The Lessee is obliged to return the LA at the instruction of M2, even during the term of lease, if there is a good reason for doing so. Good reasons may be, for example, the carrying out of repairs, maintenance, inspection, a sale or a manufacturer recall. In this case, the Lessee shall receive an equivalent replacement from M2 upon return of the LA.

#### **§ 20 Collection Without Lessee's Consent**

If M2 has cancelled the lease contract for good cause or the Lessee returns the LA late contrary to contractual agreements, M2 may have the LA collected without the Lessee's consent.

#### **§ 21 Withholding of Service**

M2 reserves the right to withhold the service if

- M2 becomes aware of circumstances after conclusion of the contract that the financial circumstances of the Lessee have deteriorated significantly or that the Lessee was not sufficiently solvent at the time of conclusion of the contract and therefore the claim to payment of receivables from the leasing is jeopardised.
- M2 has justified doubts about the suitability of the Lessee's designated own operating personnel.

The withholding shall continue until either the corresponding consideration has been paid or security has been provided by the Lessee.

#### **§ 22 Final Provisions**

- 1) Deviating, conflicting or additional terms and conditions of the Lessee shall only become part of the contract insofar as M2 has expressly agreed to them in writing.
- 2) No additional agreements were made.
- 3) Amendments and additions to M2's contracts with the respective Lessee must be made in writing. This also applies to the amendment/cancellation of the written form clause itself.
- 4) Should any of the above conditions be or become invalid, this shall not affect the validity of the remaining conditions.
- 5) In business dealings, the place of jurisdiction for all claims arising from the lease contract shall be the court responsible for the registered office of M2. However, M2 is also entitled to assert claims at the registered office of the Lessee or at the place of use of the LA.
- 6) German law shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods.