

## **I. General, scope of application**

1. These General Rental Terms and Conditions (hereinafter also referred to as "Rental Terms and Conditions") apply to all current and future rentals.

future lettings and for all related transactions between MB.es and the tenant.

2. The rental object within the meaning of these terms and conditions is each individual item that MB.es provides to the tenant in fulfilment of a rental agreement for use within Mallorca (hereinafter: "contractual territory").

3. MB.ES does not recognise any general terms and conditions of the Tenant that conflict with or deviate from these General Terms and Conditions of Tenancy unless MB.ES expressly agrees to their validity in writing. The General Rental Terms and Conditions of MB.ES shall also apply if MB.ES carries out the rental to the Tenant without reservation in the knowledge that the Tenant's General Terms and Conditions conflict with or deviate from its General Rental Terms and Conditions.

4. Individual agreements made with MB.ES in individual cases (including collateral agreements, supplements and amendments) shall always take precedence over these Rental Terms and Conditions. A written contract or confirmation from MB.ES in writing or text form (e.. by e-mail) is decisive for the content of such agreements.

5. References to the validity of statutory provisions in these Rental Terms and Conditions are for clarification purposes only. Even without such clarification the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these Rental Terms and Conditions.

## **II. Offer and conclusion of contract, equivalent rental object**

1. Offers from MB.ES - regardless of their type and form - are merely invitations to the to submit offers. In such cases, the offer to conclude a contract with MB.ES shall only be deemed to exist in the written or verbal order placed by the Tenant, insofar as these offers are labelled or described as non-binding or subject to change. The Tenant is bound to his order for ten days.

2. A contract is only concluded by an order confirmation (or rental certificate) from MB.ES in written or text form or by the handover of the rental object by MB.ES to the Lessee. The order confirmation or rental certificate from MB.ES determines the content and scope of the contractual service provided by MB.ES.

3. Unless expressly agreed otherwise with the Tenant, MB.ES is entitled to provide the Tenant with a functionally equivalent rental item instead of the ordered rental item.

## **III. Rental period**

1. The rental period begins on the day agreed between MB.ES and the Lessee. The minimum rental period half a day (4 operating hours).

2. The tenant is obliged to accept the rental object on the agreed day and at the agreed time.

If the Tenant does not accept the rental object at the agreed time, MB.ES may withdraw from the contract in accordance with the statutory provisions or terminate the contract - also with immediate effect - and rent the rental object to another party. MB.ES is entitled to demand compensation from the Tenant for any damages arising from the Tenant's default.

3. The tenant's authorisation to use the rental property ends at the end of the agreed rental period, provided this was agreed in writing at the time of rental. If the Tenant continues to use the rented property after the end of its authorisation to use it ("exceeding the rental period"), the rental agreement shall not be extended as a result. If the Lessee has recognisably relinquished possession of the rental object, MB.ES is entitled, but not obliged, to collect it and to enter the place of use of the rental object for this purpose. The Tenant is obliged to pay MB.ES compensation in the amount of one day's rent for each additional day of use or non-return.

Any discounts according to MB.ES graduated rental price list shall not apply if the rental period is exceeded.

The assertion of further damages is not excluded.

4. If the parties have not firmly agreed the duration of the rental period at the time of rental, the rental agreement shall end with the return of the rental item, provided that the Tenant notifies MB.ES in text form of the imminent return of the rental item at least three working days in advance ("Return Period"). Without prior notification of the imminent return, the rental period shall continue after the return of the Leased Property and shall only end upon expiry of the Return Period. The statutory provisions shall apply to cancellations by MB.ES, whereby the notice period shall, however, correspond at least to the return period applicable to the Lessee. The right of both parties to terminate for good cause remains unaffected.

#### **IV. Handover and return of the rental item and transport**

1. Unless expressly agreed otherwise in writing, the rented item be handed over to the hirer at the location specified in the order confirmation.

2. MB.ES or a transport company commissioned by MB.ES shall transport the rental object to the place of use specified by the Customer at the expense of the Lessee.

3. The binding return inspection (acceptance) for any damage shall only take place after the return of the rental item to the respective MB.ES rental station. This also applies if MB.ES carries out the return transport itself. Employees of a transport company commissioned by MB.ES with the return transport are not authorised to carry out a return inspection (acceptance) or otherwise make legally binding declarations on behalf of MB.ES. However, in addition to the written obligation to notify MB.ES contained in Section IV. 6., the Tenant is obliged to notify the transport personnel of MB.ES or the transport company of any damage/defects when handing over the rental item for return transport.

4. MB.ES shall hand over the rental item to the Tenant in a roadworthy and technically flawless condition. Upon handover, the Lessee must inspect the rental object for road safety, operational capability and any defects. Tracked vehicles (mini excavators) that do not have a licence for public transport may only be moved on private property. The hirer is liable for fines and penalties in the event of violations.

5. The Tenant is obliged to return the rental object at the end of the rental period within the core opening hours of MB.ES (Mon - Sat 08:00 - 18:00) in a clean condition at the agreed location at the agreed time (in accordance with the General Terms and Conditions). Deviations from this are only permitted with written confirmation from MB.ES. The Tenant's duty of care for the rental item remains in force until the rental item is collected by MB.ES.

6. The Tenant must notify MB.ES in full of any damage/defects to the rental item upon return of the rental item. If third parties (transport companies) or MB.ES carry out the return transport, the Tenant must also notify MB.ES in writing of any damage/defects to the Leased Property, irrespective of his obligation to notify in accordance with Section IV. 3. sentence 4.

#### **V. Rent & security deposit**

1. The rent owed by the Lessee is determined as a calendar day's rent (hereinafter: "daily rent" TM) on the basis of the applicable MB.ES rental price list and is due at the latest upon delivery of the rental object. The daily rent is based on a maximum of eight operating hours. If the Lessee exceeds this daily shift time, MB.ES shall charge the Lessee an additional 1/8 of the applicable daily rate for each additional hour or part thereof (15 minutes per ). The daily rent shall not be reduced if the maximum daily operating time is not reached. If the rental period runs over a weekend, the weekend rate according to the rental price list with a maximum operating time of 12 operating hours. Public holidays at the place of use are free and are not charged at the daily rate. The operating hours charge is zero on these days. Simplified: No daily hire - no entitlement to 8 operating hours per day.

2. All prices quoted by MB.ES are subject to the applicable statutory value added tax (IVA).

3. The rent is solely the consideration paid by the Tenant for the opportunity to use the rental object within the contractual territory. MB.ES shall invoice the Tenant separately for all other costs for transport, assembly, fastening, fuel and operating materials, cleaning and limitation of liability/insurance premiums (see Section XIV.) (hereinafter: "ancillary costs").

4. To cover the tenant's deductible of €2,500 in the event of damage, a security deposit of the same amount is due before the rental property is handed over. This is "blocked" by credit card or payment app. The tenant's account is not debited, but only the possible utilisation in the event of damage is secured. The block will be cancelled within 24 hours of the flawless return of the rental property.

#### **VI. Notification of defects and claims for defects**

1. The Tenant must notify MB.ES immediately in writing of any defects occurring during the rental period. Defects for which the Tenant is not responsible shall be rectified by MB.ES at its own expense.
2. Claims by the Tenant based on obvious defects are excluded unless the Tenant notifies MB.ES of the defect upon handover.
3. MB.ES accepts no liability for the Tenant being able to use the rented item provided in accordance with the contract in line with his ideas and for the purpose he has planned.

#### **VII. Obligations of the tenant, use of the rented property**

1. The hirer is responsible for the operation of the rental item in compliance with the statutory provisions and the health and safety and accident prevention regulations. He must use the rental item as intended and as is customary within the contract territory and read the operating instructions before commissioning.

The Lessee may only use the rental item with the attachments and accessories provided by MB.ES.

2. Repair and maintenance work as well as any repairs and technical modifications are carried out exclusively by MB.ES.
3. Refuelling the rental vehicle with unsuitable fuels, such as biofuel, rapeseed oil and heating oil, is not permitted unless a corresponding admixture (e.g. AdBlue) is added to the normal fuel in accordance with statutory regulations.
4. The use of the tracked mini excavator on public roads and paths is prohibited. Non-compliance constitutes an administrative offence by the Lessee, which may be punished with a fine and constitutes a breach of the rental agreement with MB.ES.

The Lessee is obliged to indemnify MB.ES as the owner against any claims made by the authorities due unauthorised use of public roads and paths.

5. The Hirer to have the rental object (excavator and trailer) operated only by professionally trained persons who are familiar with the proper handling of the rental object or objects of a comparable type and who have any necessary permits and authorisations under public law - in particular the necessary driving licence.

The Lessee warrants that it or the persons it deploys have the necessary knowledge and skills to operate the rental item properly. MB.ES does not owe the Tenant any advice on the use and operation of the rental item beyond the usual provision of the operating instructions.

6. If the Tenant intends to use the rental object on weekends or public holidays, he must inform MB.ES of this in writing before concluding the rental agreement and no later than three working days before the intended use, stating the exact days of use. If the Tenant fails to notify MB.ES in good time or if prior notification was not possible, MB.ES cannot guarantee a repair service on weekends or public holidays if defects occur. If no prior notification was given, the Tenant is obliged to provide subsequent notification in any case.

7. The use of the rental object outside the contractual territory as well as any transfer for use and subletting to third parties is not permitted without the express prior written consent of MB.ES. The Tenant hereby assigns his claims against third parties arising from a permitted or unauthorised transfer for use to MB.ES on account of performance and agrees to pay a contractual penalty in the same amount. MB.ES accepts this assignment. The Tenant shall reimburse MB.ES for any costs and expenses incurred by MB.ES in pursuing and asserting claims against such third parties.

8. Theft/loss of or damage to the rented item (hereinafter summarised as: "Damage"), the Tenant must notify MB.ES immediately and take all measures necessary to minimise the damage and preserve evidence. Furthermore, the Tenant is obliged to support MB.ES and third parties in the further processing and clarification of the damage to the best of his ability at all times. In the event of theft or damage caused by third parties, the Tenant must also immediately report to the police. In this case, the Tenant is obliged to pay a deductible of €2,500.

9. In the event of seizure or other enforcement attempts by third parties against the rental object, the Tenant must draw attention to the ownership of MB.ES and inform MB.ES immediately.

10. The Tenant is responsible for the on-site requirements for the delivery and removal, assembly and commissioning of the rental items, including any necessary foundations. The Tenant bears the risk of the stability of the rental object and must obtain any necessary official authorisations and inform MB.ES of any risks.

11. The Tenant must store the rental item safely and - as far as possible - protect and secure it against harmful weather and unauthorised interference by third parties, in particular through theft, damage and unauthorised use (duty of care). The duty of care applies - irrespective of the duration of the rental agreement until the return of the rental object to MB.ES. In the case of a return transport organised by MB.ES, until the rental item is collected from the agreed collection point.

12. MB.ES shall be entitled to inspect the leased property itself or have it inspected by an authorised representative at any time in the event of suspected changes or if it is suspected that the leased property is at risk.

13. If the Lessee deploys personnel from MB.ES to fulfil its obligations or for its support, it shall indemnify MB.ES against all claims of its client or third parties resulting from the deployment of personnel.

### **VIII. Terms of payment, offsetting, right of retention**

1. Unless otherwise agreed in writing, the rent and the anticipated ancillary costs are due immediately and payable in advance. MB.ES shall invoice the ancillary costs actually incurred (refuelling, additional operating hours) separately after the end of the rental period.

2. MB.ES accepts payments in cash, by debit and credit card, by bank transfer and via payment app. MB.ES may offset any deposits against any outstanding claims of MB.ES against the Tenant after the end of the rental period.

3. Payment by the Tenant by bank transfer shall only be deemed to have been made on the date on which it is credited unconditionally to MB.ES's business account.

4. The tenant is only entitled to offset undisputed, legally established counterclaims or counterclaims arising from the same contractual relationship.

5. The Tenant shall only be entitled to exercise a right to refuse performance or a right of retention in relation to claims by MB.ES to an amount that is in reasonable proportion to its counterclaims.

Moreover, the exercise of a right of retention is only permissible if the Tenant's counterclaim is based on the same contractual relationship with MB.ES.

### **IX. Default of payment, damage caused by default**

1. If the Tenant is more than five working days in arrears with a payment in whole or in part or if an application is to open insolvency proceedings against its assets, MB.ES may, without prejudice to other rights

- demand immediate payment all claims arising from a financing or amortisation agreement, insofar as the default concerns obligations of the tenant arising from these agreements and

- withhold all deliveries and services from contracts that have not yet been fulfilled or not yet fully fulfilled.

2. In the event of default, MB.ES shall be entitled to demand default interest of 5 percentage points from consumers and 9 percentage points above the respective base interest rate from entrepreneurs. From entrepreneurs

MB.ES may also demand compensation for damages caused by delay in the amount of at least EUR 40.00 (Section 288 (5) BGB). The

MB.ES reserves the right to assert claims for higher damages caused by delay against consumers and entrepreneurs.

#### **X. Assignment by way of security**

1. To secure all future claims of MB.ES arising from the business relationship, the Lessee assigns to MB.ES its current and future claims against the clients for whom the Lessee uses the rental object. Claims that are subject to the extended retention of title of a supplier of the shall be transferred to MB.ES at the point in time at which they are no longer covered by the extended retention of title. MB.ES accepts this assignment. Upon request, the Tenant shall provide MB.ES with a list of the assigned claims, including their amount, due date and the address of the Tenant's client (third-party debtor).

2. MB.ES is authorised to the assignment of security to the third-party debtors, to dispose of the assigned claims and to collect them from the Tenant's client if there is an important reason and after prior warning and setting a reasonable grace period. Good cause shall be deemed to exist in particular if the Tenant is in default of payment to MB.ES. The grace period must be long enough the Tenant to raise objections or pay the amounts owed. In the event of an application for the opening of insolvency proceedings against the Tenant's assets, no grace period is required.

#### **XI. Transfer by way of security**

If the assignment by way of security in accordance with Section X is not sufficient to ensure the fulfilment of MB.ES's current and future claims against the Tenant, MB.ES may additionally demand that the Tenant assign goods by way of security up to an amount of 120% of the outstanding MB.ES claim.

#### **XII. Liability of MB.ES**

1. Claims by the Tenant for damages and compensation for futile expenses against MB.ES, its bodies and legal representatives and/or vicarious agents (hereinafter referred to collectively as "MB.ES"), irrespective of the legal grounds, in particular due to breach of the contractual obligation and/or tort (hereinafter referred to as "claims for damages"), are excluded.

2. This shall not apply if MB.ES is guilty of intent or gross negligence and/or in the event of a breach of material contractual obligations. Material contractual obligations are obligations whose fulfilment is essential for the proper execution of the contract and on whose compliance the Tenant regularly relies and may rely.

3. In the cases referred to in paragraph 2, MB.ES shall be liable in accordance with the statutory provisions. However, in the event of a breach of material contractual obligations due to simple negligence, the scope of liability shall be limited to compensation for foreseeable damage typical of the contract.

4. The above limitations of liability do not apply if MB.ES is mandatorily liable, e.g. for damages resulting from injury to life, limb or health.

#### **XIII. Start of the limitation period, duration of the limitation period**

The statutory provisions apply to the limitation period for any claims by MB.ES against the Tenant and by the Tenant against MB.ES. However, if damage to the Leased Property has been recorded by the police (see Section VII 8.), the limitation period for claims for damages by MB.ES against the Tenant not commence until MB.ES has had the opportunity to inspect the investigation file. However, the limitation period shall commence no later than six months after the return of the rental object by the Tenant or collection of the rental object by MB.ES. In the event of inspection of the file, MB.ES shall notify the Tenant immediately of the time of inspection.

#### **XIV. Liability of the tenant**

1. The Tenant shall be liable to MB.ES for any damage to the rental object, including damage caused by third parties, while it is in its care. The Tenant's liability shall also include any consequential damage, in particular towing costs, expert fees, loss of rent and pro rata administrative costs.

2. The Hirer shall have unlimited liability if he or his representatives have wilfully caused the damage to the rental object. The Lessee shall also be liable without limitation for all offences against traffic and regulatory provisions (e.g. the German Road Traffic Regulations) and other statutory provisions (e.g. due to interference with possession, injury to persons or damage to third-party property), unless MB.ES is responsible for these. In the event of the rental of vehicles or vehicle combinations whose dimensions, axle loads or total weights actually exceed the limits generally permitted by law during use, as well as vehicles whose design does not allow the vehicle driver a sufficient field of vision (e.g. self-propelled, pneumatic-tired work machines such as mobile excavators and wheel loaders), the Lessee's unlimited liability shall apply in particular for damage to roads and their facilities as well as to railway installations, railway vehicles, other railway objects and properties caused during the use of the vehicle. The Lessee shall not be entitled to object to any liability in this respect on the grounds that the road conditions did not meet the specific requirements of the use made by the Lessee. The Tenant shall indemnify MB.ES against all fines and warnings, fees and other claims for compensation arising from such offences or damage that are levied by or against MB.ES by authorities or other third parties.

3. The following applies to damage to the rental object caused by simple negligence and gross negligence:

a) Contracts for the rental of items with a new value of at least EUR 1,500 include a limitation of liability of € 1,500 in favour of the tenant

The limitation of liability only covers those items, risks and losses that are deemed to be insured under the ABMG, but not those items, risks and losses that are merely described there as "additionally insurable".

b) MB.ES requires the Lessee to pay a fee for the limitation of liability in accordance with the valid MB.ES price list. The fee shall be shown separately in the order form and shall be payable in the amount of the full daily fee for each commenced calendar day from the day of commencement of the rental up to and including the day of return of the rental object. In the event of use under difficult conditions - especially in the case of demolition work - the fee payable shall be doubled. The Lessee is obliged to inform MB.ES of such deployments upon conclusion of the contract.

c) From the time of payment of the fee, the Tenant's liability towards MB.ES for damage to the rental object in the event of damage caused by simple negligence is limited to the amount stated per damage event (= excess) as follows:

Limitation of liability of the tenant to Euro 2,500.00 excess

MB.ES shall inform the Lessee of the excess applicable to the respective rental item for damage caused by simple negligence in the order confirmation (= usually the rental voucher). The Tenant's limitation of liability for damage caused by simple negligence (excess) is doubled if the rental item is used under difficult conditions, in particular during demolition work.

In the event of gross negligence, the amount of the tenant's liability shall be determined by the severity of the fault. The Hirer's liability in the event of damage caused by gross negligence is therefore not limited to the deductibles specified in Section XIV.3c.

d) The above limitations of liability for simple negligence (see paragraph b)) or gross negligence (see paragraph c)) require the fulfilment of the tenant's obligations to cooperate, provide information and/or mitigate damages (see Section VII. 8.) in addition to payment of the applicable fee.

e) The Lessee shall be liable to MB.ES without limitation in all cases for damage to the rental object for which the Lessee is responsible and which is not covered by the insurance. The Lessee's liability shall not be limited in accordance with the ABMG, for example, for damage to the rental object caused by flooding, waterlogging or silting as a result of the particular dangers of use on water construction sites. Similarly, there is no limitation of the lessee's liability for tyre and chain damage to the rental item, unless the tyre/chain damage is the consequence (consequential damage) of material damage to other parts of the insured rental item that is insured on the merits. The above sentence applies accordingly to damage to rubber tracks of excavators on which they move. There is also no limitation of liability for damage that occurs during transport of the rental object that is not carried out by MB.ES or a transport company commissioned by MB.ES.

or which arise during an unauthorised transfer of use of the rental object to third parties in accordance with Clause VII. 7.

f) Insofar as the Tenant has to bear an excess in accordance with the above provisions of this Section XIV. 3, the following shall apply: Should MB.ES have to bear a share of the damage due to the contractual modalities of an existing insurance contract, which is lower in amount than the excess to be paid by the Tenant in accordance with this provision, the excess to be paid by the Tenant in the specific case of damage shall be reduced to the share of the damage to be borne by MB.ES.

g) MB.ES is entitled, at its own discretion, either to have a damaged rental item repaired at its own expense or to report the damage to the respective insurer of MB.ES for claims settlement.

4. The Tenant must insure rented items with a new value of less than EUR 1,500.00 against damage (fire, theft, loss and damage) for the duration of the rental period at his own expense in favour MB.ES as the beneficiary of the insurance contract. If the Tenant does not fulfil this obligation, he must reimburse MB.ES for all damages resulting from this breach of duty.

5. The renter's liability risk arising from the use of the rental object is generally not insured. In particular, this is not the case for self-propelled work machines whose maximum speed does not exceed 20 km/h. If there is no liability insurance cover for the rental item, the Hirer must take out liability insurance at his own expense against the risks arising from the use of the rental item. If the Tenant fails to fulfil this obligation, he shall also be obliged to compensate MB.ES for any resulting damage. If the rental object is a self-propelled machine with pneumatic tyres (e.g. mobile excavator, wheel loader) whose maximum design speed exceeds 20 km/h, it may only be used on public roads if the rental object has an official licence plate. The use of such rental equipment without a licence plate is an administrative offence punishable by a fine of up to two thousand euros.

6. As a precaution, the Tenant assigns to MB.ES any claims against the damage insurance pursuant to Section XIV. 4.

Furthermore, the Tenant assigns his claims against the liability insurance pursuant to Section XIV. 5. to MB.ES insofar as MB.ES is liable to third parties for damage resulting from the operation of the rental object by the Tenant. MB.ES accepts the aforementioned assignments.

7. All insurance policies taken out by MB.ES and the limitations of liability granted to the Lessee in accordance with Section XIV. 3. apply exclusively to use of the rental object within the contractual territory.

## **XV Place of fulfilment, place of jurisdiction**

1. The law of the Federal Republic of Germany shall apply.

2. The place of fulfilment for all claims is the registered office of the respective MB.ES rental station, unless otherwise agreed in writing or text form.

3. If the lessee is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the place of jurisdiction for all disputes arising from this contract shall be Cologne.

The same shall apply if such a Tenant does not a general place of jurisdiction in the Federal Republic of Germany or if his place of residence or habitual abode is not known at the time the action is filed. MB.ES is also entitled to sue the Tenant at its registered office/domicile.

MB.ES CONSTRUCTION MACHINERY HIRE