

Terms and conditions of lease of Volkmann & Roszbach GmbH & Co. KG

1. General

- (1) The Agreement is entered into under exclusive applicability of our terms and conditions of lease; we do not acknowledge any terms and conditions of the lessee (i) standing in opposition to our terms and conditions of lease or (ii) deviating therefrom unless we have expressly consented in writing to their applicability.
- (2) Our terms and conditions of lease shall apply only vis-à-vis an entrepreneur (§§ 310 I, 14 of the *Bürgerliches Gesetzbuch* (the Civil Code, the "**BGB**"), a legal person under public law or an investment fund under public law.
- (3) All covenants which are made between the lessee and us to amend the Agreement or for the purpose of executing this Agreement are to be memorialized in writing. Such shall also apply to any restatements. The understanding that the written-form is to be used can be repealed in the individual case only in writing.
- (4) Our terms and conditions of lease shall also apply to all future transactions with the lessee.
- (5) Insofar as the lessee is (i) a merchant, (ii) a legal person under public law, or (iii) an investment fund under public law, venue shall be at our business seat; however, we shall have the right to bring suit against the lessee before the court at its seat as well.
- (6) If no other agreement has been made, then the place of performance shall be our business seat.
- (7) The Agreement shall be subject to German law.
- (8) The offers of the lessor shall remain subject to confirmation and non-binding, unless the lessor has in writing expressly designated them as binding.
- (9) Pictures, drawings, and other documents that belong to the non-binding offers of the lessor shall remain the property of the lessor and shall be, insofar as they have not been expressly designated as binding by the lessor, only approximately decisive.

2. Lease property, location

- (1) The lessor shall provide to the lessee for use the item(s) described in the offer/in the order confirmation.
- (2) The anticipated location for setting up the item shall follow from the offer or the order confirmation. The lessee shall not be permitted to take the item to another location without the consent of the lessee. The items shall be left to the lessee only for the stipulated purpose for the customary and earmarked purpose; any other use during the lease term shall not be permitted. Any sub-lease or other transfer of the leased items shall not be permitted without written consent of the lessor. The lessee hereby assigns to the accepting lessor already now any claims for surrender and payment against the sub-lessee as security for any and all claims arising from this lease agreement.

3. Lease period/term/extension

- (1) The stipulated lease term is established in the offer/in the order confirmation. If the lessee is prevented from complying with the stipulated delivery date – due to circumstances for which it is not culpable (e.g., disruption in production, strike and lockout both in its own operation as well as in that of the supplier) and in cases of *force majeure* – then both contracting parties shall have the right to withdraw from the Agreement after a reasonable notice period has been set. Claims for compensatory damages shall be precluded.
- (2) After the stipulated lease period has expired, the leased property is to be returned unless the parties separately and expressly stipulate to extend the lease term.
- (3) If the return of the lease property is delayed for reasons for which the lessee is culpable or at the wish of the lessee, then the lease agreement shall be tacitly extended at the stipulated terms and conditions subject to the provision in 4.2. In this case, the lessor is to be notified in writing at least two (2) weeks in advance of the new end of the lease term. The lessor shall be allowed to terminate the extended agreement with a notice period of ten (10) business days.
- (4) The contractually stipulate lease term shall end:
 - when the lessor performs dismantling, at the date of the timely notification of availability.
 - when the lessee performs dismantling, at the date of the return delivery to the lessor or at the date of the earliest possible timely assumption by the lessor at the construction site.
- (5) A premature termination of the Agreement shall not release the lessee from its contractual obligations; in particular, it shall have to pay the stipulated rent in the full amount, unless otherwise stipulated in writing. The lessor, however, shall set off whatever it acquires through any other leasing of the same item or what it saves in expenses. All further expenses arising from the premature termination of the Agreement shall also be borne by the lessee, unless the lessor was responsible for the premature termination of the Agreement.
- (6) The lessee shall be liable for all damages that arise to the lessor from untimely information concerning the extension of the lease term or the untimely return of the lease property.
- (7) The lessee shall have the right to set off – even if notice of defects of counterclaims are asserted – only if the counterclaims (i) were judicially established, (ii) were acknowledged by the lessor, or (iii) are undisputed. The lessee shall be authorized to exercise the right of retention only if its counterclaim is based upon one and the same lease agreement.

4. Rent and payment, default, assignment

- (1) The rent shall be found in the order/order confirmation. Ordinarily, the rent shall not include, e.g., any assembly expenses, insofar as no agreement to the contrary was made with the lessee. Value-added tax and the expenses for servicing the leased items (cleaning and damage removal) shall not be contained in the lease price. In the event of any change in the value-added tax, the lessee shall have the right to adjust the rental rates.

Unless otherwise stipulated in writing with the lessee, the lease term shall commence on the date provided on the order confirmation. The rent shall initially be due and payable from this date without deduction within fourteen (14) days of receipt of the invoice at the lessee.

If the lessee enters into default with a payment, then the lessor shall have the right to demand from the lessor, from the affected date on, interest in the amount of 9% over the respective base interest rate of the European Central Bank. The lessee reserves the right to substantiate a greater amount of damage.

Notice periods that are not expressly stipulated as binding shall be solely non-binding details. The lessee shall have to procure the necessary official approvals.

In the event that the lessor culpably cannot comply with an expressly stipulated notice period or for other reasons enters into default, the lessee shall have to grant the lessor a reasonable grace period – commencing from the day of receipt of the written notice of default of the lessor or in the case of the notice period determined by the calendar. After fruitless expiration of this grace period, the lessee shall have the right to withdraw from the lease agreement.

Subject to the following limitations, the lessee shall be liable as provided by law, if (i) the contractual agreement involves a transaction in which time is of the essence or (ii) the lessee has the right, as a result of the default for which the lessor is responsible, to invoke the cessation of its interest in the fulfillment of the agreement.

In the event of default, the lessor shall be liable to the lessee in accordance with provisions of law, if the default is based upon a malicious or grossly negligent breach of duty for which the lessor is culpable. Any culpability of the lessor's representatives or vicarious agents is to be imputed to the lessor. If the default is not based on a malicious or grossly negligent breach of contract for which the lessor is culpable, then its liability shall be limited to foreseeable and typically occurring damages.

If the default for which the lessor is responsible is based upon culpable breach of a material contractual duty or a cardinal duty, then the lessor shall be liable under the provisions of law; in this event, the liability for compensatory damages shall be limited to foreseeable and typically occurring damages.

- (2) In the event that the lease period (Sect. 3) is extended, the daily rent for use shall be, subject to another written agreement, 1/30 of the stipulated monthly rent.

- (3) Unless otherwise stipulated in writing, the rent is to be paid monthly in advance to the lessor, without any deductions and without charge to the account set forth in the invoice or in the order. In the event of default, § 288 I and II BGB shall apply.

- (4) The lessee shall assign to the lessor the portion of its claims against its clients from the undertakings, in whose framework the item is being used, which portion corresponds to the rent respectively due. The lessor accepts the assignment and authorizes the lessee to collect the amounts. If the lessee enters into default with its rent payments or if a bankruptcy proceeding over the assets of the lessee is filed or if the lessee suffers deterioration of assets (*in Vermögensverfall geraten*), then the lessor shall be able to revoke the authorization, and disclose the assignment in the amount of the rents owed to it, and collect the amounts due.

5. Warranty, compensation for damage, limitation of liability

- (1) The lessee shall have to inspect the lease property upon commencement of the lease for completeness and proper condition, and is to notify the lessor of any defects without undue delay. If the lessee breaches these obligations, then any warranty claim shall be precluded.

- (2) In the event of justified and timely notice of defects, initially the lessor shall at its discretion perform on its warranty by means of subsequent improvement or by delivery of equally valued lease properties at no charge. If the subsequent performance does not succeed, then the lessee, at its discretion, shall be able (i) to demand reduction of the rent (reduction) or (ii) to declare withdrawal from the contract.

Such shall be without prejudice to the right of the lessee to assert any additional compensatory damages claims under the following terms and conditions.

- (3) The lessor shall have unlimited liability under provisions of law for (i) injuries or damage to life, limb, and health that are based upon a negligent or malicious breach of duty by the lessor, its legal representatives, or its vicarious agents, as well as for (ii) damages contemplated by the liability under the *Produkthaftungsgesetz* (the Product Liability Act), and for (iii) all damages that are based upon malicious or grossly negligent breaches of contract as well as bad faith on the part of the lessor, its legal representatives, or its vicarious agents.

- (4) The lessor shall also be liable for any damages caused by simple negligence, insofar as this negligence concerns the breach of material contractual duties or a cardinal duty. The same shall also apply if the lessee is entitled to any claims for compensatory damages in lieu of transfer for use. The lessor shall, however, be liable only insofar as the damages are (i) typically associated with the contract and (ii) foreseeable.

- (5) Any further liability of the lessor – regardless of the legal nature of the claim being asserted – shall be precluded; such shall also apply, but not be limited to, claims sounding in tort or claims for compensation for fruitless expenditures in lieu of performance; such shall be without prejudice to the liability of the lessor under the provisions of this Agreement.

- (6) Insofar as any liability of the lessor is precluded or limited, such shall also apply to any personal liability of its salaried employees, other employees, co-workers, representatives, and vicarious agents.

6. Rights of ownership – termination

- (1) The lessee shall have to inform the lessor in writing without undue delay of all accessing effected by third parties, including, but not limited to, foreclosure measures and any other impairments of its property rights. The lessee shall compensate the lessor for all damages and expenses which arise from a breach of this obligation and from requisite measures to intervene against accessing effected by third parties.

- (2) If the lessee conducts itself in a manner contrary to the Agreement, including, but not limited to, if the lessee does not comply with its payment obligation despite a warning from the lessor, then the lessee shall be able (i) to terminate the Agreement after having set a reasonable notice period and (ii) to demand the surrender of lease items in its possession.

7. Renovation/dismantling the lease property

- (1) During the lease term, the lessor shall be permitted to disassemble and remove the lease property only upon the lessee's request. The call-up to carry out the work shall have to be made in the text-form in a timely manner, by no later than two (2) weeks prior to beginning the work.

- (2) The lessee shall be able to perform conversions or partial dismantling at the lease property only with prior consent of the lessor; the lessor is to be notified of the planned changes prior to the execution thereof using the text-form.

- (3) The lessee shall bear the expenses for any changes to the lease property demanded by the lessee during the lease term.

- (4) The return delivery of lease property shall be effected in accordance with the contractual agreement by the lessor. When the lessor or its vicarious agents arrive to pick up the lease properties, they are to be held accessible. Any return delivery by the lessee shall be effected to the location from which the lessee picked up the lease property, insofar as the lessor does not specify another location which is reachable for the lessee with reasonable expense. That is generally a given if the specified location is not any farther away than the pick-up location.

- (5) The lease property is to be returned in proper condition. Any gross contamination of the lease property (e.g., concrete remains, construction debris, excavation material, tar, paint, plastic film, or the like) is to be removed by the lessee prior to dismantling/return. Otherwise, the removal is effected by the lessor at the lessee's expense.

- (6) Any expenses and damages that result in the event of the return delivery by the lessee due to improper packaging shall be at the expense of the lessee.

8. Liability

(1) Each of the parties carrying out assembly work on the lease property shall be respectively liable for doing so properly and professionally. If the lessee performs the assembly work, then the lessee shall also be liable for any property and financial damages to the lessor that arise as a consequence of unprofessionally performed assembly.

(2) The lessee shall be liable for all damages occurring on the lease property, including, but not limited to, theft and damage from accidents. Liability shall commence with the delivery and in the event of self pick-up with taking possession of the lease property. It shall end when the lessor picks up the lease property. If the lease property is picked up and brought back by the lessee in accordance with the Agreement, then the lessee shall also bear the risk of carriage in both directions. The liability shall therefore end only upon the return of the leased property at the location of return under Sect. 7 (4).

(3) The expenses for any repairs and maintenance work that may possibly become necessary, resulting from accident-related damages or other damages (e.g., from snowplows or use of street-cleaning equipment) shall be borne by the lessee. It shall be the responsibility of the lessee to insure the lease property for the duration of the lease term against theft, fire, loss, damages arising from accidents and transportation, and other hazards. In the event of any lost, stolen, or damaged lease property, the lessee shall have to compensate the lessor not only for the rental price but also for any expenses for replacement or maintenance, plus value-added tax. Insofar as a repair is not possible, the replacement price shall be invoiced.

The lessee shall have to inform the lessor without undue delay concerning any possible damages or losses to the leased items. Such shall be without prejudice to the lessee's obligation, in the event of theft, to file a report with the police. The police report is to be submitted to the lessor upon demand.

(4) Should any damages or shortfalls in the lease property (individual parts, assemblage material) be determined, then the lessee shall have to bear the expenses for maintenance or for procuring replacements.

(5) The lessee shall indemnify the lessor from all third-party claims which are asserted against the lessee or against the lessor as owner in connection with any traffic accidents or other damages (e.g., impressions in the asphalt surfacing). The indemnification shall not pertain to such damage for which the cause is to be found in the condition of the lease property, insofar (i) as the lessee has not effected any changes in the lease property and (ii) that the assembly has been properly carried out by the lessee or by the lessor.

(6) The lessee shall be obligated to maintain insurance coverage with a coverage amount of €2,500,000.00 – as a lump sum – per personal/property damage event. If the lessor is entitled to any further indemnification claims, then such coverage shall be without prejudice thereto.

9. Severability

Should a provision of this Agreement be or become ineffective, then such shall be without prejudice to the legal efficacy of the remaining provisions thereof.

The contracting parties shall be obligated to replace any ineffective provision of the individually stipulated part of the Agreement with an effective provision the purpose of which approximates the purpose of the omitted provision as closely as possible. The same shall apply if the Agreement contains any loopholes.