

# General terms and conditions of hire of Boels Verleih GmbH



## 1. General

- The following Terms and Conditions of Boels Verleih GmbH (hereinafter: the Lessor) shall apply exclusively; any terms and conditions of the Hirer to the contrary or which differ from these Terms and Conditions shall not be acknowledged, save where the Lessor has explicitly acknowledged their applicability in writing. The Terms and Conditions of the Lessor shall also apply in the case of unreserved delivery/hire to the Hirer by the Lessor where the existence of opposing terms and conditions of the Hirer is known.
- All agreements entered into between the Lessor and the Hirer with the purpose of performing the Contract are laid down in writing in this Contract.
- The General Terms and Conditions shall also apply to any future business conducted.

## 2. General rights and obligations of the Contract Parties in general

- The Lessor undertakes to provide the Hirer with the Plant for the agreed period of hire against payment of the agreed fee.
- The Hirer undertakes to provide proof of his identity upon taking delivery of the Plant by showing a valid identity document to the employee of the Lessor, only to use the Plant in accordance with its intended use, to comply with the relevant regulations concerning accident prevention and health and safety at work as well as road traffic act regulations, to handle the Plant in accordance with the applicable regulations and to return the Plant at the end of the hiring period in a clean condition and, where necessary, with a full tank of fuel and to pay the agreed hire charge in advance.
- The Hirer undertakes to inform the Lessor truthfully of the present location or operational location of the Plant in the Contract of Hire.
- Any depictions, drawings, indications of weight and stated dimensions, etc. included in or forming part of this Contract are merely approximations to the extent that they are not explicitly stated as binding.

## 3. Provision of the Plant, default by the Lessor

- The Lessor shall keep the Plant in a proper, fully operational condition, free from defects, with a full tank of fuel, together with the necessary documents, ready for collection by the Hirer. The risk of damage, loss and the risk of transportation shall pass to the Hirer upon collection, even where the Plant is transported using vehicles belonging to the Lessor.
- In the event the Lessor fails to make the Plant available, the Hirer shall only be entitled to withdraw from the Contract if he has first given the Lessor a suitable additional period within which to provide the Plant.  
The Hirer may only demand compensation for the failure to provide the Plant in good time, however, if culpability for the failure to provide the Plant in good time can be attributed to the Lessor. Any compensation shall be limited to the daily net hire charge. The right to withdraw from the Contract shall remain unaffected.

## 4. Reservation and advance booking

- Plants may be reserved in advance. The time and period to which the booking order relates and at which the Plant will be ready and available for the other party will be laid down in writing upon the conclusion of the Contract. In the event that the Hirer does not take receipt of the reserved Plant at the agreed time and for the agreed period of time, the Hirer shall nonetheless be liable for payment of the hire charge in full.
- Notwithstanding the above provision, the Hirer may nonetheless cancel its order for the Plant prior to the moment the Plant is made available for the Hirer by giving notification in writing to the Lessor. The Hirer shall then be required to pay the following by way of compensation:
  - 60 % of the net contract sum (agreed hire charge, minus VAT), in the event of cancellation between 59 and 30 days before the time the Plant is made available for the Hirer;
  - 70 % of the net contract sum (agreed hire charge, minus VAT) in the event of cancellation between 29 and 10 days before the above-mentioned moment;
  - 80 % of the net contract sum (agreed hire charge, minus VAT) in the event of cancellation within 10 days before the above-mentioned moment.In the event of non-receipt in accordance with paragraph 1 above or cancellation in accordance with paragraph 2 above, the Hirer cannot rely on the objection that the Lessor has not incurred any expenses; the objection of not having hired a Plant elsewhere is similarly excluded.

## 5. Defects in the Plant

- A defect is deemed to exist in the Plant when its suitability for use in accordance with the Contract is nullified or diminished (lack of functional suitability).
- The Hirer is obliged to inspect the Plant upon taking receipt and to complain immediately about any defects which are discovered.
- No complaint may be made about any defects which are noticeable upon transfer and which do not impair the intended use to any insignificant degree if such defects are not reported to the Lessor immediately after the inspection. If the Hirer fails to make any report, the unit of Plant shall be deemed to be approved and free of defects.
- If a defect appears during the hire period, it must be reported to the Lessor immediately in writing following its discovery; failing this the Plant shall be deemed to be compliant with the Contract, also with a view to any defect which is discovered at a later time.
- The Lessor may repair or replace the defective parts of a Plant free of charge, whichever option is cheapest to it. The

Lessor may provide the Hirer with a Plant of equivalent functionality or may repair the defective Plant.

The presence of a defect in Plant shall not grant any entitlement to withdraw from the Contract. A right to withdraw only exists where the Lessor fails to exercise its right to exchange the Plant and two attempts at repair have failed. Furthermore, the right to a reduction in the hire charge is excluded. The Lessor is also excluded from any obligation to pay compensation due to a defect in the Plant.

## 6. Limitation of Lessor's liability

- In the event of injury to life, limb or health, the Lessor shall be liable for its own willful or negligent breaches of duty as well as for the fault of its legal representatives and persons employed in performing an obligation. All other claims for damages or compensation, irrespective of their cause in law, are excluded, however, to the extent that ordinary negligence is attributable to the Lessor, its legal representatives and persons employed in performing an obligation. The aforementioned limitation does not apply, however, in the event that essential contractual obligations are violated. In the event of the violation of essential contractual obligations, the Lessor's liability shall then be limited to compensation for the typically predictable loss and/or damage.
- Any other liability on the part of the Lessor is excluded. In so far as the Hirer is unable to use the Plant in accordance with the Contract as a result of a failure to provide instructions or the provision of faulty instructions by the Lessor or persons employed by it in performing an obligation/its legal representative, the provisions in clause 5/clause 6 shall apply accordingly under exclusion of any further claims by the Hirer. No claims for compensation may be brought against the Lessor if the loss and/or damage has not been reported immediately by the Hirer. The Hirer shall be required to provide the Lessor with all requested information and documents proving the loss and/or damage without being asked to do so. If the Hirer omits to provide proof by submitting documents and/or other documentary evidence proving the loss and/or damage, the Lessor's liability shall lapse even where it would basically be required to warrant for the consequences under clause 6.1.

## 7. Hire charge, payment, assignment as security

### A. Hire of Plant/machinery/equipment

- The prices stated in the Plant/machinery/equipment catalogue shall be applicable; the prices quoted are daily rates for the hire and use of a Plant for a maximum of 24 hours, or weekly rates for the hire of a Plant for a maximum of 168 hours from acceptance of delivery by the Hirer (with the exception of Plants equipped with a device for recording operating hours, in respect of which the daily rate applies to 8 operating hours and the weekly rate to 40 operating hours; additional operating hours will be charged separately by the Lessor). In addition to the hire charge, charges will also be made for value added tax, servicing, fuel, oil, transport, environmental levies – as far as accruing –, cleaning, and a surcharge as applicable for limitation of liability A/B (= "Haftungsbegrenzung A/B").
- The weekend rate (Friday to Monday) covers a hire of no more than 72 hours (Sundays are not included).
- The Lessor can be requested to give a quotation for hire periods of more than four weeks.

### B. Party hire

- The hire charges quoted in the Lessor's party catalogue cover weekend hires or hire periods of three working days. Plants can be collected on the day before the commencement of the period of use and must be returned by the Hirer on the day after the end of the period of use. A 15% surcharge on the weekend rate will be payable for each additional day. Rates are available only on request for hire periods of more than two weeks, i.e. by separate agreement.
- The hire charges are exclusive of VAT, servicing, cleaning, transport, loading and unloading as well as a surcharge, as applicable, for limitation of liability A (= "Haftungsbegrenzung A").

### C. General remarks with regard to hire charges

- The hire charge is payable in advance in cash, without discount, plus the applicable VAT.
- The hire charges quoted in the Lessor's catalogue are correct at the time of printing of this catalogue only. The rates quoted in the catalogue are correct for 30 days from this time; thereafter the rates quoted in the catalogue are non-binding recommended prices. The publication of a new catalogue renders the rates and offers which have applied until such time ineffective.
- The Lessor may alter the rates it charges for hires if the factors which determine the formation of its rates, such as freight charges, levies such as import and export duties and/or taxes, wages and salaries, social security contributions and exchange rates, change. This does not apply to rates which have already been agreed contractually during the hire period.
- The Hirer shall assign to the Lessor its claims against its principal, on whose behalf and instructions the Plant is used, in an amount equal to the agreed hire charge, minus any deposit received, as security for the acceptance of this Plant. The Lessor shall agree to this assignment.
- The retention of payments as well as the setting off of any counterclaims of the Hirer which are contested by the Lessor are not permissible. The Hirer shall similarly waive any enforcement or exercise of a right of retention in respect of the issuance of the Plant due to any counterclaims which are asserted against the Lessor.
- The Hirer shall be required to pay a deposit, subject to in-

dividual written agreements to the contrary. The amount of the deposit will be determined by the Lessor in proportion to the specified hire period and the value of the Plant. In the event that the Hirer wishes to extend the Contract, he shall be required to pay the newly determined deposit by no later than the first day of the Contract extension.

- In the event that the Hirer fails to pay the deposit on time, the Lessor may withdraw from the Contract without a reminder or demand note being required. In such case, the Lessor reserves the right to enforce a claim for further loss and/or damage due to the conduct of the Hirer which is contrary to the Contract.
- A deposit which has been paid may not be set off by the Hirer as an advance payment on the hire charge which is due or as the sum of indemnity in respect of an event of damage or loss. The Lessor is, however, entitled to set off the amounts payable by the other party against the deposit upon the termination of the hire period. The deposit will be refunded once it has been established that the other party has fulfilled all its obligations in full.

## 8. Hirer's obligations

- The Hirer shall be obliged to and warrants that it will:
  - handle the Plant with due care, and safeguard the Plant against overuse in any manner as well as against access by third parties. The Hirer, its members of staff, assistants and/or other persons operating the Plant under the direction and/or the responsibility of the Hirer must be familiar with the operating instructions attached to the Plant and/or (any other) instructions issued by the Lessor, and must act accordingly. The Hirer warrants that all persons operating the Plant are properly qualified in respect of such operation and hold the credentials, certificates of competence, driver's licences, etc. which may be (legally) prescribed. In the event of violation of the aforementioned provisions, the insurance protection and/or cover under the regulations on the limitation of liability within the meaning of clause § 13 A/B may lapse;
  - undertake the proper and competent maintenance and care of the Plant at its own expense, and in this respect will in particular undertake the necessary inspection and overhaul work in a competent manner using original or equivalent spare parts at its own expense.
- The Hirer is obliged to notify the Lessor immediately of any and all damage occurring to the Plant during the hire period and to submit the Plant to the Lessor after any damage has occurred. The Lessor may, in the case of damage to the Plant, carry out the necessary repair(s) itself at the Hirer's expense or have such repair(s) carried out by a selected specialised company.
- The Lessor may inspect the Plant at any time, and examine it or have it examined by an appointed representative by prior arrangement with the Hirer.
- The Hirer undertakes to pay all expenses, taxes (including taxes for use of public areas) and fines arising for the Lessor in connection with the use of the Plant by the Hirer or any third party.
- Where necessary on legal grounds, the Hirer must ensure at its own expense that it holds the required permits and authorisations in good time prior to the delivery of the Plant.
- The Hirer undertakes to contest any claims of third parties to the Plant at its own expense and to notify the Lessor thereof immediately in writing as well as to indemnify the Lessor against any claims or recourse by third parties related to the use of the Plant. The Plant may only be sublet or rehired and provided to third parties with the express written permission of the Lessor. In the event of violation of the aforementioned provision, the insurance protection and/or cover under the regulations on the limitation of liability within the meaning of clause 13 A/B shall lapse in the event of unauthorised subletting/transfer to third parties should any damage or loss occur. The Lessor may terminate the Contract with the Hirer without notice and demand payment of the agreed hire charge by way of compensation in the event that the Hirer violates the aforementioned obligations. The Lessor reserves the right to bring further claims for compensation in cases of the aforementioned breaches of contract.

## 9. Liability for operating personnel

Where an operator or operators employed by the Lessor is/are supplied with the Plant, such operator/operators may only be deployed for the operation of the Plant and not for other work. The Lessor shall only be liable for loss or damage caused by its operating personnel if it has not selected such operating personnel in a proper manner. The Hirer shall be liable for all other loss or damage caused by the operating personnel to the Plant or to property belonging to third parties.

## 10. Return of the Plant

- The Hirer shall return the Plant to the Lessor at the contractually agreed time without being requested to do so and at its own expense. The parties interpret return as meaning the handing over of the Plant to the Lessor or an employee or to an authorised representative of the Lessor who has been charged with accepting the Plant in such a way that such authorised representative acquires the exclusive power of disposition over the Plant. Where the Plant has been hired out for an extended period (without a termination date or time), the Hirer shall notify the Lessor in writing (notification of availability) in advance when it intends to undertake return delivery of the Plant. The Hirer shall continue to pay the agreed hire charge until final delivery to the Lessor or until the Lessor has collected the Plant. The provisions in clause 8, subclauses 2, 4 and 5 shall also apply mutatis mutandis with respect to the obligation to return the Plant.

2. The hire period ends on the day when the Plant, together with all parts necessary for putting it into operation, is received back in a proper condition and as provided in the Contract at the Lessor's place of business where delivery was taken at the Plant, or upon return at another agreed location, at the earliest however upon the expiry of the agreed hire period.
3. The Hirer shall return the Plant to the Lessor at the agreed time on the agreed date in the condition in which he took delivery of the Plant upon commencement of the hire. The Hirer must return the Plant in a clean condition, and sorted and in boxes, etc. as the Plant was when first received. The Lessor will charge the Hirer for any additional work arising from a failure to sort or clean, or from the insufficient sorting or cleaning of, the Plant.
4. Return delivery of the Plant must take place during the Lessor's normal business hours so that the Lessor has sufficient time to inspect the Plant on the same day. Failing this, the Hirer shall remain responsible for the Plant for a further two working days and shall be required to pay a hire charge for this period on a proportional basis. To the extent that the Lessor receives the Plant back at another location than the place of business or distribution according to the provisions in the Contract, the Hirer shall ensure, after written notification, that the Plant can be collected daily between 8 am and 6 pm at the stated location. The Hirer shall also ensure that a suitably authorised person is present when the Plant is handed over to the Lessor; if no one is present during collection, the Lessor shall nonetheless be entitled to take possession of the Plant. Responsibility for proving the condition of the Plant upon return receipt by the Lessor shall then lie with the Hirer.
5. The Plant must be available for collection on the ground floor and must be sorted, cleaned, arranged and stacked. The packaging belonging to the Plant shall remain with the Hirer as a warranty of quality. In the event that the Plant is not ready for transportation, the Hirer shall be required to pay a flat-rate charge in the amount of EUR 150.
6. Following its return, the Plant will be inspected at the business premises of the Lessor or the third-party lessor. Acceptance of the Plant by a haulage firm commissioned by the Lessor or a third-party lessor acting on the instructions of the Lessor shall not be considered as constituting inspection in this sense. If the Hirer wishes to be present at the inspection, he must indicate this when entering into the Contract so that an appointed time can be agreed for the inspection (within 24 hours after return). In the event that fouling or contamination or incorrect packaging is established in the absence of the Hirer, the inspection carried out by the Lessor or the third-party lessor shall be binding and the Lessor shall be entitled to charge the Hirer the related costs.
7. The Hirer will be notified in the event of any damage being discovered in or to the Plant during the inspection. The Lessor will specify a period of time in the damage report within which the damaged Plant will be made available in order to allow an expert (counter) opinion to be furnished for the Hirer. If this term expires without being used, the Lessor will undertake the repair or replacement of the Plant. If the Hirer does not use the opportunity to obtain a counter opinion, the Lessor will ascertain the loss, which ascertainment of loss shall be binding on the Hirer. The loss will otherwise be further adjusted in accordance with the provisions in clause 12 of these terms and conditions.

#### 11. Further obligations of the Hirer

1. The Hirer may not consign the Plant to a third party nor may it assign any rights under this Contract or grant any rights whatsoever in respect of the Plant to any third party. In the event of violation of the aforementioned provision in the case of loss and/or damage, the insurance protection and/or cover under the regulations on the limitation of liability A/B within the meaning of clause 13 A/B shall lapse. The Hirer shall be liable for any loss and/or damage arising from such breach of contract.
2. In the event that any third party should enforce any rights in respect of the Plant by attachment, seizure or pursuant to any other alleged claims or should take authorised or unauthorised possession of the Plant, the Hirer shall be obliged to notify the Lessor thereof without delay and in any event within three days; such notification must be made in writing by letter or fax or by e-mail. The Hirer shall likewise be obliged to draw attention in writing to the Lessor's ownership and to furnish the Lessor with a copy of such notification. The Hirer shall be obliged to make good to the Lessor all the costs associated with the recovery of the Plant and to pay a reasonable and suitable advance for the costs of litigation on first demand by the Lessor.  
The Lessor may terminate the hire for exceptional reasons without notice in the event that the Hirer fails to safeguard the Lessor's rights, or fails to safeguard them sufficiently, in accordance with the aforementioned provisions.
3. The Hirer shall take suitable measures to protect the Plant against theft.

#### 12. Damage and loss

1. Any damage to the Plant which arises during the period when the Plant has been assigned to the Hirer must be reported to the Lessor in writing immediately after its discovery, and in any event within 48 hours.
2. In the event of the theft/loss of the Plant, the Hirer shall inform the Lessor immediately following the discovery thereof, and in any event within 24 hours, and shall report the theft to the police without delay. The Hirer must then submit a copy of the police report to the Lessor. In the event of loss or theft, the expiry date of the Contract of Hire shall be the time which is indicated as the date of loss according to the police report. The hire of any further Plants included in the same Contract of Hire will meanwhile continue.
3. In the event that the Hirer fails to report the matter to the police and to provide the Lessor with a copy of the police report, the theft shall be considered as misappropriation. In such case, the limitation of liability B referred to in clause 13 of these terms and conditions shall not cover the loss and/or damage.
4. In the event of the theft or write-off of the Plant, the Hirer undertakes to make good the loss to the Lessor on a full new replacement basis. In the event that the damaged Plant can

be repaired, the Hirer undertakes to reimburse the associated costs of repair. The same applies in the case of damage to/ theft of component parts and/or accessories belonging to the Plant. Moreover, the Hirer shall be liable for all further resulting loss and/or damage suffered or incurred by the Lessor (such as, for example, the costs of an expert and/or loss of revenue/profit).

5. If the Plant which was lost is later recovered and returned, the Hirer shall be required to pay the hire charge until the date of restitution. In that case the Lessor will set off any replacement value which may have been paid by the Hirer against the hire charge.
6. The costs of an expert who was commissioned by the Lessor to assess the loss and/or damage and/or costs of repair and/or the costs of cleaning of the Plant shall be for the Hirer's account. The Hirer declares that it agrees that the Lessor is entitled to instruct a competent expert to undertake a loss assessment at the Hirer's expense.

#### 13. Insurance and limitation of liability (= "Haftungs-begrenzung")

1. The Hirer shall in any event be liable for the loss, damage or theft as well as for the destruction of the Plant.
2. The Hirer may claim a limitation of liability (= "Haftungs-begrenzung") (A/B) in respect of the above-mentioned risks within the framework of the provisions set out below. To the extent that this is possible with respect to the hired Plant according to the conditions in the regulations on the limitation of liability (= "Haftungs-begrenzung") (A/B), the Hirer shall be obliged to claim such limitation of liability.
3. For information regarding content and cost, reference should be made to the conditions in the regulations on the limitation of liability (= "Haftungs-begrenzung") (A/B), which are printed on the reverse of the Contract of Hire. These conditions can also be obtained from any hire office and are also available on the Boels website: [www.boels.com](http://www.boels.com). A copy of the conditions can also be forwarded on request.

#### A. Regulations on the limitation of liability (= "Haftungs-begrenzung") for private individuals and businesses (= limitation of liability A = "Haftungs-begrenzung A")

4. The Lessor may require the Hirer to contract for a limitation of liability (= "Haftungs-begrenzung") for damage to or loss of Plant. Cover under the limitation of liability (= "Haftungs-begrenzung") A applies solely to the Hirer. Not covered are: damage and/or resulting from fire, theft, improper or careless handling and/or negligence and damage to articles belonging to third-party lessors.
5. The limitation of liability (= "Haftungs-begrenzung") A shall be subject to a surcharge of 10% on the agreed hire charge, unless another percentage figure is stated in writing. The limitation of liability (= "Haftungs-begrenzung") A shall be subject to an excess as stated in the conditions of the limitation of liability (= "Haftungs-begrenzung") A.

#### B. Fire-/theft provisions for businesses (= limitation of liability B = "Haftungs-begrenzung B")

6. The limitation of liability (= "Haftungs-begrenzung") B can only be claimed by commercial Hirers. The limitation of liability (= "Haftungs-begrenzung") B covers loss and/or damage resulting from fire or theft. Cover does not include inter alia damage resulting from intent or gross negligence, improper or careless use, unauthorised subletting or rehire or provision of the Plant for the benefit of third parties, damage to articles belonging to third-party lessors or when the loss and/or damage is already covered under a policy of insurance under which the Hirer may claim. The limitation of liability (= "Haftungs-begrenzung") B does not apply to the Party Rental departments.
7. The limitation of liability (= "Haftungs-begrenzung") B shall be subject to a surcharge in the form of a percentage of the hire charge. The limitation of liability (= "Haftungs-begrenzung") B shall be subject to an excess as stated in the conditions of the limitation of liability (= "Haftungs-begrenzung") B.

#### C. Insurance

8. If the Hirer wishes to take out his own insurance for the Plant, the Lessor shall be entitled to demand that he be named as beneficiary in the insurance and that the policy of insurance be submitted to him. Any excesses shall be for the account of the Hirer.
9. The Hirer declares in advance that Boels, in the event that a construction all risks insurance has been taken out, can and may as (co-)insured enforce claims under this construction all risks insurance. Any excesses shall be for the account of the Hirer.

#### 14. Special obligations in the event of loss and/or damage or breakdowns

In the event of damage, the Hirer shall ensure that, once the scene has been secured and first aid has been provided, all measures necessary for mitigation and to secure evidence are taken, namely that

- a) the police are immediately called in, even in the case of accidents where no third party is involved,
- b) the names and addresses of persons involved in the accident and witnesses as well as the registration numbers of vehicles involved in the accident are noted and that a sketch is made, for forwarding to the Lessor,
- c) the Hirer does not admit guilt or responsibility, and appropriate safety precautions are taken for the Plant.
- d) The Hirer may not leave the scene of the accident until he has fulfilled his obligation to provide an explanation of what happened and to establish the necessary facts. Following the theft of the Plant, parts of the Plant or accessories belonging to the Plant, the Hirer must immediately report the theft to the appropriate police station. Where available, witnesses must be named and a corresponding sketch made for the location where the Plant has been secured. The Hirer is obliged to report every event of loss and/or damage truthfully and in full to the nearest Boels (representative) office without delay and in person. The Hirer is also required to assist the Lessor and its insurer in the handling of the event of loss or damage and to provide them with any and all information which may be needed to clarify what happened in relation to the event of loss or damage and to assess or adjust the damage and/or loss between the Lessor and the Hirer.

#### 15. Hirer's liability

1. The Hirer shall be liable for any damage to the Plant arising or which is culpably caused by its operation of such Plant or for the loss of the Plant/vehicle (including parts of and accessories belonging to the Plant) during the term of the Contract of Hire. The Hirer shall also be obliged to compensate any and all damage to the Plant or compensate for the loss of the Plant where the Hirer has consigned the Plant to any third party, e.g. a haulier. He may not invoke the guilt of any third party vis-à-vis the Hirer. The Hirer's duty to provide compensation also extends to the costs of repair plus any depreciation or, in the event the Plant is written off, to the replacement value of the vehicle minus the residual value. The Hirer shall further be liable – to the extent incurred – for towing charges, expert's fees and any further costs and loss of hire charge arising for the Lessor. Where a Plant/vehicle is consigned to a third party, the Hirer shall be liable for compliance with the provisions in this Contract of Hire and for the conduct of the third party or third parties as well as for his own conduct. The Hirer shall be responsible for the consequences of traffic violations or (criminal) offences which are established in connection with the use of a hired vehicle and shall indemnify the Lessor against any charges and costs which may arise. The Lessor may name the Hirer as the driver to the authorities in such a case.
2. The hire charge includes third-party liability insurance – in the case of vehicle rentals for use on public roads according to the Obligatory Insurance Act (Pflichtversicherungsgesetz), to at least the limit of liability legally prescribed in the country where the vehicle is authorised for use or in the country of hire. This cover does not extend to any objects which are placed in or on the vehicle/Plant. No extended passenger insurance exists. Moreover, no cover is provided for the following:
  - damage and/or loss to third parties which is not covered on insurance-legal grounds, for example where consumption of alcohol is a factor or in the case of gross negligence,
  - damage caused to overground or underground lines or cables and/or the resulting consequential loss and/or damages.
 The Hirer's liability lapses to the extent that the third-party liability insurance becomes effective.

#### 16. Termination

1. The Lessor may terminate the Contract of Hire for exceptional reasons without notice for serious cause. A serious cause for termination is always deemed to exist if the Hirer is in breach of his obligations under the Contract of Hire or under the law.
2. Where the Lessor exercises the right of termination granted to him, the provisions in clause 6.5 in conjunction with clauses 10 and 11 shall apply accordingly.
3. The Hirer may terminate the Contract of Hire in writing after giving notice without observing any period of time if the Plant cannot be used for an extended period of time, unless in the case of long-term Contracts of Hire the parties have agreed otherwise in writing.

#### 17. Due date, payment, default

1. To the extent that the hire charge has not already been paid in advance (in full) upon receipt of the Plant (clause 6 C), the final invoice for the hire charge and any other amounts receivable plus the VAT applicable at that time will be drawn up by the Lessor upon the return of the Plant or as soon as this is possible. The invoiced amounts shall be due and payable upon the submission or delivery of the invoice.
2. The invoices shall be provided with an order and/or project number or with another form of identification at the Hirer's request provided that the space provided for doing so is sufficient. It is not possible to return the order note at the end of a hire period together with the invoice due to the fully automated nature of the invoicing process.
3. In the case of extended hires for periods of at least 4 weeks, the hire charge shall be payable to Boels every 4 weeks in advance.
4. In the event that the Hirer defaults on payment, interest shall be payable by him on the amounts due in the amount of the interest on credits calculated or charged by the Lessor, at the minimum however at a rate of five percentage points above the base interest rate for customers who are not business clients and at a rate of at least eight percentage points above the base interest rate for business clients. The Lessor reserves the right to enforce further claims for default.
5. Sums paid by the Hirer shall first be used to settle any expenses and costs, then to settle the interest due and finally to settle the hire charge or any other outstanding amounts receivable by the Lessor.

#### 18. Final provisions, applicable law; choice of forum

1. Any agreements deviating from or additions to the Contract shall only be effective if agreed in writing. This shall also apply to any waiver of this agreement on written form itself.
2. In the event that any provision in this Contract should become void or be rendered ineffective, this shall not affect the validity of the other provisions in the Contract.
3. The place of performance and court having exclusive jurisdiction – also for proceedings involving claims relating to documents, bills of exchange or cheques – shall be, in the event that the Hirer is a businessman, a legal entity under private or public law, for both parts and for all claims the registered office of the Lessor, the firm of Boels Verleih GmbH, Willich. The Lessor may also institute a claim at the Hirer's place of general jurisdiction.
4. These Terms and Conditions shall be governed by and construed solely in accordance with German law.