



# General Terms and Conditions

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## GENERAL TERMS AND CONDITIONS

### FOR THE HIRE OF CONSTRUCTION MACHINES, CONSTRUCTION EQUIPMENT AND INDUSTRIAL MACHINERY FROM VP GMBH (DIVISION GROUNDFORCE AND DIVISION TPA)

#### 1 GENERAL - SCOPE OF APPLICATION

- 1.1 These general terms and conditions for the hire from Vp GmbH (the "Conditions") are applicable to all offers and any kind of hire contract for the hire of construction machines, construction equipment and/or industrial machinery as well as the hire of mobile panels for portable roadways, walkways or sites, of crane mats or similar materials, machines or equipment (the "Plant") from Vp GmbH. The Owner hereby expressly objects against the applicability of general terms and conditions of the Hirer.
- 1.2 The lessor and usually equally the owner of the Plant is Vp GmbH („Owner“).
- 1.3 The Conditions also apply in their respective applicable version, as amended from time to time, to future contracts on the hire of movable property between the parties.
- 1.4 Individual agreements with the Hirer, made on a case by case basis (inclusive of side agreements, supplements and modifications) always have precedence over the Conditions. For the content of any such individual agreement a written contract or a written confirmation from the Owner is decisive.
- 1.5 Legally relevant declarations and notifications, which are to be submitted towards the Owner by the Hirer after conclusion of the hire contract, shall be made in writing to be legally effective.
- 1.6 Unless otherwise stated or expressly mentioned, all quotations by the Owner shall be without engagement and non-binding.
- 1.7 Contracts which mandatorily require a permit from the competent public authority (comp. Section 2.5) in order to be implemented are concluded under the condition precedent that the authority timely grants such permit.
- 1.8 The following Conditions apply only to persons who, when the contract is concluded, are exercising their commercial or independent professional activity (entrepreneurs) and to juristic persons under public law and to special funds under public law in accordance with Section 310 para. 1 BGB (German Civil Code).

#### 2 GENERAL RIGHTS AND DUTIES OF THE PARTIES

- 2.1 The Owner shall be obligated to make the Plant available to the Hirer for the agreed hire period. The Plant shall be handed over from the Owner to the Hirer in proper condition and working order - where applicable - with a full tank of gasoline and the necessary documentation to the Plant. The Owner is allowed to use sub-contractors for the fulfillment of his contractual duties.
- 2.2 The Hirer shall be obliged to pay hire charge for the entire hire period, undertakes to use the Plant only for its intended purpose, to carefully adhere with the provided operating instruction and other instructions or specifications of the manufacturer or the Owner and with all relevant accident prevention and work protection provisions as well as the rules of the road. This particularly applies to suitable provisions for loading and transportation of the Plant. If the Plant is hired out without operating personnel, the Hirer shall become familiar with the characteristics and state of the Plant. The Hirer shall always observe the information and notes by the manufacturer of the Plant with regard to the use of anti freeze agent, in particular but not limited to the case if the outdoor temperature falls below 5° C. The Hirer shall keep the Plant safely and handle it with care.
- 2.3 Without written approval of the Owner the Plant may not be moved from the site of operation agreed at inception of the contract. The Hirer has the duty to inform the Owner immediately about any relocation of the Plant. The Hirer shall inform the Owner on demand of the whereabouts of the Plant respectively the site of operation. The Hirer shall during regular business hours allow the Owner, his agents or his insurers to have access to the Plant to inspect, test, adjust, repair or replace the same. Such work will be carried out at times to suit the convenience of the Hirer.
- 2.4 The Plant is certified and approved for operation in the Germany. It is the Hirer's responsibility to ensure that certification and approval is obtained and that any local requirements are met in relation to operation of the Plant outside of Germany.
- 2.5 The Hirer is responsible for obtaining himself and at his costs any official permit necessary for his specific intended use of the Plant or for the Plant's transport, e.g. according to Sections 29 para. 3, 46 para. 1 no. 5, no. 7 of the German road traffic Act (StVO) in conjunction with Sections 18 Abs. 1 sentence 2, 22 para. 2 until 4, 30 para. 3 German road traffic Act (StVO) or



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according to the German regulation on traffic during holidays (Ferienreiseverordnung). The Hirer shall also ensure that all other technical or legal prerequisites for his specific intended use of the Plant are provided, .e.g consent to drive on foreign properties. However, in case the parties have agreed that the Owner shall provide and organise the transport of the Plant for the Hirer, the Owner will obtain the traffic law permits necessary for the transport.

### 3 HIRE PERIOD, TRANSPORT, ASSEMBLING AND DISMANTLING

- 3.1 Where the Plant has to be picked up by the Hirer, the hire period shall commence from the date agreed upon between the parties for pick up, provided that the Owner makes the Plant available; this also applies in the case where the Hirer picks up the Plant with delay. Where the Plant has to be delivered by the Owner to the Hirer, the hire period shall commence when the Plant leaves the Owner's depot or place where last employed.
- 3.2 In the event the Hirer continues to use the Plant after expiry of the hire period, the application of Section 545 of the German Civil Code (tacit extension of hire contract) is excluded.
- 3.3 The Hirer shall pay the cost for the transport of the Plant from the Owner's depot or other agreed location to the site and return to the depot of the Owner or to another agreed location. Unless otherwise agreed, the Hirer shall arrange the transport of the Plant on its own responsibility.
- 3.4 If nothing to the contrary is agreed in writing, the Hirer shall be responsible for the arrangements and all costs associated with assembling and dismantling of the Plant at the site of operation at the beginning and at the end of the hire period including crantage, transportation, customs charges, import export taxes and duties, permits and the like.

### 4 ADVICE AND RECOMMENDATION, CONFIGURATION OF PLANT

- 4.1 Where the Owner gives information to the Hirer or advises the Hirer with the choice of the Plant or grants advice, he shall be obliged to do so diligently. However, the Owner does not warrant the correctness of an information, advice or recommendation nor the suitability of the Plant for a specific use by the Hirer.
- 4.2 Save as expressly agreed otherwise, the same applies for suggestions of the Owner regarding the configuration of the Plant. Such suggestions are non-binding. They are solely based

on the information given by the Hirer. The Hirer shall verify whether the suggested configuration can be utilised on the relevant project either safely or at all.

- 4.3 The Hirer must verify and be satisfied with and he warrants that all information and data supplied to the Owner by the Hirer, its employees or representatives, is accurate and complete, in particular sufficient for the granting of any advice regarding the Plant by the Owner. Unless otherwise agreed, the Owner is not obliged to verify the information given by the Hirer or to investigate himself.
- 4.4 All drawings, illustrations, designs, plans, performance figures, computations, descriptions, weights and measurements supplied by the Owner to the Hirer are approximations only and shall not form part of the contract.
- 4.5 The Hirer is relying on his own experience and judgement in relation to the Plant. This applies in particular to the question of suitability of the Plant for the purpose the Hirer is renting it for as well as to the appropriateness of the Plant's configuration.
- 4.6 Any changes to site conditions or other information provided by the Hirer must be notified in writing to the Owner immediately. The Owner reserves the right to amend its advice or suggestions for the Plant's configuration in accordance with the amended conditions. If the Hirer fails to notify the Owner of such changes the Owner takes no responsibility for the continued use of the Plant, unless the Hirer proves that an identical damage would have arisen in case of proper information of the Owner.

### 5 INSURANCE

- 5.1 The Hirer shall throughout the entire hire period at its own expense effect and maintain the following insurance with a reputable insurance company:
  - (a) insurance for the Plant for the benefit of the Owner covering the risks of fire, theft, loss and damage on fully comprehensive cover and in an amount equal to full new replacement value of the Plant (including all taxes, duties and other payments incidental to any replacements), at least in the amount of an annual hire charge;
  - (b) third party liability insurance for all risks resulting from the use of the Plant including all liabilities towards third parties which occur during the transport, the storing or the use of the Plant in an appropriate sum of not less than EUR 10 million.



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- 5.2 Upon request the Hirer shall produce a copy of the documentation relating to such insurances to the Owner at any time.
- 5.3 If the Hirer does not fulfil his duty to enter into such insurance contracts he is liable for any damage resulting therefrom including the release from third party claims.
- 5.4 By way of precaution the Hirer assigns his claims from the property insurance to the Owner. Furthermore, the Hirer assigns any claims from the third party liability insurance as far as the Owner is liable towards third parties for any damage resulting from the use, storage or transport of the Plant by the Hirer.

## 6 CUSTODY DUTY AND DUTY OF CARE OF THE HIRER; LOSS OR DAMAGE OF THE PLANT

- 6.1 The Hirer is liable in case of a loss or a complete or partial damage of the Plant which occurs while the Plant is left to the Hirer and until the Plant is returned or picked up, unless the Owner is responsible for the loss or damage or the loss or damage has been caused by a breach of duty of the Owner or unless the Hirer proves otherwise that he has not culpably caused the loss or damage and that he is not responsible for the loss or damage.
- 6.2 The Hirer bears the duty of care during the hire period and until the Plant is returned or picked up. The Hirer shall indemnify the Owner from any third party claim based on a breach of the duty of care by the Hirer upon first request.
- 6.3 The Hirer bears the operational risk from the Plant while the Plant is left to the Hirer and until it is returned or picked up, unless a damage is caused by a defect of the Plant for which the Owner is responsible.

## 7 DEFECTS AT THE TIME OF DELIVERY OF THE PLANT

- 7.1 At the latest at the time of delivery of the Plant the Hirer must examine the Plant. In the event that the Plant needs to be assembled on site the Plant shall be examined after it has been assembled, in case the Plant is dismantled and assembled repeatedly by the Owner (e.g. in accordance with construction sections) the Hirer shall examine it upon each assembly. Defects ascertainable at the time of delivery or after having assembled the Plant as the case may be may not be found faulty if the Hirer did not immediately notify them to the Owner in writing. Other defects which exist at the time of delivery, but which are not

ascertainable must be reported in writing immediately upon their discovery.

- 7.2 The Hirer may examine the Plant prior to the commencement of the hire period at his own costs and notify any defects. Upon request the Owner shall provide a copy of the current inspection report required under the relevant legislation which must be returned at the end of the hire period.
- 7.3 The Owner shall remediate any defects impairing the contractual use of the Plant which were existent at the time of delivery and which were duly notified at its own costs. The defect may only be remediated by the Hirer if the parties previously agree thereon in writing; the Owner will bear the necessary costs. The Owner may also replace the Plant with a functionally equivalent plant if this is reasonable for the Hirer.
- 7.4 If a reasonable additional period which the Hirer granted to the Owner for the remedy of a defect which existed at the time of delivery unsuccessfully elapses due to deliberate or negligent behaviour of the Owner, the Hirer has a right to revoke the contract. The right of revocation of the Hirer equally applies in cases of unsuccessful remedy by the Owner of a defect which existed at the time of delivery of the Plant.

## 8 MAINTENANCE DUTY OF THE HIRER

- 8.1 The Hirer shall
  - (a) protect the Plant from any kind of overstraining;
  - (b) properly and professionally maintain and preserve the Plant at its own costs;
  - (c) timely announce necessary inspection and repair works and immediately arrange for the accomplishment of these works upon written approval of the Owner. The costs shall be borne by the Owner, provided that the Hirer and his auxiliary persons have provably observed all due diligence.
- 8.2 All damage to TYRES and TUBES, if applicable, is the responsibility of the Hirer and all site repairs must be carried out by the Hirer at its own costs.
- 8.3 The Owner may visit the Plant at any time and upon prior agreement with the Hirer examine the Plant himself or have it examined by an agent. The Hirer is obliged to facilitate the examination for the Owner or his agent as the case may be in any regard. The Owner bears the costs of the examination.



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## 9 RETURN OF THE PLANT FOR REPAIRS

- 9.1 If during the hire period the Owner decides that urgent repairs to the Plant are necessary he may in his equitable discretion arrange for such repairs to be carried out at another location than the site of operation. The Hirer is obliged to hand out the Plant for this purpose.
- 9.2 In such case the Owner is obliged to replace the Plant with a plant of comparable functionality, if available, and to bear all related transport costs, except where the Hirer is responsible for the damage of the Plant.

## 10 BREACH OF MAINTENANCE DUTY

- 10.1 If the Plant is returned in a state showing that the Hirer has not fulfilled his maintenance duties according to Section 8, the Hirer is obliged to pay a compensation to the Owner in the amount of the hire charge pro rata temporis for the time until the outstanding repair works which would have been due in accordance with the contract have been completed. The claim of further damage is not excluded.
- 10.2 The Owner shall inform the Hirer of the scope and amount of the defects for which the Hirer is responsible and shall give him the possibility of examination. The Owner may claim a pre-payment for the estimated costs necessary for the repair of the damage.
- 10.3 The Owner shall notify ascertainable defects within three (3) working days after the return of the Plant in case of return in due time, and other defects immediately upon their discovery, otherwise the return of the Plant is deemed to be in good order.

## 11 LIMITATION OF LIABILITY OF THE OWNER

- 11.1 The Owner shall only be liable for damages, in particular for damages which are not damage of the Plant itself, in case
- (a) of a deliberate or gross negligent breach of duty of the Owner or a legal representative or a person used to perform an obligation of the Owner; or
- (b) of culpable breach of fundamental contractual obligations (obligations which are crucial for the proper execution of the contract or whose breach jeopardize the accomplishment of the purpose of the contract and which the Hirer usually relies upon and may rely upon), however, in such case limited to the foreseeable damage typical for such contracts; or

- (c) of damages from injury to life, body or health due to intentional or negligent breach of duty by the Owner, or a legal representative or a person used to perform an obligation of the Owner; or
- (d) and as far as the Owner is liable for damages to persons or things according to the Product Liability Act.

Any further liability is excluded.

- 11.2 Thus, the Owner bears no liability for damages to the underground, i.e. to the access road or the site where the panel is laid out in case of hire of mobile panels or crane mats. Such damages cannot not fully be excluded by using mobile panels. The Owner is not liable for damages to or from unknowable pipes, gully covers etc.
- 11.3 The liability according to Section 11.1(b) (breach of crucial obligations) is limited to the typical, foreseeable damage, provided that it is not a case of intentional or grossly negligent breach. The liability for such damages is limited to an amount equal to the hire charges for 6 (six) months for the particular item of equipment involved.
- 11.4 Notwithstanding Section 11.2 above, if the Owner is in delay with the delivery of the Plant the liability for damages shall in case of ordinary negligence be limited to an amount corresponding to the agreed net hire for the period of delay. As far as this is reasonable, the Owner may deliver a another machine of comparable functionality to the Hirer in order to minimize the damage. Any right of rescission of the Hirer upon unsuccessful expiry of a reasonable period of grace remain unaffected.

## 12 HIRE CHARGE, EXTRA CHARGES, SET-OFF, CASH DEPOSIT AND ASSIGNMENT FOR SECURITY

- 12.1 The hire charge and the presumable extra charges will be invoiced by the Owner at the end of each month if nothing else has been agreed. The Owner will settle the actual extra charges at the end of the hire period. If nothing to the contrary is indicated all prices will be plus Value Added Tax.
- 12.2 The parties may agree on a minimum hire charge.
- 12.3 If the parties agreed on a rate which is dependant from the actual usage time during the hire period, the Hirer shall render to the Owner for each week an accurate statement of the number of hours the Plant has worked each day. Where the Plant is accompanied by the Owner's driver or operator, the Hirer shall



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sign the employee's accurate time record sheets. The signature of the Hirer shall be deemed as a recognition of the hours shown on the time record sheets, unless the Hirer may prove that they are incorrect.

- 12.4 The Owner may amend the hire charge for the future in accordance with his price list after prior announcement of at least one month.
- 12.5 The Owner may also amend the hire charge in case the steel prices according to the MEPS index vary more than insignificantly. The Owner is entitled to increase the hire charge if and to the extent the costs for the operating personnel have increased due to amendments of collective labour agreements and/or increases of the statutory social security contributions payable by the employer and similar costs.
- 12.6 If nothing to the contrary is agreed, travelling time and travelling costs for operating personnel (drivers, operators of the Plant and any person supplied by the Owner) and similar expenses incurred at the beginning or at the end of the hire period will be charged at cost.
- 12.7 Consumables will be charged extra, this also applies to LIFTING SLINGS. Fuel, oil and grease shall, when supplied by the Owner, be charged at cost or an agreed estimate of cost.
- 12.8 The Owner may at any time claim a reasonable cash security deposit from the Hirer bearing no interest.
- 12.9 The Hirer is not entitled to set off or retain any sums due to the Owner, unless his counterclaim against the Owner is undisputed or has become res judicata, ie has been recognized by a final and binding judgement.
- 12.10 By way of security the Hirer herewith assigns its claims - including future claims - against its customer for whose order the Plant is used to the Owner in the amount of the agreed hire charge less any paid cash security deposit and less a paid pre-payment. The Owner herewith accepts such assignment.
- 12.11 The Hirer shall be liable for the payment of all taxes (including import taxes, customs duties, withholding taxes and local taxes) incurred in relation to its hiring of the Plant to the extent they cannot be reclaimed by the Owner from the tax authorities and shall reimburse the Owner for any such taxes suffered by the Owner. In this regard the Owner shall be entitled to invoice the Hirer such additional amounts as are required such that, after taxes are deducted, the Owner receives the full value of the hire charges and associated goods and services.

## 13 REDUCTION OF HIRE CHARGE IN CASE OF BREAKDOWN PERIODS

- 13.1 During times in which the Hirer cannot use the Plant due to defects of the Plant or due to the absence of driver or operator supplied by the Owner (Breakdown Periods) no hire charge is due pro rata temporis, except where such defect or breakdown is due to Hirer's misuse, misdirection or any other causes for which the Hirer is responsible or where such defect was not properly notified by the Hirer at the delivery of the Plant. If the Hirer hired several machines or equipment the reduction of hire charge only applies to the specific equipment which cannot be used. The hire charge for other equipment or machines remains unchanged. For times during which the suitability of the Plant for the contractually agreed use is reduced only a reasonably reduced hire charge is due. A trivial reduction of suitability is not taken into account. The provisions of Section 15 of this contract remain unaffected.
- 13.2 Breakdown Periods time within the meaning above shall be accounted for or deducted from the hire charge pro rata on a hourly basis. In case no hourly rate is expressly agreed, the hourly rate shall be calculated pro rata from the daily, weekly or monthly rate or the rate for the entire hire period. For this purpose it is deemed that the rates are based on an assumed working time of 8 hours per day or 40 hours per week or 30 days per month.
- 13.3 In case of weekly or monthly rates or rates for the entire hire period Breakdown Periods of less than one full working day shall be disregarded and are deemed to be usage time.
- 13.4 Breakdown Periods due to changing of tyres and repairs to punctures will equally be disregarded up to a maximum of two (2) hours for any one stoppage and be deemed to be usage time; any excess will be charged for at the appropriate idle time rates (see Section 14.2).

## 14 IDLE TIME

- 14.1 If work is suspended at the place of work for which the Plant has been hired, as a result of circumstances for which neither the Hirer nor its principal are responsible (e.g. frost, flooding, strikes, civil strife, events involving war, official orders) for a minimum of eleven (11) successive days, this time shall be deemed as a shutdown time from the 11th calendar day onwards.
- 14.2 During the shutdown period, provided that the Hirer does not use the Plant, the Hirer shall pay a percentage of the hire charge



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agreed for this period; unless otherwise agreed, a standard rate of 75 % shall apply. Costs of operating personnel remain due in the full amount during the shutdown period.

- 14.3 The Hirer shall immediately inform the Owner of the stop and restart of the work in writing and upon request prove the shutdown period by providing respective documentation.

## 15 HIRE INCLUDING OPERATING PERSONNEL

- 15.1 Where the Plant is hired out with operating personnel, the operating personnel shall only be used for the assembling, dismantling and the operation of the Plant. The operating personnel shall not be used for other work. During assembling, dismantling and during the operation of the Plant the hired out operating personnel works exclusively under the instructions of the Hirer.

- 15.2 In case of any damage caused by the operating personnel, the Owner shall only be liable if he has not selected the operating personnel correctly. Apart from that the Hirer is liable.

- 15.3 Where the Plant is hired out with operating personnel, the Hirer shall not be entitled to allow other persons to operate the Plant, unless prior written consent of the Owner has been given to the Hirer.

## 16 TIMBER MATS OR EQUIVALENT

- 16.1 If the ground (including any private access road or track) is soft or unsuitable for the Plant to work on, travel, or be transported over without timbers or equivalents the Hirer shall supply and lay suitable timbers or equivalent in a suitable position for the Plant to travel over, work on, or be transported over, including for the purpose of delivery and collection.

- 16.2 Where the hire is for lifting equipment, the Hirer is obligated to ensure adequate stability of the lifting equipment under the imposed loading. Any sound timber or other material supplied by the Owner for use with outriggers/stabilisers is provided solely to assist the Hirer and does not constitute an assumption of responsibility for the stability of the lifting equipment at the site of operation by the Owner. Any materials supplied are only an assistance to the Hirer.

## 17 OWNER'S NAME PLATES

- 17.1 Name plate or mark of the Owner or of any third party on the Plant indicating that the Plant is his property may not be removed, damaged or covered.

## 18 RETURN OF PLANT

- 18.1 On the final day of the agreed hire period, the Plant must be returned either to the Owner's depot or other place previously agreed upon with the Owner during regular hours of business of the Owner until at the latest 3 p.m.

- 18.2 The Hirer shall return the Plant in an operational and cleaned condition and, if applicable, refuelled.

## 19 FURTHER OBLIGATIONS OF THE HIRER

- 19.1 Without prior written consent by the Owner the Hirer may not subhire the Plant or otherwise provide the Plant to a third party or grant rights of any kind to the Plant to a third party.

- 19.2 The Hirer may not assign rights under this contract.

- 19.3 The Hirer shall inform the Owner immediately about any kind of failure or malfunction of the Plant or part of it.

- 19.4 Should a third party assert rights to the Plant through seizure, attachment or similar rights, the Hirer is obliged to immediately report this to the Owner in oral and in writing and to immediately notify the third party of the ownership in provable written form.

- 19.5 The Hirer shall take good care of and bears the duty of custody for the Plant as long as the Plant is left to him and until the Plant is returned or picked up. In particular the Hirer must make suitable measures to protect the Plant against theft.

- 19.6 The Hirer shall inform the Owner immediately of all accidents with the Plant and, unless there is a case of imminent danger, await his instructions. In the event of an accident resulting in personal injury or property damage, the Hirer is not only obliged to inform the Owner in writing but equally to inform the Owner immediately by telephone. The police must be involved for all road accidents and in case of suspicion of criminal offence (e.g. theft, criminal damage to property).



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19.7 Where the Hirer culpably infringes the above provisions of Sections 19.1 to 19.6, he shall reimburse the Owner for any resulting damage including the release from third party claims against the Owner.

## 20 TERMINATION

20.1 Unless the parties have agreed otherwise, a hire contract signed for a fixed hire period can not be terminated ordinarily by either party to the hire contract. Aforementioned rule also applies to any specified minimum hire period within the framework of a hire contract concluded for an indefinite period.

20.2 Where the period of the hire is indeterminate the hire contract may be terminated by ordinary termination by either party with a notice period of seven (7) days, provided that an agreed minimum hire period has expired.

20.3 The parties are entitled to give notice of extraordinary termination for good cause without observing a notice period.

20.4 The Owner is entitled to give notice of extraordinary termination of the hire contract for good cause particularly:

- (a) where the Hirer has fallen behind on two (2) consecutive hire charge payments or on a material part thereof;
- (b) where the Hirer is in default of payment of the hire charges in an amount corresponding to the hire charges for two months or more;
- (c) where without the consent of the Owner the Hirer does not use the Plant or a part thereof as intended, alters the Plant, transfers it unauthorized to a third party, or moves it to another location, especially when the location is outside of the Federal Republic of Germany;
- (d) in case of infringements of Section 8.1;
- (e) where after the conclusion of the hire contract it becomes apparent, that the entitlement to receive hire charge is at risk due to inability to pay on the part of the Hirer;
- (f) if the Hirer's assets become subject to a foreclosure procedure;
- (g) where the Owner with regard to Section 9 of this contract is not able to replace the Plant within a reasonable span of time. In this case the Owner bears the cost for loading and return transportation of the Plant. In the event that the hire contract is terminated within the first three months, the Owner shall reimburse the Hirer for any cost of transportation which was borne by the Hirer.

20.5 The Hirer is entitled to give notice of extraordinary termination for good cause particularly:

- (a) where the use of the Plant is impaired for a considerable period of time due to reasons for which the Owner is responsible;
- (b) where without the Owner bearing responsibility therefor the use of the Plant is impaired due to events of force majeure (e.g. unusually bad weather, flood, lightning, storm, fire, explosion, earthquake, structural damage, failure of third party suppliers, war, crowd disorder, strike or other labour dispute, terrorist action etc.) for a period of more than three months.

20.6 If the good cause for termination consists of a breach of a contractual obligation under this agreement, termination is only permissible after expiration of a deadline set for curing the breach or after a reminder has been issued without such breach being cured. The requirement to set a deadline or a warning is waived, where a deadline or a warning apparently will have no prospect of success, where the Hirer is in delay pursuant to sections 20.4(a) and 20.4(b), and where the immediate termination is justified for other special reasons after weighing the concerns of both parties.

20.7 The termination notice shall be in written form.

## 21 MISCELLANEOUS

21.1 This contract has no protective effects in favour of third parties nor does it create any rights for third parties.

21.2 Amendments of this contracts require the written form. This equally applies to any amendment or waiver of this written form requirement.

21.3 If any provision of this contract is invalid or inexecutable or becomes invalid or inexecutable, this shall not affect the validity of the remaining provisions. In place of the invalid or inexecutable provision another provision is deemed to have been agreed which - within the legally permissible - is as close as possible to what the parties intended according to the spirit and purpose of the invalid or inexecutable provisions. The same shall apply accordingly if this contract should prove to contain a contractual gap.



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## **22 CHOICE OF LAW, PLACE OF FULFILMENT AND JURISDICTION**

- 22.1 The contract shall be governed by the laws of the Federal Republic of Germany excluding the Convention on Contracts for the International Sale of Goods.
- 22.2 Place of fulfilment for all performances out of or in connection with this contract shall be the seat of the Owner, except where the parties have agreed otherwise or where this contract contains a deviating provision.
- 22.3 If the Hirer is a merchant, a legal person under public law or a special fund under public law the court competent for the seat of the Owner shall have exclusive jurisdiction for all disputes arising out of or in connection with this contract. The Owner may also take legal action at the court competent for the Hirer.