



# GENERAL CONDITIONS FOR RENTAL SERVICES (RENTAL OF EQUIPMENT)

## 1. Definitions and application of these present conditions

### 1.1. HTE means Hebetec Engineering Ltd.

Hirer means the person or entity taking HTE's Equipment on rental, which expression shall include its successors in title.

Equipment shall include any equipment, machine or part thereof and any attachments or fittings rented under this Order.

Offer means the quotation made by HTE to the Hirer for the rental services of the Equipment.

Order means the agreement made between HTE and the Hirer for the rental of the Equipment comprising these general terms and conditions for rental services (the "Terms and Conditions").

### 1.2. Orders, agreements as well as amendments and modifications shall only become binding when such have been confirmed in writing by HTE and signed by an Authorized Manager or Director of HTE.

### 1.3. These Terms and Conditions shall form part of any Order to HTE for the rental of equipment. In so far as any provision of the Hirer's said Order is inconsistent, these Terms and Conditions shall be deemed to prevail.

### 1.4. Should any contradictions arise between HTE's Offer and these Terms and Conditions, the Offer shall take precedence over these Terms and Conditions.

## 2. Extent of performance

### 2.1. HTE rents out the Equipment as agreed in the Order in accordance with its specifications for the agreed duration.

### 2.2. The Hirer shall be liable for repairs or the supply of spare parts as a consequence of damage to the Equipment unless they have been caused by HTE. Any such repair shall be made by specialized persons with the required competencies for repairing the Equipment and in accordance with the original drawings and specifications.

### 2.3. HTE shall at all times retain ownership and title to the Equipment. Hirer shall at its expense protect and defend HTE's title against all persons, at all times keeping the Equipment free from any legal procedures or encumbrance whatsoever, including but not limited to liens, attachments, levies and execution, and shall give HTE immediate written notice thereof and shall indemnify HTE from any loss caused thereby.

### 2.4. HTE shall not be responsible in any way for faulty assembly, installation, commissioning, operation and dismantling of the Equipment by the Hirer or by anyone on the Hirer's behalf. These shall be performed under the sole responsibility of the Hirer.

Should HTE be requested to provide any operators or other workmen for the site activities, these shall work under the direction of the Hirer and Hirer shall pay the monthly rate as agreed in the Order. Hirer shall also pay all taxes required by law and resulting from these services of such operators and workmen.

### 2.5. Should the personnel from HTE, made available to the Hirer, reasonably believe, based on their experience, that Hirer's use of the Equipment would expose anybody to any hazardous conditions, they shall have the right to notify the Hirer thereof and to withdraw from the site. HTE shall be excused from any delay therefrom until such time as the Hirer can demonstrate to the reasonable satisfaction of HTE that the circumstances giving rise to the withdrawal of personnel have been corrected.

### 2.6. In the Offer and the Order HTE will identify any works or operations by Hirer involving the Equipment for which the presence of HTE's personnel is mandatory. Only in exceptional cases and after due training may HTE waive this requirement at HTE's discretion.

### 2.7. The rental period of the Equipment begins from the day of the departure from Hindelbank, Switzerland and ends on the day of return to Hindelbank, Switzerland.

## 3. Inspection by the Hirer and postponement

### 3.1. Hirer shall inspect the Equipment within three (3) business days after delivery to the Hirer's site. Unless Hirer, within said period of time, gives written notice to HTE, specifying any defect in, or other proper objection to, the Equipment, Hirer agrees that it shall be conclusively presumed that Hirer has fully inspected and acknowledged that the Equipment is in full compliance with the Order, in good condition and repair, and that Hirer is satisfied with and has accepted the Equipment in such condition.

### 3.2. Should the start of the rental period be delayed beyond the date agreed in the Order for reasons outside the control of HTE, then the Hirer shall be liable to pay a standstill rental up to the actual start of the rental period. Such standstill rental shall amount to 60 % (sixty percent) of the daily net rental tariff fixed in the Order. After the departure of the Equipment, 100 % (hundred percent) of the daily net rental tariff for Equipment will become payable for any time period of standstill.

## 4. No subletting or transfer

### 4.1. Hirer may not sublease, assign or transfer the Equipment or any interest therein to any third party without the prior written consent of HTE.

## 5. Rental tariffs, payment conditions

### 5.1. Performance and services provided by HTE will be charged at the net rental tariff specified in the Order throughout the rental period of the Equipment as defined under clause 2.7. Any taxes and customs duties becoming due in connection with the Order, including value added tax (V.A.T.), are to be paid in addition by the Hirer.

### 5.2. The net rental tariffs in the Order are based upon the cost of materials, personnel and transportation at the date of the Order. Additional services that are not expressly included in the Order will be charged to the Hirer.

### 5.3. The rental tariffs may be adjusted in the following events:

- a. Modifications of the Equipment for reasons not attributable to HTE.
- b. Enactment or revision of codes, laws or regulations subsequent to the date of Order between the Parties.
- c. Prolongation of the rental period estimated at the date of the Order.

### 5.4. In case HTE makes available any operators or other workmen, the following surcharges will be applied to the hourly rates given in the Order:

- 50 % on Saturdays
- 100 % on public holidays and Sundays
- 50 % at night

Travelling time shall be counted as working time.

5.5. The Hirer shall pay all invoices within 30 days of the date of the invoice without any deduction whatsoever. If any invoice has not been paid upon the expiry of this time period, the Hirer will be in default even without any express reminder having been issued. In case of default of payment, HTE shall be entitled, without prejudice to any other rights available to HTE by law or under the Order to interest at the rate charged by the banks at the domicile of HTE for short term loans.

5.6. In no event shall Hirer have a right of set-off or deduct any monies or other compensation owing from HTE to Hirer against any amounts payable by Hirer to HTE which are due or which shall become due to HTE under the Order.

## **6. Liability in cases of delay and faulty performance**

6.1. HTE will make every effort to meet the agreed deadlines. If, for reasons solely attributable to HTE, HTE fails to meet the deadline and after expiration of a reasonable notification period by the Hirer to correct this failure, the Hirer shall be entitled to the payment of liquidated damages by HTE (any other claim for delays being excluded), calculated on the Order amount (taxes, fees and levies being excluded), at a rate of 0.5% of the rental tariff of the delayed equipment per full week of delay. Such liquidated damages shall not exceed five percent (5%) of the Order amount. Liquidated damages shall not be imposed on HTE for not achieving any agreed deadline due to any circumstances attributable to the Hirer, to force majeure (including for example war, enemy action, strikes, epidemics and interruptions of supplies or materials) or to any circumstances not attributable to HTE or when such delay has not resulted in any damage to the Hirer or if HTE's performance is otherwise excused due to Hirer's delay.

6.2. The aforementioned liquidated damages assessable by Hirer under the Order shall be the Hirer's sole and exclusive remedy and shall be in full and final satisfaction of HTE's responsibility towards the Hirer for the corresponding breach.

6.3. HTE warrants that the Equipment for rental shall be free from defects in design, material and workmanship. If the Equipment contains such defects or deficiencies, HTE's obligation under this warranty shall be limited to repair or replace the defective Equipment, at HTE's option. HTE's obligations under this Clause shall be its sole and exclusive remedy with respect to defective Equipment. HTE gives no other warranty, express or implied, including (without limitation) any warranties of merchantability or fitness for purpose and all other warranties, conditions, or other terms implied by statute, contract, tort (including negligence of any nature whether sole or concurrent) or otherwise are hereby excluded to the fullest extent permitted by law.

6.4. Hirer shall be responsible for any error, discrepancy, omission, incorrectness or insufficiency in any document or information (including any statical calculations, plans and technical drawings hereinafter referred to as the "documentation") provided to HTE as a basis for the elaboration of the Offer and Order as well as for the performance of the Order. HTE is not bound hereunder to conduct any examination of such documentation and will accept no liability for its completeness or correctness.

6.5. Technical Assistance – Any technical assistance provided by HTE at the request of Hirer is of a consulting nature and shall not at any time relieve Hirer of its sole responsibility to perform its works including the proper and safe assembly, installation, commissioning, operation, maintenance and dismantling of the Equipment in accordance with the applicable specifications.

## **7. Insurance**

7.1. Hirer acknowledges and accepts that the net rental tariffs do not include insurance for loss or damage to the Equipment.

7.2. Hirer shall bear risk of loss, theft, destruction or damage of the Equipment resulting from any and every cause whatsoever, regardless of whether or not insured. No loss of or damage to Equipment or any part thereof shall impair any obligation of Hirer under the Order, which shall continue in full force and effect.

In the event of damage of any kind whatsoever to any item of Equipment, Hirer, at the option of HTE, shall repair or replace the same at Hirer's expense.

Hirer shall keep the Equipment insured against all risks of loss or damage from every cause whatsoever for not less than its full replacement value and shall carry public liability and property damage insurance covering the Equipment and its operation and handling for the amount of at least Two Million Euros (EUR 2,000,000) or other reasonable amount specified by HTE.

Hirer shall pay the premiums and be liable for any deductible and deliver said policies, or duplicates thereof, or acceptable insurance certificates to HTE prior to the start of the rental period.

## **8. Maintenance service**

The Hirer shall use the Equipment for the purpose for which it was intended and not for any other purpose.

Hirer, at its own cost and expense, shall maintain, service and repair the Equipment so that it be returned to HTE in due and proper condition for use. Hirer shall ensure that the Equipment is not subject to careless, unusual or needlessly rough usage. The cost of all maintenance and repairs resulting from the use of the Equipment by Hirer including labor, material, parts and other items shall be borne by Hirer.

## **9. Miscellaneous**

9.1. The Order represents the entire understanding between the parties with respect to its subject matter and supersedes any previous communication or agreements that may exist.

9.2. The invalidity or unenforceability of any portion or provision of the Order shall in no way effect the validity or enforcement of any other portion thereof. Any ineffective stipulation shall be replaced by an admissible stipulation which shall possess the equivalent commercial intent, or which shall correspond most closely with the original stipulation.

9.3. No condition or other provision contained herein is intended to confer on any third party any benefit or right enforceable at the option of that third party against either the Hirer or HTE.

9.4. A "day" or "daily" shall refer to a calendar day in these Terms and Conditions and the Order unless where explicitly stated otherwise (e.g., business day).

## **10. Liability, governing law and dispute resolution**

10.1. HTE's liability – to the extent permitted by law – shall be strictly limited to the obligations specified in the Order. Under no circumstances shall HTE be liable for any loss of use, profit, production, contracts, revenues, loss by reason of shutdown of the Hirer's facilities or inability to operate the Hirer's facilities at full capacity, costs of replacement activities, cost of capital or for any other financial or economic loss or any consequential or indirect damages whatsoever incurred by the Hirer or by any third party. HTE's maximum aggregate liability under the Order shall be – to the extent permitted by law - limited to 10% of the Order amount. The Hirer waives, on its own behalf and on behalf of its insurers, any right to claim from HTE or its insurers, any compensation or indemnification whatsoever in excess of the above-mentioned limits, for damages caused by HTE, its suppliers or subcontractors. The provisions of this article shall prevail over any inconsistent provisions elsewhere in the Order.

10.2. The Order will be governed by and construed according to the laws of Switzerland, with the exception of its conflict of law provisions.

10.3. Any dispute arising out of or in connection with the Order, which cannot be resolved by an amicable settlement (such as high-level management meetings or mediation proceedings) between the Hirer and HTE within fifteen (15) days after the dispute has been brought to the attention of the other party through written notice shall be referred to the courts at Bern, Switzerland, to the exclusion of any other courts.