

## **GENERAL TERMS AND CONDITIONS SMET RENTAL BV**

### **I. GENERAL PROVISIONS**

#### **Article 1. Applicability**

1.1. These General Terms and Conditions apply to all offers, orders and agreements between Smet Rental NV, KBO no. 0811.351.550, with its registered office at 9130 Beveren Havinkbeekstraat 24 (hereinafter "Smet Rental") and the Customer. The customer declares to have read the general terms and conditions and to accept them in their entirety. Insofar as the Customer refers to other terms and conditions in his offer or other correspondence, their application is expressly rejected.

1.2. Deviations from and/or additions to these general terms and conditions, shall only be valid if expressly agreed in writing, and shall relate exclusively to the agreement in question.

1.3. The customer with whom a contract has once been concluded with the application of these general terms and conditions, agrees to the application of these general terms and conditions to subsequent offers, orders and agreements.

#### **Article 2. Offers**

2.1. Quotations are entirely without obligation and do not bind us in any way, unless expressly stipulated otherwise. Smet Rental's offers are only valid for a period of 2 weeks after their date.

2.2. An agreement is only concluded after acceptance of the offer by the customer and the sending of an order confirmation by Smet Rental. The agreement is deemed to have been concluded at the moment the order confirmation has been sent. An agreement is also concluded by commencing its actual execution. The right to request an advance payment is expressly reserved. If the advance payment is not made in time, any orders in progress may be suspended by Smet Rental, without prior notice of default and without compensation.

2.3. Any additional agreements, promises or announcements made by employees or other persons acting as representatives of Smet Rental, are only binding if these agreements, promises or announcements have been confirmed in writing by one of the Smet Rental directors.

2.4. Unless expressly stated otherwise, all advice given by Smet Rental, whether orally or in writing, is non-binding.

2.5. No rights can be derived from apparent misprints or typographical errors in (online) catalogs or price lists.

## **II. RENT**

### **Article 3. Rental period**

3.1. All rental agreements are, unless otherwise expressly stipulated, concluded per working day of 8 hours (for more running hours a surcharge applies).

3.2. The rental period will begin at the time indicated in the order confirmation. Smet Rental is entitled to postpone the start of the rental period by a maximum of five working days, without being liable for any compensation. Although the indicated delivery periods will be observed as much as possible by Smet Rental, these periods are indicative. Only after exceeding the aforementioned term, the renter is entitled to terminate the agreement, without any compensation being due by Smet Rental. Smet Rental is always entitled to abandon the start of the rental period or to terminate the rental agreement without being liable for any compensation in the event of force majeure and external causes beyond Smet Rental's control. By way of example, the non-availability of a rented good due to repairs to be carried out during a previous rental period, the loss of the rented good before the start of the rental period, etc.).

4.1. Depending on whether the goods are delivered at Smet Rental's registered office or in the event of delivery at another location, the goods shall be deemed to have been delivered and the risk transferred respectively at the time of actual delivery or when the goods are unloaded at the agreed location. Unless expressly stated otherwise, the cost of delivery and collection shall not be included in the price. If the delivery requires the use of special material, a specialized firm will be called upon if necessary. These costs will always be the sole responsibility of the lessee.

4.2. The hirer shall ensure that an authorized person is present at the time of delivery to take delivery of the goods. If nobody is present, the goods will be taken back and the transport costs will be due more a compensation of 100 EUR, all this without prejudice to the rent due, which has started in the meantime.

4.3. All defects or damage to the rented goods present at the time of delivery must be mentioned on the introduction form, which the renter receives upon delivery of the rented goods. The hirer must return the introduction form completed and signed within 2 calendar days after receipt of the hired goods, failing which the goods are deemed to have been accepted and to be in good working order (free of any defects and/or damage).

4.4. Upon delivery of the rented goods, the hirer shall always be informed about the maintenance of the rented goods, this shall be done both orally and in writing (by means of the delivery of the introduction form, on which the maintenance instructions are stated). By taking delivery of the rented goods, the hirer acknowledges to be fully informed about the maintenance standards and instructions to be observed.

4.5. If the hirer has not received an introduction form upon delivery of the leased goods, he must immediately report this, in the absence of which it is deemed that the hirer has properly received the introduction form and/or already knows the maintenance instructions.

4.6. Unless expressly agreed otherwise, Smet Rental shall not be deemed to have knowledge of or to have taken into account the specific use the renter will make of the rented goods, and Smet Rental cannot consequently be held liable therefor. Only the renter is liable for the specific use he makes of the goods and/or the purposes for which he uses them.

## **Article 5. Return**

5.1. The goods shall be returned at the agreed place and time. Acceptance of the goods by Smet Rental without any reservation does not constitute acceptance of the state of their return. Likewise, the collection of the goods by a driver of Smet Rental or its subcontractor without any reservation will not be considered as acceptance of the good condition of the machine being returned. If the renter wishes to be present during the inspection, he must notify Smet Rental in writing no later than upon return of the machine. If the hirer is not or does not wish to be present for this, the findings shall be deemed to have been made in contradiction.

5.2. The goods must be returned in the condition in which they were at the time of delivery. The hirer bears the burden of proof that the goods are returned in the same condition as they were at the time of delivery. The hirer accepts that his burden of proof can only be met subject to the submission by him of adequate visual material, recorded at the time of delivery.

5.3. If damage is found during the inspection, the lessee will be informed in writing, stating the cost of repair. The tenant has a period of 5 calendar days to request a (counter) assessment by registered letter, failing which the tenant is deemed to agree to the amount of the damage. The assessment will be carried out by an expert appointed by mutual agreement or by the President of the Commercial Court of Ghent, Dendermonde Division. The costs, as well as any loss of rent for downtime, will be advanced and charged to the tenant unless it is proven that the damage was not caused by him.

5.4. If the goods are not returned at the agreed time, a compensation of EUR 500 per day of delay will be due in addition to the rent by right and without prior notice, without prejudice to the right to claim higher compensation if there are grounds to do so.

## **Article 6. Obligations of the tenant**

6.1. The rented goods must be used in accordance with professional standards, Smet Rental's instructions and those of the manufacturer. The renter, his personnel, auxiliary persons or appointees who operate the rented good by order of the renter and/or under his responsibility, must be familiar with the use and maintenance of the rented good and must have the required diplomas, certificates, driving licenses, and the like... The operating personnel works under the responsibility of the renter.

6.2. The lessee is obliged to pay all charges, taxes and fines arising from the use of the leased property. If applicable, the lessee shall ensure at his expense that he has all necessary permits and approvals. The tenant is also obliged to request all location plans regarding cable and other utility lines.

6.3. The renter is obliged to take preventive measures to protect the rented goods against theft, such as, but not limited to, the use of locks, locking, storing and keeping out of the possession of the rented goods.

6.4. Unless expressly authorized in writing by Smet Rental, it is forbidden to sublet the rented goods or make them available to third parties.

6.5. Smet Rental has the right to inspect the rented equipment at any time. To this end, the renter is obliged to indicate the place where the equipment is located.

6.6. The renter is obliged to maintain the goods in accordance with the introduction form and other instructions given by Smet Rental. In his absence and failing to report this, the required maintenance and any actions to be carried out will be considered known.

6.7. Repairs to the rented items can only be carried out by Smet Rental or by one repairer approved by Smet Rental, and will take place on normal working days. The loss of time and use resulting from these repairs will not entitle the renter to any price reduction or compensation.

6.8. The goods must be returned by the renter clean and fully refueled at the end of the rental period. Any additional work to be carried out by Smet Rental afterwards, so that the goods can be rented again, will be charged to the renter.

6.9. The rented items remain the property of Smet Rental at all times. In the event of seizure, the renter will immediately inform the person levying the seizure of Smet Rental's property rights, as well as us.

6.10. The renter will fully indemnify Smet Rental against any claims by third parties regarding the use of the rented property. Smet Rental shall not be liable to compensate the renter for any damage arising directly or indirectly from the rented goods and/or their use.

## **Article 7. Damage, loss and theft**

7.1. Any damage, loss or theft of the rented goods must be reported to Smet Rental within 24 hours of the damage occurring. The renter is liable for any damage, faulty maintenance, loss, theft of the rented object, regardless of by whom it was caused and even in case of force majeure.

7.2. In case of damage, lack of maintenance, loss or theft of the rented object, the renter will be obliged to pay compensation within one month, as well as to pay a compensation equal to the rent until the rented object is repaired or replaced.

7.3. Unless otherwise agreed, the renter undertakes to take out what Smet Rental considers adequate insurance, with Smet Rental being designated as third party beneficiary, to cover any damage, loss or theft of the rented goods. This coverage is obtained through an external insurer or through Smet Rental (damage waiver) as described in Article 8. Any excluded damages and/or own risks will be for the account of the renter.

## **Article 8. Damage settlement**

8.1. The renter has an option to take out a damage waiver arrangement at the start of the rental. For the specific contents of the damage waiver arrangement, Smet Rental refers to the separate terms and conditions, which the renter acknowledges having received and read. A copy of these can also be obtained at any time upon simple request.

8.2. Smet Rental may make acceptance of the damage waiver agreement a condition for entering into a rental agreement, and Smet Rental may refuse to accept the damage waiver agreement at any time and without giving reasons.

## **Article 9. Rent and rental deposit**

9.1. In fulfillment of all obligations incumbent upon the renter, Smet Rental is entitled to demand payment of a rental deposit, which will only be released after it has been established that the renter has fulfilled all obligations. The rental deposit may never be considered as an advance on the rent. The rental deposit does not entitle to interest.

9.2. The rental price mentioned in the offer or agreement is exclusive of VAT and other costs or taxes. Fuel costs and the cost of any lubricants are not included in the rental price.

9.3. Unless expressly agreed otherwise, the rental price is calculated per working day. As working day is considered all days, except Sundays and holidays. The rental price will be settled at the end of the rental, unless the rental was concluded for longer than one week. In the aforementioned case, Smet Rental will be entitled to demand payment per week of the rent already due.

9.4. All invoices must be paid in accordance with and within the term provided for in article 14 below.

9.5. If, in the opinion of Smet Rental, the credit, the financial position or the payment record of the renter gives cause to do so, Smet Rental is authorized to draw up a weekly advance invoice, which must be paid in full by the renter before commencing the following week, or to demand full payment in advance. If the renter refuses to comply with Smet Rental's request, Smet Rental reserves the right to terminate the agreement immediately, unilaterally and without any compensation. In such a case, the renter shall be liable to pay a fixed compensation of 20% of the total price of the agreement. However, Smet Rental reserves the right to claim a higher compensation if there are grounds to do so, due to higher damage actually incurred.

### **Article 10. Dissolution**

10.1. Without prejudice to the right to demand the execution of the agreement, Smet Rental has the right to terminate the rental agreement by operation of law, without prior judicial authorization, and without notice of default, if the renter fails to fulfil any of his obligations. In the aforementioned case, a compensation equal to 20% of the total rental price will also be due, without prejudice to the right to claim a higher compensation if there are grounds to do so.

10.2. The tenancy shall be terminated ipso jure and without prior notice in the event of the tenant's bankruptcy, the tenant's application for an arrangement for protection against his creditors and the decision to go into liquidation.

10.3. Any claim must be made within 3 calendar days of the damage occurring.

## **III. SALE**

### **Article 11. Sale**

11.1. All goods are sold in their condition as known and approved by the buyer. Any visible defects must be reported no later than at the time of delivery. Any claims on account of hidden defects, under penalty of expiry, must be made within 3 calendar days of discovery.

11.2. The goods are sold carriage-paid at the registered office of Smet Rental. All prices are exclusive of VAT and other costs or taxes. The term of delivery is mentioned only indicatively and in case of a delay in delivery, unless it exceeds 6 months, the buyer shall not be entitled to any compensation or the right to terminate the agreement.

11.3. Machines are sold without warranty, unless expressly stated otherwise in the sales agreement. Smet Rental's warranties are limited to those granted by the manufacturer or importer. Smet Rental is in no way responsible for the accuracy or completeness of the data provided by the manufacturer or importer. In any event, Smet Rental's liability shall be limited to the repair or possible replacement of the sold machine, without entitling the buyer to any additional compensation.

#### **Article 12. Retention of title and transfer of risk**

Ownership of the sold goods is transferred only after full payment of the price. Delivery shall therefore also only take place after full payment of the price, unless other payment terms have been agreed upon in the sales contract. As soon as this delivery has taken place, the risk in relation to the goods sold is transferred.

#### **IV. ACCEPTANCE**

##### **Article 13. Contract**

13.1. Unless expressly agreed otherwise, the execution of the works shall be done within a normally reasonable time.

13.2. To be admissible, any complaint must be formulated by registered mail within 8 days of discovery. Visible defects are covered by the signature of the work order, or by the unreserved acceptance of the works and/or machinery. Hidden defects must be reported immediately upon their discovery under penalty of cancellation. If necessary, the works and/or machines must be kept at Smet Rental's disposal for possible inspection and control. Should Smet Rental be held liable, its liability will be limited to the repair of the defective works and/or machines.

13.3. All works carried out are subject to invoicing. If additional works are necessary for an adequate execution of the works, the assignment is always implied. Execution of the works, proves the order and the agreement thereto.

13.4. Formulating complaints never gives the client the right to delay or postpone payment of invoices.

#### **V. PAYMENTS**

##### **Article 14. Invoices**

14.1. All invoices shall be payable within fifteen days of invoice date, except in the case of sale of goods as described in III. Sales. Failing this, interest of 12 % per annum and a penalty clause of 10 % shall be payable ipso jure and without prior notice of default.

14.2 Each payment will first be charged on the damage clause, then on the interest and

then on the principal sum. If the customer has left several invoices unpaid, each payment will first be charged against the oldest invoices. Furthermore, in the event of non-payment of one invoice, all invoices not yet due shall become immediately payable.

### **Article 15. Security**

15.1. As security for the fulfilment of his payment obligation and to the amount of the amount due to Smet Rental, including damages, interest and costs, the customer pledges all his present and any future claims against his principals. The other party authorizes Smet Rental to bring the pledge to the attention of these principals.

15.2. Except with Smet Rental's written consent, the customer waives his right of compensation or right of retention.

## **VI. FINAL PROVISIONS**

### **Article 16. Nullity and assignment**

16.1 The possible nullity of one of the provisions of these general terms and conditions shall not result in the nullity of all its provisions, nor of the part of the provision that is enforceable and not contrary to mandatory law. In such a case, the parties shall negotiate in good faith to replace the unenforceable or conflicting provision with an enforceable and legally valid provision that is as close as possible to the purpose and intent of the original provision. If such clause cannot be replaced by mutual agreement, the competent Court shall have the power to replace the void clause with legally valid clause that is as close as possible to the purpose and purport of the original clause.

16.2. Smet Rental is entitled to transfer all obligations under the concluded agreements to a third party.

### **Article 17. Applicable law and choice of forum**

17.1. Only the courts of the district of Dendermonde and the Justice of the Peace of the canton of Beveren, are competent to take cognizance of all disputes arising from or resulting from a concluded agreement.

17.2. Only Belgian law, to the exclusion of the Vienna Sales Convention, is applicable to the concluded agreements.



## **TERMS AND CONDITIONS SMET RENTAL BV : DAMAGE WAIVER ARRANGEMENT**

### **Article 1. General**

1.1. In accordance with Smet Rental's general terms and conditions, which the customer declares to have read and accepted in their entirety, the renter is liable for any damage, faulty maintenance, loss or theft of the rented object, regardless of by whom it was caused and even in cases of force majeure.

1.2. The renter has the possibility, according to the present conditions and for a percentage surcharge on the rent, to limit his contractual liability for sudden and unforeseeable damage or theft of the rented property by means of a damage waiver scheme. The damage waiver arrangement involves a limitation of Smet Rental's right of recourse. Restriction of the right of recourse is understood to mean: limitation of the right to recover damages to the amount of the specified own risk and under application of the following conditions.

1.3. Any other (co-)liable parties and/or third parties may not derive any rights from this regulation.

1.4. If a damage waiver arrangement is agreed upon, these General Terms and Conditions will prevail over Smet Rental's general terms and conditions, which will otherwise remain additionally in force. Any additional exclusions or instructions printed on or with the rental agreement will supplement and form part of the settlement.

### **Article 2. Applicability**

2.1. The damage waiver scheme applies during the agreed rental period and, subject to other conditions or exclusions, is only applicable if, prior to the rental period, a valid rental agreement has been drawn up and signed by the renter and the renter has fulfilled all his obligations arising from the rental agreement and from Smet Rental's general and present terms and conditions in good time. It is explicitly provided that the damage waiver will cease to apply as soon as the renter has not returned the machine in time as provided for in the initial rental agreement. Only an explicit written consent of the lessor that the rental period is extended, as well as the damage redemption arrangement, can extend the initial period of damage redemption arrangement.

2.2. The damage waiver scheme covers (i) material damage to the rented object (including damage as a result of fire, burglary or theft) and (ii) the costs of repair, expertise, salvage, transport, examination, repatriation and salvage costs directly related to the damage, insofar as these actions are based on an order from Smet Rental, as well as (iii) loss of rent on Smet Rental's part (the loss of rent is calculated on the basis of the rental rate for daily rental excluding discounts).

2.3. The damage waiver scheme relates solely to damage occurring on the site communicated by the renter and is in any case limited to damage occurring within Europe.

2.4. All damages not covered by the damage waiver scheme remain the responsibility of the lessee.

2.5. The damage waiver scheme covers damages up to and including EUR 2,500,000. Damage above the aforementioned amount is thus not covered by this damage waiver scheme and remains at the tenant's expense.

### **Article 3. Assessment of damage**

3.1. As soon as the renter has or reasonably could have had knowledge of any damage, he is obliged: to immediately report the event to Smet Rental, stating the cause, extent and circumstances of the damage; to render every assistance in the settlement of the damage, more specifically, to follow Smet Rental's instructions, to provide the requested information and documents (including a fully completed and signed damage form) or to submit the required documents, and to refrain from any actions which may be necessary to resolve the damage. In the event of theft of the object or any other crime resulting in damage, to immediately report this to the police and to submit a copy of the report to Smet Rental. In case of non-compliance with the foregoing obligations, the damage settlement will not apply.

3.1. As soon as the renter has or reasonably could have had knowledge of any damage, he is obliged to: immediately report the event to Smet Rental, stating the cause, scope and circumstances of the damage; render all cooperation in the handling of the damage, more specifically to follow Smet Rental's instructions, to provide the required information and documents (including a fully completed and signed damage form) or to submit a copy of the damage form, and to refrain from any acts which may harm Smet Rental's interests; in the event of theft or any other criminal offence resulting in damage, immediately report this to the police and to provide a copy of the damage form. In the event of theft of the object or any other crime resulting in damage, to immediately report this to the police and to submit a copy of the report to Smet Rental. In case of non-compliance with the foregoing obligations, the damage settlement will not apply.

3.2. The damage will be assessed by Smet Rental's technical department or its appointee. If the hirer does not submit a substantiated objection within five working days after receipt of the damage estimate or indication provided by Smet Rental or, failing this, within five working days after receipt of the (damage) invoice, the hirer will be deemed to have agreed to the damage assessment by Smet Rental's technical service. If the renter wishes a counter-assessment, the renter must appoint a counter-assessment within five working days after receipt of the damage estimate or (damage) invoice and inform Smet Rental thereof, failing which Smet Rental may assume that the renter does not wish a counter-assessment.

#### **Article 4. Exclusions.**

4.1. Recovery by Smet Rental will not be limited if the damage and/or theft arose out of, caused or increased by or occurred in:

- (a) armed conflict, civil war, insurrection, internal disturbances, terrorism, strike, riot or mutiny, earthquake, flood, volcanic eruption, atomic nuclear reactions, acts of government (including government seizure), irrespective of how they arose;
- b) intentional, gross negligence or recklessness of the tenant and/or its personnel and/or auxiliaries/subcontractors;
- (c) insufficient care and/or careless use, act or omission of the hirer and/or its personnel and/or auxiliary persons/subcontractors;
- d) any act as a result of which a good has been damaged by the use of biological or chemical agents;

Furthermore, Smet Rental's recourse shall not be limited:

- (e) if the renter has sublet or otherwise made the rented good available to third parties (other than employees of the renter) without Smet Rental's prior written consent;
  - f) in case a specific exclusion mentioned on the contract applies;
  - g) if preventive measures and other instructions, printed on the rental contract or product manual, have not been demonstrably followed by the renter;
  - h) if the hirer uses, has used or has caused to be used the hired item for purposes other than those for which the hired item is intended;
  - i) if the tenant can derive rights from any insurance or other provision in respect of a claim;
- In addition, damage caused to :

- j) parts of the power train or wearing parts including conveyor belts, cutting teeth, wearing plates, sieve webs and sieve drums, whether or not as a result of gradual or persistent damage resulting from the chemical, thermal or mechanical action of any destructive factors;

4.2. Careless use, action or omission includes but is not limited to: operation by non-certified or (legally) unqualified/unauthorized persons, failure to refill or use incorrect oil, lubricants, fuel, antifreeze in a timely manner, improper use, overloading or loading, transportation of trailers and/or other equipment coupled to a motor vehicle by a driver who does not have the appropriate licence category in relation to the vehicle combination, making repairs without Smet Rental's permission, careless repairs, disabling (safety) devices and/or other (partial) systems, tilting due to an excessive angle of inclination or uneven or otherwise unsuitable terrain or surface, acting contrary to the instructions of Smet Rental and/or manufacturer and/or manual and/or instructions printed on or with the rental contract, improper or unsuitable transport, vertical transport, failure to take adequate measures against leaving behind concrete, cement, paint or spray residues, failure to clean the rented object, not taking adequate measures to prevent damage in case of announced storm, hail, frost or (other) extreme weather conditions, not or not demonstrably complying with the specific and written instructions for use and/or prevention stipulated in or on the contract, acting in violation of a legal obligation or (local) regulation.

4.3. In addition to the aforementioned general exclusions, Smet Rental's right of recourse in case of theft will not be limited if all the following conditions and circumstances are not demonstrably met:

(a) the rented object has been stored or placed outside working hours in a locked and alarm-protected indoor space or, if that is physically impossible, on an adequately secured and properly fenced outdoor area or construction site;

b) the premises, container, shed or fencing has been broken into. Break-in will only be assumed if there are externally clearly visible traces of break-in.

c) machinery must be secured with a separate lock and may only be placed on a trailer during transport. Locks must be demonstrably used; if not all keys handed to the hirer can be returned immediately by the hirer, the hirer will be deemed not to have fulfilled this condition.

#### **Article 5. Ownership of Rented Goods**

The rented goods remain Smet Rental's property, regardless of any application of the damage waiver scheme. Invoicing and/or payment of damage or an excess does not constitute transfer of ownership.

#### **Article 6. Exclusion of compensation to the renter**

The damage waiver scheme can never give rise to making any payment or granting any compensation or refund to the renter.

#### **Article 7. Own risk**

An excess is applicable to the damage waiver per event and per rented item in the amount of (i) in the event of damage: 10% of the current new value or similar (or successor) machine type and (ii) in the event of theft or fire: 25% of the current new value or similar (or successor) machine type.