
**General terms and conditions for
rentals (rental terms) of Durwen
Maschinenbau**

I. General

We rent out exclusively on our rental terms for attachments; Lessor does not recognise Lessee's terms that are contrary to or depart from these rental terms unless Lessor has expressly agreed to their validity in writing. These rental terms of Lessor apply even if Lessor unconditionally executes the rental while aware of Lessee's terms that are contrary to or depart from its rental terms.

II. Ownership

1. The rental item remains Lessor's property during the term of the rental contract. If the rental item is attached to land or inserted into a building or installation, this at all times happens only for a temporary purpose within the meaning of section 95 of the Civil Code (BGB) with the intention of separation when the rental relationship ends.

III. Type of use by Lessee

1. Lessee may sublet the rental item to a third party but not assign any rights under the rental contract with Lessor. Pledging or transfer by way of security is not permitted.
Lessee may install and use the rental item only at the place specified in the rental contract and may not change the location of the rental item without Lessor's express prior consent.
Lessee may use the rental item only in accordance with regulations and for the purposes specified in the rental contract.

2. Lessee may not damage, alter, remove or conceal proprietary notices, labels, numbers or other inscriptions affixed by Lessor to the rental item. Lessee may not carry on its own advertising or advertising permitted by it on the rental item or cause such advertising to be carried on.

IV. Delivery of the rental item

1. Lessor must have the rental item in working order ready for collection or ready for dispatch. Risk passes to Lessee with collection/dispatch. The rental item is – if and insofar as agreed – collected at Lessee's expense and risk from Lessor's premises and returned to them after expiry of the rental term. In the event of delivery and return transport commissioned by Lessor separately for such purpose, the persons used act as Lessee's agents.

2. Lessee is free to inspect the rental item at its own expense in good time before dispatch/collection.

3. Compliance with dates by Lessor requires fulfilment of the contractual obligations on the part of Lessee.

4. The date of collection, dispatch or handover is postponed by an appropriate time in the event of measures in the context of industrial disputes, particularly strikes and lockouts, and if unforeseeable events occur that are beyond the control of Lessor provided such obstacles verifiably have a considerable effect on the date.

5. Lessor is entitled if Lessee delays acceptance

a) to cancel without notice the contract after warning or

b) to give Lessee a reasonable period for collection or acceptance with the statement that Lessor may otherwise dispose of the rental item after expiry of the period and that Lessee will be provided with an equivalent rental item with appropriately extended period.

6. If handover is delayed at Lessee's request, the costs incurred by Lessor as a result of the delay are invoiced to Lessee.

V. Risk assumption, duty to maintain safety

1. Lessee assumes risk for the rental item for the entire time from leaving Lessor's premises or the other location to arrival back with Lessor.

2. If there is a delay in leaving Lessor's premises or the other location as a result of Lessee's conduct, risk passes to Lessee with effect from the beginning of the delay.

3. Points 1 and 2 also apply to individual parts of the rental item or even if Lessor has assumed other services, e.g. dispatch or installation and/or assembly/disassembly.

4. Lessee is bound by the duty to maintain safety during the time of rental and use. Lessee releases Lessor from all claims arising under any breach of the duty to maintain safety in relation to the rental item in the internal relationship.

VI. Assembly and disassembly

1. If Lessor assumes assembly or after the contract ends disassembly, special agreements must be concluded for such purpose.

2. Lessee must in good time ensure suitable premises and adequate energy sources.

VII. Transport and packaging

1. If Lessor assumes dispatch, the costs of conveying the rental item pass to Lessee and if the contract ends the costs of conveying it from Lessee to Lessor are borne by Lessee.

2. Packaging and loading costs including load safety are also borne by Lessee.

VIII. Rent

1. The amount of the rent is based on Lessor's current net price list. In the case of rental objects differing from the current price list, rent is based on the contractual agreements between Lessor and Lessee concerning the rental item.

2. The rental price relates to a maximum daily use of the rental item for eight (8) hours (shift time) from Monday to Friday. Longer daily use and use on Saturdays and Sundays requires Lessor's prior consent in writing. The burden of proof rests with Lessee that a rental item situated at the weekend in Lessee's possession was not used at the weekend.

3. If Lessee uses the rental item for more than eight (8) hours a day, a multiple-shift surcharge of 50% is payable on the daily rent. Daily rent will be invoiced in the event of use in shift time on Saturday or Sunday. If the rental item is rented only over the weekend (Saturday to Sunday), a surcharge of 50% is payable on the daily rent.
4. Unless specifically agreed otherwise, the minimum rental term is two weeks from the beginning of the rental.
5. The rental price includes exclusively the equipment costs. The costs of used auxiliary and operating materials (fixing material, power, consumables, spares, etc.) are not included in the rental price and are invoiced separately. The same applies to additional services and transport.
6. All waiting, loading and unloading times and any times needed for equipment briefings must be borne by Lessee.
7. If as a result of circumstances beyond Lessor's control use of the rental item or parts thereof becomes pointless or impossible, the Lessor's rights are not diminished.
8. Statutory value added tax is not included in the rent and is additionally invoiced to Lessor at the statutory rate.
9. Unless specifically agreed otherwise, the amounts invoiced by Lessor are due from the beginning of the rental (see section XVIII).
10. Lessor is entitled to demand security in an appropriate amount.
11. Lessor is entitled to issue weekly invoices.
12. Lessee is entitled to offset rights only if its counterclaims are legally established, undisputed or recognised by Lessor. Lessee is also entitled to exercise a right of retention if its counterclaim is based on the same contractual relationship.

IX. Fees and charges

1. Lessee assumes any public-law fees, contributions and other charges levied during the term of the contract on account of the rental, possession and/or use. This also applies to the costs of inspections required by the authorities.
2. Lessor is entitled in the event of non-payment to make an advance payment for its part and demand reimbursement from Lessee.
3. Such additional expenses must be settled by Lessee's next rent payment.

X. Insurances

1. Lessee is obliged at its own expenses for the rental item in favour of Lessor and the rental term to take out machinery insurance at the reinstatement value including all ancillary costs. Lessee is responsible for ensuring that there is also cover in favour of Lessor for risk insurable by fire or theft insurance by taking out additional insurance to the machinery insurance or including the rental item in its factory, fire or theft insurance.

If transport risk for the rental items is borne by Lessee, Lessee will take out transport insurance in favour of Lessor.

2. If assembly of the rental item is necessary, Lessee is obliged at Lessor's demand to take out assembly insurance in favour of Lessor.

3. If Lessee is obliged to take out insurances, the insurer's cover notes must be proven to Lessor on demand.

4. If Lessee fails to provide evidence of insurance cover, Lessor is entitled to take out in its own favour appropriate insurance policies on behalf and for the account of Lessee. Lessor may demand immediate reimbursement of the additional expenses.

5. Lessee herewith irrevocably assigns to Lessor all its rights under the insurance policies taken out on the basis hereof and notifies Lessor accordingly.

XI. Lessee's specific obligations

1. Lessee is obliged

a) at all times to protect the rental item against excessive use in any way and to ensure use in accordance with regulations, particularly by specialist trained staff.

b) to professionally service and maintain the rental item at its own expense or to have it serviced and maintained at regular intervals.

c) Lessor's instructions for servicing, maintenance and use must be observed.

d) to comply with and fulfil all laws and regulations connected with possession, use or maintenance of the rental item. Lessor is exempt from claims arising as a result of culpable non-compliance with such obligations.

e) to take precautions and protective measures so that the rental item is not exposed to access by unauthorised third parties (e.g. theft, third-party use, etc.).

2. Lessor is entitled at any time to demand from Lessee information on the location and the type of use of the rental item. Lessor may at any time upon consultation during normal business hours inspect the rental item or have it inspected by authorised representatives. Lessee is obliged to permit the inspection, to allow the place of use to be entered or to produce any necessary third-party permission.

3. Personal protective equipment must be provided by Lessee.

4. If a driving licence, driving permit, forklift licence, etc., is needed to drive or operate the rental item, Lessee must ensure that the persons deployed by it on the rental item have the necessary authorisation.

XII. Claims for defects

1. Lessor will keep the rental item operational at its own expense. Lessor eliminates any damage arising in the course of normal use. This is subject to verifiable compliance with Lessee's obligations under section XI.

2. Elimination of any other damage, particularly damage caused by inappropriate or improper use, defective assembly or commissioning, changes or maintenance measures made contrary to the contract by Lessee or by third parties commissioned by Lessee, faulty or careless handling – especially excessive use –, improper operating means and replacement materials, defective construction work, improper construction base, chemical, electrotechnical or electric influences is borne by Lessee insofar as the damage is not due to Lessor's fault. This also applies to damage due to corrosion and rust.

3. Any faults, defects, errors, damage that occur or the absence and loss of parts or accessories must be notified by Lessee to Lessor without delay.

4. To carry out any repairs and replacements appearing necessary to Lessor, Lessee must upon consultation with Lessor give Lessor the necessary time and opportunity otherwise Lessor is released from liability for defects. Only in urgent cases of endangering operational safety, of which Lessor is to be notified immediately, does Lessee have the right to have the defect eliminate itself or by third parties or to demand from Lessor appropriate replacement at its expense. Lessee may also terminate under the conditions specified in section XIX(2).

XIII. Breach of secondary obligations

If the rental item cannot be used as per contract due to culpably omitted or deficient execution of suggestions or advice before or after contractual completion and other secondary contractual obligations – particularly instructions for operation and maintenance of the rental item –, the rule in section XII applies analogously subject to exclusion of Lessee's other claims – without prejudice to section XIV.

XIV. Liability

For all Lessee's compensation claims not governed herein – on whatever legal ground –, particularly compensation for damages that have not arisen on the rental item itself, Lessor is liable only in the event of

1. wilful intent,
2. gross negligence on the part of the owner or of the management bodies or executives,
3. culpable injury to life, limb and health,
4. defects that are deliberately concealed by Lessor or whose absence has been guaranteed by Lessor in the context of the guarantee promise,
5. defects in the rental item insofar as liability applies under the Product Liability Law to personal or material losses with regard to privately used objects.

In the event of culpable breach of major contractual obligations Lessor will also be liable for the gross negligence of non-executive employees and for minor negligence, the latter case being limited, however, to losses that are typical for this type of contract and are reasonably foreseeable. Other claims are excluded.

Lessee is liable for all Lessor's compensation claims that arise in the event of Lessee's non-compliance with the general rental terms. If special agreements apply between Lessor and Lessee, they must be documented in writing. In the event of non-compliance with the special agreements on the part of Lessee, Lessee is liable in respect of all Lessor's accruing compensation claims regarding the rental object.

XV. Prescription

All Lessee's claims – on whatever legal grounds – become time-barred after 12 months. The statutory time limits apply to compensation claims under sections XIV(1) to XIV(5).

XVI. Changes in the rental item

1. Changes in the rental item, particularly additions and installations, and connection with other objects may not be made without Lessor's prior consent. If changes are demanded by the authorities, Lessor must provide information without delay. Changes, additions and installations made without prior consent pass in any case into Lessor's ownership without compensation. Any right of seizure is excluded.

2. Lessor may demand that the original condition of the rental item be restored at Lessee's expense.

XVII. Access by third parties

1. In the event of orders from higher authorities, seizures, pledges, etc., irrespective of whether they take place at the instigation of an authority or a private individual, Lessee must without delay draw attention orally and in writing to the ownership relations and also notify Lessor without delay by handing over all the necessary documentation.

2. Lessee must inform Lessor without delay if a forced sale and forced administration is petitioned in respect of land on which the rental item is situated.

3. Compensation claims likely to arise for Lessee as a result of access by third parties are here and now assigned to Lessor.

4. Lessee bears the costs of any measures to remedy such interventions.

XVIII. Rental time

1. The rental time begins two days after dispatch or at the contractually agreed time. If Lessee uses the rental item before such time, the rental time begins when the rental item is actually used. In the event of Lessee's unjustified refusal to accept, the rental time begins on the day of Lessor's offer. The foregoing applies mutatis mutandis in the event of handover of autonomous parts.

2. The rental time ends with the arrival of the rental items at the Lessor's premises in contractual and proper order, and in particular in cleaned and complete condition, but at the earliest with expiry of the contractually agreed rental term. If the return takes place directly to a new lessee, the rental time ends on the day of dispatch or collection of the rental item in proper condition by the new lessee.

3. If the return of the rental item does not take place in contractual and proper condition, Lessee is obliged to assume the resulting damage arising as a result thereof for Lessor, particularly any rent losses.

4. Lessee is not permitted to use the rental item after the contract has ended.

XIX. Lessee's right of withdrawal and termination

1. Lessee may withdraw from the contract if granting of permission to use and permit to use ultimately makes it impossible for Lessor to transfer risk for a reason beyond Lessor's or the parties' control. This right also exists if the granting of permission to use and permit to use make it partly impossible to transfer risk and Lessee has a justified interest in rejecting the partial service.

2. Lessee may terminate without notice if Lessor is responsible for letting an appropriate time set by it elapse for eliminating any defect for which it is responsible or elimination of the defect by Lessee or third parties is impossible or no longer reasonable.

3. If Lessee justifiably terminates as per point 2 without notice, Lessor bears the costs and risk of return transport of the rental item.

XX. Termination without notice by Lessor

1. Lessor is in particular entitled to terminate the rental contract without notice if

a) Lessee is fully or partially in arrears after warning with a rental payment or any other specially agreed payment for longer than two (2) weeks,

b) Lessee uses the rental item or part thereof for other purposes after warning, without Lessor's consent, (section III(3)) or without permission moves it to any place (section III (2)) other than that which has been contractually specified,

c) Lessee fails to comply without delay with the obligations under section XI(1) after Lessor's warning,

d) Lessee makes changes to the rental item (section III(4)),

e) material circumstances become known that fundamentally call into question fulfilment of the contract by Lessee, e.g. cessation of payments, enforcement measures, insolvency,

f) Lessee culpably provides no or incorrect details on quantities and/or extra hours.

2. In the event of termination without notice Lessor may demand half of the remaining rents until the next permissible ordinary termination date as flat-rate compensation. Lessee is entitled to prove a slighter loss and Lessor is entitled to prove a greater loss.

3. If Lessee despite warning fails to comply with the contractual obligations, Lessor may also – without having to terminate without notice – shut down the rental item until fulfilment or remove it at Lessee's expense. The costs are borne by Lessee.

4. If Lessor removes the rental item as per point 3, it may also dispose of it elsewhere. Lessor's rights and claims remain unaffected. Amounts that Lessor has achieved by rental elsewhere are credited after deduction of the costs incurred by the return and rental elsewhere. Lessor's compensation claims remain unaffected.

XXI. Return of the rental item

1. When the contract ends, Lessee must return the rental item without delay in proper, cleaned and complete condition – taking account of any normal wear and tear for the rental term, which is borne by Lessor – to Lessor or, if collection is agreed, to make it available for collection. Lessee waives any right of retention.
2. The return of the rental item is permitted only during Lessor's usual office hours.
3. In the event of collection by Lessor, the rental item must be made ready by Lessor for transport.
4. Lessor may inspect the rental item itself before dispatch or collection or have it inspected by an expert. The expert will establish the extent of defects and damage, the likely costs of their elimination and any reduction in the rental item's value. The parties each bear half of the costs of the inspection. If the expert does not establish any defects or damage, Lessor bears his costs in full.
5. Defects and damage to the rental item that exceed normal wear and tear and/or have arisen as a result of improper use are borne by Lessee.
6. If during the rental term the rental item is lost or written off, Lessee must pay compensation in the amount of the current replacement value. Lessor may also demand procurement of a replacement object of equal value to the rental item. Until receipt of full compensation, the rent must continue to be paid until the end of the agreed rental term at 100% and thereafter at 50%.
7. Lessor may for the return transport give a different destination from the place of handover but Lessee is then obliged to assume the costs only up to an amount that would have arisen in the event of return transport to the place of handover. Freight savings benefit Lessee.
8. If Lessee fails to comply with its return transport obligation within seven (7) days of the end of the contract, Lessor may carry out the return transport or have it carried out at Lessee's expense. Lessee here and now permits Lessor or the third parties commissioned by Lessor access to the place of installation of the rental item for the purposes of collection. Lessor's compensation claims remain unaffected.

XXII. Applicable law, place of jurisdiction, place of performance

1. Unless agreed otherwise, the place of performance for all services hereunder is Plaidt.
2. In our favour Koblenz is the place of jurisdiction for all disputes arising under the contractual relationship. But we may choose any other place of jurisdiction.
3. The law of the Federal Republic of Germany applies. International sales law is excluded. This also applies exclusively to application of the United Nations Convention on Contracts for the International Sale of Good (CISG).

4. The invalidity of individual provisions of these general rental terms does not affect the validity of the other rules. Invalid provisions are regarded as replaced by such valid rules that are appropriate for achieving as far as possible the economic purpose of the omitted rule.

5. We are entitled to save data on movement of goods and payment transactions with the buyer and to forward such data to third parties.

Supplementary terms to the General Terms and Conditions for rentals (rental terms), valid for large items of equipment and work platforms

I. Large items of equipment

1. The assembly of items of equipment that are delivered disassembled must be carried out by Lessor's representatives at Lessee's expense as must the disassembly at the time of return.

2. When commissioning the equipment and instructing operating staff, Lessee must request a specialist from Lessor against reimbursement of costs in the usual amount.

3. Lessee ensures that the equipment is operated only by qualified professionals.

4. Fuel (coal, water, oils, fats, propellants), cleaning materials, etc., must be used only in perfect condition or as expressly prescribed by Lessor.

II. Work platforms

1. Lessee is responsible for ensuring that the equipment is suitable for the use planned by it. For the suitability test Lessor provides work diagrams and technical data of the individual items of equipment on request.

2. If it turns out that the work platform is not suitable for the use planned by Lessee – insufficient range, work height, etc. –, Lessor is nonetheless entitled to rent for the entire agreed rental time.

3. Work platforms may be used only in accordance with their design. They must be used exclusively in the context of the cage load and work height. They may not be used to pull loads or cables or as lifting cranes. Work platforms must also be entered and left only via the accesses specified for such purpose. The safety recommendations in the operating instructions must be observed.

4. The platform's stability must be checked if its place is changed, when soil conditions must also be considered. The same applies to the displacement path.

5. If any defect is identified on the work platform during use, the equipment must immediately be shut down. Lessor must immediately be informed and his instructions awaited.

6. When used for rough work, the equipment must be sufficiently covered and protected. This applies in particular in the case of painting, welding and cleaning work with acids. Use is prohibited in respect of spray and sandblasting work.