

## **TERMS AND CONDITIONS OF RENT ASCENDUM RENTS (hereinafter “MAR”) of Ascendum Baumaschinen Österreich GmbH, hereinafter referred to as “Lessor”**

### **1. SCOPE OF APPLICATION AND SUBJECT OF RENTAL**

Scope of application: The MAR shall apply exclusively to all rental agreements for movable items (in particular construction machinery) until revoked by the Lessor. Deviating conditions of the lessee do not bind the Lessor, even if such deviating conditions are not expressly contradicted.

Rental object: The rental object is described in the relevant rental agreement and in the corresponding field in the handover/return protocol. Modifications to the rental object, in particular to attachments and fittings, as well as the connection with other objects / attachments are prohibited by the lessee without the written consent of the Lessor; in case of non-compliance of this restriction by the Lessee, any liability of the Lessor is excluded. The rental object including components and accessories shall remain the exclusive property of the Lessor during the entire rental period. The Lessee is not authorized to grant third parties any rights to the rental object or to assign to them any rights arising from the rental agreement; in particular, subletting or re-lending is prohibited. The transfer of risk to the Lessee shall take place upon collection of the rental object from the Lessor's storage location or upon handover to the carrier and shall end after proper return to the location specified by the Lessor.

### **2. CONTRACT PERIOD**

The rental period shall commence on the day of collection or handover to the freight carrier or from the agreed provision of the rental object by the Lessor. The rental period ends on the day on which the rental object is handed over to the Lessor with all parts and attachments required for its commissioning in proper and contractual condition or on which the rental object arrives at another agreed destination, but not before the expiry of the agreed rental period. An extension beyond the contract period requires a corresponding agreement between the Lessee and the Lessor at least one day before the expiry of the rental period. Such an agreement shall be deemed to have been concluded, subject to the conditions contained in the rental agreement, if the Lessee does not return the rental object at the time of the agreed return and the Lessor does not raise any objection within a period of one month.

### **3. RENT**

The agreed rent shall apply to single-shift operation of max. 40 working hours per week, unless otherwise agreed. The rent shall be paid in full even if the normal shift time is not fully utilized or 20 working days per month are not reached. Hours worked in excess of the single shift shall be considered overtime and shall be determined by the Lessor at the time of return by reading from the hour meter. Lessor reserves the right to charge for such overtime. If the lease term exceeds 6 months, the rent shall be value-indexed according to the Consumer Price Index 2020 (VPI 2020) or, if the latter is no longer announced, according to the successor index as follows: If the current index figure increases by more than 5% compared to the index figure in the month of the conclusion of the contract (base index figure), the rent shall be increased in proportion to the index increase (index adjustment). The same shall apply in case of any further increase of the last index figure by more than 5% compared to the index figure of the month of the last index adjustment.

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#### 4. RENT CALCULATION AND PAYMENT

The rent is calculated in advance and is due for payment without any deduction immediately upon conclusion of the contract. In the event of a longer-term rental period of more than 6 months, the rent shall be invoiced monthly from the beginning of the rental relationship. In case of default of payment - for whatever reason - the Lessee - regardless of his fault - is obliged to pay default interest for the outstanding due amount in the amount of entrepreneurial interest according to § 456 sentence 1 and 2 UGB (i.e. currently 9.2 percentage points above the prime rate of the ONB, but at least 12% p.a.). A set-off of the rent with counterclaims of the Lessee from other business transactions is expressly excluded. Payment experience data, in particular concerning undisputed and unjustified outstanding claims as well as address data shall be transmitted to CRIF GmbH (FN 200570g), Rothschildplatz 3/Top 3.06.B, 1020 Vienna, Austria, for lawful use within the scope of its trade license pursuant to §§ 151-153 Gewerbeordnung.

#### 5. ADDITIONAL COSTS

The rent agreed upon in each case is exclusive of costs for loading and unloading, freight and transport for outward and return deliveries, as well as operating materials and personnel costs for training and operation. The costs for the contract administration shall be borne by the Lessee.

#### 6. HANDOVER, RETURN

The Lessor shall deliver the rental object in a cleaned and operational condition for dispatch or hold it ready for collection. The same shall apply to the Lessee upon return delivery to the Lessor. Prior to dispatch or upon acceptance of the rental object, a condition report is to be prepared for both delivery and return delivery and signed by both contracting parties. Any defects are to be pointed out. If a condition report is not drawn up, the rental object shall be deemed to have been delivered or returned in accordance with the contract. If the rental object is returned in a condition which shows that the Lessee has not fulfilled his obligations as stipulated in item 7, the rental period shall be extended by the time required for the procurement of spare parts and the repair of the damage. The Lessee shall be informed of the estimated cost of the repair work before the work is started.

#### 7. OBLIGATIONS OF THE LESSEE

The Lessee undertakes to use the rental object only at the specified location, in the usual operational use and with due care. The operating instructions on the rental object or the relevant regulations in the operating manual must be observed without fail - in particular the protection of bystanders. The rental equipment must be protected against overloading in any way. The daily service and maintenance work is to be carried out at the expense of the Lessee and any damage that occurs is to be reported to the lessor without delay. The Lessor shall carry out service and maintenance work at its own expense at regular intervals (at least every 500 hours). For this purpose, the Lessee is obliged to monitor the status of the hour meter and to inform the Lessor accordingly. The Lessor is entitled to inspect the rental object himself at any time or to have it inspected by an authorized representative. The Lessee is obliged to grant the Lessor access for this purpose and to support the Lessor in every respect during the inspection.

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## 8. LIABILITY

The Lessee is liable for any damage or loss of the rental object during the rental period regardless of whether the damage or loss was caused by his fault or that of his assistants, by the personnel provided by the Lessor, by the fault of third parties or by unforeseeable and unavoidable events such as accident, force majeure, strike or war. Unless otherwise agreed, the Lessee undertakes to take out the insurance specified in the rental agreement in good time so that insurance cover is provided from the beginning of the rental period until the end of the rental period. Upon request, the Lessee shall prove this to the Lessor by presenting the policy. If the Lessee is unable to provide proof of insurance coverage by the time the rental object is handed over at the latest, the Lessor shall be entitled to take out a corresponding insurance policy at the Lessee's expense. The Lessor shall not be liable for consequential damage caused by the use of the rental object by the Lessee or third parties, unless liability is mandatory in cases of intent or gross negligence. The lessee undertakes to indemnify and hold the Lessor harmless in the event that he is held liable by third parties for damage events in connection with the rental object. If the rental object is not ready for operation, the Lessor cannot be held liable beyond the amount of the intended rental fee. The Lessor's liability to pay compensation under the Produkthaftungsgesetz (Product Liability Act) BGBl 1988/99 or product liability claims derived from other provisions for property damage to or caused by operationally acquired product(s) of the Lessee as an entrepreneur (§ 1 Para. 1 Z 1 KSchG) is excluded. The Lessee undertakes to allow only personnel to work with the rental object who have been demonstrably trained and instructed by the Lessor. Training of third parties by the Lessee is not permitted. The Lessor assumes no liability for damages resulting from these circumstances or incorrect operation.

## 9. INSURANCE

If the Lessee protects the rental object by own insurances, this must be proved by presenting the policy. The Lessor reserves the right of non-acceptance of the Lessee's insurance. All equipment is insured by Ascendum Baumaschinen Österreich GmbH against machine breakage. Small equipment and attachments with a value below € 10.000,00 are generally not insured. Here the Lessee is liable for the full value.

Unless otherwise agreed in the relevant rental contract, the insurance premium is included in the rental price. The deductible in the event of damage is € 1,500.00 for compact equipment and € 3,000.00 for GPPE equipment; this is per damage event. In case of burglary, theft or vandalism the deductible is at least 10%, in case of robbery or embezzlement at least 20% of the value of the rental object.

## 10. REPAIRS

All defects and damages to the rental object must be reported to the Lessor immediately and repaired according to the Lessor's instructions. The necessary spare parts shall be obtained from the Lessor. Consequential damages due to neglected service obligations shall be borne by the Lessee. Repairs and replacements resulting from normal use shall be borne by the Lessor. Damage caused by force and damage resulting from improper use shall be repaired at the expense of the Lessee. If a rental object is not insured in accordance with item 8, any disputed repair shall be at the expense of the Lessee. Consequential damage due to lack of renewal of wear parts shall be borne by the Lessee.

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## 11. TERMINATION AND DISSOLUTION OF THE RENTAL AGREEMENT

The Lessor shall be entitled to terminate the relevant rental agreement with immediate effect if a) after the conclusion of the agreement, the Lessor becomes aware of circumstances that give rise to justified doubts about the creditworthiness of the Lessee, b) the Lessee has not paid the rent in arrears in full after a reminder has been sent by registered mail and after expiry of the grace period set, c) the Lessor is not granted an inspection of the rented property for the purpose of assessing its condition or damage during normal business hours despite prior notice, d) the Lessee has not granted third parties any rights of use or other rights to the rented property - of whatever kind - without the written consent of the Lessor. d) the Lessee grants or transfers to third parties rights of use or other rights to the rental object - of whatever kind - without the written consent of the Lessor, and e) the Lessee changes the location of the rental object without the consent of the Lessor. If the relevant rental agreement is terminated by the Lessor for one of the aforementioned reasons or for any other reason, the Lessor shall be entitled, without recourse to the court, to collect the rental objects, to take them into its custody or to place them with a specific custodian or to render them unfit for further use by the Lessee by taking other suitable measures, at the expense of the Lessee, who shall allow access to and removal of the Rental Goods and, if necessary, tolerate the opening of locks.

The Lessor shall be entitled to take such measures both to secure due rent claims prior to termination of the lease and after premature termination of the lease. The Lessee waives the right to sue for disturbance of possession and the objection that the rental object is necessary for the maintenance of its business, as well as the assertion of claims for compensation for any reason whatsoever. The claims to which the Lessor is entitled under the rental agreement shall remain unchanged. If the rental object is not returned to the Lessor without delay in the event of the Lessee's insolvency, an appropriate usage fee shall be deemed to have been agreed. In the absence of any agreement to the contrary, in this case a usage fee in the amount of the rent agreed in the rental agreement, but at least 4% of the purchase price of the rental object per month, shall be payable.

## 12. ENCROACHMENT OF PROPERTY BY THIRD PARTIES

If the rental object owned by the Lessor is seized by third parties by way of seizure, custody, confiscation, etc., the Lessee shall be obliged to notify the Lessor thereof immediately by fax or registered letter, as well as a copy by e-mail, and to transmit all related orders and documents; the Lessee shall bear all costs of judicial or extrajudicial measures and interventions of its own that are necessary and expedient for the elimination of the encroachment. If the Lessee fails to notify the Lessor in due time, he shall be liable without limitation for all disadvantages resulting therefrom.

## 13. OTHER PROVISIONS

Deviating agreements or additions to the rental agreement must be made in writing; verbal collateral agreements shall be invalid; this shall also apply to any waiver of this written form requirement.

Should any provision of the relevant lease agreement or of these MAR be invalid for any reason, the remaining provisions shall not be affected thereby. In this case, the parties shall be deemed to have agreed on a provision that comes as close as possible to the economic result of the invalid provision.

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**VOLVO** **SENEBOGEN** **AMMANN** **Epiroc** **VOLVO PENTA**

For disputes about or in connection with these MAR or the contracts within the scope of these MAR including the question of their valid conclusion and their pre- and post-effects, the exclusive applicability of Austrian law as well as the exclusive jurisdiction of the competent court of the provincial capital Salzburg is agreed. The validity of the UN Convention on Contracts for the International Sale of Goods is expressly waived. The General Terms and Conditions of MAWEV, the Association of Austrian Construction Machinery Dealers, shall apply to questions of rental that are not regulated by the rental agreement in question or by MAR.

**Stand 24.01.2023**

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