

## MATERIAL HANDLING

### Rental Terms and Conditions (RTG) of Toyota Material Handling Deutschland GmbH \*Long-term rental (LTR) (Last amended September 2021)

#### §1. General provisions – applicability

- The Rental Terms and Conditions\* are an integral part of every rental agreement concluded, unless such agreement contains provisions to the contrary. Any terms and conditions of the Rental Customer deviating from, contradicting, or supplementing the Rental Terms and Conditions\* of the Lessor shall not become part of the agreement, even if the Lessor does not expressly object to such terms and conditions.
- Should individual provisions of the Rental Terms and Conditions\* be invalid, this shall not affect the validity of the remaining provisions; the same shall apply contrary to Section 139 German Civil Code (BGB) insofar as agreements deviating from or supplementing these conditions are partially void or invalid. Ineffective provisions shall be deemed replaced by such effective provisions as are appropriate for realising the economic purpose of the omitted provision to the greatest possible extent.
- All agreements deviating from and supplementing these Rental Terms and Conditions\* must be in writing. There are no ancillary agreements to this rental agreement or to these Rental Terms and Conditions\*. Amendments and supplements must be in writing. This written form requirement may only be waived by written agreement.
- All rental agreement offers by the Lessor are subject to confirmation.
- The underlying rental agreement and these Rental Terms and Conditions\* shall only apply vis-à-vis an entrepreneur (Section 14 German Civil Code), a legal entity under public law or a special fund under public law.

#### §2. Rental item, use, structural changes, data protection

- The subject of the agreement is the equipment described in more detail in the performance specifications. In the case of multiple pieces of equipment, the Rental Customer and Lessor shall regard each piece of equipment as the subject of an individual rental agreement. The termination of one of these rental relationships shall have no contractual effect on the others. The contractual agreement shall be decisive for the quality of the rental item.
- The Rental Customer is in principle only entitled to use the rental items to the extent bindingly stipulated in the performance specifications, measured in hours per year. The hours per year shall be deemed to be the time indicated by the hour meters installed in the rental items. In all other respects Section 5.3 of these Terms and Conditions shall apply. The Lessor must be notified immediately of any malfunction of the hour meter.
- No changes of any kind may be made to the rental item during the rental period without the prior written consent of the Lessor.
- Toyota equipment records and stores usage data as soon as they are used. This data is transmitted to Toyota where it is processed. Toyota and its affiliates will collect, use, modify and copy data that is part of this agreement in order to continuously improve our service portfolio and products. This will take place in accordance with Toyota's customers' intellectual property rights and compliance rules, as well as applicable law. Any legal obligations relating to personal data are not affected by this.

#### §3. Granting of use and place of use

- The Lessor shall not be liable for delays in delivery.
- The rental items may not be used at the previously specified location. Any changes require the written consent of the Lessor before the rental items are moved to another location.

#### §4. Commencement of the rental, rental period and return of the rental item

- The term of the agreement in months is shown in the performance specifications. If the delivery of the rental items is delayed for reasons for which the Lessor is responsible, the term of the agreement shall commence once the rental items have actually been delivered. In this case, the Lessor shall not be liable for any damage incurred by the Rental Customer as a result. The Rental Customer is obliged to request the collection of the rental items by the Lessor in writing at least one month before the end of the agreement and to duly make them available for collection at the end of the agreement. Otherwise, the lease shall be extended by one month in each case.
- The Rental Customer undertakes to return the rental item in its entirety. Wear and tear resulting from the contractually stipulated use excepted. If it fails to comply with this obligation, it shall be obliged to pay damages to the Lessor - without prejudice to the Lessor's right to demand the rental fee at the usual local rate as compensation for the duration of any withholding.
- The return transport of the rental items is defined in the service specifications.

#### §5. Rental price and calculation

- Unless otherwise agreed, all prices are quoted exclusive of statutory value added tax.
- The monthly rental fee payable by the Rental Customer is stipulated in the performance specifications.
- Additional use: The scope actually used shall be determined annually. If the rental items are used in excess of the agreed scope (hours per year), the Lessor shall be entitled to charge for the additional use retrospectively. The additional hours used, the value of which is determined by the ratio of the fixed rental fee to the agreed scope of use, shall generally be subject to a surcharge amounting to 0.5% of the monthly rental payment per operating hour exceeding the agreed scope.
- The rental fee shall be calculated on the basis of the usage factors listed in the performance specifications (place of use, route, soil, corrosion, environment). The equipment may only be used by the Rental Customer in the manner specified therein. The Lessor must be notified without delay in writing of any changes to the usage factors within 5 working days. Changes to the usage factors shall entitle the Lessor to adjust the rental fee in accordance with the actual usage. The Lessor reserves the right to assert other rights.

#### §6. Operating expenses

- During the rental period, the Rental Customer shall bear the costs of operating materials, in particular the costs of fuel (diesel, gas or electricity), lubricants, battery water and the charging of all batteries as well as for consumables.

#### §7. Operation, maintenance and care, damages

- The Rental Customer shall be obliged to handle the rental item properly, carefully and with care, to use it as intended and not to overload it or use it for purposes other than those for which it is intended, to observe the operating instructions and all statutory safety regulations and, in particular, not to exceed its load-bearing capacity. The Rental Customer is obliged to ensure the proper and contractual use of the rental item in accordance with the conditions of use in the performance specifications. In addition, the Rental Customer shall be responsible for protecting the rental item from external damage. The Rental Customer shall instruct the persons working with the rental item accordingly and ensure that the provisions of the German Driver's Licence Ordinance (Fahrerlaubnisverordnung) are complied with. The Rental Customer shall be obliged to monitor the FEM 4.004 tests and to inform the Lessor of this in writing at least 7 working days before expiry.
- The Rental Customer is obliged to clean the rental items regularly.
- The Lessor alone shall be responsible for servicing and repairing the rental items. The performance specifications stipulate which of the following service packages has been agreed.

- For the purpose of repairs or maintenance, the Rental Customer is obliged to keep the rental item accessible to the representatives of the Lessor during normal working hours.
- The rental items must be subjected to a daily visual and functional check in accordance with the Lessor's instructions. The Rental Customer shall be obliged to properly charge and fill the battery with battery water.
- The Rental Customer shall compensate the Lessor for any damage caused by intentional or negligent actions on the part of the Rental Customer, its employees or vicarious agents, in particular by improper operation and inadequate care. If it is established that the damage was caused by the Rental Customer, the Rental Customer shall bear the burden of proof that it and its employees were not at fault. The Rental Customer is obliged to notify the Lessor in writing of any damage to the rental item without delay within 5 working days. In the event of a breach of this duty to notify, the Rental Customer shall be obliged to compensate the Lessor for any damage incurred.

#### §8. Service packages

##### 1. Service package Basic - inspection and repair

The Lessor shall service the equipment at service intervals in accordance with the manufacturer's specifications and shall perform the annual inspection in accordance with FEM 4.004 (the labour costs for the inspection and the FEM 4.004 inspection are included in the rental fee). Should repairs be necessary for this purpose, these shall be carried out by the Lessor at the Rental Customer's expense (e.g. for parts, operating materials and lubricants, labour and travel expenses). For new equipment (year of manufacture = delivery date), the warranty period applies as stated in the performance specifications (except for malicious damage and repairs due to wear and tear).

##### 2. Service package Full Service - maintenance and repair

The rental items shall be kept in working order by the Lessor. Full Service includes:

- Regular maintenance according to manufacturer's specifications
- Repairs including materials and spare parts (excluding repairs for using the equipment outside the hours and usage factors agreed in the performance specifications, as well as malicious damage)
- Working hours
- Annual FEM 4.004 inspection
- Provision of a replacement piece of equipment (i.e. standard equipment, without special accessories, if the rental item cannot be restored to working condition within 48 hours)

If the breakdown is due to non-contractual use or force, the obligation to provide a replacement piece of equipment free of charge shall no longer apply.

The wear-related repair or replacement of tyres, wheels or castors shall be limited to the number per year as specified in the performance specifications. If no such number is specified in the performance specifications, the repair or replacement of tyres, wheels or castors is not included.

The performance specifications also stipulate whether a battery lifetime warranty has been agreed.

The Lessor shall grant the Rental Customer a performance guarantee in the event of defects to the rental item under the following conditions, i.e. it shall reimburse the Rental Customer a maximum of 4 days' rental fee for the rental items if 1.) a customer service technician has not commenced repair of the rental items within 6 working hours (Monday to Friday from 8.00 am - 5.00 pm), calculated from receipt of the Rental Customer's written request by the Lessor's customer service support team, 2.) the Lessor is unable to repair the defective rental item within a further 48 hours or to provide a replacement piece of equipment at the request of the Rental Customer; this does not apply to damage to batteries and chargers.

Any warranty claims of the Rental Customer shall expire immediately if unauthorised repairs are carried out on the rental item by the Rental Customer or third parties (i.e. without written approval from Toyota). The Rental Customer is not authorised to transfer the use of the rental item to a third party without the Lessor's written consent. In the event of unauthorised surrender, the Toyota damage service is not applicable (see Section 9).

#### §9. Machine breakdown insurance and damage service

- The Rental Customer shall insure the rental items against theft, fire, water and machine breakdown for the term of the agreement from the time of transfer by taking out machine breakdown insurance. In this case, the Rental Customer shall assign the rights arising from the machine breakdown insurance to the Lessor. The Lessor accepts the assignment.
- Evidence of this machine breakdown insurance shall be provided to the Lessor upon request. If the Rental Customer fails to comply with the obligation to take out machine breakdown insurance, the Rental Customer shall be obliged to reimburse the Lessor for any damage arising therefrom.
- If the Rental Customer concludes the damage service with the Lessor instead of a machine breakdown insurance, the Lessor shall assume liability for the damage covered by the damage service during the term of the agreement within the framework of the damage service conditions of the Lessor. The General Terms and Conditions for the damage service for industrial trucks of Toyota Material Handling Deutschland GmbH, as amended from time to time, apply. These can be found at <https://toyota-forklifts.de/agb>.
- The performance specifications stipulate whether the Rental Customer has concluded the damage service (hereinafter referred to as DS) via the Lessor. The term "without" means → no claims service by the Lessor. The scope of services can be seen in the enclosed damage service conditions. A premium change by the insurer entitles the Lessor to adjust the rental fee accordingly. The Rental Customer must pay a deductible (D) in the agreed amount for each claim. The amount of the deductible is specified in the performance specifications. Any damage must be reported to the Lessor in writing without delay (within 5 working days) with a description of the course of events, the exact time (date) and the parties involved. In the event of a breach of this duty to notify, the Rental Customer shall be obliged to compensate the Lessor for any damage resulting from the Rental Customer's failure to notify the Lessor of the damage.

#### §10. Transfer of use to third parties, seizure of the rental item & opening of insolvency proceedings

- The Rental Customer is not authorised to transfer the use of the rental item to a third party without the Lessor's written consent. Excluded from this are employees of the Rental Customer under temporary employment agreements. In the event of unauthorised surrender, the Toyota damage service is not applicable (see Section 9).
- In the event of interventions by creditors of the Rental Customer, in particular in the event of seizure of the rental items, the Rental Customer shall immediately notify the Lessor in writing and bear the costs of measures to remedy the intervention if they cannot be recovered from the other party.
- The Rental Customer shall notify the Lessor immediately if an application is made to open insolvency proceedings against the assets of the Rental Customer, one of its subsidiaries, or one of its customers who is in possession of the rental items.

#### §11. Warranty, liability of the Lessor and limitation of claims for compensation and right of removal

- Subject to Section 6.1 above, the Lessor shall be liable without limitation:
  - in the event of malice, intent or gross negligence;
  - within the scope of a guarantee expressly assumed by it;
  - for damages resulting from injury to life, body or health;
  - for the breach of a material contractual obligation, the fulfilment of which is a prerequisite for the proper performance of the rental agreement and on the observance of which the Rental Customer regularly relies and may rely ("cardinal obligation"), but limited to the damage reasonably to be expected at the time of the conclusion of the agreement;
  - in accordance with the provisions of the German Product Liability Act (Produkthaftungsgesetz).
- In all other respects, any liability on the part of the Lessor is excluded. In particular, the Lessor shall not be liable

for defects already existing at the time of conclusion of the agreement and claims for compensation asserted against it, especially for consequential damages such as loss of profit, damages due to interruption of business, loss of production and loss of use, as well as for indirect damages, insofar as no case of para. 1 is given.

3. The above liability rules apply accordingly to the conduct of and claims against the Lessor's employees, legal representatives and vicarious agents.
4. The right to reduction, in particular for the duration of repairs, is excluded; the Rental Customer's right to reclaim and/or claim damages remains unaffected. At the Lessor's request, the Rental Customer shall accept a replacement rental item.
5. Claims for compensation by the Lessor due to changes or deterioration of the rental item shall become statute-barred 12 months after the return of the rental item. Claims by the Rental Customer for reimbursement of expenses or permission to remove a device shall become statute-barred 12 months after termination of the rental agreement.

#### **§12. Payment, counterclaims, assignment, invoices**

1. The first rental fee shall be due upon receipt of the rental items. All further rental fees shall be due in advance by the 1st working day of the following month.
2. In all other respects, payments shall be made in accordance with the payment terms stipulated in the performance specifications. The payment date shall be the date on which the Lessor can dispose of the amount.
3. The Rental Customer is not entitled to the rights to refuse performance described in Sections 273, 320 German Civil Code (BGB) in the case of counterclaims disputed by the Lessor or not legally established. The same shall apply to the commercial right of retention under Section 369 German Commercial Code (HGB).
4. Offsetting with counterclaims is excluded if the counterclaims are disputed by the Lessor or have not been established by a court of law.
5. Claims of the Rental Customer arising from the business relationship may only be assigned after prior written consent of the Lessor.
6. Invoice complaints must be reported in writing within 14 days.

#### **§13. Termination**

1. As a matter of principle, rental agreements concluded for a specific rental period cannot be terminated prematurely by either contracting party.
2. The Rental Customer has the option to terminate the rental agreement before the end of the rental period. The following three conditions must be met cumulatively:
  - 1.) it is operationally necessary (change in technical equipment requirement),
  - 2.) 50% of the agreed term of agreement (at least 24 months) has been fulfilled,
  - 3.) the Rental Customer concludes a new agreement for another piece of equipment with the Lessor.The costs incurred by the Lessor as a result of the premature termination of the agreement may either be included in a new agreement or charged to the Rental Customer. The parties agree on 40% of the remaining rental fees for the still unfulfilled term of agreement, plus return freight costs and any dismantling costs. The Lessor reserves the right to prove a higher loss, while the Rental Customer reserves the right to prove a lower loss or no loss.
3. The Rental Customer's right to terminate the agreement without notice is stipulated by law; in all other respects Section 11 of the agreement applies. In the event of termination without notice by the Lessor for which the Rental Customer is responsible, the Rental Customer shall be obliged to compensate the Lessor for the loss incurred as a result (loss of rental income).
4. The rental agreement may be terminated by the Lessor without notice if:
  - a) compulsory enforcement measures are taken against the Rental Customer's assets;
  - b) insolvency proceedings are applied for against the Rental Customer;
  - c) the Rental Customer is in arrears with the payment of the rental fee or a not insignificant part thereof for two consecutive months or, in a period extending over more than two months, is in arrears with the payment of the rental fee in an amount equal to the rental fee for two months;
  - d) the financial circumstances of the Rental Customer have deteriorated substantially and the claims of the Lessor are endangered as a result;
  - e) the Rental Customer leaves the rental item to a third party without being authorised to do so;
  - f) the Rental Customer puts the rental item at considerable risk by neglecting its duty of care;
  - g) the Lessor, taking into account all the circumstances of the individual case, in particular any fault on the part of the Rental Customer, and weighing up the interests of both parties, cannot reasonably be expected to continue the rental agreement until the expiry of the notice period or until the rental agreement is otherwise terminated.
  - h) if the Rental Customer, without the consent of the Lessor, does not use the rental item or any part thereof as intended or moves it to another location without the prior consent of the Lessor.
5. Termination is only permissible after the unsuccessful expiry of a reasonable period set for remedial action or after an unsuccessful warning, unless this is not required by law.

#### **§14. Refinancing**

1. The rental item may be owned by a bank/financing company (the "Owner"), which makes the rental item available to the Swedish company Toyota Material Handling Europe Rental AB, CIN 556032-5002, which in turn makes the rental item available to Toyota Material Handling Deutschland GmbH (Lessor). Toyota Material Handling Europe Rental AB or the Owner shall have the right to conclude the agreement on behalf of the Lessor as far as making the rental item available to the Rental Customer is concerned. The parties agree not to amend this Agreement without the prior written consent of Toyota Material Handling Europe Rental AB and the Owner.

#### **§15. Place of jurisdiction and applicable law**

1. The place of jurisdiction for disputes between the parties shall be Hanover if the Rental Customer is a merchant within the meaning of the German Commercial Code, a legal entity under public law, a special fund under public law or if it has no general place of jurisdiction in Germany. However, the Lessor shall always also be entitled to bring an action at the Rental Customer's general place of jurisdiction. Statutory provisions on exclusive jurisdiction shall remain unaffected.
2. In addition to these "Rental Terms and Conditions", every rental agreement shall be governed by the law of the Federal Republic of Germany.