

MATERIAL HANDLING

Rental Terms and Conditions (RTG) of Toyota Material Handling Deutschland GmbH

*Short-term rental (STR) (Last amended July 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, structural changes, data protection

- The contractual agreement shall be decisive for the quality of the rental item.
- The Lessor reserves the right to deviate from the contractually agreed condition, insofar as such deviations are customary in the trade.
- 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 delivery of the rental item to the place of use specified by the Rental Customer, the continuing presence of the rental item at the place of use until the end of the rental period and the return of the rental item to the Lessor after the end of the rental period shall be at the Lessor's risk and expense.
- In the event of changing places of use, the Rental Customer must inform the Lessor in writing of the location of the rental item on an ongoing basis. Any change to the place of use shall require the express consent of the Lessor.

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

- The rental shall commence on the stated date of delivery of the rental item. Unless otherwise agreed, the stated delivery date is non-binding. A non-binding delivery date may be exceeded by the Lessor by up to 6 weeks; only after this period shall the Lessor be in default following a reminder sent by the Rental Customer. Force majeure as well as inability on the part of the Lessor through no fault of its own, in particular due to traffic delays or breakdowns, shall entitle the Lessor to withdraw from the agreement or to postpone delivery - for the duration of the disruptions to performance caused by these circumstances, but for no longer than 2 months - without the Rental Customer accruing any claims against the Lessor for breach of duty as a result; other claims of the Rental Customer (in particular due to impossibility for which the Lessor is not responsible or frustration of the basis of the agreement) shall remain unaffected.
- The rental period for which the Rental Customer is liable to pay costs shall commence on the actual day of delivery. The rental period ends on the agreed date. The Rental Customer must notify the Lessor in writing of the return date 3 working days before the return delivery.
- The Rental Customer undertakes to return the rental item on the agreed date in full and in good order and condition (an exact check for completeness, operating hours used, technical and visual defects shall take place in the Lessor's workshop). 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 rental item must be returned cleaned, fully fuelled and with the battery fully charged. If the rental item is returned by the Rental Customer, it must be returned to the Lessor (place of issue of the rental item) or to a place designated by the Lessor. In the event that the rental item is returned to a place other than that contractually agreed, the Rental Customer shall reimburse the Lessor for any additional expenses incurred as a result.
- Should it be impossible for the Rental Customer, culpably or for technically compelling reasons, to comply with the obligation incumbent upon it to return the rental item (return it or keep it ready for collection) in an operable, fully fuelled and cleaned condition, it shall be obliged to pay compensation.

§5. Rental price and calculation

- Unless otherwise agreed, all prices are quoted exclusive of statutory value added tax.
- The rental prices are based on 1-shift operation (≤ 8 hours/day, ≤ 100 hours/month) in normal industrial use. A 20% surcharge on the regular rental price will be charged for 2-shift operation (≤ 16 hrs/day, ≤ 200 hrs/month) and a 40% surcharge for 3-shift operation (> 16 hrs/day, > 200 hrs/month). The rental price does not include replacement batteries for multi-shift operation.
The rental price is calculated for at least one shift per day - regardless of whether the rental item is actually used. If the Rental Customer intends to use the rental item for more than one shift, this must be notified to the Lessor in writing without delay within 5 working days.
- The rental price is subject to market fluctuations and may be adjusted.

§6. Operating, maintenance and repair costs

- 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.
- Repair and maintenance costs due to normal wear and tear shall be borne by the Lessor to the extent of the "Full Service" package. As soon as any part of the equipment requires repair, this must be reported immediately to the Lessor in writing. For the purpose of repairs, the Rental Customer is obliged to keep the rental item accessible to the representatives of the Lessor during normal working hours.

§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 addition, it is the responsibility of the Rental Customer to protect the rental item from external damage, in particular from aggressive substances (acids, salts, alkalis, concrete, dust, etc.). 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 shall be entitled to carry out maintenance work on the rental item. For this maintenance, Section 6.2 shall apply accordingly. The rental items must be subjected to a daily visual and functional check in accordance with the Lessor's instructions. The Rental Customer is obliged to take proper care of the batteries.
- 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 resulting from the Rental Customer's failure to notify the Lessor of the damage.

§8. 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 10).
- 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.

§9. 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.
- The above liability rules apply accordingly to the conduct of and claims against the Lessor's employees, legal representatives and vicarious agents.
- 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.
- 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.

§10. Machine breakdown insurance and damage service

- The Rental Customer shall insure the rental items at the replacement value of the rental items against transport damage, theft, fire, water and machine breakdown for the term of the agreement from the time of transfer by taking out machine breakdown insurance. The Rental Customer shall provide evidence of the insurance cover at the request of the Lessor. In this case, the Rental Customer shall assign the rights arising from the machine breakdown insurance to the Lessor. The Lessor accepts the assignment.
- If the Rental Customer concludes the "Premium Miete Plus" damage service instead of a machine breakdown insurance (Section 10, sentence 1) with the Lessor, the Lessor shall assume liability for the damages covered by the damage service during the term of the agreement within the framework of the damage service conditions of the Lessor. Unless otherwise agreed in writing between the Rental Customer and the Lessor in the agreement, the Rental Customer shall bear the costs of the deductible in the amount of € 1,000 (capacity < 4 t), € 3,000 (capacity 4 t to < 9 t) or € 5,000 (capacity ≥ 9 t) for each claim. 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>. Unless otherwise agreed, the agreed damage service and the deductible apply for the term of the rental agreement.
- 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 time 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.
- During this period of validity, the Lessor has the right to demand a corresponding adjustment of the monthly damage service payment in the event of changes to the contractually required conditions of use. If, under the aforementioned conditions, no agreement is reached with the Rental Customer on the price adjustment for the damage service payment, the Lessor shall be entitled to terminate the damage service agreement with one month's notice to the end of the month.
- If the Rental Customer violates its obligation to take out insurance according to Section 10, 1 above or if the Lessor has not become the holder of the rights under the relevant insurance, the Rental Customer shall bear the full costs of repairing the damage.

§11. Payment, counterclaims, assignment

- The rental fee shall be paid monthly or, in the case of terms of less than one month, immediately.
- In all other respects, payments shall be made in accordance with the payment terms stipulated at the time of conclusion. The payment date shall be the date on which the Lessor can dispose of the amount.
- 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).
- Offsetting with counterclaims is excluded if the counterclaims are disputed by the Lessor or have not been established by a court of law.
- Claims of the Rental Customer arising from the business relationship may only be assigned after prior written consent of the Lessor.
- Invoice complaints must be reported in writing within 14 days.

§12. Termination

- As a matter of principle, rental agreements concluded for a specific rental period cannot be terminated prematurely by either contracting party.

2. 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.
3. 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.
4. The Rental Customer shall compensate the Lessor for the damage caused by the termination without notice (loss of rent).

§13. 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.