

General terms and conditions of HPZ GmbH

I. General

Our terms of business apply exclusively. We shall not accept any opposing contractual conditions or contractual conditions of the customer that deviate from our terms of business, unless we have expressly agreed to their application in writing. Our terms of business also apply if we render performance to the customer without reservation in the knowledge of opposing conditions or conditions of the customer that deviate from our terms of business. The lessor assumes no guarantee that the rental item is suitable for the intended application.

II. Contract initiation

HPZ GmbH (also referred to as the "lessor") reserves copyright to all documents it has created. The documents may only be used in connection with a contractual relationship and may not be made accessible to third parties or used for promotional purposes. Items handed over to the customer by HPZ GmbH prior to contract conclusion (e.g. proposals, concepts, etc.) are the intellectual property of HPZ GmbH; they may not be duplicated and made accessible to third parties. If no contract is established, the documents must be returned or deleted and may not be used. In other respects, the provisions of these general terms of business also apply to the precontractual relationship.

III. Periods (offer, performance and subsequent fulfilment)

1. The order of the customer constitutes a binding contractual offer, which HPZ GmbH may accept within two weeks by transmission of an order confirmation or by performance of the service.
2. The binding period for offers of HPZ GmbH amounts to two weeks.
3. Periods relating to the performance of an order by HPZ GmbH are non-binding, unless binding periods are expressly specified in the written order confirmation. Insofar as binding periods are agreed, the customer shall provide a suitable grace period of typically two weeks in the event of delay in performance on the part of HPZ GmbH.

IV. Beginning and interruption of the rental period

1. The rental period for the rental item with all parts necessary for its operation (technical functional unit) begins – unless otherwise agreed – a) on the day on which it is loaded onto a train or handed over to another carrier, or b) at the time defined for collection if the lessee is obliged to collect the item, or c) on the day on which the item arrives at the destination address.
2. If a group of items is rented, the rental period pursuant to paragraph 1. a) to c) begins on the day on which the last item belonging to the group has been loaded, handed over, provided or has arrived at the destination address. However, if the lessee uses the items delivered first at an earlier time, the rental period shall begin for each of these individual items in accordance with paragraph 1.

V. End of the rental period

1. The rental period ends – unless otherwise agreed – on the day on which the rental item with all its parts necessary for its operation arrives or is handed over at the agreed HPZ GmbH site, but not prior to expiry of the minimum rental period.
2. In the event that the return delivery is made directly to a new lessee or if HPZ GmbH changes the agreed place of return transport, the rental period shall end on the day of dispatch by the lessee.

VI. Return of the item

The lessee undertakes to return the item to the lessor in the same condition in which the item was originally provided.

VII. Rental calculation and payment

1. The rental price must be paid within 30 calendar days of invoice receipt.
2. If the lessee is in arrears on the payment of a due amount for longer than 14 calendar days after written warning or if a bill of exchange provided by the lessee is protested or if a check is not redeemed, the lessor shall be permitted to collect the item at the expense of the lessee, who must enable access to the item, and to otherwise dispose over the item without having to terminate the contract without notice. The claims on the part of HPZ GmbH arising from the contract continue to exist provided that they have not become invalid due to collection; however, HPZ GmbH must allow the offsetting of the amount, which it acquired or wilfully omitted to acquire after deduction of the costs incurred by retrieval and further disposal, through another use of the item within the agreed contractual term, in particular renting to a new lessee.
3. All remunerations defined in this contract are stated net in addition to the statutory value added tax valid on the day of invoicing.

VIII. Transport, loading and assembly costs

The rental price is specified without loading and transport costs and without the costs for the provision of fuels and personnel. The transport and carriage costs from the place of dispatch or collection of the item or the group of items as well as the transport and carriage costs of the return transport shall be assumed by the lessee. The lessee is responsible for the proper assembly or disassembly of the rental item, unless otherwise agreed.

IX. Duties of the lessee

1. The lessee undertakes a) to use the rental item only for its intended purpose and to protect same against excessive use, to carefully observe the pertinent accident prevention and occupational safety regulations and only to use professionally trained personnel. Furthermore, it is the responsibility of the lessee to ensure that its personnel are familiar with the handling of the rental item and that all safety precautions are observed,

b) to ensure maintenance and care as well as application-related inspections of the rental item at its own expense in accordance with the insurance association regulations (Berufsgenossenschaftliche Vorschriften – BGV), whereby the lessor is responsible for non-application-related, officially prescribed inspections – e.g. TÜV inspections –

- c) to promptly arrange any necessary repairs due to the fault of the lessee – including replacement parts – for maintaining the operational readiness of the rental item during the rental period in a proper and appropriate manner with the use of original replacement parts or – with the approval of the lessor – equivalent replacement parts at its own expense.
2. The replacement parts required pursuant to paragraph 1 c) shall be procured by the lessor upon payment.
3. The lessee is not permitted to carry out changes to the rental item, in particular extensions or installations, without the prior written consent of the lessor, nor to remove labels attached by the lessor.
4. The lessee may not grant any third party rights to the rental item (e.g. rental, loan), nor assign rights from this contract.
5. In the event that a third party asserts claims to the rental item by way of seizure, attachment or similar, the lessee undertakes to promptly notify the lessor in writing and to inform the third party accordingly in writing.
6. A right of retention on the part of the lessee is excluded, unless the counterclaim of the lessee originates from the same contractual relationship and is undisputed or legally determined. The lessee may only offset with undisputed or legally determined claims. Without prejudice to the provision in Section 354a of the German Commercial Code (Handelsgesetzbuch – HGB), the lessee may not assign its claim to a third party.

X. Reservation of ownership

In any case, HPZ GmbH reserves the ownership and other rights to contractual items until settlement in full of its claims arising from the contract.

XI. Hindrance to performance

Force majeure of any kind, unforeseeable operating, traffic or dispatch disruptions, fire damages, unforeseen labour shortages, energy, raw material or fuel shortages, strikes, lockouts, acts of terrorism, official orders or other hindrances beyond the responsibility of the party liable to render performance, which delay, prevent or make unreasonable performance of the service, dispatch or acceptance, shall release said party from the obligation to render performance or acceptance for the duration or scope of the disruption. If binding periods are exceeded by more than eight weeks as a result of the disruption, each party shall be permitted to withdraw from the contract.

XII. Compensation

1. The lessee shall be liable for damages incurred to the rental item during the rental relationship or the loss thereof, including fixtures and accessories, whereby the amount of the damage shall be determined either by the repair costs plus any value reductions or by the replacement value at most.
2. Compensation claims on the part of the lessee against HPZ GmbH are excluded in the event of a slightly negligent breach of duty by HPZ GmbH, its employees and other vicarious agents, unless the breach concerns a duty that is of material importance for the fulfilment of the contractual purpose (known as a cardinal duty).
3. The liability of HPZ GmbH is limited to the typically incurring damage.
4. The above limitations do not apply to damages arising from injury to life, limb and health. Mandatory statutory liability provisions, such as liability in the assumption of a guarantee or according to the Product Liability Act (Produkthaftungsgesetz – ProdHaftG), remain unaffected.

XIII. Limitation

Insofar as a liability for damages, which do not concern injury to life, limb or health of the customer, is not excluded for slight negligence, such claims shall lapse within one year beginning with the occurrence of the claim.

XIV. Applicable law, jurisdiction and place of fulfilment

1. The law of the Federal Republic of Germany applies. If the customer is a merchant, a legal entity under public law or a special fund under public law, the place of jurisdiction shall be the court competent at the registered address of HPZ GmbH. HPZ GmbH is also permitted to file a lawsuit against the customer at its general jurisdiction.
2. Unless otherwise determined by the contract, the place of fulfilment and payment is the registered address of HPZ GmbH.

XV. Effectiveness clause

1. Contractual amendments and supplements must be made in writing to be valid. No verbal ancillary agreements have been made.
2. Legally significant declarations and notifications, which the customer is required to make to HPZ GmbH or another third party, must be made in writing.
3. Should individual provisions of these general terms of conditions be invalid in part or full, this shall not affect the validity of the remaining provisions or the remaining parts of such provisions. The parties shall replace an invalid provision with a valid provision that comes as close as possible to the economic purpose of the original invalid provision.

XVI. Miscellaneous

The customer is informed that the installation of sound insulation mats in urban areas may be subject to permission and fees if a statute of fees for special use or a corresponding regulation exists for the area concerned. If this is the case, the customer must obtain the corresponding permission and bear any costs incurred.