

## Terms and Conditions for Renting Instruments and Tools (February 2019)

### 1. Scope of Application

- 1.1 These terms and conditions apply to the rental of brand-new or used respectively refurbished instruments and tools (hereinafter "**Rental Object**" or "**Rental Objects**") and the sale of related consumables by an affiliate of DURAG GmbH, Kollaustrasse 105, 22453 Hamburg in the meaning of Art. 15 et seq. of the German Stock Corporation Act (*Aktiengesetz*) (hereinafter "**Lessor**") to a third party (hereinafter "**Lessee**"). Rentals are carried out exclusively subject to the following terms and conditions. The Lessee's general terms and conditions shall only apply to the extent they have been approved by the Lessor in writing.
- 1.2 Any side agreements and other amendments require the written form, including this clause.

### 2. Orders and Conclusion of Contract

The Lessor will provide the Lessee with a non-binding offer upon request. Based on such offer the Lessee may place an order. However, if deviating/additional agreements are made between the Lessee and the Lessor or if the Lessor has not provided the Lessee with an offer beforehand, the contents of any agreements documented in text form shall be the prevailing contractual basis. The offer shall however become an integral part of the contract to the extent it contradicts any arrangements made thereafter. After the Lessee has placed an order, the Lessor shall provide the Lessee with an order confirmation. Henceforth, the contents of such order confirmation shall be authoritative for the contractual relationship, provided that the offer or the arrangements, respectively, shall remain parts of the contract to the extent they are not in conflict with the order confirmation.

### 3. Rental Term

- 3.1 The rental term shall begin
- with the provision of the Rental Objects as of the start of contract as agreed upon; or
  - in case the Rental Objects are shipped with the date of dispatch (start of contract); or
  - in case the Rental Objects are collected by the customer with the date of handover to the Lessee.
- 3.2 The rental term shall end with the date of receipt of the Rental Objects by the Lessor (date of the confirmation of goods received according to the return delivery note).

### 4. Shipment of Rental Objects

- 4.1 Rental Objects will be shipped against payment of shipping costs from the delivery warehouse of the Lessor
- by express service (DHL, TNT, air freight and the like); or
  - pursuant to the Lessee's shipment instructions; or
  - by collection by customer.
- In case of shipment instructions the Lessee shall be responsible for any damages to the Rental Object to the extent such damage is caused as a consequence of the instructions given by the Lessee.
- 4.2 If any transport protection is required, the Lessee shall bear the respective additional costs.

### 5. Return of Rental Objects

- 5.1 The Lessee undertakes to return the Rental Objects in full, i.e. in particular including the original packaging and any and all accessories such as original data carriers, manuals etc., to the place of receipt stated in the order confirmation at the end of the rental term agreed upon. Any costs/expenses incurred in the course of the return transport shall be borne by the Lessee.
- 5.2 Any costs for damages, total losses and unusual repairs shall be borne by the Lessee. If such costs are covered by any insurance, the Lessee shall be responsible to handle the settlement with the respective insurer. The Lessee undertakes to maintain liability insurance with sufficient coverage, of which he shall provide evidence to the Lessor upon request.

### 6. Prices

- 6.1 The rental prices for individual Rental Objects are listed in the price list applicable at the time of the sending of the order confirmation. The prices for the Rental Objects and consumables apply ex delivery warehouse of the Lessor excluding packaging and freight costs plus statutory VAT applicable at the time of conclusion of contract if applicable.
- 6.2 The Lessee shall bear the following additional costs:
- Basic set of required consumables;
  - Replacement of materials of Rental Objects not included in the return and defect materials;
  - Customs handling;
  - Preparation of transport papers for dangerous goods.
- 6.3 Precondition for the conclusion of contract is a minimum rental term, which depends on the type of Rental Object (with a minimum rental term of 7 days) and a minimum rental order value of 200.00 Euro (excluding any additional costs).
- 6.4 Should the customer withdraw from contract prior to the agreed beginning of contract, the Lessor is entitled to request from the Lessee a compensation in the amount of at least the minimum rental order value plus any expenses incurred for packaging and shipment as well as the items listed under Sec. 6.2.
- 6.5 Instruments and tools from the renting stock may, to the extent available and upon prior inquiry, be purchased by the Lessee pursuant to an offer to be requested by the Lessee. For any sale the conditions of sale of DURAG GROUP apply.

### 7. Payment

- 7.1 The rental price shall be payable upon maturity for the rental term or the indicated billing period, respectively.
- 7.2 Invoice is issued upon delivery and subsequently in intervals of one month or upon return of the Rental Objects, respectively. All other prices are charged after the respective service has been provided.
- 7.3 Unless provided for otherwise, invoices shall be payable without deductions within 10 days after the invoice date.
- 7.4 The Lessee may only offset with claims, which are undisputed or have been finally determined by a court.

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### 8. Export

- 8.1 The Lessor's obligation to fulfil the contract is subject to the proviso that the fulfilment is not prevented by any impediments arising out of national or international foreign trade legislation or by any embargos (and/or any other sanctions).
- 8.2 Without the Lessor's explicit written approval the Lessee may not transfer the Rental Objects outside of the Federal Republic of Germany. The Lessee shall inform the Lessor about the address of application, or at least of the country of application, upon placement of order at the latest. Only then will the Lessor be able to conduct the approval test with regards to the respective country of application for the Rental Objects to be delivered from Germany.
- 8.3 If the Lessee passes on any goods delivered by the Lessor (hardware and/or software and/or technology as well as any documentation with regards thereto, irrespective of the manner of provision) or the works and services provided by the Lessor (including technical support of any kind) to third parties in Germany or abroad, provided that the Lessor grants a respective written approval, the Lessee shall fulfil any applicable rules of any national and international (re-)export control laws. In any such case he shall comply with the (re-)export control regulations of the Federal Republic of Germany and the European Union.
- 8.4 If required for export control checks, the Lessee shall promptly provide the Lessor upon request with any and all information regarding the final recipient, the final destination and the intended use of the goods or works and performances, respectively, provided by the Lessor, as well as any applicable export control restrictions.
- 8.5 The Lessee shall fully indemnify the Lessor from any and all claims asserted by authorities or other third parties towards the Lessor for the non-fulfilment of the aforementioned obligations under export control rules by the Lessee and undertakes to compensate the Lessor for any and all damages and expenses incurred in this connection - in particular in case of any unauthorised transfer of the Rental Objects outside of Germany -, unless the Lessee is not responsible for such breach of obligation. The aforementioned provision does not reverse the burden of proof.
- 8.6 If it is determined that an individual export authorisation is required, the Lessee shall act as exporter and shall apply for the individual export authorisation himself.

### 9. Material Defects and Warranty

- 9.1 The Lessee shall be solely responsible for selecting the Rental Objects suitable for the respective purpose as well as for their utilisation and the achieved results.
- 9.2 The Lessor warrants that the Rental Objects are fully operational for the rental term and comply with the manufacturer's specifications during normal use pursuant to Sec. 12. Rental Objects, which are or become defective or which do not comply with the manufacturer's specifications will be, at the Lessor's own discretion and at his own expense (including any related transport costs) either repaired, inspected, calibrated pursuant to DIN EN ISO 9001 or any other respective quality standard, as applicable, or replaced. For such purpose, the Lessee shall send such objects to the place indicated by the Lessor.
- 9.3 Initially, the Lessor shall be given the opportunity to carry out the measures stated in Sec. 9.2 within a reasonable period. If such measures fail repeatedly, the Lessee shall be entitled to

terminate the contract or to reduce payment. Any claims for compensation shall be subject to Sec. 10.

- 9.4 The Lessor may separately charge the Lessee at list prices with the costs for the diagnosis and the rectification of faults and damages caused by any improper handling, unauthorised modifications or any other circumstances, for which the Lessor is not responsible.

### 10. Claims for Compensation and Liability

- 10.1 Any claims for compensation of damages and reimbursement of expenses by the Lessee (hereinafter "**Claims for Compensation**") irrespective of the legal grounds, in particular for any breach of duties resulting from the contractual relationship and unlawful acts, shall be excluded to the extent legally permissible.
- 10.2 This shall not apply in case of mandatory liability, e.g. under the German Product Liability Act, in cases of malicious intent, gross negligence, in cases of injury to life, limb or health, in absence of warranted characteristics, in case of fraudulent concealment of a defect or breach of material contractual duties. Material contractual duties are duties, the fulfilment of which is a prerequisite for proper performance of contract and in the compliance of which the contractual partner trusts and may trust. Any Claim for Compensation for the breach of material contractual duties shall, however, be limited to typical contractual and foreseeable damages, except in cases of malicious intent or gross negligence or in cases of liability for injury to life, limb or health.
- 10.3 The period of limitations for Claims for Compensation under this Sec. 10 shall be 12 months as of the date of passing of risk. This does not apply in case of mandatory liability, e.g. in cases of malicious intent, gross negligence or in cases of liability for injury to life, limb or health.
- 10.4 The aforementioned provisions of Sec. 10.1 to Sec. 10.3 do not change the burden of proof for the disadvantage of the Lessee.

### 11. Passing of Risk

The Lessee shall bear the risks for the Rental Objects ex delivery warehouse of the Lessor until they arrive at the indicated return address.

### 12. Use of Rental Objects

- 12.1 The Lessee shall ensure that the Rental Objects are only used by expert professionals and only for the agreed purpose or, if no purpose has been agreed upon, for the intended purpose according to the manufacturer's manual, as amended, for the respective Rental Object. The Lessee must strictly comply with the instructions of the manufacturer and the Lessor. The utilization of any consumables other than those delivered by the Lessor or allowed by the manufacturer is not permitted. The Lessee shall be liable to the extent legally permissible for any and all damages incurred due to the non-compliance with the rules and/or instructions.
- 12.2 In case of errors, defects or damages of the Rental Object and in case of loss or theft, the Lessee shall immediately notify the Lessor and await the Lessor's instructions. The Lessee shall not be entitled to make or try to make any modifications, changes or adjustments or repairs to the Rental Object, unless he has been authorized to do so in writing by the Lessor. Any costs for damages,

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total losses and unusual repairs, for which the Lessee is responsible, shall be borne by the Lessee.

- 12.3 Any changes to the Rental Object, including the company logo and identification number of the manufacturer or the Lessor, standard specification plates, test stickers and any other labels, are not permitted.
- 12.4 The Lessor shall be entitled to have the Rental Object inspected at any time at the place of application. The costs for such inspection shall be borne by the Lessee if such inspection unveils any breaches of contract.
- 12.5 Packaging, manuals and accessories are part of the Rental Object and property of the Lessor. All parts must be treated with care and fully returned.
- 12.6 Any supplied software may only be used in accordance with the terms and conditions of the respective licensor. The Lessee shall be responsible to ensure that any use of the software by himself or his agents contrary to contract is excluded. The Lessee is aware that any improper use may result in Claims for Compensation in unlimited amounts asserted by the license holder. In this regard, the Lessee indemnifies the Lessor and his affiliates in the meaning of Art. 15 et seq. of the German Stock Corporation Act from any and all claims of the license holder.

### 13. Termination

The Lessor may terminate the rental agreement before the expiration of the agreed rental term without observing any notice period if the Lessee breaches any provisions of the rental agreement or in case of another good cause. Upon the date of the termination, the Rental Objects shall be sent immediately to the return address indicated by the Lessor.

### 14. Conditions of Sale for Consumables

In case of a sale of consumables by the Lessor the "General Terms and Conditions of Sale for Products and Services of the Electrical Industry", as amended, shall additionally apply. If such terms and conditions of sale are unknown to the Lessee, he may request them from the Lessor.

### 15. Data Protection

The Lessee acknowledges and agrees that the Lessor may collect, store, process, use, submit to third parties and delete any and all data of the Lessee resulting from the business relationship within the purpose of the contractual relationship and to the extent legally permissible in compliance with the EU General Data Protection Regulation, the new German Federal Data Protection Act as well as any and all other relevant data protection provisions. The Lessor shall have the right to process contact information and data for the purpose of processing orders and to process such contact information and data to selected and designated service partners. For such purpose, the data may also be processed by and between the affiliates of the Lessor in the meaning of Art. 15 et seq. of the German Stock Corporation Act (hereinafter the "**Corporate Group**"). Within the Corporate Group, the data is processed based on the processing of orders in accordance with the provisions of the EU General Data Protection Regulation. In other respects and in particular with regards to the information duties pursuant to the EU General Data

Protection Regulation reference is made to the privacy notice of the Lessor, which is available under [www.durag.de](http://www.durag.de).

### 16. Confidentiality, Place of Jurisdiction, Miscellaneous

- 16.1 The Lessee shall not make any information obtained from the Lessor available to third parties, unless to the extent they are already in the public domain or legitimately known in other ways. The Lessor may disclose any confidential information of the Lessee, which is explicitly identified as such, to companies within the Corporate Group, provided that they remain secrecy and provided that Sec. 15 shall apply accordingly.
- 16.2 In case of a seizure of Rental Objects the Lessee shall immediately notify the Lessor in writing and forward the seizure report. The same shall apply if any rights in the Rental Objects are claimed by third parties (e.g. land owners, mortgage holders etc.).
- 16.3 If the Lessee is a businessman in the meaning of the German Commercial Code, the exclusive place of jurisdiction for any and all (including non-contractual) disputes shall be Hamburg, Germany. The laws of the Federal Republic of Germany shall exclusively apply, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 16.4 Should a provision of these terms and conditions or the contracts concluded pursuant thereto be or become invalid, the validity of the remaining provisions shall remain unaffected thereby. The contractual partners are obligated to replace such invalid provision with a provision, which comes closest to the economic intention of the original provision.