

IBAK Rental Conditions (MB 01/2023)

I. Conclusion of contract

1. Quotation and price inquiries only intended as information to potential customers must be clearly marked as such.
2. All quotations and price information provided by the lessor are generally non-binding and are valid subject to availability of the potential rental object.
3. A rental agreement based on these IBAK Rental Conditions is concluded in writing or in text form or based on a binding telephone order made by the lessee which must be confirmed by the lessor in writing or in text form.

II. Rental object, transfer of risk

1. The lessor shall hand over the rental object(s) to the lessee in a proper and fully operational condition at the lessor's office during its normal business hours.
2. The handover date is non-binding unless it has been otherwise expressly agreed in writing.
3. If the lessor is in default with the handover, its liability towards the lessee in case of ordinary negligence is limited to compensation of no more than the amount that the lessee would have had to pay as a rental price for the period of delay. Further claims for damages by the lessee are excluded with the exception of those based on intent or gross negligence on the part of the lessor.
4. If the rental object is a vehicle, the lessor shall hand over the vehicle to the lessee with a full fuel tank.
5. The lessee has the option to examine the rental object(s) at the time of handover. During the handover of the rental object(s), a handover protocol must be drawn up and then signed by both parties of the rental agreement. This protocol must include any apparent defects and objections that are still to be rectified by the lessor. Subsequent notification of defects which allegedly existed at the time of handover is excluded.
6. If, at the time of handover, the lessee finds a defect in the rental object(s) which makes the contractual use of the object(s) impossible or which would significantly impair such use, the lessor is entitled to provide the lessee with an equivalent rental object or objects.
7. The lessor must remove all defects reported immediately at handover by the lessee within a reasonable period of time.
8. At handover, the lessee or any third party commissioned by the lessee must identify itself by means of a valid national identity card or passport. Every person who is to operate a vehicle must be in possession of a valid driver's licence. The lessor shall make copies of all relevant documents. These copies will be destroyed 6 months after the end of the contractual period.
9. The full range of equipment must be listed in the handover protocol.
10. If the rented object(s) is/are dispatched to the lessee at its behest, the risk of transportation is transferred to the lessee at handover of the rental object(s) to the person responsible for the transport. All packaging and shipping costs shall be borne by the lessee.
11. Once the lessee confirms the handover of the rental object(s) by signing the handover protocol, the risk is transferred to the lessee.

III. Lessee's duty of care and maintenance

1. The lessee is obligated to use the rental object(s) appropriately and in compliance with the rental agreement, to handle it/them with care and must ensure that the rental object(s) is/are only operated by persons who have been instructed and trained to do so. It is not allowed to operate the rental object(s) without reading the operating instructions beforehand. Operation must be carried out in accordance with the operating instructions provided at the time of handover and in compliance with any applicable accident prevention regulations. Furthermore, the lessee is obligated to prevent any excessive straining of the rental object(s) in any way. The rental objects must only be operated with original accessories.
2. The lessee must arrange for ongoing checks at its own expense in accordance with the operating instructions. Such checks include checking and topping up engine oil, coolant, brake fluid, antifreeze, liquid grease, bearing and shaft grease (winch), windscreen wiper fluid, battery water and tyre pressure. A self-test and a leak test must be carried out on a daily basis.
3. The lessee is responsible, at its own expense, to procure any required wearing parts (such as illuminants, protection domes or tractor tyres) via the service points indicated by the lessor. Only original spare parts may be used.
4. In case of operational malfunctions or other technical malfunctions of the rental object, the lessee must inform the lessor immediately and permit any required repairs to be carried out by the lessor itself or by a third party commissioned by the lessor. If the lessee fails to provide such notification, it shall be liable for any loss incurred by the lessor arising from such malfunction. The costs for the repair must be borne by the lessee as listed in the invoice unless such repair falls under the warranty stipulated in clause IV.1.
5. Furthermore, the lessee is not entitled to make any changes to the rental object(s).
6. The lessee must inform the lessor immediately if the rental object(s) is/are to be seized by third parties to collect a debt owed by the lessee. In this case, it must allow the lessor to access the protocol of the proceedings of the seizure. The lessee is obligated to inform the third party in writing that the rental object(s) is/are the property of the lessor.
7. The lessee shall ensure that all inscriptions and labels attached to the rental object(s), such as functional inscriptions, owner's label, designation of origin, serial number, etc., remain undamaged and readable.

IV. Sub-leasing

1. The lessee is not allowed to sublease the rental object(s).

V. Rental period

1. The lease is concluded for the rental period specified in the rental agreement.
2. A working day is defined as a period of 24 hours beginning with the rental period specified in the rental agreement.
3. A working week is defined as 5 working days. Sundays, weekends and public holidays are not considered working days.
4. The lessee shall notify the lessor about their intention to extend the agreed rental period in good time before the end of the agreed rental period and must obtain the agreement of the lessor. If the lessor refuses to extend the rental period, the rented object(s) must be returned punctually on the agreed return date. All further provisions of the original rental agreement remain effective, even if there is only an oral agreement on the extension of the rental agreement. The lease is not considered to be extended if the lessee simply continues to use the rental object after the rental period has expired. A tacit extension of the rental agreement (as stipulated under the German Civil Code – §545 BGB) shall not apply.
5. If the rental agreement is not extended (regardless of the reason), all rights granted to the lessee under the rental agreement shall cease. Notwithstanding the aforementioned, the lessee is obligated to pay the respective rental price for each working day commenced for the duration of such unauthorized extension of the rental period. The lessor reserves the right to provide evidence of further damage.
6. The rental object may only be returned during the usual business hours of the lessor.

VI. Rental price, rental payment, deposit

1. The rental price for one working day according to clause V.2 above or one working week according to clause V.3 above is calculated based on the assumption that the rental object is used in 8-hour single-shift operation. If the rental object is used in two-shift or three-shift operation, the rental prices per working day and/or per working week will be increased accordingly. If the lessor only subsequently becomes aware of the fact that the rental object has been used in multi-shift operation, a surcharge will be charged to the lessee in accordance with clause 2 above which will include a contractual penalty of 20%. The lessor expressly reserves the right to claim further damages.
2. If advance payment and/or the payment of a deposit are agreed, the rental object will only be handed over after the lessor has received full payment. If advance payment was agreed, this will also apply for any extension of the rental period agreed between the two parties.
3. Payments by the lessee must be made as a non-cash money transfer to one of the following bank accounts held by the lessor:
 - a. Financial institution: Kieler Volksbank
Sort code: 21090007, Account number: 30247802
IBAN: DE42 2109 0007 0030 2478 02
BIC: GENODEF1KIL
 - b. Financial institution: Commerzbank AG Kiel
Sort code: 21040010, Account number: 750280000
IBAN: DE79 2104 0010 0750 2800 00
BIC: COBADEFF 210
 - c. Financial institution: Fördesparkasse Kiel
Sort Code: 21050170, Account number: 6704 30
IBAN: DE97 2105 0170 0000 6704 30
BIC: NOLADE21KIE
4. All prices stated in the agreement are net prices and are to be understood plus legal VAT.

VII. Contractual exclusion of set-off and right of retention

1. The lessee is not entitled to offset or assert a right of retention against the rental price claim by the lessor unless the lessee's claim to be offset is undisputed or has been established by a legal ruling.
2. The lessee shall only be entitled to assert a right of retention if its counterclaim is based on the same contractual relationship.

VIII. Lessor's warranty

1. A defect in the rental object will be repaired at the lessor's expense. The procedure for such repair is stipulated under clause III.4.
2. Furthermore, the statutory right of abatement shall apply.

IX. Lessor's liability

1. The lessor is not liable for damage and defects caused by improper use of the rental object by the lessee, its staff or other third parties.
2. The lessor is liable for damages for whichever legal reason only in the event of intent or gross negligence.
3. In the event of ordinary negligence, the lessor is also liable for damage resulting from
 - a. injury to life, body or health;
 - b. violation of an essential contractual obligation, i.e. an obligation, the fulfilment of which is essential for the proper execution of the rental agreement, and on the fulfilment of which the lessee may regularly rely. In this case, however, the lessor's liability is limited to the reimbursement of foreseeable damage that typically occurs. Compensation for indirect consequential damage, such as lost profits, is excluded.

4. Insofar as the lessor's liability is excluded or limited, this provision shall also apply to the liability of any of their legal representatives, employees and vicarious agents.

X. Lessee's liability

1. The lessee is liable for loss and destruction, damage and malfunctions of the rental object(s) during the rental period regardless of whether this event was caused by itself, its vicarious agents or other third parties. In any of the aforementioned cases, the lessee shall inform the lessor immediately about the case of damage. If the lessee fails to provide such notification, it shall be liable for any loss incurred by the lessor arising therefrom.
2. In return, the lessor undertakes to assign to the lessee any claims for damages against third parties causing the damage.
3. The lessee undertakes to indemnify and hold harmless the lessor in the event that the lessor is held liable by third parties for damage related to the rental object(s).
4. The lessee shall be liable for all traffic violations committed with the rental object during the rental period.
5. In the event of shipping damage, claims for compensation against third parties must be asserted within the time limit. The lessor must be informed immediately. Damage that can be perceived from the outside must be confirmed by a corresponding note on the consignment note before acceptance of the rental object(s). In the case of damage that is not visible from the outside or missing parts (loss) which is not ascertained until the rental object(s) is/are unpacked, the rental object(s) must be left in the condition it/they was/were found and a written request must be sent to the transport company to determine the damage.

XI. Lessor's right of inspection and examination

1. During the rental period, the lessor is entitled to inspect and examine the rental object(s) after prior arrangement with the lessee during normal business hours or to have the rental object(s) inspected and examined by an authorized third party. The lessee is obligated to ensure that the lessor can inspect and examine the rental object(s) at short notice.

XII. Termination

1. A contractual notice of termination of the rental agreement by the lessee during the agreed rental period is excluded.
2. Both parties are entitled to terminate the rental agreement extraordinarily without notice for an important reason. Important reasons for the lessor are in particular:
 - a. the lessee's default in payment;
 - b. the improper use of the rental object by the lessee.

XIII. Returning the rental object(s)

1. At the end of the rental period, the lessee is obligated to return the rental object(s) in a fully operational, fully refuelled, cleaned and proper condition. Otherwise, the lessor is entitled to take any required measures to achieve this itself and to charge the lessee for the costs incurred.
2. Until the proper condition of the rental object(s) is established, the rental object(s) shall not be deemed to have been returned. The same applies if the rental object(s) is/are not complete when it/they is/are returned.
3. The rental object(s) must be returned early enough during the lessor's normal business hours to allow the lessor to inspect the rental object(s) on that same day.
4. All rental object(s) must strictly be returned to the lessor's registered office at: IBAK Helmut Hunger GmbH & Co. KG, Wehdenweg 122, D-24148 Kiel, Germany. Any other arrangements must be agreed in writing as part of the rental agreement.
5. If the lessee becomes aware that it will not be able to comply with the agreed date of return, it must contact the lessor immediately. Otherwise, the lessor is entitled to retrieve the rental object(s) at the expense of the lessee.
6. On return of the rental object(s), it/they shall be subjected to an initial visual inspection in the presence of both parties. The result of this inspection shall be recorded in a return protocol which must be signed by both parties. The lessor reserves the right to carry out a comprehensive final inspection, also to detect any concealed damage.
7. The lessor also reserves the right to carry out a comprehensive final inspection if the rental object(s) is/are returned at the lessee's location.
8. If the final inspection reveals any defects on the rental object(s), the lessor shall remove such defects. Any costs incurred for this shall be borne by the lessee.
9. If the lessee waives its right to take part in a joint visual inspection in whole or in part, the lessor shall be considered the sole inspector. In this case, the lessor is entitled to determine shortfalls and to make a binding assessment of the condition of the rental object(s) at its own discretion. The lessee thereby automatically and irrevocably acknowledges all defects found subsequently and agrees to assume the costs required for their removal.
10. In case of doubt, the lessee must provide proof that damage or malfunctions found on the rental object(s) were not caused by the lessee's fault and that they must therefore not be indemnified by the lessee.
11. If the lessee decides to return the rental object(s) with a freight forwarder or a delivery service, this shall be considered to be a waiver of the lessee's right to take part in a joint visual inspection. Shipment shall be at the lessee's expense and risk.

12. A deposit received for the rental object(s) will be repaid without interest after termination of the rental agreement as soon as the rental object(s) has/have been returned in accordance with the provisions of the rental agreement provided that there are no other claims under the rental agreement, unless otherwise stipulated by law.

XIV. General, place of performance, jurisdiction, applicable law

1. The above provisions constitute the entire agreement made between the contracting parties. There are no supplementary agreements. Any amendments or additions must be made in writing. This also applies to any amendment of this written-form clause.
2. Should any provision of this agreement be or become invalid or ineffective in whole or in part, this shall not affect the validity of the remaining provisions. In such a case, the contractual parties shall negotiate and jointly agree to replace this invalid or ineffective provision by a valid and effective provision that comes closest to the intended economic purpose of the same. Both contracting parties undertake to make the declarations of intent required in this respect.
3. Place of performance for all contractual obligations is Kiel.
4. The place of jurisdiction for merchants, legal entities under public law or special funds under public law is Kiel. The lessor is also entitled to file a suit at the place in which the lessee's registered office is located.
5. The agreement shall be governed by the law of the Federal Republic of Germany to the exclusion of all international and supranational (contractual) legal systems, in particular the sales law of the United Nations.