



# **Framework**

**for**

# **General Rental Conditions**

## Introduction

This document had been developed during 2007 by the General Rental Conditions Committee of the European Rental Association (ERA).

It is a non-exhaustive comparative analysis of approaches used by existing associations and companies from nine European countries in their standard terms and conditions.

The document can be used, by associations as well as companies, as a reference point for developing their own standard terms and conditions for the rental of equipment to customers within their own and in other European countries.

This document should be used on a voluntary basis and rental companies are free to adopt alternative contract terms.

The ERA board have stated that this framework document is freely available to both members and non-members of the ERA.

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**1) DEFINITIONS**

- a) The **Rental Company / Owner / Lessor / Supplier / Us** is the Company, firm, business, undertaking or person renting / letting the Rental Equipment on hire and includes their successors, assignees or personal representatives.
- b) The **User / Hirer / Lessee / Customer / You** is the Company, firm, person, Corporation or public authority renting in the Rental Company's Rental Equipment and includes their successors, assignees or personal representatives.
- c) **Rental Equipment** covers all classes of plant, machinery, vehicles, equipment, tools and accessories thereof, which the Rental Company agrees to rent to the User.
- d) **Rental Period** shall commence from the time when the Rental Equipment is collected by the User from the Rental Company's depot or place of work or place where last employed, or when the Rental Equipment is delivered to site by the Rental Company. The Rental Period will end when the Rental Equipment is returned to the Rental Company's named depot or other agreed location by the User, or is collected from site by the Rental Company.

**2) LOADING AND UNLOADING**

The User will be responsible for the unobstructed access to the site, and unless otherwise agreed in writing, for the loading and unloading of the Rental Equipment.

If the Rental Company supplies any personnel for loading and unloading, then they will be under the direction and control of the User.

If damage occurs to the Rental Equipment during this procedure, then the User will be liable as per clause 7.

**3) GROUND CONDITIONS**

The User will supply and lay suitable material for soft ground conditions (including private access roads, tracks, and during delivery and collection) for all Rental Equipment which is being transported over, travelled over or worked on the site.

#### **4) OPERATORS**

The User may decide which option they wish to adopt when renting out their Rental Equipment.

##### **Option 1 – Operator and Other Personnel**

When a driver or operator or any person is supplied by the Rental Company with the Rental Equipment, the Rental Company shall supply a person competent in operating the Rental Equipment or for such purpose for which the person is supplied and such person shall be under the direction and control of the User. Such drivers or operators or persons shall for all purposes in connection with their employment in the working of the Rental Equipment be regarded as the servants or agents of the User (but without prejudice to any of the provisions of Clause 7) who also shall be responsible for all claims arising in connection with the operation of the Rental Equipment by the said drivers/operators/persons. The User shall not allow any other person to operate such Rental Equipment without the Rental Company's previous consent to be confirmed in writing.

##### **Option 2 – Operating Personnel**

If the Rental Equipment is hired with operating personnel, the operating personnel may only be used for operation of the Rental Equipment and not for other purposes. The Rental Company shall only be liable for damage caused by the operating personnel if it has not selected suitable personnel for the task. In all other cases the User shall be liable.

#### **5) BREAKDOWNS, REPAIRS AND ADJUSTMENT**

- a) The User must immediately inform the Rental Company of any breakdown to the Rental Equipment, and allow the Rental Company's representatives access to the Rental Equipment. The User's representatives must be given an opportunity to assess the damage to the Rental Equipment.
- b) The User cannot commence any repairs without the Rental Company's written agreement, unless it is for the replacement or repair of tyres or tracks, which must be to manufacturer's specifications.
- c) If the Rental Equipment cannot be repaired, then the Rental Company must replace the Rental Equipment with a comparative make and model within 5 working days. If this cannot be accomplished, then the rental agreement will terminate immediately, with clause 6(a) taking immediate effect.
- d) If the User contributes to the breakdown of the Rental Equipment, then clause 7 applies.
- e) If the Rental Equipment breaks down due to a defect, an inherent fault, or a fault not ascertainable by reasonable examination, then the User will receive full allowances for the rental charges for the duration of the breakdown.

**6) LIMITATION OF RENTAL COMPANY'S LIABILITY**

- a) The Rental Company will not be held liable for any loss either direct or indirect which the User or third party has incurred as a consequence of Rental Equipment's failure or some other cause which is outside the Rental Company's reasonable control or which is due to the User's action or inaction.
- b) Where the Contract (including these Clauses) provides for any allowance which is made against rental charges, such allowance shall be the User's sole and exclusive remedy in respect of the circumstances giving rise to the allowance, and such remedy shall be limited to the amount of rental charges which would otherwise be or become due if the allowance in question had not been made.

**7) USER'S RESPONSIBILITY FOR DAMAGE, LOSS OR THEFT**

The User may decide which option they wish to adopt when renting out their Rental Equipment.

**Option 1 - REPLACEMENT AT MARKET VALUE**

- a) The User will immediately inform the Rental Company of any accidents, damage or theft of the Rental Equipment during the Rental Period.
- b) If the Rental Equipment is damaged during the Rental Period, (fair wear and tear excepted), and is economically repairable, then the User will be liable for the repairs.
- c) If the Rental Equipment is damaged beyond its economic repair or is stolen, then the User will be liable for the Rental Equipment's current market value.
- d) The User shall indemnify the Rental Company against any claims which may arise from any third party in connection with the Rental Equipment during the Rental Period.

**Option 2 - REPLACEMENT AT NEW FOR OLD VALUE**

- a) The User will immediately inform the Rental Company of any accidents, damage or theft of the Rental Equipment during the Rental Period.
- b) If the Rental Equipment is damaged during the Rental Period, (fair wear and tear excepted), and is economically repairable, then the User will be liable for the repairs.
- c) If the Rental Equipment is damaged beyond its economic repair or is stolen, then the User will be liable for a brand new item of Rental Equipment.
- d) The User shall indemnify the Rental Company against any claims which may arise from any third party in connection with the Rental Equipment during the Rental Period.

**8) RENTAL CHARGES UNTIL RENTAL EQUIPMENT REPAIRED OR REPLACED**

- a) Should repairs to the Rental Equipment be necessary, (fair wear and tear excepted), then the User shall be liable for two-thirds of the Rental Equipment's rental rate until repairs have been completed.
- b) The User shall be liable for two-thirds of the Rental Equipment's rental rate until the Rental Company has been compensated in full for the loss of the Rental Equipment.

**9) SUB-RENTAL – BY THE USER**

The User may decide which option they wish to adopt when renting out their Rental Equipment.

**Option 1 - NON-ASSIGNMENT OF RENTAL EQUIPMENT**

The User may not assign, sublet or lease the Rental Equipment to any third party at any time during the Rental Period.

**Option 2 - ASSIGNMENT OF RENTAL EQUIPMENT WITH RENTAL COMPANY'S PERMISSION**

The User may assign, sub-let or lease the Rental Equipment to third parties during the Rental Period with the prior written agreement of the Rental Company.

**10) INSURANCE**

The User may decide which option they wish to adopt when renting out their Rental Equipment.

**Option 1 – User provides insurance cover**

The User will have the necessary insurance cover for the Rental Equipment during the Rental Period, and for any claims arising with the Rental Equipment from any third party, and send documentary evidence prior to the Rental Period commencing.

**Option 2 – Rental Company offers cover**

The Rental Company may offer the User for a fee, insurance or damage waiver cover for the Rental Equipment during the Rental Period. The level of cover will be passed to the User prior to the Rental Period commencing.

**11) PROTECTION OF RENTAL COMPANY'S RIGHTS**

If the User attempts to claim ownership of the Rental Equipment or passes it off as his own personal property through the sale, transfer, mortgage or yield possession in any other way during the Rental Period, then the Rental Company can immediately recover the Rental Equipment from the User, and terminate the rental agreement with clause 6(a) taking immediate effect.

**12) FORCE MAJEUR**

- a) Should the Rental Company be unable to fulfil any part of the rental agreement, due to natural obstacle, fire, mechanical breakdown or similar malfunction, strike, lockout, war, mobilisation, prohibition on imports and exports, lack of transport, discontinuation of production, traffic disruption, or similar obstacle which is outside the Rental Company's reasonable control.
- b) Subject to clause 12(a), the rental agreement can be terminated immediately by either party and clause 6(a) will take immediate effect.
- c) If the Rental Company agrees to the termination, then the User will be liable for any costs incurred by the Rental Company up to the point of the force majeure.

**13) PAYMENT TERMS**

- a) Should the Rental Company require it, the User will leave a deposit which reflects the value of the Rental Equipment which the Rental Company is renting to the User.
- b) The hire charges will be based on a minimum Rental Period of an 8-hour day (Monday to Friday), unless otherwise agreed in writing. If the Rental Equipment works in excess of these hours, or weekends, or bank and public holidays, then the Rental Company has the discretion to charge the User at a premium rate.
- c) The User shall pay all of the Rental Company's invoices within 30 days of their receipt unless otherwise agreed in the rental agreement.
- d) The User can only delay payment against any invoices which is in dispute, and cannot delay any other invoices which are or become due.
- e) At the Rental Company's discretion, if payment is delayed, then the User will be invoiced for interest and charges on outstanding debts, as stipulated within the contract or by National legislation, whichever is the greater.

**14) TERMINATION OF THE CONTRACT**

- a) The User must give a minimum of [x days'] notice if wishing to terminate the rental agreement prior to the Rental Equipment arriving on site, unless otherwise agreed in the hire agreement.
- b) If the Rental Equipment exceeds agreed use, or is placed in a different location than otherwise agreed by the Rental Company, then the Contract can be terminated by the Rental Company.
- c) If the User breaches any of the terms of the rental agreement, or becomes insolvent, or enters into any financial arrangements with his creditors, or places the Rental Equipment at risk, then the User will assist the Rental Company to enter the User's

premises where the Rental Equipment is located and recover it. Any recovery costs will be met by the User.

- d) If the User breaches any terms of the contract, then the Rental Company has the right to terminate the balance of the rental agreement with clause 6(a) taking immediate effect.
- e) If the User breaches any terms of the contract, then the User will settle all outstanding invoices, whether they are due or otherwise, with immediate effect.
- f) Either party may terminate the hire agreement by giving [x days'] written notice to the other party, unless a determinate period has been agreed in the rental agreement.

## **15) DISPUTE RESOLUTION**

If a dispute arises between the Rental Company and User, then the matter will be dealt with under the laws and jurisdiction of the country where the Rental Company's Head Office is located, and will be decided in a court of law unless the parties can agree on the nomination of an adjudicator who will review the dispute.