



EUROPEAN
RENTAL
ASSOCIATION

CEN WORKSHOP AGREEMENT

FRAMEWORK FOR CONSUMER RENTAL CONDITIONS

May 2011

This document has been developed within the **CEN Workshop n°060 - Rental Conditions for B to C in relation to equipments, tools and accessories for construction, gardening and DIY** - and is equivalent to the CEN Workshop Agreement registered as **CWA 16308:2011 - Framework for consumer rental conditions**.

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Foreword

This CEN Workshop Agreement has been drafted and approved by a Workshop of representatives of interested parties on 2011-04-11, the constitution of which was supported by CEN following the public call for participation made on 2010-06-15.

A list of the individuals and organizations which supported the technical consensus represented by the CEN Workshop Agreement is available to purchasers from the CEN-CENELEC Management Centre. This CWA has received the support of representatives of the following organisations:

- BOELS GROUP
- C.P.A
- D.L.R
- ERA
- HIRE ASSOCIATION EUROPE
- HIRE TRADE ALLIANCE
- KILOUTOU
- LOXAM
- NORMAPME
- NORWEGIAN RENTAL EQUIPMENT ASSOCIATION
- PORTABLE SANITATION EUROPE
- RAMIRENT

The formal process followed by the Workshop in the development of the CEN Workshop Agreement has been endorsed by the National Members of CEN but neither the National Members of CEN nor the CEN-CENELEC Management Centre can be held accountable for the technical content of the CEN Workshop Agreement or possible conflict with standards or legislation. This CEN Workshop Agreement can in no way be held as being an official standard developed by CEN and its members.

The final review/endorsement round for this CWA was started on 2011-03-23 and was successfully closed on 2011-04-13. The final text of this CWA was submitted to CEN for publication on 2011-04-18.

This CEN Workshop Agreement is publicly available as a reference document from the CEN National Members of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland and the United Kingdom.

Comments or suggestions from the users of the CEN Workshop Agreement are welcome and should be addressed to the CEN-CENELEC Management Centre.

Introduction

This CWA is a non-exhaustive comparative analysis of approaches used by existing associations and companies from various European countries, in their standard consumer terms and conditions for rental equipment supplied without an operator.

It 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 consumer customers within their own and in other European countries.

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

1 Terms and definitions

For the purposes of this document, the following terms and definitions apply

NOTE The purpose of these definitions is to give a rudimentary explanation of the technical terms which the reader may be unfamiliar with.

1.1

Customer

non-business entity who is renting the Rental Equipment

1.2

Deposit

advance payment which is to be held by the Rental Company as security until the Rental Equipment is returned

1.3

Rental Agreement

contract made between the Customer and the Rental Company for the rental of the Rental Equipment

1.4

Rental Charges

fees the Rental Company charges the Customer whilst the Rental Equipment is in the Customer's possession

1.5

Rental Company

organisation who is renting the Rental Equipment to the Customer

1.6

Rental Equipment

this can cover any machine, tool, article, manual, accessory or any other item(s) rented to the Customer which will be supplied without an operator

1.7

Rental Period

period which shall commence on the date on which the Rental Equipment is collected by the Customer or delivered to the Customer by the Rental Company. The Rental Period shall end when the Customer returns all the Rental Equipment or it is all collected by the Rental Company. The above-mentioned collection and delivery days shall be included in the Rental Period

1.8

Service Charges

any additional work to be carried out by the Rental Company for the Customer in conjunction with the renting of the Rental Equipment including any delivery and/or collection services, or any other fees

1.9

Site

place where the Rental Equipment will be operated

2 Basis of contract

These are the fundamental terms of the framework document.

- 2.1** The Rental Equipment is hired to the Customer on the basis that it is used only for private or non-commercial use.
- 2.2** The Rental Equipment is hired subject to the equipment being available to rent to the Customer at the time required by the Customer.
- 2.3** The Rental Company will not be liable for any loss suffered by the Customer as a result of the Rental Equipment being unavailable due to circumstances beyond the Rental Company's reasonable control.
- 2.4** The duration of the Rental Period shall not exceed 3 months.
- 2.5** These terms and conditions shall not affect the Customer's statutory rights under national consumer legislation.

3 Payment terms / Deposits

The following clauses outline the charges which may be levelled against the Customer.

- 3.1** The amount of any Deposit, Rental Charges and/or Service Charges shall be as quoted to the Customer or otherwise as shown in the Rental Company's current price list.
- 3.2** Where a Deposit is required for the Rental Equipment it must be paid in advance of the Customer renting the Rental Equipment. The Rental Company may also require an initial payment on account of the Rental Period in advance of the Customer renting the Rental Equipment.
- 3.3** The Rental Company reserves the right to see additional forms of identification before renting the Rental Equipment to the Customer.
- 3.4** The Deposit will be returned to the Customer if the Rental Equipment is returned in the same condition as it was when rented out to the Customer, with the exception of fair wear and tear. When the Rental Company repays the Deposit, it will be allowed to deduct any monies the Customer owes the Rental Company.
- 3.5** The Customer must pay Rental Charges for each day the Rental Equipment is rented, including Saturdays, Sundays and Public Holidays. If the Customer agrees to rent the Rental Equipment for a minimum or a fixed period, then the Customer must pay the Rental Charges applicable for the whole of the minimum or fixed period.
- 3.6** The Customer must pay the Rental Charges in full and on the due dates, (including upon termination of this Rental Agreement), and time is of the essence for payment; even if the Customer considers that they have contra-charges against the Rental Company.
- 3.7** If any amount is payable to the Customer by the Rental Company under this Rental Agreement, then the Rental Company may withhold from those monies an amount equal to the total monies the Customer owes the Rental Company under this Rental Agreement.
- 3.8** Payment shall not be deemed to be made until the Rental Company has received either cash or cleared funds in respect of the outstanding Rental Charges.
- 3.9** If the Customer fails to make any payment in full on the due date, the Rental Company may charge the Customer interest on the amount unpaid at the rate of [] % above the Central European Bank's base rate.
- 3.10** The Rental Charges do not include transportation costs, which if charged, will be detailed separately.

3.11 Any additional Services and / or fuel costs are charged separately.

4 Insurance

It is the Rental Company's decision as to how the Rental Equipment will be insured during the Rental Period.

Option 1 – Customer obtains own insurance cover

The Rental Company will not insure the Rental Equipment.

The Customer must obtain all necessary insurance for the Rental Equipment for the duration of the Rental Period. The policy must also cover any third party claims. The original insurance documentation must be sent to the Rental Company prior to the Rental Period commencing.

The Customer will still be liable for the balance of any loss or damage to the Rental Equipment or from any third party claim(s), which is not settled by the insurance arrangement.

The party who is transporting or driving the Rental Equipment along the Public Highway will be responsible for having adequate insurance cover for it.

Option 2 – Rental Company offers their insurance / subrogation waiver cover

The Rental Company will offer an insurance / subrogation waiver cover in respect of the Rental Equipment, but this will be at an additional cost to the Rental Charges.

The Customer will still be liable for the balance of any loss or damage to the Rental Equipment or from any third party claim(s), which is not settled by the insurance / subrogation waiver arrangement.

The party who is transporting or driving the Rental Equipment along the Public Highway will be responsible for having adequate insurance cover for it.

5 Liability

These clauses outline the liability of both the Customer and Rental Company throughout the Rental Period.

Customer's Liability

5.1 The Customer accepts that they will be liable for the Rental Equipment by the Rental Company, once it leaves the Rental Company's physical possession; and this will not cease until the Rental Equipment is back in the Rental Company's physical possession.

5.2 The Rental Company shall supply operating and safety instructions with the Rental Equipment; but it is the Customer's responsibility to ensure that they have the necessary information and skill to safely operate the Rental Equipment; and if necessary, it is the Customer's responsibility to supplement their own knowledge.

5.3 The Customer will indemnify the Rental Company against all third party claims relating to the Customer's use of the Rental Equipment, in so far as the claim cannot be directly attributed to a fault with the Rental Equipment.

Rental Company's Liability

5.4 The Rental Company will not accept any liability for loss or damage should the Customer continue to use defective or damaged Rental Equipment.

5.5 The Rental Company will not be held liable for any loss or non-compliance of the Rental Equipment, which is outside their reasonable control.

6 Delivery and collection

These clauses outline the responsibility and liability of both the Customer and Rental Company during the delivery and collection of the Rental Equipment.

- 6.1** It is the Customer's responsibility to collect the Rental Equipment from the Rental Company, and return it at the end of the Rental Period.
- 6.2** If the Rental Company agrees to deliver and/or collect the Rental Equipment, then the Customer will be present to accept delivery and/or collection. The Rental Company reserves the right to charge the Customer for this Service.
- 6.3** If the Customer has chosen to have the Rental Equipment delivered or collected by the Rental Company, then their delivery driver will do their best to limit any damage to any property, ground or underground services; however, the Rental Company will not be liable for any damage should this occur.
- 6.4** The Rental Company will not be liable for any delay in supplying or collecting the Rental Equipment, which is beyond their reasonable control.
- 6.5** If the Rental Equipment is to be delivered or collected by the Rental Company, then the Customer will ensure that sufficient space is available at the Site so that the Rental Equipment can be safely delivered, unloaded, loaded or collected.
- 6.6** The Rental Company will ensure that the Rental Equipment rented to the Customer will be in good working order and conforms to current legislation.
- 6.7** Upon receiving the Rental Equipment, the Customer shall inspect the Rental Equipment, and must immediately notify the Rental Company of any defects. Any rent refund shall be calculated from the moment the Rental Company receives said notification.
- 6.8** The Customer will only use the Rental Equipment at the designated Site, unless otherwise agreed by the Rental Company.
- 6.9** The Customer shall return the Rental Equipment cleaned and (notwithstanding normal wear by usage of the equipment) in its original condition to the Rental Company, during normal working hours, where a final inspection will be carried out.
- 6.10** Should the Customer return the Rental Equipment in an unclean or unfit condition, then the Rental Company shall have the right to charge the Customer for all costs associated with cleaning and/or repairing the Rental Equipment.
- 6.11** The Customer will be liable for any costs the Rental Company incurs in recovering the Rental Equipment, should the Customer fail to return it or allow the Rental Company to collect it on the due date.

7 Condition / Care of rental equipment (during rental period)

These clauses outline the Customer's responsibility in keeping themselves acquainted with the state and condition of the Rental Equipment during the Rental Period.

- 7.1** The Customer must not modify or adjust the Rental Equipment in any way nor repair it.
- 7.2** The Customer, as per clause 5.2, will operate the Rental Equipment in a safe and suitable manner.
- 7.3** The Customer must periodically check the Rental Equipment to ensure it remains in good working order.

7.4 The Customer shall be responsible for any servicing and maintenance of the Rental Equipment as well as any related costs arising during the Rental Period.

7.5 The Customer must monitor any burden caused by inclement weather on the Rental Equipment and without delay minimise any risk to the Rental Equipment.

7.6 The Customer shall take adequate and proper measures to protect the Rental Equipment from theft, damage and/or other risks.

7.7 The Customer shall permit the Rental Company at all reasonable times and upon reasonable notice to inspect the Rental Equipment including procuring access to the Site where the Rental Equipment is situated.

7.8 The Customer shall not do or omit to do anything, which will invalidate any insurance / subrogation waiver policy relating to the Rental Equipment.

7.9 Where the Rental Equipment requires fuel, oil and/or electricity, the Customer will ensure that the correct type and/or voltage are used and that, where appropriate, the Rental Equipment is properly installed by a qualified and competent person.

7.10 The Customer cannot lend / rent / sub-let the Rental Equipment to any party without the prior written agreement of the Rental Company.

8 Breakdowns

The following clauses outline the steps, which the Customer must take in the event the Rental Equipment breakdown.

8.1 The Customer shall immediately notify the Rental Company of any breakdown, loss or damage to the Rental Equipment; or damage to any third party's person or property, which was caused by the Rental Equipment.

8.2 The Customer shall be obliged to take measures to preserve the rental equipment from loss or damage or to minimise risks of loss or damage.

8.3 The Customer or a third party may not repair the Rental Equipment, with the exception of punctured or damaged tyres.

8.4 The Rental Equipment must be returned to the Rental Company immediately, where the Rental Company will use their best endeavours to repair or exchange it. If the Rental Equipment cannot be repaired or exchanged within [] days, then the Rental Agreement will be terminated.

8.5 The Customer will not be charged whilst the Rental Equipment is broken down, subject to the breakdown being caused by the development of an inherent fault and/or fair wear and tear.

8.6 The Customer shall be responsible for all expenses, loss (including loss of Rental Charges) and/or damage suffered by the Rental Company arising from any breakdown of the Rental Equipment due to the Customer's incorrect, imprudent and/or illegal use of the Rental Equipment. The Rental Company reserves the right to immediately terminate this Rental Agreement as a result.

9 Loss, theft or damage to the rental goods

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

OPTION 1 – Replacement at Current Market Value - Rental Equipment more than [] months old

If the Rental Equipment is damaged during the Rental Period, (fair wear and tear excepted), then the Customer must immediately inform the Rental Company. However, if the Rental Equipment or any part of it is stolen or has been criminally damaged, then the local police must also be immediately informed.

If the damage is economically repairable, and the damage was not due to an inherent fault on the Rental Equipment, then the Customer will be liable for the repairs.

If the Rental Equipment is damaged beyond its economic repair or is stolen, then the Customer will be liable for the Rental Equipment's current market value, unless the theft or damage arose from an inherent fault, which was present when the Rental Equipment was rented to them.

OPTION 2 – Replacement at New for Old - Rental Equipment up to [] months old

If the Rental Equipment is damaged during the Rental Period, (fair wear and tear excepted), then the Customer must immediately inform the Rental Company. However, if the Rental Equipment or any part of it is stolen or has been criminally damaged, then the local police must also be immediately informed.

If the damage is economically repairable, and the damage was not due to an inherent fault on the Rental Equipment, then the Customer will be liable for the repairs.

If the Rental Equipment is damaged beyond its economic repair or is stolen, then the Customer will be liable for a brand new item of Rental Equipment, unless the theft arose from an inherent fault, which was present when the Rental Equipment was rented to them.

10 Termination of the rental agreement

The following clauses outline how the Rental Agreement may be terminated.

10.1 Where the Rental Period has expired; the Customer must immediately return the Rental Equipment to the Rental Company cleaned, packaged and otherwise in the same condition as it was when rented out, fair wear and tear excepted. The Rental Equipment must be returned to where it was rented from.

Either party may immediately terminate this Rental Agreement where:-

10.2 They obtain the consent of the other party, prior to prematurely terminating a Rental Agreement of fixed duration; subject to the Customer returning the Rental Equipment and settling all outstanding Rental Charges.

10.3 The Rental Period is not of a fixed duration (refer to 2.4), then either the Customer or the Rental Company is entitled to terminate the Rental Agreement upon giving the other party not less than [] days' notice.

The Customer may immediately terminate this Rental Agreement where:-

10.4 The Rental Equipment is returned to the Rental Company and by settling all outstanding Rental Charges, subject to there being no fixed duration agreed in the Rental Agreement.

10.5 The Rental Equipment cannot be repaired or exchanged, as per clause 8.4.

10.6 The Rental Company is in default of the Rental Agreement if they fail to remedy a breach (which is capable of remedy) within [] days, once notice has been received from the Customer.

The Rental Company may immediately terminate this Rental Agreement where:-

10.7 The Customer places any pledges, charges or gives any form of security over the Rental Equipment to any third party; or fails to inform the Rental Company that a third party is attempting to claim a right over the Rental Equipment.

10.8 The Customer breaches any terms of the Rental Agreement. The Customer must immediately return the Rental Equipment and settle all outstanding Rental Charges.

10.9 The Customer breaches clause 10.8, then the Rental Company has the right to enter the Site where the Rental Equipment is located and recover it. Any costs the Rental Company incurs in recovering the Rental Equipment will be met by the Customer. The Customer will remain liable for any outstanding Rental Charges.

10.10 The Customer has defaulted on the Rental Agreement by:-

10.10.1 Failing to promptly pay the full Rental Charges when they fall due.

10.10.2 Providing incomplete or inaccurate information.

10.10.3 Damaging the Rental Equipment as per clause 5.3.

10.10.4 Moving the Rental Equipment without permission as per clause 6.8.

10.10.5 Winding up or petitioning for debt restructured.

10.10.6 Putting into administration.

11 General

The following clauses outline the jurisdiction and legality of this framework document.

11.1 This Rental Agreement is governed by and interpreted in accordance with the laws of the country where the Rental Company is located and that country will have exclusive jurisdiction in relation to this Rental Agreement.

11.2 If any provision of this Rental Agreement is held to be unlawful, void or unenforceable then that clause will be deemed severable and will not affect the validity and enforceability of the remaining clauses, to the extent permitted by national law.

11.3 All third party rights are excluded and no third parties shall have any rights to enforce the Rental Agreement.