

# General Terms and Conditions of Rental of Laserscanning Europe GmbH

## **§ 1 - General**

The following terms and conditions shall apply to the rental of 3D-scanners or cameras and software (Rented Item) by Laserscanning Europe GmbH (Lessor) and, analogously, to the loaning of these, for example to tide the Lessee over in the event of the failure of the latter's own equipment or for demonstration purposes. The Lessor's contracts shall only be agreed subject to the following General Terms and Conditions of Rental, unless agreed otherwise in individual cases.

Counter-confirmations on the part of the Lessee, referring to the latter's general terms and conditions, are hereby rejected. General contractual terms of the Lessee shall only become part of the Contract if they are expressly acknowledged by the Lessor.

## **§ 2 – Entry into force of the Rental Contract**

The Lessor's quotations shall always be non-binding and subject to change. The Lessor's respective rent shall apply, which shall be communicated on request or through a quotation or order confirmation. A full day's rent shall be charged for each new day of the lease of the Rented Item. An increase in the rent during the contractual rental period shall not be possible.

Contracts shall only enter into force through a written order confirmation or through their execution on the part of the Lessor, with the contents of the present General Terms and Conditions of Rental. The Lessee shall be bound to the order it has placed for a period of one week from the order being signed. Following the written order confirmation from the Lessor, the provisions of these General Terms and Conditions of Rental shall apply.

The Lessor reserves the right to collect a deposit and/or an advance payment.

## **§ 3 – Term of the Rental Contract**

During the contractual rental term, an ordinary termination of the Rental Contract shall be excluded for both Parties. The right to an extraordinary termination shall remain unaffected by this.

If the Lessee withdraws from the Rental Contract before the start of the contractual rental term, 30 % of the rent in accordance with the contractual rental period shall be charged. If the withdrawal takes place fewer than seven days before the start of the contractual rental period, 50 % of the rent – or the full rent if it is fewer than two days before the start of the contractual rental period – in accordance with the contractual rental term shall be charged.

1. The rental period shall start, in the event of collection by the Lessee, on the agreed date on which the Rented Item is handed over to the Lessee or, in the event of shipment to the Lessee, at the time of delivery at the agreed place.

This shall apply even if the collection or the acceptance of the Rented Item by the Lessee does not take place on the agreed date. The Lessor shall then be entitled to store the Rented Item at the expense of the Lessee and, after the fruitless expiry of an appropriate period for collection/acceptance of the Rented Item, to terminate the Contract without notice and demand compensation.

2. The rental period shall end on the date on which the Rented Item reaches the Lessor or another previously agreed destination during business hours, but no earlier than the expiry of the agreed rental period.
3. The minimum rental period shall amount to two days in the event of a delivery by a logistics company. Individual agreements are possible. The rental period shall be calculated by the day by working days (Mon – Sat).
4. An extension of the originally agreed rental period requires the prior written confirmation of the Lessor. A tacit extension of the Rental Contract in accordance with Section 545, German Civil Code, is excluded. In addition, Section 546a, German Civil Code, shall apply, subject to the proviso that the right to assert claims for further damages remains reserved. The Lessee must, in the event of an intended extension of the rental period, apply for this at least 48 hours before the expiry of the originally agreed rental period. If the Lessor does not confirm the applied for extension of the rental period in writing, the originally agreed term shall apply. The Lessor undertakes to respond to the application for the extension of the rental period within 36 hours of receipt of the latter.
5. If the collection of the Rented Item is agreed by the Lessor after the expiry of the rental period, the Lessee undertakes to coordinate the timing and organisation of the collection with the Lessor. If the collection cannot be performed as a result of circumstances for which the Lessee is not responsible, the rental period shall be extended until a collection is effected. The Lessee must bear the additional costs arising from this, and provide compensation for any damage, if applicable. For the period between the agreed end of the Rental Contract and the actual end of the rental period, the original rents shall be deemed to be agreed. This shall also apply in the event that the Rented Item is only returned after the time agreed in the Rental Contract.
6. The rental period shall automatically be extended by the period of necessary maintenance and repair work that is required because the Lessee has not met its obligations in accordance with § 6 of the General Terms and Conditions of Rental.

#### **§ 4 Payment and calculation of the rent**

1. The rent must, unless otherwise agreed, be paid in advance, after the receipt of the invoice at the latest, net plus the applicable VAT. The Lessor is entitled to prepare interim statements after every 5 days of the rental period.
2. In the event of the shipment of the Rented Item, the Lessee must bear the freight charges for shipment there and back, unless otherwise agreed in an individual contract. The Lessor's General Terms and Conditions of Rental shall apply here.
3. The following provisions shall apply to the calculation of the rent:
  - a) In the event of collection:

- Return before 9:00 am: rent calculated up to the previous day
  - Return from 9:00 am to 1:00 pm: rent calculated at 50% of the daily rate
  - Return after 1:00 pm: rent calculated at the full daily rate
- b) In the event of shipment to Germany:
- Receipt of the Rented Item by the Lessee by 10:30 am: rent calculated at the full daily rate
  - Collection of the Rented Item by the Lessee for return shipment by 4:00 pm: calculation of daily rent = last day of the rent
- c) In the event of shipment to/from other countries, the day on which the Lessee/the Lessor receives the Rented Item shall be charged in full

The receipt of the Rented Item or the end of the rental period shall be based on the data of the specified times/dates of the tracking system of the forwarding companies engaged (UPS/TNT).

If the Rented Item is received by the Lessee earlier than agreed, the original agreement on the rental period shall apply.

4. If the Lessee is in arrears with the payment of a due amount by longer than 10 days or if a bill of exchange or cheque handed over by the Lessee has been protested, the Lessor shall be entitled to collect the Rented Item without a further reminder and without setting a grace period, at the expense of the Lessee. The claims to which the Lessor is entitled from the Rental Contract shall be unaffected. Counterclaims of the Lessee on account of the removal of the Rented Item shall become void. In the event that the Lessee is in default of payment, the latter must pay 1 % default interest per month on the owed amount, from the due date until the date on which the payment is received.
5. The Lessor may demand the provision of a deposit up to the amount of the original value of the Rented Item before the start of the rental period. A deposit that has been provided shall not bear interest. The deposit shall be due for repayment when the Rented Item is returned. The Lessor shall be entitled to offset deposit payments against claims for rent and compensation.
6. The Lessee shall not have a right of set-off in the event of counterclaims that are disputed and not legally established.

## **§ 5 – Handover of the Rented Item, contractual use and liability**

1. The Rented Item shall be held ready for collection or prepared for dispatch by the Lessor in an undamaged, cleaned, operational condition.
2. Upon collection/acceptance of the Rented Item, the Lessee shall confirm the flawless condition of the transferred Rented Item and the delivered scope of the accessories – in writing on the delivery note. The Lessee is obliged to check the Rented Item for proper functioning by putting it into operation. If the Lessee detects defects or faults in the process, it is obliged to report these to the Lessor immediately.

3. The Lessee undertakes to treat the Rented Item and its accessories with care and, in particular, to protect them from excessive strain in every reasonable way, to return them complete and undamaged to the Lessor and to effectively protect them from access by third parties. It shall be responsible for any deterioration that goes beyond normal wear during proper use, provided that it is culpable for this.
4. The Lessee undertakes to strictly observe the traffic regulations, the accident prevention regulations and the occupational health and safety regulations, as well as the other relevant laws and guidelines. The Lessee shall be responsible for the securing of the cargo in the event that it transports the rented device itself.
5. The Lessee guarantees that it is able to operate the Rented Item appropriately and professionally in every application situation. The Rented Item shall only be put into operation on this condition. The Lessee must provide evidence, at the request of the Lessor, of its ability to use the respective type of operation, for example through a certificate from the manufacturer or third parties engaged by the manufacturer.
6. Defects in the Rented Item for which the Lessor is responsible shall be – as far as technically possible and reasonable – removed by the latter free of charge, within an appropriate period. The Lessee must grant the Lessor the required access to the Rented Item and the time and opportunity to take appropriate measures for the removal of defects. Further claims of the Lessee on account of defects in the Rented Item, in particular claims for compensation for consequential damages, which have not arisen on the Rented Item itself, shall be excluded.
7. The Lessee shall be liable for damages that are caused by it through the use of the Rented Item on the premises of third parties. In this respect, the Lessee undertakes to indemnify the Lessor of any claims to compensation from third parties.
8. A claim to compensation, irrespective of fault, on the part of the Lessee on account of a defect in the Rented Item in accordance with Section 536 a (1), German Civil Code, shall be excluded. The Lessor's liability for compensation in the event of the infringement of essential contractual obligations and arising from unlawful actions shall be limited to typically occurring and foreseeable damages, unless the Lessor is culpable of gross negligence or wilful intent. The same shall apply if legal representatives or vicarious agents of the Lessor act and cause damage. The liability for compensation of the Lessor and its legal representatives or vicarious agents, in the event of the infringement of secondary obligations, shall be excluded, unless the Lessor, its legal representatives or vicarious agents are culpable of gross negligence or wilful intent.

## **§ 6 – Maintenance and conservation obligation of the Lessee**

The Lessee is obliged:

1. to store the Rented Item in a safe place after use and to protect it from access by third parties as far as possible. The Rented Item may not be stored in vehicles – especially at night – without permanent supervision. The Lessee acknowledges that the insurance cover for the Rented Item shall become void in this case. In the event of the infringement of this and the damage or loss of the Rented Item, the Lessee shall be liable for all the damages that have arisen from this, including for any consequential damages for the Lessor, such as lost profit.
2. Any use of the device in dangerous environments in which damages as a result of environmental influences, unrest or natural disasters are to be anticipated must

be approved in writing by the Lessor in advance. This shall apply in particular, but not conclusively, to the use of the Rented Item:

- in the vicinity of or within nuclear facilities or other facilities with a high current or magnetic fields
- on scaffolding/hoisting platforms, conveyor platforms or on difficult terrain
- in an area of possible chemical exposure
- in rain, snow, high wind speeds and other adverse environmental and weather conditions
- in the event of very high dust exposure, the use of the Rented Item is generally not permitted

The shipment of the Rented Item into other countries is not permitted without the written consent of the Lessor in advance.

3. Upon expiry of the rental period, the Rented Item must be returned to the Lessor ready for use, i.e. in a proper, cleaned, complete condition.

## **§ 7 – Infringement of the maintenance and conservation obligation**

1. The Rented Item shall be taken back by the Lessor subject to a complete check of the proper condition of the Rented Item.
2. If the Rented Item is returned in a condition from which it is possible to conclude that the Lessee has not or has not sufficiently complied with its maintenance and obligation provided for in § 6, the Lessor shall establish the scope of any defects, damages and neglected care and maintenance. The Lessor shall be fully liable for the costs of the restoration of the proper condition of the Rented Item and the consequential damages arising from this, unless it provides evidence that it has not culpably infringed its maintenance and conservation obligations or is not responsible for the damage.
3. If the restoration of the Rented Item is not possible or is only possible with unreasonable expenditure, the Lessee is obliged to provide the Lessor with compensation to the amount of the replacement value of the Rented Item; the assertion of further claims for damages shall not be affected by this.
4. The Lessor shall be entitled to inspect the Rented Item at any time. The Lessee is obliged to support the Lessor with an examination of the Rented Item in every way, and to make the Rented Item accessible on request.

## **§ 8 – Other obligations of the Lessee**

1. The Lessee shall not be entitled to re-rent the Rented Item or to pass it on to third parties for payment or free of charge, to assign rights arising from the present Contract or to grant third parties rights of any kind to the Rented Item. Exceptions require the written approval of the Lessor.

2. The Lessee shall be liable to pay the costs of the repairs for damages to the Rented Item for which it is responsible. In the event of a loss, disappearance or theft of the Rented Item for which it is responsible, the Lessor shall be liable to pay the replacement value or the specified current market value. For the period of downtime of the Rented Item in the event that a replacement or repairs are necessary due to a damage, loss, disappearance or theft of the Rented Item for which the Lessee is responsible, the Lessee shall be invoiced for the costs and lost revenue resulting from this. If a third party asserts rights to the Rented Item through confiscation or seizure, the Lessee shall be obliged to notify the third party of the fact of the Lessor's ownership immediately in writing, and inform the Lessor immediately.
3. The damage, loss or destruction of the Rented Item must be reported by the Lessee to the Lessor immediately. In the event of theft, damage to property by third parties or other criminal offences, the Lessee must also inform the police immediately.
4. In the event of the damage, loss or destruction of the Rented Item, the Lessee must, insofar as this can be attributed to it,
  - a) provide compensation to the amount of the replacement value of an equivalent device, in the event of the loss or destruction of the Rented Item; this obligation to provide compensation shall exist even if the extent of the damage equates to a commercial write-off;
  - b) to refund the costs for the repairs of the Rented Item, in the event of damages to the latter.

The obligation to pay the rent shall remain in force until the agreed expiry of the rental period. The right to assert further claims for damages shall be reserved.

## **§ 9 – Termination of the Rental Contract**

During the contractual rental period, the ordinary termination of the Rental Contract shall be excluded for both Parties.

The Lessor shall be entitled to terminate the Contract without notice if

1. the Lessee is fully or partially in arrears with the payment of a rental invoice or with payment obligations arising from another legal transaction entered into with the Lessor by more than 10 days;
2. the Lessee ceases its payments; an application has been made for the institution of composition or insolvency proceedings on its assets or the Lessee is striving for extra-judicial composition proceedings; or it is evident from the circumstances (e.g. enforcement measures, protests and similar) that the Lessee cannot meet the obligations that are due;
3. the Lessee infringes its contractual obligations, in particular by not handling the Rented Item correctly and in accordance with its intended use, or if there is a threat of the loss or destruction of the Rented Item.

In the aforementioned cases, the Lessee is obliged, upon demand, to return the Rented Item to the Lessor immediately.

## **§ 10 – Data privacy**

The Lessee agrees to data pertaining to it being saved by the Lessor, insofar as this data is necessary for the proper handling of the orders or in accordance with the legal requirements. The data shall not be passed on to third parties.

The Lessee also agrees to the Lessor using technical equipment which serves to roughly locate the Rented Item for reasons arising from insurance and transport law. Information collected in this process is not personal data in terms of Section 3 (1), German Federal Data Protection Act.

## **§ 11 – Miscellaneous provisions**

1. Any amendment or addition to the present Contract must be in writing; this shall also apply to the requirement for the written form. There shall be no oral subsidiary agreements.
2. The Parties shall endeavour to settle all disputes arising from the present Contract in a spirit of cooperation, without formal proceedings. The exclusive place of jurisdiction for disputes that cannot be resolved in such a manner shall be the registered place of business of the Lessor. The law of the Federal Republic of Germany shall apply exclusively to all claims arising from the present Contract.
3. If a provision of the present Contract is or becomes invalid, this shall not affect the validity of the remaining provisions. In the place of an invalid provision, a provision shall apply that corresponds to or at least comes close to the purpose of this agreement, and which the Parties would have selected if they had been aware of the ineffectiveness of a provision for the achievement of their joint purpose. The same shall apply for any incompleteness in the Contract. For all disputes arising from rental contracts, the place of jurisdiction shall be Magdeburg or the registered place of business of the Lessee, at the discretion of the Lessor. The place of fulfilment shall be Magdeburg.

Magdeburg,

Laserscanning Europe GmbH

Gustav-Ricker-Str. 62

39120 Magdeburg