

## **General Terms and Conditions of Lease**

of

**btl next GmbH**

**Amtsgericht Düsseldorf (registration court) - HRB 90111**

**Geschäftsführer:**

Michael Terwint

### **1.**

#### **Applicability, Preface**

- a) The following General Terms and Conditions of Lease (hereinafter GTCL) are part of all our offers and contracts regarding a lease and shall also be applied to all future lease contracts with the Hirer. As far as there are deliverables and performance (e.g. program compilations, planning, construction and assembly work) to be carried out on the basis of a lease contract, our General Terms and Conditions (GTC) shall also apply in this context.
- b) We do not recognize any general terms and conditions of the hirer which are in opposition or deviate from our conditions of lease, unless we have explicitly consented in written form to their validity. Our GTCL shall also apply if we leave the lease object to the hirer unconditionally and without restriction despite our knowledge of general terms and conditions of the hirer which are in opposition or deviate from our GTCL. All agreements made between the hirer and us for the purpose of carrying out this contract are fixed in writing in the individual contract including these conditions and, in the case of Nr. 1. a) second sentence, the GTC.
- c) Our offers are subject to change unless they have been explicitly marked as binding. The lease contract is considered as awarded upon receipt of our written order confirmation or when the lease object is handed over.
- d) Consumer in the sense of these GTCL is a natural person unless the purpose of conveyance of the lease object is predominantly of commercial nature or can be attributed to his or her self-employed professional activity. Whereas Entrepreneur in the sense of the GTC

are natural persons, legal entities or partnerships which act on behalf of their commercial or self-employed professional activity in the moment of concluding the contract. Hirer in the sense of these GTCL are Consumers and Entrepreneurs likewise.

## 2.

### **Lease Object**

Subject of the lease contract are the individual devices listed in our order confirmation including accessories. We reserve the right to replace the listed devices with other devices of the same quality.

## 3.

### **Lease Period, Leasing Price, Deadlines, Force Majeure**

- a) The lease period commences and ends at the points in time stated in the relevant lease contract, at the latest at the relinquishment and at the earliest at the restoration of the object of lease respectively.
- b) The rental fee to be paid is stated in the lease contract. If there is no rental fee included in the contract for individual relinquished items, the usually invoiced and appropriate rental fee shall apply.
- c) If we fail to deliver the leased device in time, the hirer shall grant us an appropriate period of grace.
- d) If the hirer should get into default of acceptance or if the hirer negligently breaches his obligation to co-operate, he is obliged to pay the rental fee in full for the period of default of acceptance or the period of default caused by the violation of the obligation to co-operate. We reserve the right to demand compensation for damages including any additional expenses.
- e) War, strikes, lock-outs, lack of raw materials and energy supply, operational and transport interruptions and official orders - also if such events make the execution of the business concerned uneconomical for the foreseeable future - as well as all cases of force majeure, any of which could also affect our suppliers, release us from our duties arising from the lease contract for the duration of the interruption and the scope of their effects. Such events

entitle us to withdraw entirely or partly from the contract without granting the hirer being entitled to demand compensation.

#### **4.**

##### **Shipment, Packaging, Risk of Loss**

- a) The shipment of lease objects is made in standard packaging only. Should the Entrepreneur request the lease object to be shipped to a place other than the agreed place of fulfillment, the risk of loss is passed on to the Entrepreneur as soon as the lease object is handed over to the transport company or when the leased object is loaded onto vehicles of the Entrepreneur. The route of shipment and the means of transport shall be determined by us unless otherwise agreed. This also applies if the means of transport and the transport company are selected by us and also if we bear the transport costs by way of exception. If the shipment should be delayed due to reasons the Hirer is responsible for, the risk of loss shall be passed on to the Hirer on the date when the Hirer upon receipt of the readiness for shipment notification.
- b) The Hirer shall make complaints with respect to transport damage directly to the transport company within the special time periods stipulated therefore and shall notify us thereof. Any Consumer's warranty rights remain unaffected by this provision.

#### **5.**

##### **Payment of the Rental Fee**

- a) If the rental fee is to be paid in a single payment pursuant to the lease contract, the rental fee is due immediately after the agreed ending date of the lease and the invoiced amount shall be paid in full by the Entrepreneur within 30 days after the ending date of the lease, and by the Consumer within 30 days after receipt of our invoice. We reserve the right to fully or in part demand payment of the agreed rental fee in advance. If the rental fee is invoiced on a monthly basis, it shall be paid monthly in advance.
- b) We are not obliged to accept checks or bills of exchange. Checks and bills of exchange shall only be accepted on account of performance.
- c) If the Hirer defaults with a payment incumbent on him, we shall, irrespective of whether further default damage is claimed, be entitled to invoice default interest at the rate of 5 % above the ECB base rate for Consumers and at the rate of 9 % above the ECB base rate for

Entrepreneurs. In case of the default with a payment incumbent on an Entrepreneur, we are furthermore entitled by law to invoice a one-time flat charge of 40 Euro.

d) Setting off a claim with counterclaims is excluded unless it takes place with a debt which has been recognized by us or has become res judicata or which originates from the same contractual relationship. Rights of retention are excluded for Entrepreneurs. Consumers can only exercise a right of retention if their counterclaim is based upon the same contractual relationship.

e) If there are doubts concerning the Hirer's solvency, particularly if there are payments in arrears, we can request securities and revoke agreed payment targets irrespective of further claims.

f) We reserve the right of cession as well as the right of entitlement of a third party to collect our claim against the Hirer. The Hirer has to obey the directions of these third parties to whom we have ceded the claim and of the third parties we have permitted to collect the debt respectively. Any objections or exceptions of the Hirer remain unaffected.

g) Payments with discharging effect can only be performed to PMF Factoring GmbH to which we have ceded our claims based upon the business relationship with the Hirer by means of a factoring contract. This does not apply to amounts of prepayment, up-front payment and down payment.

## 6.

### **Warranty, Compensation, Limitation of Liability**

a) If there are justified complaints due to defects of the lease object, we shall rectify the defect or replace the defective lease object with a faultless one depending on our choice or release the Hirer from the contract. If we have decided to rectify the defect or to replace the defective lease object with a faultless one and both remedies show to have failed ultimately, the Hirer shall be entitled to demand a termination of the leasing relationship.

b) If the lease object is examined upon the Hirer's request and if the lease object does not show any defects during that examination, the Hirer shall reimburse the expenditure which we thus incurred or which came about due to work on the lease object.

c) If the Hirer further processes the lease object or carries out modifications thereto, a warranty based on defects of the lease object is excluded.

d) As far as nothing else is agreed upon in the contract, the following applies for our liability:

- Our contractual and non-contractual liability is confined to claims that are based on intent or gross negligence, unless the violation affects an essential contractual duty. In case of the violation of such an essential contractual duty caused by ordinary negligence, the liability for compensation is limited to the, typically occurring, direct damage which was foreseeable in the moment of the conclusion of the contract.
- The term essential contractual duty is defined as a duty whose fulfillment in the first place permits the duly execution of the contract and on whose observance the other party may rely under regular circumstances.
- For Entrepreneurs the limitation of claims for compensation begins with the end of the month containing the closing date of the assignment irrespective of awareness, unless the claim can be based on intent.
- The above limitations of liability equally apply to the liability of legal representatives and any auxiliary persons.
- The compulsory liability pursuant to the German Product Liability Act (Produkthaftungsgesetz), the pre-contractual liability, the liability for any guarantees or fraudulent intent as well as the liability for faulty damage to life, body and health remains unaffected.

e) Compensation claims of the Hirer due to delays or the impossibility to lease are limited to the agreed rental fee of the delayed or missing lease object except in case of gross negligence or intent.

## 7.

### **Use and Maintenance of the Lease Object**

a) The Hirer is obliged to use the lease object with due care and in a proper way. In particular, the Hirer has to carefully observe the instructions for use and the recommendations for maintenance and care which were supplied with the lease object. The Hirer is furthermore obliged to insure the lease object in the manner common for this sector of industry, amounting to the replacement value.

- b) Serial numbers, manufacturer signs and other identification means which are attached to the lease object may not be removed, covered or distorted in any way.
- c) The Hirer is only entitled to carry out modifications, installations, extensions and similar work to the lease object with our prior written consent. Upon our request, the Hirer shall at the time of termination of the leasing contract be obliged to reproduce the previous condition of the lease object and bear the costs therefor. If we do not exercise this right at the time the leasing contract is terminated and if the Hirer returns the lease object in the condition produced by him, the Hirer cannot demand reimbursement of the costs incurred for the modification, installation, extension and similar work carried out to the lease object.
- d) The Hirer is responsible for all damage which occurs due to improper use of the lease object.

## 8.

### **Loss of the Lease Object**

- a) The Hirer bears the risk of an accidental loss and an accidental deterioration of the lease object for the duration of the leasing contract. Such events do not release the Hirer from observing the duties accepted in the leasing contract, in particular, the payment of the rental fee. The Hirer is obliged to inform us in writing without delay should one of these events occur.
- b) If the Hirer is responsible for the loss or the deterioration of the lease object, the Hirer is obliged, depending on our choice, to put the lease object back in its contractual condition or to replace the lease object with another one of a similar quality and to transfer to us the ownership thereof or to reimburse the value of the lost or the loss of value of the deteriorated lease object. If we choose reimbursement, we shall, if possible, furnish the Hirer with a lease object of a similar quality in order to continue the lease contract.
- c) In the event that the lease object is lost or deteriorates due to reasons the Hirer is responsible for, the Hirer hereby assigns to us any future claims against insurers, to which the Hirer is entitled to in accordance with an insurance policy.

**9.**

**Third-Party Rights, Information Requirements**

- a) The Hirer is obliged to keep the lease object free of any and all third-party rights brought to bear on the lease object. If such a right is claimed, the Hirer has to inform us thereof without delay. In particular, the Hirer shall inform us without delay via telephone of any announced or already processed garnishment, seizure or other third-party influence on the devices (e.g. by means of a levy of execution) and confirm this to us in writing or via facsimile within 24 hours. The Hirer shall make our rights of ownership clear to any third party and shall explicitly inform third parties of this, if necessary.
- b) The Hirer shall bear all costs incurred in asserting our legal rights in order to defend us against asserted third-party claims.

**10.**

**Return of the Lease Object**

- a) At the end of the lease period the Hirer shall duly and without delay return the lease object to us at the Hirer's expense and risk.
- b) If the return of the lease object is delayed by the Hirer, the Hirer shall pay the agreed rental fee pro rata for every day of delay as a minimum irrespective of any further claims of compensation.
- c) If the lease object is not returned in the same condition, the Hirer shall compensate us for the damage incurred, in particular pay the agreed rental fee pro rata for the duration of any repair. The Consumer is explicitly permitted to provide evidence for the fact that no damage has arose from rental default or that the damage is significantly lower than the flat charge claimed for the duration of the repair.

**11.**

**Rescission of the Hirer**

If the Hirer resigns from the lease contract due to reasons we are not responsible for, the Hirer has to pay flat-rate compensation amounting to 30 % of the contract value. If the rescission is effected less than four weeks prior to the beginning of the agreed leasing time we will assess 45 %, in case of less than two weeks we will assess 60 % and in case of less

than one week we will assess 75 % of the contract value as a flat-rate compensation. If the rescission is effected during the agreed leasing time, every day of use of the lease object has to be recompensed fully, for every day of non-usage, we will assess 90 % of the contract value. The day of reception of the notification of rescission is considered as a full leasing day. The Consumer is explicitly permitted to provide evidence for the fact that no damage has arose from rental default or that the damage is significantly lower than the aforementioned correspondent flat-rate compensation.

## **12.**

### **Data Protection according to EU-General Data Protection Regulation (GDPR)**

#### **a) Preface**

Personal data, which are collected and processed by us in the context of entering into a contract or of contract processing do serve exclusively for the purpose of entering into a contract, arranging the content of the contract, implementation and processing of the contractual relationship (Art. 6 paragraph 1 b) GDPR). They will generally not be transmitted to third parties. For the purpose of executing payments, the necessary payment-data will be transmitted to the financial institution in charge of executing the payment and to the factoring service provider, for the purpose of carrying out transportation services they will be transmitted to the transportation service provider. Any use of personal data thus occurs only within the necessary extent or provided that we are obliged by law or judicial decision or, if necessary, in order to inhibit any misuse of our IT-infrastructure.

#### **b) Storage**

Hirer's personal data will, after the completion of the purpose for which they have been collected, only stored as long as it is necessary due to legal provisions (especially tax law provisions).

#### **c) Hirer's rights regarding their personal data**

##### **aa) Access to personal data**

Hirers have the right to obtain information whether personal data relating to them is processed by us. If this is the case, Hirers have the right to request access regarding those personal data as well as to the further information mentioned in Art. 15 of the GDPR.

##### **bb) Rectification**

Hirers have the right to request rectification of inaccurate personal data concerning them as well as the right to request the completion of incomplete personal data according to Art. 16 of the GDPR.

cc) Erasure

Hirers have the right to obtain the erasure of personal data concerning them without undue delay. We have the obligation to erase personal data without undue delay where one of the following grounds applies:

- The personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;
- The Hirer withdraws consent on which the processing is based and there is no other legal ground for the processing;
- The personal data have been unlawfully processed;
- The right to obtain erasure does not apply, as far as the personal data are necessary for the establishment, exercise or defense of our legal claims.

dd) Restriction of processing

Hirers have the right to obtain restriction of processing, if

- the Hirer contests the accuracy of the personal data for a period enabling us to verify the accuracy of the personal data;
- the processing is unlawful and the Hirer opposes the erasure of the personal data and requests the restriction of their use instead;
- we no longer need the personal data for the purposes of the processing, but they are required by the Hirer for the establishment, exercise or defense of legal claims;
- the Hirer has objected to processing pending the verification whether our legitimate grounds override those of the Hirer.

ee) Data Portability

Hirers have the right to receive the personal data concerning them, which they have provided to us, in a structured, commonly used and machine-readable format and have the right to transmit those data to another controller without hindrance from us, if and to the extent to which the processing is based on consent or on a contract and the processing is carried out by automated means.

ff) Right to Withdrawal

As far as the processing of the Hirer's personal data is based on their consent, Hirers have the right to withdraw their consent at any time.

gg) Exemption from costs and right to lodge a complaint

The exercise of your above-mentioned rights is in general free of charge. You have the right to lodge a complaint with the competent supervisory authority.

d) Data controller / Contact

You can contact us in case of data protection requests and the exercise of data protection rights by using the following contact details. Controller in terms of the GDPR is:

btl next GmbH  
Andreas Hahn  
Data Protection Coordinator  
Theodorstraße 299  
D-40472 Düsseldorf  
Telefon: +49-211-90 449 – 0  
Telefax: +49-211-90 449 – 555  
E-Mail: [datenschutz@btl.eu](mailto:datenschutz@btl.eu)  
Internet: [www.btl-x.de](http://www.btl-x.de)

**13.**

**Choice of Law, Place of Fulfillment, Court of Venue, Consumer Dispute Settlement, Preference of the German Copy, Severability Clause**

- a) The contract shall be governed by the law of the Federal Republic of Germany under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG). Regarding business relationships with Consumers this choice of law is applicable only as far as the Consumer does not lack the protection granted by compulsory law of the state where his habitual residence is located.
- b) For the Entrepreneur and for us, the place of fulfillment and payment is our place of business.
- c) For Merchants, legal entities, public corporations or foundations under public law, the court of jurisdiction for all disputes arising from the contractual relationship, including its validity, shall be the competent court at our place of business or the general court of jurisdiction of such Hirer depending on our choice.
- d) Online Dispute Settlement Platform and Consumer Dispute Settlement:  
The European Commission provides an Online Dispute Settlement Platform that can be found here: <http://ec.europa.eu/consumers/odr> - We do not participate in dispute settlement procedures at consumer arbitration boards.

- e) This English language version of the GTCL is a translation of the original German Language version. If there are any contradictions or inconsistencies between the original German Language version of the GTCL and any version or translation of the GTCL in any other language the German Language version shall prevail.
- f) Should any of the provisions contained in these GTC or the contract be legally invalid, the validity of the remainder of the contract's provisions shall remain unaffected by this circumstance.