

General Leasing Terms and Conditions of MAXIMATOR

I. Application of the „General Leasing Terms and Conditions of MAXIMATOR“

1. Unless otherwise agreed between the parties, these General Leasing Terms and Conditions (hereinafter the “Terms of Lease”) apply to all lease agreements on machines leased from MAXIMATOR GmbH, Lange Straße 6, 99734 Nordhausen, Germany, (hereinafter “MAXIMATOR”) (a lease agreement hereinafter “Lease Agreement”).
2. The general terms and conditions of the customer (hereinafter the “Customer”) or any other third party will not be acknowledged hereunder even if MAXIMATOR has not explicitly objected their application in the specific case. Even any reference by MAXIMATOR to documents that may contain the general terms and conditions of the Customer or of a third party will not constitute an acknowledgment of the application of such general terms and conditions.
3. Oral promises that were made by MAXIMATOR before the Lease Agreement was concluded are always without obligation or commitment. The signed Lease Agreement will replace any oral agreements between the parties unless in a given case their binding nature is specifically confirmed. Amendments or changes to the agreements including these Terms of Lease shall only be effective in writing. Transmission via telefax is sufficient to meet the requirement of written form. Other means of telecommunication, i.e. transmission per email, are not sufficient.

II. Offers

1. MAXIMATOR’s offers are always without obligation or commitment unless MAXIMATOR has specified a binding duration or a specific acceptance time limit. In that case the Customer’s order will be binding on MAXIMATOR. The Customer is committed to that offer for 4 weeks from the date MAXIMATOR receives the order. As a prerequisite for a Lease Agreement, MAXIMATOR must have explicitly accepted the Customer’s order by a written lease-order acknowledgment. Oral declarations or assurances before the signing of an agreement shall in any event be nonbinding and will be replaced by a written agreement unless in a given case their binding nature is specifically confirmed.
2. MAXIMATOR reserves all copyrights and related proprietary rights, as defined in the German Copyrights Act, to all illustrations, drawings, calculations and other documents made available in connection with MAXIMATOR’s offers or the handover of a leased equipment (hereafter each one a “Machine”). The use of these documents or their release to third parties, in whatever form, free or against payment, is not permitted without MAXIMATOR’s express written consent.
3. Unless specifically agreed otherwise, MAXIMATOR does not make personnel available with the Machine.

III. Lease Term

1. A Lease Agreement commences on the day agreed upon between MAXIMATOR and the Customer. If no specific date has been agreed, the Lease Agreement shall be in effect as of the day on which MAXIMATOR has loaded the Machine for shipment to the Customer or have transferred it to a freight forwarder selected by the Customer.
2. Should the Customer continue to use the Machine beyond the termination date of the Lease Agreement, such use will not extend the Lease Agreement. In that case, however, the Customer shall be required to pay MAXIMATOR a compensation for each additional day started, in the amount of the applicable daily fee for using the Machine. The burden shall be on the Customer to prove that MAXIMATOR has incurred no or only a minor loss. MAXIMATOR reserves the right to lodge a claim against the Customer especially for payment of further indemnities.

IV. Delivery and Return of the Machine

1. The Machine is leased “ex works” Nordhausen, excluding packing and transportation of the Machine. Packing and transportation will be invoiced separately, at the freight tariffs, customs duty rates and other shipping-related fees applicable on the day of delivery.
2. MAXIMATOR turns the Machine over to the Customer in operationally safe and technically proper condition. At the time of the transfer the Customer must inspect the Machine for its road safety, working condition and possible deficiencies. A written report on the condition of the Machine shall be required.
3. The Customer will always assume the risk of shipping and transportation. That risk will pass to the Customer at the time the Machine is turned over to the freight forwarder.
4. If the dispatch of the Machine is delayed for reasons attributable to the Customer, the passing of the risk will take place upon the start of the delay by the Customer. The cost of any storage required due to delayed acceptance shall be for the Customer’s account. MAXIMATOR reserves the right to charge for storage at a flat rate of 0.5% of the (net) monthly rental fee, or for the actual loss incurred, unless the Customer can prove that the loss was less. In addition, MAXIMATOR can grant the Customer a 14-day grace period; after that has expired without success, MAXIMATOR can terminate the agreement for cause and lodge a claim for damages.

General Leasing Terms and Conditions of MAXIMATOR

5. Upon termination of the Lease Agreement the Customer shall return the Machine to MAXIMATOR. Such return of the Machine will take place by delivering it back to MAXIMATOR's corporate facility at Nordhausen.
6. The Customer shall be required to notify MAXIMATOR in writing or by fax of the intended return of the Machine 14 calendar days prior to the return delivery date, unless a time limit was mutually agreed upfront.
7. The Customer must return the Machine to MAXIMATOR in the condition in which it was when delivered, taking into account the deterioration in value through its contractual use and in due consideration of the rules set forth in article VII.
8. If upon termination of the Lease Agreement the Customer fails to return the Machine to MAXIMATOR, MAXIMATOR shall have the right, but not the obligation, to retrieve the Machine and for that purpose to enter the site at which the Machine is being kept or used. The Customer waives any claim to withhold the Machine.

V. Lease Fee

1. The amount of lease fees is specified in MAXIMATOR's respective offer and is subject to the addition of the statutory value-added tax. The lease fees do not include ancillary expenses, especially the cost of loading, operation, freight, import or export duty or the deployment of personnel, costs of working material or those costs for the operation of the Machine.
2. The obligation to pay the lease fees begins with the handover of the Machine. The lease fees shall be paid monthly in advance within ten (10) calendar days after the corresponding invoice has been received by the Customer.

VI. Term and Termination of the Lease Agreement

1. The Lease Agreement terminates upon expiration of the term agreed upon between the parties. If the parties did not agree on a fixed lease period, the Lease Agreement shall expire on the day the Machine and all its operating accessories are returned to MAXIMATOR by the Customer, with MAXIMATOR's consent, to the stipulated delivery point, unless either party had already terminated the Lease Agreement at 30 calendar days prior notice and by the time the Machine is returned to MAXIMATOR that termination is already in effect.
2. Pursuant to Section 543 German Civil Code, either party may terminate the Lease Agreement for cause without notice, including but not limited to the following reasons:
 - the Customer continues to use the Machine in a contract-violating manner that infringes MAXIMATOR's rights to more than an insignificant extent, notwithstanding written warnings by MAXIMATOR; especially if the Customer uses the Machine or part thereof for a construction project not agreed upon by the parties or moves the Machine to a site other than that agreed upon without our prior consent; or allows a third party to use the Machine without authorization, or endangers the Machine by improper use or neglect of due care;
 - the Customer is more than five weeks in arrears with the payment of two (2) full monthly (gross) rental fees;
 - insolvency proceedings against the assets of the Customer have been initiated; or
 - the Customer has not met his obligations under the Lease Agreement despite written reminders, infringing MAXIMATOR's rights to more than an insignificant extent.
3. In the event of termination for cause without prior notice MAXIMATOR reserves the right to collect the Machine from the Customer, who shall provide MAXIMATOR access to the Machine, and the take possession of the Machine on MAXIMATOR's sole discretion.
4. Any termination of the Lease Agreement must be in writing.
5. Section 580 German Civil Code shall not apply.

VII. Customer's Special Obligations

1. The Customer shall be required to use the Machine only as provided for and only at the agreed-upon location, to protect it from excessive wear and tear, to carefully abide by the applicable accident prevention and occupational safety regulations and to assign only technically trained personnel to the operation of the Machine. In addition, the Customer must reassure himself that his technical personnel is familiar with the manipulation of the Machine and performs the activities duly observing all safety precautions.

General Leasing Terms and Conditions of MAXIMATOR

2. The Customer shall perform promptly, competently, with the use of genuine or – with MAXIMATOR's consent – equivalent replacement parts, and at his own expense any repairs necessary through the Customer's fault – including spare parts – required for the operability of the Machine during the time of the lease. Repairs due to normal wear and tear are to be performed by MAXIMATOR and at MAXIMATOR's expense.
3. The replacement parts required per article VII sec. 2 shall be purchased from MAXIMATOR against appropriate payment. However, if in response to the Customer's inquiry MAXIMATOR does not promptly declare that MAXIMATOR can supply the required replacement parts within the same delivery time and at no higher cost as the Customer can himself, the Customer shall have the right to procure the replacement parts within the scope of self-remedy elsewhere.
4. Without MAXIMATOR's prior written consent the Customer is not authorized to make modifications to the Machine, especially with added external or internal components, or to remove identification markings affixed by MAXIMATOR.
5. The Customer is not permitted to grant rights on the Machine to a third party (such as on a rental or loan basis).
6. If a third party exercises a right to the Machine by confiscation, distraint or the like, the Customer is required to immediately inform MAXIMATOR thereof in writing.

VIII. Insurance

1. The Customer shall obtain the following insurance coverage for the risk of damage to or destruction of the Machine, resulting from:
 - Violations by the Customer's vicarious agents, excluding recourse by the insurer;
 - Fire, explosion and damage due to acts of war; and
 - Transport hazards during the delivery and return shipment of the Machine, if the Customer is required to assume responsibility for inbound delivery to and outbound delivery from the construction site.
2. The Customer shall obtain insurance coverage for the above-mentioned hazards at his own expense, presenting to MAXIMATOR, before handover of the Machine, the respective insurer's provisional cover note with indication of any possibly stipulated deductible amount.
3. Losses as a result of burglary, theft or other misplacement after the handover of the Machine shall be charged to the Customer if the Customer had failed to take appropriate measures to prevent burglary, theft and misplacement.
4. In the event of a loss per article VIII sec. 1 or article VIII sec. 3 the Customer shall immediately bring that to MAXIMATOR's attention, indicating the time of the occurrence and the cause and extent of the damage.
5. The Customer agrees to hold MAXIMATOR harmless against liability claims by third parties originating in the time period during which the Customer (or a third party engaged by him) had control over the Machine.
6. As a precautionary measure, the Customer cedes to MAXIMATOR any claims against his insurer (article VIII, sec. 1). Moreover, the Customer cedes to MAXIMATOR any claims against his insurer (article VIII sec. 1) insofar as MAXIMATOR is liable to third parties for damages caused through the operation of the Machine by the Customer (and/or a third party engaged by him). MAXIMATOR accepts these cessions.

IX. Right of Inspection

1. MAXIMATOR reserves the right to inspect the Machine at any time after 5 calendar days prior notice or to have it inspected by an authorized representative. The Customer shall be required to facilitate MAXIMATOR's inspection in every way. MAXIMATOR will bear the costs of the inspection.
2. Before the Machine is returned upon termination of the Lease Agreement, both parties shall jointly perform a final examination of the Machine.
3. Should there be disagreement between MAXIMATOR and the Customer as to the condition of the Machine, then, at the request of either party, the Machine will be examined by an outside expert. If the parties cannot agree on a particular expert, the latter shall be appointed by the Chamber of Industry and Commerce in Hamburg, Germany. The expert is to determine the extent of the defects and damages and the expected costs and the physical time required to correct them, and to document that in an expert opinion. The expert's assessment shall be binding on both parties. The expert will in his own and fair discretion determine by whom and at what ration the cost of the expert assessment is to be defrayed. The deciding factor will be the causal share of the parties.

General Leasing Terms and Conditions of MAXIMATOR

X. Warranty

1. MAXIMATOR's liability for defects that existed at the time the agreement was signed is limited to those defects which were listed in the report at the handover of the Machine (article IV sec. 2) and to those which even with due care the Customer could not have recognized. Special characteristic features of the Machine are neither stipulated nor guaranteed.
2. We are not liable for initial defects within the meaning of Section 536a (1) alt. 1 German Civil Code (BGB).
3. The limitation period for warranty rights shall be one (1) year, insofar as the defect was not intentionally caused and except the defect concerns a quality that was guaranteed by MAXIMATOR or in cases of injury to body, life or health.

XI. Liability

1. MAXIMATOR assumes unlimited liability for damages due to injuries to life, body or health caused by a breach of duty by MAXIMATOR, by one of MAXIMATOR's legal representatives or by one of MAXIMATOR's vicarious agents, as well as for damages caused by the omission of a quality that was guaranteed by MAXIMATOR or through wilful deception on MAXIMATOR's part.
2. MAXIMATOR assumes unlimited liability for damages caused by MAXIMATOR or one of MAXIMATOR's legal representatives or vicarious agents through malicious intent or gross negligence.
3. In the event of minor negligent violation of essential contractual duties by MAXIMATOR or one of MAXIMATOR's legal representatives or vicarious agents, with the exception of cases under article XI sec. 1 or article XI sec. 4, the amount of MAXIMATOR's liability will be limited to the contractually typical and predictable damages. Essential contractual duties, in the abstract sense, are those duties whose fulfilment makes the proper execution of a contract possible in the first place and on the compliance with which the parties to the agreement must be able to depend.
4. The above shall be without prejudice to liability under the German Product Liability Act.
5. Other than that stated, MAXIMATOR assumes no liability.
6. The statute of limitations for indemnification claims against MAXIMATOR is one (1) year with the exception of cases per article XI sec. 1, article XI sec. 2 or article XI sec. 4.

XII. Confidentiality

1. The Customer shall be required to keep confidential information strictly confidential for a period of 5 (five) years from receipt of such confidential information.
2. Confidential information includes all data regardless of whether it is indicated or marked as confidential, and regardless of whether it is in written, oral, visual or digital form, which has been or will be made available to the Customer in relation to or in connection with the leasing of a Machine from us, or is otherwise perceived by the Customer, in particular information on (i) the compensation arrangement between the parties, (ii) the details of the Lease Agreement concerned, and (iii) all of the technical information, know-how about the Machines leased from us, any designs, drawings, plans, techniques, algorithms, patterns, processes, methods, new product or technology information, statistical models, passwords, access codes, security procedures, new product development or manufacturing information, trade secrets, business strategies and business development plans and supplier information made available to the Customer, and (iv) other relevant business information that is usually not generally available, including certain third party information that a party is required to keep confidential, and any other information of a confidential nature.
3. Without our prior written consent, the Customer shall not (i) make the confidential information accessible to third parties, either directly or indirectly, either in whole or in part, nor permit disclosure, and (ii) use it for other purposes that do not serve the mutual cooperation. The obligation to maintain confidentiality shall continue to apply after termination of the leasing for the duration specified in article XII No. 1.
4. This confidentiality requirement does not include information which without contravention by the Customer (i) was already known prior to disclosure and the Customer did not receive it directly or indirectly from us and both are evident from records; (ii) has become public knowledge prior to disclosure without being the result of a breach of the confidentiality obligation; (iii) the Customer has already received it from a third party who was authorized to disclose it without restriction; or (iv) the Customer has developed the concerning information without breach of this article XII and can prove this independent development by written record.
5. The Customer shall take all measures necessary to protect the confidentiality of the confidential information. In particular, the Customer is obliged to disclose confidential information only to authorized persons and only to the extent necessary for the performance of the duties. The Customer shall (i) inform the authorized persons that the confidential information is to be treated confidentially, (ii) bind them to confidentiality by means of a written agreement which protects the confidential information at least as strictly as this article XII, and

General Leasing Terms and Conditions of MAXIMATOR

(iii) monitor the authorized persons with regard to compliance with confidentiality. Any breach of confidentiality by authorized persons will be ascribed to the Customer as a breach of obligations under this Agreement (Section 278 of the German Civil Code).

6. The Customer is only permitted to reproduce confidential information to the extent necessary for the purposes of leasing a machine agreed between the parties.
7. At our request, the Customer is obliged to (i) return immediately to us or (ii) destroy and delete from any storage medium all confidential information and portion thereof, and any copies, excerpts or notes thereof, as well as any documentation, drawings and specifications. An exception to the confidentiality obligation under this article XII applies insofar as the Customer is obliged under mandatory law to store copies of such confidential information. In this case, the obligation under this article XII shall apply as soon as the statutory storage requirement for the Customer no longer applies.

XIII. Miscellaneous

1. The venue and jurisdiction for any disputes arising in connection with supply transactions shall be Hamburg or, if so chosen by MAXIMATOR, the Customer's place of business, but for actions by the Customer it shall be Hamburg only. Legal regulations regarding jurisdiction take precedence. This jurisdiction-related provision applies to corporate customers only.
3. Contracts with Customers not located within the Federal Republic of Germany shall be governed by German law with the exception of the provisions of conflict of laws, unless stipulated otherwise. The UN convention on Contracts for the International Sale of Goods (CISG) and other current and future interterritorial or international conventions, even if adopted into German law, shall be inapplicable.
4. All agreements made between MAXIMATOR and the Customer in connection with the execution of a Lease Agreement shall be recorded in writing. This also applies to all legally relevant declarations and notifications that are given to MAXIMATOR by the Customer (i.e. setting of deadlines, notification of defects or declaration of termination of contract) and to all modifications to the Lease Agreement.
5. Without MAXIMATOR's written consent the Customer may not delegate to third parties rights and obligations under a Lease Agreement.
6. Business with legal persons under public law and public-law estates will be transacted in the same way as with private enterprises.
7. The Customer may invoke retention rights or repudiation rights only if based on undisputed, court-confirmed or pending claims that are ready for decision under the respective lease arrangement with MAXIMATOR.
8. Should a clause of these Terms of Lease be wholly or partly invalid or unenforceable, it will not affect the validity and enforceability of all of the remaining provisions of these Terms of Lease. The invalid or unenforceable provision shall be replaced by a valid and enforceable provision that comes closest to the financial purpose pursued by the parties with the invalid or unenforceable provision. The same applies if a gap is detected in the Terms of Lease that needs to be closed.