

# **mateco**

YOUR BETTER WAY UP



## General Hire Conditions



# Fedecom General Hire Conditions 2017

## Clause 1: Applicability

- These conditions apply to all hire agreements entered into between the Lender and Hirer.
- These conditions may only be used by members of the Koninklijke Metaalunie branchegroep FEDECOM.
- The Lender is the FEDECOM member using these conditions. The contractual party is referred to as the Hirer.

## Clause 2: Offers

All offers are without obligation.

## Clause 3: Hire and hire price

- The hire agreement is entered into for the term and at the hire price as stated in the hire agreement.
- Unless another additional price arrangement has been agreed in the hire agreement concluded by the parties, a change in the maximum number of operating hours stipulated in the hire agreement can be reason to change the hire price in the interim.
- The additional hours, established on the basis of the number of hours recorded on the counter attached to the Hired Item will, unless another additional price arrangement has been agreed, be calculated at an additional price stated in the agreement and will be payable with retroactive effect from the date of the change by the Hirer.
- If the hire lasts longer than one year, there will be an annual adjustment of the hire price on the basis of the change in the monthly price index figure in accordance with the consumer price index (CPI) all households (2006=100), published by Statistics Netherlands. The adjusted hire price is calculated on the basis of the following formula: the adjusted hire price is equal to the hire price on the commencement date of the (first) hire period multiplied by the index figure of the calendar month which lies four calendar months before the calendar month in which the hire price is adjusted, divided by the index figure of the calendar month which lies four calendar months before the calendar month in which the first hire period commenced.

## Clause 4: Payment

- If the hire period is longer than one month, invoicing will be on a monthly basis. The monthly amounts payable by the Hirer must be credited before the first of each month to the bank account number provided by the Lender. If the hire period is shorter, payment must be made when the Hired Item was made available to the Hirer.
- The deposit referred to in the agreement must be paid on commencement of the hire agreement. The deposit shall be refunded to the Hirer at the end of the agreed hire period provided the Hired Item, subject to deterioration due to normal wear and tear, has been transferred to the Lender in the condition in which it was made available to the Hirer.
- Irrespective of the agreed payment conditions the Hirer is obliged, at the request and at the discretion of the Lender, to provide sufficient security for payment. If the Hirer does not comply with this within the set term, the Hirer is immediately in default. In that event, the Lender is entitled to terminate the agreement and recoup any loss from the Hirer.
- The right of the Hirer to offset his claims on the Lender is excluded unless the Lender is bankrupt.
- The claim for full payment becomes immediately due and payable if:
  - a payment term has been exceeded;
  - the bankruptcy or a moratorium of the Hirer is petitioned;
  - the assets or accounts receivables of the Hirer are seized;
  - the Hirer's company is being dissolved or liquidated;
  - the Hirer (natural person) is admitted to a statutory debt restructuring scheme;
  - the Hirer (natural person) is placed under guardianship or dies.
- If payment has not taken place within the agreed payment term, the Hirer immediately owes the Lender interest. The interest is 12% per year, but is equal to the statutory interest if such is higher. In the interest calculation, a part of a month is deemed to be a full month.

## Clause 5: Delivery

- The Hired Item is delivered to the Hirer at the location indicated in the hire agreement. The costs of delivery and collection are for the account of the Hirer. From the moment of delivery, the Hired Item and the use of the Hired Item is for the account and at the risk of the Hirer.
- The Hirer is responsible for any assembly and disassembly of the Hired Item.
- At the time of delivery, the Lender, or a third party to be indicated by the Lender, shall prepare a report on the condition of the Hired Item. In the event of a dispute, this report shall serve as evidence for the condition of the Hired Item at the time of delivery of the Hired Item to the Hirer by the Lender.
- If the Hired Item is not available on time, the Hirer is in any event not entitled to compensation.

## Clause 6: Ownership

- All that is fitted or affixed to the Hired Item by or on behalf of the Hirer making it a part of the Hired Item becomes the property of the Lender.
- The Lender is also deemed to be the owner of the Hired Item for tax purposes. The Hirer shall not present himself in respect of the Hired Item as the owner, and shall refrain from making claims on Dutch Tax investment facilities.
- The Hired Item cannot be sold, pledged or otherwise encumbered by the Hirer. It is the parties' intention for this to have effect under property law. In addition, the Hirer is not authorised to sub-hire the Hired Item to third parties or give it in (partial) use, unless the Lender has given its express written permission for this.
- The Hirer is obliged to notify the receiver in bankruptcy, the administrator, the seizing bailiff, the lessee or any other claiming the surrender of the Hired Item or a part thereof immediately of the existence of the ownership right of the Lender and to notify the receiver of this within 24 hours. Pending the instructions of the Lender, the Hirer must take suitable measures at his expense to protect the Hired Item and the interests of the Lender.
- The costs of the measures to be incurred by the Lender in this event are for the account of the Hirer.
- The Lender is entitled to affix a mark to the Hired Item clearly showing the ownership right of the Lender to third parties. The Hirer may not remove this mark during the term of the hire agreement.

## Clause 7: Use

- On delivery, the Hired Item is deemed to correspond with the choice of and the intended use by the Hirer, be in a sound condition and have been delivered with all required accessories and materials.
- The Hirer shall look after the Hired Item with proper care, secure it efficiently and only use it in accordance with its purpose, all this with due observance of the operating and handling instructions.
- The Hirer undertakes only to allow people of 18 years old or above to use the Hired Item, who have the required skill to operate the Hired Item. These people must meet all the requirements imposed by law on the use. They must also have demonstrable experience: for example, they must have all the certificates required for the use.
- The Hirer will not use the Hired Item outside the location stipulated in the hire agreement.
- Without the prior written permission of the Lender, the Hirer is not permitted to drive the Hired Item on the public roads (as referred to in the Dutch Road Act).
- When not in use, the Hirer is required to keep the Hired Item in a dry place locked against vandals. During this time the ignition key must be removed. Failure to comply with this clause will result in an immediately due and payable penalty of € 2500.00 for each day on which the non-compliance continues. The above does not prejudice the right to full compensation for loss.
- The Hirer is obliged to notify the Lender immediately if the Hirer observes any defect or damage to the Hired Item. The Hirer is fully liable for any loss the Lender suffers as a result of the failure of the Hirer to comply with this duty to report.
- If the Hirer is unable to use the Hired Item, this is for the Hirer's account and does not affect the Hirer's payment obligation(s) except if, in the view of the Lender, the impediment is of an unreasonably long duration or is the result of circumstances which can be attributed to the Lender.

## Clause 8: Inspection and maintenance

- The Hirer undertakes to make the Hired Item available for inspection at the request of the Lender and free of charge. The Hirer gives the Lender permission in advance to enter the buildings and sites of the Hirer to inspect or repossess the Hired Item.
- The Hirer:
  - will provide the Hired Object with fuel, charge any batteries and have the Hired Item regularly cleaned at its own expense;
  - will inspect the Hired Item daily in accordance with the instructions and inasmuch as is applicable check:
    - the levels of lubricating oil, hydraulic oil, coolant, anti-freeze and brake fluid, all other lubricants and liquids in the appropriate reservoirs and compartments. Where needed the Hirer will top up these reservoirs;
    - the tyre pressure and the condition of the tyres. Where needed the Hirer will pump up the tyres to the prescribed pressure;
    - the functioning of the operating hours counter;
    - the condition of the warning and detection systems, pipes, hoses, cooling systems, light and lubrication systems, etc.;
    - the general and safe functioning of the Hired Item and any equipment connected to or belonging to the Hired Item.
  - will report deviations to the Lender without delay;
  - will inspect the water level of the traction battery each week and, if needed, will top this up with distilled water after charging.
- Unless agreed otherwise, the Hirer will bear the cost of repairing or replacing punctured or worn tyres. The Lender will arrange for repair or replacement.
- The Hirer will make the Hired Item available in a cleaned condition and continuously, cost free, in a suitable place for the regular maintenance to be carried out by the Lender, or for any malfunctions to be rectified.
- Any repairs may only be carried out by the Hirer or third parties with the express, prior consent of the Lender. If the Lender has not given consent, the costs of the repairs are for the Hirer, without prejudice to the right of the Lender, in the event of damage, to claim full compensation.
- The maintenance of the Hired Item, except that mentioned in paragraph 2 of this clause, is for the Lender's account.
- The maintenance mentioned in the previous paragraph of this clause, resolving any malfunctions or repair work will be done by the Lender on working days (Mon. to Fri.) and during regular working hours (7.30 a.m. to 5 p.m.). If this work takes place on days other than these days and at other times, the additional costs related to this, such as overtime, allowances for work done in the weekend and on public holidays etc. will be at the Hirer's account. The Lender will draw up a separate invoice for these additional costs, which, unless it has explicitly been agreed otherwise, the Hirer must pay together with the next hire instalment or, if this is earlier, within 30 days of the invoice date.

## Clause 9: Impracticability of the hire agreement

- The Lender is entitled to suspend the performance of its obligations if, due to circumstances which could not be anticipated when entering into the agreement and which are outside the Lender's control, the Lender is temporarily unable to comply with its obligations.
- Circumstances which cannot be anticipated by the Lender and which are outside its control include the circumstances that suppliers of the Lender fail to comply with their obligations or fail to comply with them on time, weather, earthquakes, fire, loss or theft of the items to be hired, road blockades, strikes or work interruptions, import restrictions or trade restrictions.
- The Lender is no longer entitled to suspension if the temporary inability to perform has lasted longer than six months. The agreement can only be terminated after this term and exclusively for the part of the obligations not yet performed. In that event, the parties are not entitled to compensation of the loss suffered or to be suffered as the result of the termination.

## Clause 10: Insurance of the Hired Item

- The Lender will take out the Compulsory Motor Vehicle Insurance (WAM) for the Hired Item.
- In addition to the insurance mentioned in paragraph 1 of this clause, the Hirer is required to adequately insure the Hired Item against the risks related to the use of the Hired Item, unless:
  - The Lender and Hirer have agreed in writing that the Lender will take out or has already taken out fire, theft and damage ("casco") insurance, work material insurance or some other insurance suitable for the Hired Item and the work performed with it.
- If there is intent or gross negligence on the part of the Hirer, the Lender can recover any loss it has incurred from the Hirer on grounds of its statutory obligation to insure.
- In all cases where the Lender must make a claim on the insurance taken out by the Lender, the Hirer is obliged to pay the excess on the basis of the policy conditions to the Lender.

## Clause 11: Liability of the Hirer

- The Hirer is liable towards the Lender for all damage to the Hired Item, which includes damage due to loss of the item, embezzlement, theft, disposal and total destruction, insofar as this damage is not compensated by any insurance taken out by the Lender.
- In the event of damage, the Lender will arrange for the Hired Item to be repaired or replaced and the cost will be for the Hirer's account.
- The Hirer is liable for all loss, however named and however caused, inflicted or arisen due to the (use of the) Hired Item.
- The Hirer indemnifies the Lender fully against claims by third parties for compensation relating to the (use of the) Hired Item.
- In the event of damage to or caused by or with the Hired Item, the Hirer must notify the Lender of this immediately in writing. The Hirer is fully liable for any loss the Lender suffers as a result of the failure of the Hirer to comply with this duty to report.
- The Hirer is obliged to take all possible measures to limit the damage to or loss in connection with the Hired Item.

## Clause 12: Liability of the Lender

- In the event of an attributable failure, the Lender is obliged to as yet comply with its contractual obligations. The obligation of the Lender to pay compensation - on whatever statutory basis - is limited to the loss for which the Lender is insured pursuant to an insurance taken out by the Lender or taken out on its behalf, but is never higher than the amount paid out by this insurance in the relevant case.
- For whatever reason, the Lender cannot rely on the restriction included in paragraph 1 of this clause, the obligation to pay compensation is limited to the amount that the Lender has charged in the current agreement (exclusive of VAT).
- Not eligible for compensation is:
  - Consequential loss, including business interruption loss, production loss and loss of profit;
  - Damage due to load or burden;
  - Loss caused by an intentional act or willful recklessness of auxiliary persons or non-managerial staff of the Lender;
  - Damage to goods in or under its care, custody or control.If possible and desired, the Hirer can take out insurance against such damage.

## Clause 13: Termination of the agreement

- An agreement entered into for a fixed period terminates by operation of law as soon as the fixed term has expired. A fixed term agreement cannot be terminated in the interim.
- If the agreed hire period expires without the hire agreement having actually ended in the form of the return of the Hired Item, the agreement is tacitly continued for an indefinite period of time and under the same conditions.
- An agreement concluded or renewed for an indefinite term can be terminated by given notice. Termination of the agreement for an indefinite period of time must be by registered letter with due observance of the notice periods mentioned below:
  - Termination during the first six months of the agreement, counted from the commencement of the hire agreement or the date of renewal for an indefinite term: a one week notice period;
  - Termination during the second six months of the agreement: a two week notice period;
  - Termination after one year: a one month notice period.

## Clause 14: Termination

- The Lender is entitled to terminate the hire agreement without a notice of default or judicial intervention being required by means of a written, extrajudicial statement in, inter alia, the following circumstances:
  - If the Hirer fails to pay a hire instalment or another amount pursuant to the hire agreement to the Lender on time on the due date, irrespective of whether or not the Hirer has been issued with a notice of default;
  - If the Hirer fails to perform an obligation under the hire agreement or fails to perform it fully, in time or properly, or carries out an act which is contrary to the hire agreement;
  - If the Hirer, being a natural person, dies, is placed under guardianship or otherwise loses the unfettered control over his assets;
  - If the Hirer applies for a (provisional) moratorium, petitions his own bankruptcy or his bankruptcy is petitioned by another, he is declared bankrupt, he applies for the application of the Debt Management (Natural Persons) Act, [Wet schuldsanering natuurlijke personen (Wsnpp)] or this has been declared applicable to him;
  - If the Hirer, being a legal person or business, resolves to liquidate the legal person or business, fully or partially ceases the business or relocates the business to a different location than where the Hirer is based according to the hire agreement on signing, or the Hirer resolves to proceed to such a cessation or relocation;
  - If the insurance of the Hired Item is cancelled by insurers or the insurance policy is withdrawn or an existing insurance is not renewed and no adequate cover, at the discretion of the Lender, can be obtained from other insurance companies;
  - In the event of loss (including theft and embezzlement) of the Hired Item or total destruction of the Hired Item.
- In the events referred to in paragraph 1 of this clause, the Hirer owes the Lender an immediate lump sum compensation equal to all the instalments falling due and all due, but not yet paid, instalments including default interest as referred to in clause 4.6.
- If the hire agreement is for an indefinite period of time, the Hirer owes the Lender in the events referred to in paragraph 1 an immediate lump sum compensation equal to all the instalments falling due until the commencement date of the hire of the Hired Item by a subsequent hirer, provided the Lender makes all reasonable efforts to find a subsequent hirer as soon as possible, and all due, but not yet paid, instalments including default interest as referred to in clause 4.6.
- In the event of the termination of the hire agreement, the Hirer immediately loses the right to use the Hired Item and the provisions included in clause 16 apply mutatis mutandis as far as possible.
- The provisions in this clause do not affect the right of the Lender to claim, judicially or extra-judicially on the basis of the relevant sections of the Dutch Civil Code, full or partial performance or (partial) termination of the hire agreement and additional compensation.

## Clause 15: Return of the Hired Item

- At the end of the hire, the Hirer is obliged to return the Hired Item in good and original condition (subject to normal wear and tear) to the Lender in a manner and to a location to be indicated by the Lender.
- All costs relating to the return of the Hired Item to the Lender, including the costs of transport to a destination indicated by the Lender and the costs of (transport) insurance, are for the account of the Hirer.
- If in the view of the Lender, the Hired Item is not clean on collection, the Lender is entitled to clean the Hired Item (or have this done) for the account of the Hirer, provided the Lender has notified the Hirer within two working days after taking receipt of the Hired Item, that the Hired Item was not clean and shall be cleaned for the account of the Hirer.
- As long as the Hired Item has not been returned to the Lender to the satisfaction of the Lender, the Hirer is obliged, in addition to the payment obligations resting on the Hirer, to comply with all other obligations pursuant to the hire agreement.
- All costs to be incurred by the Lender after the return of the Hired Item due to the fact that the Hirer has failed to comply with any obligation pursuant to the hire agreement, including repair or maintenance obligations, are for the account of the Hirer.
- At the time of the return, the Lender, or a third party appointed by the Lender to this end, shall prepare a report on the condition of the Hired Item. In the event of a dispute, this report shall serve as evidence for the condition of the Hired Item at the time of the return of the Hired Item by the Hirer to the Lender. Any damage exceeding normal wear and tear shall be born by the Hirer.

## Clause 16: Bankruptcy or a moratorium of the Hirer

This agreement will end in the event of the bankruptcy or a moratorium of the Hirer. In that case, the receiver or the administrator will act in the Hirer's place. All remaining hire instalments will then become immediately due and payable. The receiver or administrator is required to prepare the Hired Item for collection by the Lender.

If the Lender agrees, the receiver or the administrator can also opt to continue this agreement. In that case, the receiver is required to pay all the outstanding hire instalments up until the remaining hire period.

## Clause 17: Transfer of rights and obligations (during sublease)

- The Lender is entitled to transfer its right and obligations under the agreement, as well as the ownership of the Hired Item, to a third party.
- The Hirer hereby approves such a transfer.
- The Lender might possess the Hired Item on the basis of a financing agreement concluded with a financier. In case the Lender fails to comply with the financing agreement, the Lender and the financier have agreed that the Lender will transfer all the rights that the Lender has under this hire agreement towards the Hirer, to the financier in advance. On signing this agreement, the Hirer accepts this and undertakes to fully cooperate with the financier at the financier's first request.

## Clause 18: Applicable law and competent court

- Dutch law applies.
- The Dutch court in the place of business of the Lender has jurisdiction to hear disputes. The Lender may depart from this jurisdiction rule and apply the statutory jurisdiction rules.