

## **Aggreko Deutschland GmbH** **General Trade and Lease Conditions**

### **1. Scope of Validity**

- 1.1 Aggreko Deutschland GmbH - hereinafter referred to as "Aggreko" - leases mobile generators, chillers and compressed air units – hereinafter referred to as "leased objects" - and delivers associated services - hereinafter referred to as "additional services" - exclusively on the basis of the following general trade conditions, unless otherwise agreed in writing in specific cases.
- 1.2 The receipt of the leased objects or services shall be considered as acceptance of these conditions. They apply even if they are not explicitly mentioned in subsequent contracts or services.
- 1.3 The Aggreko general trade and lease conditions are exclusively applicable. The terms and conditions of the customer - hereinafter referred to as the "Customer" - do not apply as far as they contradict the Aggreko general trade conditions or deviate from them, unless Aggreko agreed with the Customer's terms and conditions explicitly and in writing. The Aggreko general trade conditions apply also in the event that Aggreko fulfills the agreement without reservation although Aggreko is aware of the Customer's contradicting or deviating terms.
- 1.4 The conclusion, amendment and supplementations to a contract must be in writing

### **2. Assumption of Validity of a Lease Agreement**

- 2.1 A lease agreement comes into effect through acceptance of a contract sent by Aggreko or through its use after dispatch (fulfillment).
- 2.2 Reservations do not entitle any legal rights.
- 2.3 Proposals bind Aggreko for a period of 7 days.
- 2.4 Aggreko reserves the right to assign the leased objects according to the number and size depending on availability as well as under consideration of the required service.
- 2.5 A minimum lease period is three calendar days

### **3. Scope of Services**

- 3.1 Aggreko allows the Customer to use the leased object for the contractually specified purpose.
- 3.2 Aggreko is responsible for maintaining the usability and proper function of the leased object during the agreed lease term by replacing damaged parts or repairing the leased object and, if necessary and available, by alternative replacement devices. The operating costs shall be borne by the leaseholder (cf. par. 11.2).

### **4. Duties of the Customer**

- 4.1 The Customer shall notify the binding delivery address and the installation site to Aggreko in writing. Any additional charges due to incorrect or incomplete information shall be borne by the Customer.
- 4.2 The Customer shall inform Aggreko of any specificities at the site that might obstruct a smooth delivery, installation and operation of the leased object.
- 4.3 The Customer shall select the installation site in such a way that delivery is guaranteed without loss of time as well as trouble-free and normal use of the leased object..
- 4.4 The transfer of the leased object to another location requires the approval of Aggreko.

## **5. Acceptance of the Leased Object**

- 5.1 The Customer accepts the leased object at the time of delivery to its site. Inspection and acceptance are documented in an acceptance log..
- 5.2 If the Customer is unable or does not appear for inspection and acceptance, the acceptance of the leased object is assumed when it is put to use.
- 5.3 The risk of loss, theft, damage or destruction of the leased object passes to the Customer at the transfer of physical possession of the leased object at the delivery site specified in the offer. The leased object shall remain at the sole risk of the Customer during the lease period and any further term during which the leased object is in the possession, custody or control of the Customer (including transport to and from the site and within the site, and unloading/loading at the site) until such time as the leased object is returned to Aggreko.
- 5.4 At the time of returning the leased object, a record of the condition of the leased object shall be created. If the Customer is unable or does not appear for the returning of the leased object, the record shall be created by Aggreko.

## **6. Customer Due Diligence**

The Customer is obliged to

- use the leased object only as intended to protect it from overload and overuse;
- ensure that the leased object, in particular the cooling towers, are not to be used near salt water, salt spray, salt laden air or hazardous materials, or situated in an environment liable to be open to dust or fine metallic substances without giving prior written notice to Aggreko;
- notify Aggreko prior to commencement of the lease period of any bacteria, viruses, parasites, contaminants, corrosion, debris or other hazardous substances or materials present in the Customer's cooling or heating system;
- notify Aggreko of any bacteria, viruses, parasites, contaminants, corrosion, debris or other hazardous substances or materials that are discovered in the Customer's cooling or heating system during the lease period;
- not introduce any coolant, refrigerants, water treatment chemicals or other consumables to the temperature control system comprised of or incorporating the leased object without giving prior written notification to Aggreko;
- to ensure careful and proper operation, service and maintenance of the leased object, taking into account the operating instructions of Aggreko and / or the manufacturer;

- immediately inform Aggreko, if necessity arises for repairs and maintenance of the leased object or if there is a need to perform service tests depending upon the hours of operation. In this context, the Customer shall provide information to Aggreko at any time about the location of the leased object and provide access to Aggreko at its own expense;
- to take precautions and safety measures, so as to prevent the risk of unauthorized access of the leased object by third parties;
- to fuel leased diesel generators only with standard diesel fuel. Other fuels can be used only with explicit written consent of Aggreko;
- immediately notify Aggreko of any loss or damage of the leased object. If the loss or damage was due to the action of a third party, the Customer must also file a police complaint and immediately inform Aggreko in writing about the extent, course and people involved in the damage;
- to inform the third party in the event of seizure or other impairment of the leased object, that the leased object is property of Aggreko, and to immediately inform Aggreko of such an event. The Customer exempts Aggreko from all costs incurred in this context and assumes sole liability.

## **7. Security Deposit**

- 7.1 In the event that the leased object should not be used in Germany, a security deposit determined by Aggreko or letter of guarantee of a credit institution that underlies the supervisory board of the Federal Agency for financial services, shall be presented and will be reimbursed or refunded after the leased object is returned.
- 7.2 Upon termination of the lease, Aggreko is entitled to offset the customer's security deposit to cover any open lease payments and / or compensation claims for additional services and / or damage compensation claims.

## **8. Subleasing**

- 8.1 A sublease agreement requires the prior written consent of Aggreko.
- 8.2 The customer is obliged to make these General Terms and Conditions the subject of the sublease contract.

## **9. Contract Duration and Termination**

- 9.1 The lease starts on the day the leased object leaves the depot of Aggreko, regardless of whether the delivery was made by Aggreko, a freight forwarder or collected by the Customer. Lease end is the day leased object is returned to the contractually specified place, in case of doubt, the delivering depot of Aggreko. Deviations to this agreement must be made in writing.
- 9.2 The Customer is entitled to extraordinary cancellation only if a subsequent performance by Aggreko fails to maintain the usability of the leased object (Section 543 paragraph 2, pt. 1 of the Federal Civil Code).
- 9.3 Aggreko is entitled to withdraw from the contract should facts occur which prove the other contracting party is not creditworthy, Section 321 of the Federal Civil Code.

## **10. Delivery and Return of the Leased Object**

- 10.1 Leased objects shall be picked up from Aggreko and returned there. If transport of the leased object is performed by Aggreko, delivery and return of the leased object take place at the risk and expense of the Customer.
- 10.2 Upon termination of the lease, the Customer is obliged to notify Aggreko in writing at least 2 working days before the intended return date.
- 10.3 If collection is carried out by Aggreko, the earliest possible transfer date must be agreed by 12:00 noon on the working day preceding the pick-up (Monday to Friday). The leased object is to be kept in an accessible and transportable condition.
- 10.4 If the customer cannot guarantee this (clause 10.3), he shall bear the costs for the unnecessary travel and the agreed lease payment for the duration of the prevention of the pick-up as well as the costs for a new pick-up. The right to claim further damages remains unaffected.

## **11. Remuneration**

- 11.1. The lease is based on the agreed scope of application of the leased object. If the scope of application that forms the basis for the lease rate is exceeded, the Customer must inform Aggreko thereof immediately. In such a case, or if, after the return of the leased object, a scope of use deviating from the agreed scope of use is ascertained, the additional services shall be subsequently charged on the basis of the agreed remuneration for the leased object.
- 11.2 The lease rate does not include operating costs, including diesel, lubricating oil and filter consumption, nor the technician's time to change and renew the mentioned resources. In particular, the Customer bears the cost of regularly adding lubricating oil, filter service, and service tests dependent on the hours of operation.
- 11.3 Additional services provided by Aggreko shall be billed separately. These costs are determined according to the contractually agreed cost rates of Aggreko per hour worked. The billing is done in accordance with work reports. Accommodation costs are invoiced separately according to actual expenses.
- 11.4 All prices are in EURO unless otherwise stated, and are exclusive of VAT.

## **12. Terms of Payment and Default**

- 12.1 Upon signing of the contract, the customer shall pay the agreed lease in advance (advance payment), unless otherwise explicitly agreed in specific cases. The final settlement takes place after termination of the lease.
- 12.2 All other payments under the contract shall be due upon receipt of invoice.
- 12.3 In the event of late payment, Aggreko shall be entitled to charge interest from the relevant date at the rate of 8% above the applicable base interest rate in accordance with Section 247 of the German Federal Civil Code.
- 12.4 Aggreko reserves the right to assert further claims for late payment, e.g. due to increase in interest rates.

## **13. Customer Liability**

- 13.1 The liability of Aggreko or their agents for slightly negligent breach of non-contractual obligations is excluded. The liability of Aggreko or their agents for slightly negligent breach of essential contractual obligations (cardinal obligations) is limited to the contractually foreseeable damages. Essential contractual obligations are those obligations the fulfillment of which enables the proper execution of the contract in the first place and on whose compliance the contractual partner can regularly rely
- 13.2 The aforementioned disclaimers and limitations of liability do not apply in the following cases:
- liability of Aggreko for damages resulting from injury to life, limb or health;
  - Liability of Aggreko for other damages based on an intentional or grossly negligent breach of duty;
  - Liability of Aggreko for the fraudulent concealment of a defect or the violation of a guarantee of quality; or
  - Liability of Aggreko under the Product Liability Act

#### **14. Insurance of the Leased Object**

- 14.1 The risk of accidental loss or damage shall be borne by the Customer. For covering the risks arising from the loss of or damage to the leased object, the leaseholder shall take out an insurance cover for the replacement value of the leased object and notify Aggreko on securing the insurance in writing. As long as the Customer does not designate Aggreko as the beneficiary, the Customer hereby assigns the resulting rights to Aggreko for the purpose of securing claims in case of damage. Aggreko accepts this assignment.
- 14.2 If Aggreko exempts the Customer from their obligation to cover the risks of loss or damage by means of an insurance, or if the insurance is not valid for other reasons, the following conditions apply:
- Aggreko assumes the insurance of the leased object for the Customer at their cost. This insurance covers generators, chillers and compressed air units, as well as load banks and transformers.
  - The insurance cover encompasses the loss of entire objects through theft, burglary or robbery. Unpredictable external damage such as fire, lightning or explosion, and road transport are also included. In the context of insurance covered by Aggreko, the Customer shall bear a deductible of up to €15.000,00 depending on the leased object. A lower deductible may be agreed against an increased premium. This shall be separately defined in the lease.
- 14.3 Not included are all related equipment, cables, power distribution panels, tanks, trailers, small components, as well as processing materials. Also, not include are the consequences of operational error by the Customer (e.g. dry run of the diesel tanks) as well as follow-up costs and loss of operation time due to machinery failures. In addition, expenses for the removal of water and soil contamination by substances resulting from improper handling by the Customer (e.g., over-filling of the diesel tanks, etc.) are not covered by the insurance. The sinking or silting of devices by flooding is not covered.

#### **15. Cancellation**

- 15.1 If the Customer cancels the order of a leased object up to a week before delivery, they shall pay a cancellation fee of 30% of the lease rate. If the cancellation occurs after this point of time, the full lease rate shall be paid, minus any expenses saved.
- 15.2 The customer reserves the right to prove that expenses or damages incurred by Aggreko were not incurred or were incurred to a lesser extent.

## **16. Warranty**

- 16.1 Technically related downtime, particularly due to maintenance work, shall be limited by Aggreko to the shortest, organizationally possible period of time, and do not entitle the Customer to reduce the lease rate..
- 16.2 The warranty claims of the customer with regard to additional services, are initially limited to the corrective performance by Aggreko, unless it is unreasonable for the customer. If the subsequent performance fails for the second time, the customer has the right to demand a reduction in the fee for the additional services or to withdraw from the contract.
- 16.3 Customer warranty claims, with the exception of the claims for damage compensation listed under paragraph 17, shall expire one year from acceptance and / or their formation.

## **§ 17 Limitations of Liability**

- 17.1 Aggreko grants a contractual use of the lease object. For damages caused by defect, Aggreko shall only be liable if and to the extent that Aggreko is responsible for the defect. Claims for damages are excluded, irrespective of the nature of the breach of duty, including unauthorized operations, unless intent or gross negligence has occurred or the claims for damages result from the failure to provide a warranted object.
- 17.2 In case of a breach of contractual obligations, Aggreko is only liable up to the amount of the contractually foreseeable damage and incidentally only up to an amount equal to the order value. Aggreko is not liable for intent or gross negligence of managers or executives for lost profits, claims for damages by third parties, nor other consequential damages, unless a written guarantee accepted by Aggreko protects the customer against such damages.
- 17.3 All claims for damages against Aggreko become time-barred one year after becoming aware of the damage and of the person liable for the damage, gross negligent ignorance notwithstanding. This does not apply to claims arising out of tort.
- 17.4 Insofar as the liability of Aggreko is excluded, this shall also apply to the personal liability of its legal representatives, employees or agents.
- 17.5 Mandatory legal regulations remain unaffected by the above.

## **18. Right to Set-off and Retention**

The Customer is allowed to offset claims from Aggreko only with legally determined or undisputed counter-claims. The Customer is entitled to the assertion of a right of retention only for claims arising from this contract that are undisputed or legally determined.

## **19. Other Provisions**

- 19.1 For all current and future claims arising from the business relationship with the Customer including receivables and check claims, the place of jurisdiction is the location of Aggreko or if chosen by Aggreko, the jurisdiction of the Customer's location.
- 19.2 The law of the Federal Republic of Germany applies.
- 19.3 Aggreko emphasizes that customer's data shall be stored according to Sec. 33 of the German Federal Data Protection Act (BDSG).
- 19.4 Furthermore, Aggreko shall keep all information and trade secrets confidential that have been received or otherwise made known by the Company, not to make them accessible to third parties, and to use them only for the purpose of carrying out the respective assignment.
- 19.5 If any provision of the contract, including the above conditions, are or become invalid, or the contract, including the above conditions is incomplete, the legal validity of the remaining provisions remain unaffected