

GENERAL RENTAL CONDITIONS STEEL SHEET PILES
OF THE LIMITED LIABILITY COMPANY KERNEL B.V.
IN VELP, THE NETHERLANDS
CHAMBER OF COMMERCE GELDERLAND
REGISTRATION NR. 0907999

General

In these conditions following is understood;

Lessor: Kernel B.V.;

Renter: a natural or legal body who places the order to rent;

Parties: lessor and renter;

Goods: all those material objects and goods which may be handled by parties and all forms of service, excepting those cases as laid down in these conditions;

Agreement: the rental agreement as laid down by parties including these general sales conditions.

1 Application

1. The present terms and conditions shall apply to the rental of steel sheet piles/ beams, in so far as mentioned in any offer, tender or agreement between parties to which user has declared the present terms and conditions applicable.

2. Any possible deviations from the present general terms and conditions, either oral agreements or changes and amendments shall be valid only provided they have been explicitly agreed upon in writing, per individual case.

2 Agreements

1. All offers and tenders will be free of obligation unless explicitly stated otherwise.

2. Agreements will come into being via a written confirmation of an order of renter or the execution of the received order by lessor.

3. If there is no denial of the correctness of the order confirmation within 5 days after date of signing, parties will be committed hereby. This also applies to any supplements, amendments, changes and other agreements.

4. Renter will bear the risk of the correct execution of all oral, telephonic and telegraphic orders.

3. General obligations of parties

1. Lessor is obliged to rent to renter the material as specified in the order confirmation (further: rented material), and renter is obliged to take in rent material from lessor.
2. Renter is obliged to pay punctually the rental price agreed upon and any costs and expenses resulting from the rental agreement and to return rented material after termination of the rental period, taking into consideration following articles.
3. Should more than one (judicial) person act as renter, each renter will be held responsible in call for any obligations ensuing from this agreement.

4. Rental period

1. The rental period will be entered upon for a minimum of 8 weeks.
2. The rent will commence on the day of the agreed upon delivery date, or on the date when the rented material, or a first part thereof, has been placed at the disposition of renter at his request.
3. The rent will end on the date to be determined, or that much later, on the date when rented material has been received by lessor, or after permission has been given to repair any damages and/or weight loss. Should the damage or loss be of such size that repair is impossible, the rental period will end when the compensation for damages has been received.

5. Rental price and other compensations

1. The rental price agreed upon is exclusive sales tax. Should any of the cost price factors be increased after the date of the offer - even if this should happen under foreseeable circumstances at the moment in time the agreement has started – lessor has the right to increase the rental price agreed upon accordingly.
2. Should rented material, whatever the reason may be, not be collected by renter on the agreed upon delivery date, or if material can not be delivered to renter, rental price is nevertheless due for the rental period agreed upon.
3. Should rented material be returned before expiration of the rental period, nevertheless rental price will be due for the rental period agreed upon.
4. Renter is also due to pay the rate per weight unit as agreed upon in this agreement concerning:
 - loading costs;
 - unloading costs on return delivery;
 - costs of return for usage of cranes, cleaning, measuring and sorting out in so far as this has been agreed upon;
 - resulting from article 10, extra costs for cleaning etc.;
 - resulting from article 12, costs of repair and loss of weight;
 - restitution for other damage and/ or any costs renter should own according to this agreement.

6. Liability, Force Majeure

1. Lessor is not responsible to renter for:

- any damage, direct or indirect, due to deficiencies of the hired material, of any kind whatsoever, visible or not and the consequences thereof;
- company and/or pursuing damage renter may suffer due to neglect or delay in the delivery, due to part delivery of only one part of hired material, replacement or repair should this have been necessary as a result of normal wear of rented material;
- damage due to advice lessor or employees of lessor may have given orally or in writing concerning the usage of certain steel sheet pile profiles and/or the manner in which piles should be placed and/or the execution of the works.

2. Lessor is not liable to renter should lessor's default be caused by force majeure, herewith included lessor's company defects, default of suppliers or transport companies and strikes at lessor, suppliers or transport companies.

3. Lessor is obliged to inform renter as soon as possible if a situation of force majeure should occur. Should the situation of force majeure, interrupted or not, continue for longer than 30 days, parties have the right to cancel the agreement in writing. In that case renter does not have a right of compensation of any damage.

4. Renter is responsible for any damage to or bought about by rented material whomever or whatever may have done so, including any (pursuing) damage as a result of delay and/ or partial standstill of lessor's company, regardless if renter can appeal to force majeure.

5. Renter will safeguard lessor against any appeal for compensation of damage that may have been caused by rented material during usage, storage or transport thereof.

7. Testing and quality

1. Lessor is obliged to supply goods in good condition. Should no concrete agreements have been made concerning the quality, renter can only claim qualities in keeping with the standards usual and normal for these type of rented goods.

2. Renter has the right to inspect material at his own costs before the start of the rental period and/ or during loading of rented material.

3. Should material be rejected, lessor will supply substitute material as soon as possible.

4. Should renter not use his right to inspect goods, rented material is supposed to have been delivered in excellent condition and corresponding with the measurements, specifications and weight as agreed upon and as indicated on the corresponding packing list.

8. Transport and transport costs

1. Delivery will be ex-storage lessor. Should no other agreements have been made, loading during delivery and unloading at return will be at lessor's risk whilst transport to and from place of delivery, including loading and unloading, will be at risk and responsibility of renter.
2. Should lessor at the end of the rental period wish for rented material to be delivered at a different address than agreed upon, lessor is expected to do so. In this case renter will compensate for the costs of transport, should these be higher than originally agreed upon.
3. Should any transport of hired material be arranged for or taken care of by lessor under the orders of renter, lessor can not be held responsible by renter for any mistakes and/ or damage caused by the transport company hired.
4. Renter is obliged to take care of necessary permits issued by the proper authorities, should rented material be transported by public road.

9. Maintenance and insurance liabilities of renter

1. During the rental period material will be at renters risk and account from the moment of loading for transport up to and including unloading at return.
2. Renter is obliged to return rented material at the termination of the rental period in the same condition as when received from lessor.
3. This obligation of renter includes:
 - that rented material will be kept at renter's cost in decent and serviceable condition;
 - taking care of sufficient surveillance of rented material, also outside normal business hours.
 - that rented material will not be too heavily burdened.
4. During the rental period lessor has the right to inspect rented material. Should lessor not do so, this will not affect his right to claim damages.
5. Renter is obliged during the rental period, herewith understood loading and unloading included, to take care of insurance of rented material against theft, loss and damages, amongst others caused by fire. This insurance will also cover third party liability. Renter may be obliged to show on request the policy and receipts concerning the insurance and any claims on the insurance in case of payment assigned to the lessor.

10. Site, (ground) pollution

1. Renter only has the right to use rented material at the agreed upon site. Lessor has the right to terminate the contract in writing immediately should material be moved to another site. Even in case of dissolution of the contract, lessor has the right to enter into a new contract with renter concerning a change of site of the material rented originally.

2. Use of the rented material abroad is only permitted by prior explicit written permission of lessor. Renter will account for any extra costs and risks arising from transport to and from the foreign destination and from the use of rented material abroad.
3. Use of rented material is not permitted on sites possibly chemically polluted or contaminated ground and/ or groundwater, unless prior explicit written permission has been given.
4. Should rented material be used on chemically or otherwise polluted or contaminated ground, with or without written permission of lessor, renter is obliged to take care of complete cleaning of rented material before return of material. This obligation also exists if renter only learns of the pollution when rented period has been entered upon, and when the pollution is only noted after return of rented material.
5. Moreover, renter is held liable for any damage to material or caused by material due to pollution or contamination, herewith understood at least extra costs for cleaning as well as costs for cleaning, drainage or destruction due to pollution that may have been dispersed in the ground and/ or groundwater on the location where lessor had stored returned rented material, not considering whatever or whoever may have caused the pollution, and including any resulting damage due to delay and/ or possible total or partial closure of the lessor's company or third parties company, regardless renter claiming circumstances beyond his control.

11. Return of goods

1. Renter is obliged to return rented material at the end of the rental period in the same state as at the start of this period and as clean as possible. Moreover, after exploitation on chemically or otherwise polluted sites rented material has to be completely cleaned. Return delivery will have to be accompanied by a specified written statement of renter.
2. Renter is obliged to inform lessor of the return of the rented material with a minimum of 2 days notice, herewith lessor will indicate location and time of return. Should lessor fail to inform renter hereof, material will be delivered at the storage warehouse of lessor.
3. Receipt of rented material by lessor when renter returns these, does not impede upon lessor's right to claim.
4. If goods are not returned or not returned in time agreed on in the contract, lessor can replace the missing goods with new bought goods and will charge there costs and all ensuing costs to the renter.

12. Costs for repair and loss of weight

1. With damage to rented material as mentioned in article 6.4 in all cases costs for repair and loss of weight will be understood.

2. With costs for repair all costs for repair and restoration will be understood lessor will have to make to restore returned material to a comparable state as when rented period started.

With loss of weight is understood the difference in weight of rented material at the start of the rented period and the weight, after possible reparations, of the returned material at the end of the rental period. This weight will be determined by multiplying the total of the delivered pile lengths by the theoretical weight of the appropriate profile noted in kilograms per linear metre pile, as stated in the most recent profile table, issued by the Dutch importer and/ or producer of the relevant steel sheet piles/ steel profiles.

3. In case of damage to the rented material renter is obliged to inform lessor hereof.

4. Renter is obliged to compensate lessor for the costs of repair based on the specified written statement of lessor.

Renter is obliged to compensate lessor for loss of weight of the rented material, including loss of weight incurred during repair, on the basis of the agreed upon loss price, or otherwise, should no price have been decided upon, on the base of current prices for new steel sheet piles/ steel profiles. Herewith is understood the price of purchase of the relevant importer in The Netherlands per weight unit of a new steel sheet pile with an identical profile or profiles, of the same producer and of the same steel quality and length specification as of the rented material.

5. The obligations as mentioned above will be fulfilled by renter in following cases:

- when the tops of the piles/ beams have been damaged due to pilling or any other cause or when holes have been made in the beams whatever the reason may be;

- when the piles/ beams for whatever reason have been bent, buckled, tracked in, tracked out or otherwise twisted, when the locks of the piles have been burned or otherwise damaged whatever the reason may have been;

- in case one or more piles/ beams after return and/ or after repair, should not have the minimal length as agreed upon between parties, whatever the reason may be;

- when returned piles/ beams should be seriously polluted.

In above mentioned cases, lessor has the right to:

- reject or to refuse to accept relevant pile/ beam, whereby renter will be obliged to compensate lessor on the base of the agreed upon loss price;

- to repair relevant pile/ beam at renter's cost, herewith also understood cutting of tops or damaged parts or any other repair and to receive from renter an extra compensation besides the costs of repair and the loss of damage, for the loss of value.

6. Should the costs for repair or for loss of weight be higher than the maximum as laid down in the rental agreement for the costs for repair and loss of weight,

renter will inform lessor in writing of the amount of the damage and of the calculation thereof. Renter is expected to agree upon this statement, unless a written message is sent within 7 days after receipt of this written message that he does not agree with the conditions. Should lessor be obliged to send renter a specification of the costs of repair and the loss of weight, any costs will be at renter's expense.

In any other case lessor has the right to start with the repair of the damage straight away.

13. Payment

1. Renter is obliged to pay lessor any invoice received from lessor within 14 days of the invoice date without any deduction or any appeal to settlements.
2. In case the terms of payment are exceeded, lessor has the right to charge an interest rate for delay from the date of expiration till the date of complete payment, equal the promesse discount rate the 'Nederlandse Bank' charges plus 4%.
3. All extra judicial costs for collection fee will be at renter's expense.
4. Possible claims do not give any right to suspend the payment.

14. Guarantee

1. Lessor has the right to demand a guarantee at all times – even when the agreement has already been partially executed – within a term to be determined by lessor, according to the requirements of lessor for the correct and timely fulfilment of the obligations of the rental agreement.
2. The guarantee will remain in force till the moment in time when the rental period has ended.

15. Transfer, Rights

1. Lessor will remain owner of rented material. Renter may not remove any distinguishing mark which may have been applied to prove the right of ownership of lessor.
2. Renter is obliged to clarify to any third party, such as creditors with threats to attach property, lessor's right of ownership of the rented material, should the possibility arise that third party considers rented material as renter's property. In these cases, renter is obliged to inform lessor immediately hereof. Any costs made to guarantee the right of lessor to third parties will be at the renter's expense.
3. Renter is not entitled to give third parties any right to the rented material, to let rented material or to hand over any rights, pursuant from this agreement, partially or totally, to third parties, without explicit prior written permission from lessor.

16. Renter's default

1. Renter will be considered judicially to default in following cases:

- renter acts in defiance of any provision of the rental agreement;
- renter is declared bankrupt or in the event renter's company is wound up, attached, or if suspension of payment is granted.

2. In any of above mentioned cases, lessor has the right to cancel the agreement with immediate effect in writing, without proof of default or judicial intervention.

Lessor has the right, in case of occurrence of 16.1, instead of cancelling the agreement, to demand restitution of the claim of damage from renter or to suspend obligations of the rental agreement without being obliged to pay any claims of damage whatsoever. Renter is also obliged to resituate lessor for any damages lessor may have hereof, including costs for loss of profit, interest and any other costs.

3. Any of above mentioned cases do not impede upon lessor right to:

- demand immediate full payment of the amount renter is indebted based on the agreement;
- any other rights lessor may have concerning default of renter as determined in this agreement or elsewhere.

Art. 17 Applicable law

1. For all transactions, to which the conditions are applicable, including any foreign transactions and any pursuing legal relation, Dutch law shall apply.

2. Any disputes between parties, including those seen as such by one party only, will have exclusive jurisdiction by a qualified judge.