

# General Rental Terms and Conditions of ICS Cool Energy GmbH

For use in business transactions between entrepreneurs

## 1. General Information

- 1.1. These General Rental Terms and Conditions (GTC) apply to all business relations with our lessees. They also apply to all future deliveries, services or offers to the lessee, even if they are not agreed again separately.
- 1.2. The general terms and conditions of the lessee or third parties shall not apply, even if we do not individually object to their validity. Even if we refer to a letter that contains or refers to the general terms and conditions of the lessee or a third party, this does constitute an acceptance of this terms and conditions.
- 1.3. Individual agreements with the lessee (including collateral agreements, additions and amendments) which have been made in an individual case shall in any case take precedence over these GTC. For the content of such agreements a written contract or our written confirmation shall be decisive.
- 1.4. Regulatory or other approvals must be provided by the lessee at his expense. The lessee bears also our costs if we assist the lessee in this regard.
- 1.5. Legal declarations and announcements, which the lessee has to give towards us after conclusion of the contract (e.g. setting of deadlines, notice of defects), require written form.
- 1.6. The statutory provisions apply insofar as they are not directly modified or expressly excluded in these GTC. The contract procedures for construction work ("Vergabe- und Vertragsordnung für Bauleistungen", VOB) do not apply.

## 2. Conclusion of Contract

- 2.1. Our offers are binding, unless they are expressly marked as non-binding. Documents such as illustrations, drawings, data sheets are only roughly accurate in respect to dimensions and weight, as far as accuracy is not expressly confirmed in writing. The same applies to information contained in a brochure, catalogue or our internet presence. Unless otherwise stated in our offer, the offer is valid for 30 days from the date of the offer.
- 2.2. The order of the rented item by the lessee is regarded as a binding acceptance of our offer, unless otherwise stated in the order.
- 2.3. The lessee is entitled to cancel the rental agreement up to one week prior to the agreed delivery. If the lessee makes use of this right, he has to pay a cancellation fee of 30% of the rent. Relevant is the rent for the entire agreed lease term plus any transport costs already incurred. After this date, even in case of a cancellation, the entire agreed rental amount plus any costs incurred for the transport must be paid by the lessee.
- 2.4. We can demand reasonable remuneration for the preparation of a cost estimate if the contract is not concluded.

## 3. Scope of Performance

- 3.1. Information regarding performance and possibility of use as well as suitability for specific applications (e.g. data regarding use, temperatures, usage, mechanical/technical resilience,

tolerances, capacities, loudness or the like) as well graphics thereof (e.g. drawings and illustrations) as are always given without guarantee and are not guaranteed characteristics/features, as long as the usability for the contractual purpose expressly set out in writing does not require exact conformity.

- 3.2. We do not render consulting services in the form of plant planning. The commissioning or connection of the purchased item is not owed, unless expressly agreed. The lessee is advised that the commissioning or the connection of the purchased item has to be carried out only by competent persons, e.g. companies specialised in refrigeration/cooling or refrigeration/cooling staff of the lessee.
- 3.3. In the event of a failure of the rented item, which is not caused by the fault of the lessee, we will remedy the situation within a reasonable period of time by repair or replacement of the rented item.
- 3.4. During the term of the rental contract, we are entitled to replace the rented item by another equivalent rented item.

#### **4. Duties of the Lessee**

- 4.1. The lessee has to notify us immediately after conclusion of the contract in writing about the binding delivery address and the place of installation. The lessee also has to inform us about specialties at the place of installation which could prevent a smooth delivery, installation and commissioning (if agreed). Additional costs arising from incorrect or incomplete information shall be borne by the lessee.
- 4.2. The lessee is responsible for a careful and professional handling, maintenance and winter protection of the rented item. The lessee has to observe and adhere to the operating instructions when using and commissioning the rented items. The tenant has to ensure the frost protection of the rented item. This also applies to the return-transport of the rented item.
- 4.3. The lessee has to maintain the rented item during the rental period. The lessee is also obliged to inform us immediately about defects or malfunctions of the rented item at the latest on the following working day. In addition, the lessee has to check the rented item every day to see whether any disorder messages or inspection messages are shown on the display. If this is the case, the lessee has to inform us immediately, at the latest on the next working day, about this including the text shown on the display. The lessee is not allowed to work on the notice of malfunction himself. All maintenance and repair work must be agreed with us. Unless otherwise specified in this GTC, the lessee is not allowed to carry out repairs or service works on the rented item himself or by third parties. The same applies to conversions and reprogramming of the rented item.
- 4.4. The inspections of the rented item which has to be carried out at specified intervals are carried out solely by us or by companies commissioned by us. The dates and duration of the inspection intervals are communicated to the lessee or are described in the documents provided with the rented item which the lessee has to read carefully. If an inspection is due by reaching a certain number of operation hours, the lessee has to inform us about this at least one week prior to the inspection date so that the work can be executed by us in due time. During an inspection we shall pay attention to the operational needs of the lessee. The lessee has to accept that the rented item cannot be used for some time because of the inspection.
- 4.5. The lessee shall obtain in its own name on its own account all approvals and permits from authorities or third parties, which may be necessary for the installation and operation of the rented item.

- 4.6. The transport of the rented item to a place other than originally agreed in the contract requires our consent. If no place is agreed in the contract, the lessee is not allowed to transport the rented item to another country without our consent.
- 4.7. Only the lessee is responsible for the compliance with all legal regulations and standards connected with the operation of the rented item including any leakage control required by applicable regulations. The lessee is responsible that, especially when operating the electrical system of the rented item, the respective staff has the necessary knowledge to avoid electrical hazards and injuries and complies with all relevant regulations including applicable DIN regulations. The lessee is responsible for carrying out the appropriate electro-technical examination of mobile electrical equipment (rented item) at his own expense in intervals of 6 months, in case the rental period exceeds this period. The lessee is also solely responsible that the rented item is suitable and approved for the purposes provided for by the lessee and corresponds to appropriate requirements, e.g. in the food sector.
- 4.8. Prior to the dispatch we clean the used equipment and - if necessary - the new equipment. Impurities that occur afterwards, whether by shipping or for any other reason, have to be cleaned by the lessee. Used equipment can have been used for various purposes. It is therefore the responsibility of the lessee to ensure that own systems are not contaminated by the connection with the used equipment.
- 4.9. The lessee has to take appropriate measures to protect the rented item from damage, vandalism and theft. In the case of loss or damage regarding the rented item, the lessee has to notify us without delay and, if necessary, assist us in filing a criminal complaint. In the case of a seizure or other impairment of the rented item by a third party, the lessee has to immediately notify the third party that the rented item is not the property of the lessee and inform us accordingly. In this case the lessee also has to inform us about the exact location of the rented item.
- 4.10. The lessee is responsible for the discharge of the condensate.

## **5. Sub-Lease**

- 5.1. The lessee is not entitled to sub-lease the rented item to third parties without our written consent.
- 5.2. For the case of a sub-lease, the lessee already assigns to us all claims for rent regarding the rented item. We accept the assignment.

## **6. Duty to Inspect and Notify**

- 6.1. The rented item has to be inspected carefully directly after delivery to the lessee or to the third party designated by the lessee. The rented item is considered as accepted regarding obvious defects or defects which are noticeable in the case of an immediate, careful investigation if we do not receive a written complaint within three working days after delivery. In respect of other defects, the rented item shall be deemed to be approved by the lessee if the complaint is not received by us within three working days after the point in time the defect was noticeable; if during normal use the defect was noticeable for the lessee at an earlier point in time, this earlier date is decisive for the commencement of the period for complaints.
- 6.2. At our request, a complained rented item shall be returned to us free of freight charges. In the case of justified complaints, we will reimburse the costs of the most cost efficient way of delivery; this does not apply in regard to a costs increase because the delivery item is located in a place other than the place of the intended use.

## **7. Start and End of Rental Period**

- 7.1. The rental period starts at the latest with the transfer of the rented item to the lessee. The transfer to legal representatives, vicarious agent of the lessee or to a transport person authorized by us or us or the lessee is equivalent with the transfer to the lessee.
- 7.2. Unless otherwise agreed, the minimum rental period is one week and the notice period is 3 working days (Mon-Fri). The minimum lease term is always automatically extended by one week, provided that the lease contract is not terminated at least three working days prior to the end of the rental period. The termination of the rental contract has to be in writing.
- 7.3. Generally the rent has to be paid until the complete return of the rented item and does not end with ending of the use. An early return of the rented item does not exempt the lessee from the obligation to pay the rent up to the end of the agreed rental period or the minimum rental period.
- 7.4. In case of an important reason both parties have the right to terminate the lease agreement without notice. In particular we are entitled to terminate the lease agreement without notice and to immediately collect the rented items if the lessee is insolvent or if an application for insolvency was filed.

## **8. Transfer of Use and Return of Rented Item**

- 8.1. The rent does not include transportation of the rented item. Unless otherwise agreed, the lessee has to collect the rented item at a place indicated by us and also return the rented item at a place indicated by us. If the lessee wishes that we transport the rented item to a place indicated by the lessee and/or collect it, delivery and, if necessary, return-delivery will be charged separately by us. The lessee bears the risk of transportation.
- 8.2. The transfer of use and the handing over of the rented item shall take place at the time when the lessee, his legal representatives, vicarious agents or the transport persons commissioned by him or us have obtained possession of the rented item. The return of the rented item shall only take place at the point time when the rented item is handed over to us at a place indicated by us. The handing over to a transport person is not sufficient.
- 8.3. The lessee has to take care for the storage of necessary packaging material such as transport material and ordered but not used additional material and to keep it secured until the return-delivery. The lessee also has to provide suitable equipment for unloading and loading, such as a suitable forklift truck or crane as well as for personnel able to operate this equipment, unless the lessee has explicitly commissioned this.
- 8.4. When a rental contract is terminated, the lessee is obliged, together with the termination but at the latest three working days (Mon-Fri) prior to the return-delivery, to inform us about the date of the return organized by the lessee. We will then inform the lessee about the binding address for the return-delivery.
- 8.5. If it has been agreed that we take care of the return-transport, a pick-up date has to be agreed together with the termination, but in any case at the latest three working days (Mon-Fri) prior to expiry of the rental period. The rented item has to be kept available in an easily accessible location and in transportable condition. This means that the rented item is kept ready for loading and that it only has to be unloaded, as the case may be packed like at delivery/collection. If the lessee cannot guarantee this, he bears the costs for unnecessary attempts to pick-up the items and the agreed rent and the cost for an additional pick-up attempt for the time period in which the pick-up is not possible. The right to claim of further damages remains unaffected.

## **9. Remuneration**

- 9.1. Unless otherwise stated, all prices are in EURO plus VAT. The prices are valid for the scope of performance and delivery described in the offer or in the order confirmation. Additional or special services such as transport, loading and unloading, installation, commissioning and dismantling, taxes, charges, insurance and operating costs are charged separately. The prices are valid for the agreed or confirmed scope of delivery and performance. Additional work and special performances will be charged separately according to our applicable rates including travel and accommodation expenses. The lessee has to notify us without delay if the contractually agreed scope of use of the rented item is exceeded. In this case, we reserve the right to demand from the tenant the rent which is due for the actual scope of use.
- 9.2. Not included in the rent are the general operating costs including heating oil and gas regarding heating units as well as the use of technicians for the exchange and renewal of the operating supplies.

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

- 10.1. If the offer, the order confirmation or the invoice does not contain another date of payment, the rent (without deduction) is due for payment immediately upon receipt of the invoice. A cash discount is only permitted if expressly agreed. If in individual cases a cash discount has been agreed, this is not admissible if the lessee is in arrears with the payment of another invoice.
- 10.2. We are entitled to invoice at the beginning of a rental period or the contractually agreed intervals. However, invoicing takes place at least once a month. At the end a final statement is prepared. We are also entitled to demand the entire rental price or parts thereof as payment in advance. If we make use of this right, delivery will only take place after receipt of payment.
- 10.3. We are at all times entitled to demand a security in money (deposit) for the duration of the rental period in the amount of the original new value of the rented item. The lessee has the right to provide this guarantee by bank surety.
- 10.4. In the case of payments without specification of the invoice number and without payment advice, the oldest invoice is always settled first.
- 10.5. If the lessee is in arrears with the payment of an invoice amount, we have the right to terminate the contract without notice and to collect the rented item at the lessee's expense. The lessee has to ensure the unrestricted access and removal of the rented item.
- 10.6. If the lessee is in arrears with the payment of an invoice amount, the rent bears interest during this period in the amount of the applicable statutory interest rate. We reserve the right to claim further damages for the delay. Towards merchants our claim to the commercial interest rate (§ 353 HGB) remains unaffected.
- 10.7. The lessee has only the right to set-off or retention rights insofar as his claim is legally binding or undisputed. In the case of defects regarding the rented item, the lessee's counter-rights remain unaffected.
- 10.8. We are entitled to carry out outstanding deliveries or performances only against payment in advance or security payment if we get aware of circumstances which considerably reduce the creditworthiness of the lessee and by which the payment of our outstanding claims by the lessee is at risk.
- 10.9. We do not provide construction services within the meaning of § 48 para. 1 EStG or § 13b para. 2 UStG. The invoice amount must therefore be paid to us in full without deduction.

## **11. Limitation and Reduction of Price**

- 11.1. Claims of the lessee for the reimbursement of expenses or to the removal of certain parts shall be barred six months after the end of the lease.
- 11.2. Any other claims of the lessee shall be barred one year after the rented item has been delivered if the defect has already existed; otherwise one year after the occurrence of the defect. These limitations do not apply to claims for damages of the lessee from injury to life, body or health or from intentionally or grossly negligent breach of duty by us, our legal representatives or our vicarious agents, or if we have maliciously concealed a defect or accepted a guarantee for condition of the rented item and for claims of the lessee according to the Product Liability Act.
- 11.3. The lessee is not entitled to reduce the rent in case of a defect. An exception applies in regard to undisputed defects or defects which are legally binding established. The right of the lessee to claim overpaid rent on the basis of a legally binding decision remains unaffected.

## **12. Disclaimer of Liability**

- 12.1. Our liability is governed by statutory provisions, unless otherwise stated in these GTC.
- 12.2. Our liability regardless of fault for defects of the rented item, which existed at the time of conclusion of the rental agreement, is excluded. § 536 a para. 1 BGB does not apply to this extent.
- 12.3. We shall not be liable in the case of simple negligence on the part of our corporate bodies, legal representatives, employees or other vicarious agents, insofar as this is not a violation of essential contractual obligations. Essential contractual obligations are obligations to deliver the rented item in time and, if owed, installation of the delivered item, the non-existence of legal defects which affect the functionality or usability more than just insignificant, as well as protection or duty of care obligations, which should enable the customer to use the delivered item in accordance with the contract or which purpose is the protection of the body or life of the lessee's personnel or the protection of his property against serious damages.
- 12.4. As far as we are liable for damages according to para 12.3 the liability is limited to damages which we have foreseen at the conclusion of the contract as possible consequence of a breach of contract or which we should have foreseen in the application of customary diligence. Indirect damages and consequential damages, which are the result of defects of the delivered item, are further only eligible for compensation as far as such damage has typically to be expected when the delivered item is used as intended.
- 12.5. The aforementioned exclusions and limitations of liability apply to the same extent to our corporate bodies, legal representatives, employees and other vicarious agents.
- 12.6. To the extent we provide technical information or act as an adviser and this information or advice is not part of the contractually agreed scope of performances we owe, this shall be free of charge and without any liability.
- 12.7. The limitations of this clause 12. (disclaimer of liability) shall not apply if we have maliciously concealed a defect or have assumed a guarantee for the quality of the rented items and for claims of the customer according to the Product Liability Act. The limitations of this clause 12. (disclaimer of liability) shall also not apply to our liability for intentional or grossly negligent breach of duty and for damages from injury to life, body or health; this also applies to breaches of duty by our legal representatives or vicarious agents.

## **13. Liability of the Lessee**

- 13.1. The lessee bears the legal duty to maintain safety for the items exclusively rented by the lessee. The lessee shall be liable for all damages incurred by us or to third parties resulting from the

culpable breach of the contract, in particular as a result of non-observance of the obligations stated in the contract or these GTC.

- 13.2. The lessee is also in particular liable for damages to us/the owner of the rented items caused due to omit or insufficient maintenance or due to the delayed or omitted reporting of due inspections or omitted notification of defects, incorrect commissioning or improper handling of the rented item or other culpable breach of duty. The lessee is also responsible for damage of the rented item caused by the lessee's employees, sub-tenants, visitors, suppliers or craftsmen, insofar as these persons were near to the rented item in the initiative or the interest of the lessee. In the case of damage to rented items, the lessee has the obligation to prove that his employees, sub-tenants, visitors, suppliers or craftsmen did not cause the damage.
- 13.3. Any further legal or individually agreed contractual claims against the lessee shall in any case remain.

#### **14. Property Rights**

Under no circumstances does the rented item become the property of the lessee or a third party. The retention of title extends to products resulting from the processing, mixing or combination of our products at their full value. If, in case of processing, mixing or connection with goods of third parties their proprietary rights remain, we acquire co-ownership in the ratio of the invoice values of the processed, mixed or connected goods.

#### **15. Assembly and Commissioning**

- 15.1. In case of rental agreements with assembly and/or commissioning of the rented item the lessee has to take over at his expense and provide in time:
- all earth, construction, masonry, chiselling and other work from outside the industry, including the required specialist and auxiliary workers, building materials and tools,
  - a plane, permanently fixed installation/storage surface for the unit,
  - the static inspection of the transport route as well as the installation location,
  - a suitable forklift or crane for loading or unloading,
  - the items and materials required for assembly and commissioning, such as scaffolding, lift equipment and other devices, fuels and lubricants,
  - energy and water at the site including the connections, heating and lighting,
  - measures to reduce sound and vibration,
  - water pipes including any required fittings,
  - discharge of condensate,
  - electricity supply to the main switch, incl. inserting, placing and locating surface (strain-relief mounted),
  - required signal and other related performances, including inserting, placing and locating surface (strain-relief mounted),
  - cleaning, rinsing, filling and venting of the water systems before the refrigeration commissioning,
  - isolation of cold and hot parts if not offered separately by ICS-CE,
  - providing of resources such as water, antifreeze and electricity during time of assembly and commissioning,
  - hydraulic balancing of the water system and other adjustment works,
  - required additional commissioning and instructions not owed by us,
  - protective clothing and protective devices etc. which are necessary as a result of special circumstances of the assembly site.

- 15.2. Prior to the start of the installation work, the lessee has to provide us unrequested with the necessary information on the location of concealed electricity, gas, water pipes or similar installations, the necessary static data as well as details of specialties which might prevent a smoothly installation, assembly and commissioning.
- 15.3. Access routes and the place for installation and assembly must be freely accessible, plane, cleared and open to traffic by trucks.
- 15.4. The lessee shall bear the costs for the time of waiting and additional required travels to an appropriate extent if installation, assembly or commissioning is delayed by reasons for which we are not responsible.
- 15.5. The lessee shall certify the hours worked by our employees and other persons appointed by us on a daily basis. If the lessee does not fulfil this obligation or fails to do so in due time, our records are used as the basis for the invoice.
- 15.6. Insofar as assembly and commissioning is owed according to the contract, the systems installed by us shall be adjusted after assembly and the lessee's operating personnel are familiarized with the proper operation. We shall coordinate the dates required with the lessee. After completion of the regulation and instruction, the lessee has to confirm in writing the correct completion of the work; any complaints and subsequent special requests shall be recorded in a protocol to be signed by both parties.
- 15.7. In case of assembly, commissioning and service, additionally our general service terms and conditions apply.

## **16. Insurance**

- 16.1 The lessee is obliged to insure the rented item at least to the replacement value of the rented item against theft, fire and water damage as well as damage to property and to prove this insurance upon request. In addition, the lessee shall ensure that the rented item is adequately protected against theft on its premises or at any other place of use.
- 16.2. The lessee's rights against the insurer resulting from the insurance contract relating to the rented item are hereby assigned to us in advance. We accept the assignment.

## **17. Applicable Law, Jurisdiction**

- 17.1. The relations between us and the customer are exclusively subject to the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) does not apply.
- 17.2. Exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is our place of business. However, we are entitled to bring an action at the general place of jurisdiction of the customer. Prior statutory provisions, in particular exclusive competences, shall remain unaffected.

## **18. Final Provision (Severability Clause)**

In case a clause of the above GTC is invalid, the concluded contract shall remain valid. Instead of the invalid clause, the corresponding legal provisions have to be applied.