

Rental will take place exclusively in line with the existing conditions which must be agreed by the Hirer and the Owner for the present as well as for all future rentals within the scope of their business relations. The existing rental conditions are in effect for all rental products of the Owner.

## **§ 1 Contract**

The order confirmation of the Owner is legally binding for conclusion and content of the contract. Quotations are subject to confirmation.

## **§ 2 Rental Period**

In case of collection by the Hirer the rental period starts on the day the equipment leaves the warehouse of the Owner. In case of delivery the rental period starts on the day following the day of shipment. It will end on the day the whole equipment arrives at the warehouse of the Owner.

## **§ 3 Rental Fee and Terms of Payment**

a) The rental fee will be evident from the order confirmation. The rental period authorized by the Hirer will be charged by the Owner on the first rental day in total and in advance or in sections one week or one month in advance. If the rental period authorized by the Hirer exceeds 12 weeks or three month, as the case may be, the rental fee for the segments of up to 12 weeks or three month will be charged in total and in advance on the first rental day.

b) Extension of the authorized rental period is always possible, notification of the Owner by the Hirer/user is not necessary. There will be retroactive and daily pro rata billing for rental time exceeding the originally authorized rental periods. Invoices will be issued in intervals of one week, four weeks or one month.

c) The Hirer agrees that the Owner may collect credit reports about him.

d) If not otherwise agreed rental fees, extra charges, configuration fees and value added tax must be paid strictly net within 10 days after date of invoice. Applicable is the day of receipt of payment.

e) In case of delayed payment of the Hirer the Owner is entitled to demand immediate return of the equipment or alternatively to collect it at the Hirer's expenses. The Owner reserves the right to charge interest for delay amounting to 5% above the prime rate. Additionally, the Owner is entitled to authorize a collecting agency with the enforced collection of payment.

f) The Hirer is only entitled to offsetting or retention insofar as counterclaims are undisputed, finally adjudicated or ready for decision.

g) If the Hirer – no matter for what reason – cancels the rental contract, the Owner reserves the right to charge a cancellation fee. Cancellation within two weeks before begin of rental will amount to 50 % of the rental fee agreed on.

h) For orders with a total value of less than EUR 50.00 a handling fee amounting to EUR 20.00 may be charged.

## **§ 4 Shipment**

Shipment of the equipment will be effected either a) by the customer after collection respectively before delivery of the equipment to the warehouse of the Owner or b) on request of the customer by a freight forwarder authorized by the Owner. In any case freight charges are for the account of the Hirer.

## **§ 5 Risk of Transport**

The risk of transport will principally be borne by the Hirer. It will be transferred to the Hirer as soon as the rental object has been turned over to the Hirer or to the person taking care of collection or shipment. It will be the obligation of the Hirer, even if the Owner or a third party authorized by him or own personnel of the Owner will take the equipment over for shipment at the Hirer's expenses. The Hirer commits himself to examine the equipment immediately after receipt. Loss or damages in transit must be reported to the Owner at the latest on the first working day after receipt of shipment, since otherwise loss of possible insurance coverage may occur.

## **§ 6 Damages**

The equipment – including all pertaining accessories – has to be returned with shockresistant insulation to the Owner in the original box. The original box is that in which the rental object has been delivered to the Hirer/User. An exception will be if the original box has been damaged so that safe transport is jeopardized. In that case the Hirer must use an equivalent replacement for the return transport in order to protect the rental object in the course of transit.

## **§ 7 General Code of Practice**

a) The Hirer agrees to keep the rental objects in good conditions and not subject to misuse and to check immediately after receipt of the rental equipment if it is functioning properly and corresponds to the order. Deviations from the order, the order confirmation or the delivery note regarding quantity, type and quality must be reported to the Owner without delay. Acceptance without objection of the rental objects is considered as confirmation of faultless condition ready for use as provided in the contract. Should the rental object be damaged this does not relieve the Hirer from paying or abating the rental fee, unless the damage has been reported immediately after receipt.

b) Apart from the equipment, packaging, operating instructions and accessories are essential components of the rental object and, consequently, are the property of the Owner. The Hirer will only fulfill his contractual obligations by complete return of all components of the rental object.

c) The Hirer is liable to the Owner for damages, loss, etc. of the rental object plus accessories up to the amount of damage and the associated handling charges. If damages to the rental objects or accessories occur during the life of the contract, or if rental objects are lost, the Hirer is obliged to inform the Owner immediately, but at the latest on the following working day after the incident. If the Hirer returns the rental object incomplete, defective or not at all, the Owner may demand the equivalent rental fee for loss of use for repair or replenishment lead time. Moreover, the Owner reserves the right to demand the cost of additional expenditures from the Hirer.

d) Company logos or identification numbers of the manufacturer or Owner, norm plates, calibration labels and other designations have to be left unchanged on the equipment. Any alteration of the rental object is inadmissible. Any damages resulting from disregard of this regulation have to be made good by the Hirer in full.

e) Deviating from §7 lit.d) it will apply that alterations of the equipment necessary for regular workflow may be made. However, they must be completely reversed before return of the rental object. The Hirer must always return the equipment in the same condition in which he received it. The Owner may demand damages for the additional amount of work necessary to set the equipment back into that condition.

## **§ 8 Hirer and User Obligations**

a) The use of the equipment can only be allowed by the Hirer to persons possessing the necessary expertise and being able to use the equipment in accordance with the operating instructions of the individual manufacturers and the briefing by the Owner. The Hirer must adhere strictly to the instructions by the manufacturer and the Owner. The Hirer is liable for any damage resulting from disregard of such instructions.

b) The Hirer/User must keep the equipment in his possession. Only with written consent of the Owner may the Hirer/User take the equipment to a location outside the country where the rental contract was concluded. In all cases the valid embargo statutes must be observed by the Hirer. The Hirer is liable for all damages sustained by the Owner through breach of these rules.

c) The Hirer must keep the equipment in good condition and use it in accordance with the operating instruction and special directions for use. If the Hirer is at fault with regard to loss or damage to the equipment, aside from normal wear and tear, the Hirer is obliged to compensate the Owner for the amount of damage as well as the associated handling charges.

d) In case of defects, malfunction or damage to the rental object the Hirer/User must inform the Owner immediately and wait for his instructions. The Hirer is not entitled to make changes, modifications or adjustments, repair the equipment or try to do it, unless the Owner has authorized him to do so. Insofar as defects, malfunctions or damages to the rental object are for reasons beyond the control of the Hirer, he is entitled to resupply or immediate rectification of the defect of the equipment. Further legal claims are precluded.

## **§ 9 Equipment Insurance**

The rental objects are insured by the Owner. It is expressly emphasized that the insurance contract will only be valid within Europe. The insurance comes into effect at the time the equipment leaves the warehouse of the Owner up to its return there. The insurance rate is indicated in the order confirmation. The insurance conditions of the Owner are valid (see §7). If insurance coverage is not wanted, the Owner must be notified in writing. Insurance coverage can only be taken out for the complete rental period. Breakdown into insured days is not possible. Insurance coverage does not apply if the equipment has been left unattended in an unsecured place which is accessible to the public. In case of theft, fraud, pilferage or embezzlement by third parties or any other type of non-delivery of the rental object, the Hirer is obliged to notify the police immediately and prepare a detailed loss report. Non-compliance to this rule will lead to complete loss of insurance coverage and thereby to sole liability of the Hirer.

## **§ 10 Insurance Conditions**

The insurance is an all-risk insurance. It covers damage, loss or demolition of the rental object as well as damages in transit. Additionally, the rental object is covered against burglary, pilferage, fraud and vandalism by third parties. Lastly, the insurance covers damages through mains overvoltage, induction, etc., fire, lightning, explosion, and water damage by humidity or flooding. Insurance coverage is precluded if the Hirer/User has caused the insured event by his own negligence or intent or that of an auxiliary person. This preclusion clause is applicable e.g. in case of negligence or intentional misuse of the rental object by the Hirer/User or an auxiliary person. Moreover, insurance coverage will not apply for damages caused by war, civil commotions, earthquakes, nuclear risk, steam or acid fumes or other fumes (due to the nature of the Hirer's/User's business).

## **§ 11 Warranty**

- a) In case of defects, malfunctions or damages to the rental object the Hirer must inform the Owner immediately and wait for his instructions. The Hirer is not entitled to make changes, modifications or adjustments or repair the equipment unless the Owner has authorized him to do so in writing. Insofar as defects, malfunctions or damages to the rental object are for reasons beyond the control of the Hirer he is entitled, at the Owner's option, to resupply or to rectification of the defect of the equipment.
- b) The Hirer's right to cancel, since rights of usage have not been granted as per § 543 par. 2, No. 1 BGB, is precluded unless subsequent improvement or replacement must be considered as failed. Failure of improvement or replacement can only be assumed if the Owner had sufficient opportunity for improvement or replacement, if this is not possible, or if the Owner refuses it or delays it unacceptably or if an unacceptable situation exists for other reasons.
- c) Liability to pay compensation for initial defects is precluded.
- d) If the Hirer is an entrepreneur in terms of § 310 BGB, there will be no right of reduction unless the claim for reduction has been legally established.
- e) Limitations of liability in § 11 lit. a) – d) will not be legally binding with regard to a quality guarantee.

## **§ 12 Liability**

- a) The Owner is liable for intent and gross negligence. In case of simple negligence the Owner is only liable for breach of an essential contractual obligation; however, liability for this is restricted to the typical foreseeable damage. Even if gross negligence is evident, liability is restricted to the typical foreseeable damage insofar as the damage has not been caused by executives of the Owner.
- b) Limitations of liability as per § 9, subsection 1, will not be in effect for liability as per the Product Liability Act and proven responsibility for damages which relate to loss of life, human injury and health effects as well as for a quality guarantee.
- c) Insofar as liability against the Owner is precluded this will also be in effect regarding the personal liability for compensation on the part of his employees, representatives and auxiliary persons.

## **§ 13 Consumables**

Consumables such as paper, pens, thermo elements, toner, ribbons, data tapes, disks, etc. will be purchased by the Hirer from the Owner. Payment will be made per use.

## **§ 14 Recognition of Software Licensing Law**

Software supplied may be used exclusively in accordance to the familiar conditions of the license owner. The Hirer/User vouches that use of the software contrary to contract by himself or his auxiliary persons is precluded. The Hirer is informed that misuse may bring about claims for damages up to an unlimited amount. The Hirer shall indemnify the Owner from all claims in this respect.

## **§ 15 Complementary Provisions**

Should one or several provisions of the rental conditions be or become invalid, all other provisions will remain valid. The parties commit to replace the invalid provision by a valid

provision which is in line with statutory provisions and which corresponds as far as possible to the original commercial content of the invalid provision.

### **§ 16 Rights of Third Parties**

Assertion of alleged rights to the rental object by third parties (e.g. impending seizure) must be immediately reported to the Owner. In case the attachment has already taken place the report on assets seized and, where necessary, other documents required for third party proceedings must be promptly sent to the Owner.

### **§ 17 Applicable Law and Court of Jurisdiction**

German Law will be applicable for all contracts based on the above rental conditions excluding any and all principles on conflicts of the German IPR (International Private Law) and excluding the UN Uniform Law on the International Sale of Goods. Place of fulfillment and jurisdiction for all conflicts arising from contracts with entrepreneurs will be Darmstadt.

### **§ 18 Nullity and Invalidation of former Rental Conditions**

With the publication of the above rental conditions all former rental conditions will become invalid.

Xchange Technology GmbH  
Hans Huber-Straße 38  
4500 Solothurn

Managing directors Siegbert Franz and Christian Franz  
commercial register Solothurn CH-170 9 001 454-4  
UID: CHE - 466 623 205