

# Terms applying in the event of accidental damage to or loss of a hired item



This English version is purely informative. Rights may only be derived from the German text on the back of the rental agreement. In the event of contradictions between this translation and the text on the rental agreement, the text on the rental agreement shall prevail.

Terms applying in the event of accidental damage to or loss of a hired item A hire agreement, printed on the leaf-side of these terms, has been entered into by and between the hiree, being the customer, and the hirer, being Boels Rental AG. The hire agreement sets forth the General Terms and Conditions of Hire of Boels Rental AG. These were provided to the hiree, on conclusion of the agreement, and the hiree will also be sent a further copy upon request. The Terms and Conditions of Hire are also available for consultation and can be downloaded from the Boels website at: www.boels.com.

In compliance with clauses 5 and 8 to 15 of the General Terms and Conditions of Hire, for the term of the hire agreement, the hiree shall accept liability for any accidental damage to or loss of the hired item (including any item components and accessories). The hiree, under the terms that follow, may purchase the following damage waiver (A) and fire-theft scheme (B).

The hiree will be liable for any accidental damage or loss that is not covered under the following conditions. In such cases, the General Terms and Conditions of Hire of Boels Rental AG will remain in full force and effect.

## I. GENERAL CONDITIONS applying to DAMAGE WAIVER A and FIRE/THEFT SCHEME B

### I.1. Hirer

Whenever the terms "hirer" or "Boels Rental AG" are used in these General Conditions, such terms mean Boels Rental AG and Boels Verhuur BV and/or companies belonging to them.

### I.2. Damage waiver and Fire/Theft scheme

DAMAGE WAIVER A and FIRE/THEFT SCHEME B provide with a limitation of liability of the hiree for cases of accidental damage and loss in Germany, Austria and the Benelux States.

### I.3. Obligations in the case of accidental damage or loss

The hiree, in the event of accidental damage or loss, in compliance with clauses 8 to 12 and 14 of the General Terms and Conditions of Hire, needs to fulfil a series of obligations, namely:

- I.3.1. Notify the hirer of the accidental damage or loss in writing without delay and, whenever possible, by telephone or e.g. fax.
- I.3.2. Loss due to theft, burglary or robbery needs to be reported to local law enforcement agencies without delay and an inventory of the missing items provided to the police immediately.
- I.3.3. Whenever possible, measures shall be taken to prevent or reduce the risk of accidental damage or loss.
- I.3.4. Otherwise, in the event of accidental damage or loss, any and all measures shall be taken that may be required and any action avoided that may prejudice the interests of the hirer. With regard to the foregoing, specifically, any information, upon reasonable request from the hirer, shall be provided for the purpose of investigating the causes, the course of events and degree of accidental damage or loss in written form, together with any required supporting evidence, leaving the evidence of damage or loss as it has been discovered, until such time that the hirer has conducted his investigation, unless:
  - continuation of business operations or security reasons require action to be taken; or
  - actions are taken for the purpose of reducing probable damage or loss; or
  - such actions have been agreed in writing with the hirer; or
  - whenever the investigation has not been promptly conducted, but no later than 3 working days from the time of notification of damage or loss; the hiree, in any case, has a duty to preserve the damaged item until such time that the hirer has conducted an inspection, whenever he has failed to leave the evidence of damage as it was discovered for the foregoing reasons.

### I.4. Ascertainment of accidental damage or loss

Whenever ascertainment of damage or loss cannot be established by mutual agreement, the hirer shall be entitled to nominate an independent expert damage appraiser, who will ascertain the extent of the accidental damage or loss. The hiree may request expert proceedings by sending a unilateral notice to the hirer. The following provisions shall be applicable to the expert proceedings:

- The expert will be nominated in writing. The hiree may, within a reasonable term, lodge founded objections challenging the expert who has been nominated.
- The hiree will be liable for the costs of the expert proceedings report.

### I.5. Cause of accidental damage or loss

The burden of proof on the hirer is limited to proving that the property was handed over in good and proper working condition. Whenever the hired item is in the custody of the hiree, the hiree shall be called upon to prove that he is not to blame and is not responsible for causing the damage.

### I.6. Extent of insurance cover

Accidental damage or loss attributable to the gross negligence or intentional wrongdoing of the hiree is not covered by the insurance. DAMAGE WAIVER A and B are not valid in the foregoing cases.

### I.7. Validity period

DAMAGE WAIVER A and/or Fire/Theft scheme B is/are only valid for the period that has been established by the hirer and the hiree under the hire agreement as the validity period.

### I.8 Definitions

- Fire means a fire which occurs outside a stove/hearth/fireplace intended for this purpose, or which has spread beyond a stove/hearth/fireplace and is capable of propagating itself further.
- Lightning strike is an occurrence of an object being hit by lightning.
- Explosion means a sudden, brief and violent release of energy caused by the expansion of gases or vapours.

### I.9. Subsidiarity of Damage waiver A and Fire/theft scheme B

DAMAGE WAIVER A and Fire theft scheme B shall not be valid whenever the hiree may be entitled to claim compensation under an insurance policy, regardless of whether such policy was purchased by him or others. The insurance policy shall prevail over this agreement.

### I.10. Sundry provisions

Whenever DAMAGE WAIVER A and/or Fire/Theft scheme B are purchased, said provisions shall prevail over the General Terms and Conditions of Hire. Without prejudice to the foregoing, the sundry provisions shall remain in full force and effect.

## A. DAMAGE WAIVER A (FOR ACCIDENTAL DAMAGE OR LOSS EXCLUDING FIRE/THEFT/BURGLARY)

DAMAGE WAIVER A covers all sudden and unexpected accidental damage to

and loss of a hire item with the exception of damage or loss caused by fire, theft and burglary. Any and all damage and loss will not be covered that is attributable to the gross negligence or intentional wrongdoing of the hiree or other persons who were entrusted with the care of the hire item.

On purchasing DAMAGE WAIVER A, a fee will be paid, calculated as a percentage of the hire price. Boels Rental AG may Damage waiver A to be purchased as a pre-condition to concluding the hire agreement.

### A.1. Field of application

DAMAGE WAIVER A may be used by all hirees of Boels Rental AG ("Hirer") hire items.

### A.2. Hire items

DAMAGE WAIVER A is valid only for each single hire item named in the hire agreement under the sub-clause referring to Damage waiver A.

### A.3. Conditions applying to DAMAGE WAIVER A

DAMAGE WAIVER A will only be enforceable upon the following conditions being satisfied:

- A.3.1. A valid Hire Agreement signed by the hiree.
- A.3.2. The hiree has complied with his obligations under the Hire Agreement and the General Terms and Conditions of Hire (specifically, his duties set forth in clauses 5 and 8 to 15 of the General Terms and Conditions of Hire) and, likewise, the following sub-clauses A.3.3. and A.3.4.
- A.3.3. The hiree has complied with the expressly mentioned additional duties on the hiree in relation to taking preventive measures for protecting the hired item.
- A.3.4. Amongst other things, the following cases will be deemed a breach of contract:
  - Use of the hired item for purposes other than its intended use, use of the hired item by (lawfully) unqualified persons, incorrect care (e.g. the use of incorrect lubricants, fuel and antifreeze liquids), tampering with the safety systems, any handling or use not in compliance with the instructions of the hirer and/or manufacturer and/or the user manual, transportation of the hired item using an unsuitable or unauthorised vehicle and handling and use not in compliance with legislative and regulatory provisions.

### A.4. Exclusion of DAMAGE WAIVER A

DAMAGE WAIVER A will not provide with a limitation of liability in the following cases:

- A.4.1. Whenever one of the foregoing obligations (A 3.1. - 3.4.) has not been complied with.
- A.4.2. Whenever damage or loss has arisen out of intentional wrongdoing or gross negligence.
- A.4.3. Whenever the hired item, contrary to permitted use, has been hired out or made available for use by third parties, unless the hirer has specifically given his written consent thereto.
- A.4.4. In the event of damage to tyres.
- A.4.5. Whenever damage or loss is the result of Acts of God, such as, for example, natural disasters, armed conflict, civil war, riot, domestic unrest, terrorist attack, uprisings, mutiny or nuclear explosion.
- A.4.6. Whenever any one of the obligations on the hiree at the time the event causing damage or loss (I.3) has occurred has not been complied with, then no claim may be made under DAMAGE WAIVER A.

### A.5. Excess

Under DAMAGE WAIVER A an excess is applicable for each claim made. The hire agreement for each hired item shows to which category (1-6) the hired item belongs, on the basis of which the excess is calculated. The relevant excess is shown in the following table.

Excess according to category DAMAGE WAIVER A		
Category	Excess	
1	CHF 25	
2	CHF 200	
3	CHF 450	
4	CHF 850	
5	CHF 2.750	
6	CHF 5.500	

The excess amount is applicable to each claim for each single hire item.

Whenever, under the hire agreement, in the case of DAMAGE WAIVER A, no excess category is provided for one or more items, then the item in question will be deemed to belong to category 6.

## B. FIRE/THEFT SCHEME B (FIRE/THEFT/BURGLARY)

Cover under DAMAGE WAIVER A (covering accidental damage and loss, excluding fire/theft/burglary) may be extended through the purchase of FIRE/THEFT SCHEME B (fire/theft/burglary).

FIRE/THEFT SCHEME B is valid, in compliance with the following conditions and/or exclusions, for providing cover for damage to or loss of a hired item or a part thereof caused by theft, burglary and/or fire.

On purchasing FIRE/THEFT SCHEME B, a fee, calculated as a percentage of the hire price, shall be paid. Boels Rental AG may require Fire/theft scheme B to be purchased as a pre-condition to concluding the hire agreement. The hiree may, alternatively, on concluding the agreement, provide an insurance policy which he has purchased and which clearly states that the hired items, property of Boels Rental AG, are suitably insured.

### B.1. Field of application

FIRE/THEFT SCHEME B may only be purchased by commercial hirees. FIRE/THEFT SCHEME B covers damage and loss caused by fire, theft and burglary.

### B.2. Hire items

Fire/theft scheme B is valid only for each single hire item named in the hire agreement under the sub-clause referring to Fire/theft scheme B.

### B.3. Conditions applying to FIRE/THEFT SCHEME B

- B.3.1. A pre-condition to FIRE/THEFT SCHEME B being purchased is the existence of a valid hire agreement executed and signed by the hiree.
- B.3.2. The hiree has complied with his obligations under the Hire Agreement and the General Terms and Conditions (specifically, his duties

set forth in clauses 5 and 8 to 15 of the General Terms and Conditions of Hire) and, likewise, the following sub-clauses B.3.3., B.3.4. and B.3.5.

- B.3.3. Theft, for the purposes of FIRE/THEFT SCHEME B, means theft through burglary and, likewise, the theft of property. Burglary shall be deemed to have occurred whenever a burglar breaks into, climbs into or enters a room of a building using false, duplicate keys or another tool; enters a container by breaking open a container or by using false, duplicate keys or another tool; takes away property from a locked room in a building.
- B.3.4. The hiree is under an express obligation to protect the hired item against theft and unauthorised use by third parties. Whenever the hired item is not being used, it should be stored in a secure, locked place; all parts of vehicles should be kept locked. In so far as practicable, all machinery should be locked and secured using a padlock.
- B.3.5. Specific conditions
  - B.3.5.1. Hand tools should not be left unattended, except when they are stored in a locked room and out of sight of third parties.
  - B.3.5.2. For (light pole) power units, compressors and non-assembled (mobile) scaffolds, a limitation to cover is provided meaning a claim for damage or loss will only be deemed valid following burglary of a well locked building or a well locked part of a building in which the stolen item was stored; for the purpose of the fire/theft scheme, such a building shall exclude a manager's office on a building site or a site hut.

### B.4. Exclusion of FIRE/THEFT SCHEME B

FIRE/THEFT SCHEME B will not provide with a limitation of liability in the following cases:

- B.4.1. Whenever theft or fire has been caused intentionally or as a certain result of the actions or negligence of the hiree.
- B.4.2. Whenever one of the foregoing obligations (B 3.3. - 3.5.) has not been complied with.
- B.4.3. Whenever damage or loss has arisen out of intentional wrongdoing or gross negligence.
- B.4.4. Whenever the hired item, contrary to permitted use, has been hired out or made available for use by third parties, unless the hirer has specifically given his written consent thereto.
- B.4.5. Whenever damage or loss is the result of Acts of God, such as, for example, natural disasters, armed conflict, civil war, riot, domestic unrest, terrorist attack, uprisings, mutiny or nuclear explosion.
- B.4.6. Whenever any one of the obligations on the hiree at the time the event causing damage or loss (I.3) has occurred has not been complied with, then no claim may be made under FIRE/THEFT SCHEME B.

### B.5. Excess

In the case of a damage or loss claim under FIRE/THEFT SCHEME B, the hiree will be asked to pay a per claim excess. The excess is calculated as a percentage of the current market value of the hired item, up to a given maximum amount, which is established by the category - 1 to 6 - to which the hired item belongs. The hire agreement shows to which category (1 to 6) the hired item belongs. The relevant excess is calculated as shown in the following table.

Excess according to category FIRE/THEFT SCHEME B (fire/theft/burglary)		
Category	Excess	Maximum limit
1	20% of current market value	CHF 225
2	20% of current market value	CHF 1.100
3	20% of current market value	CHF 1.650
4	20% of current market value	CHF 3.500
5	20% of current market value	CHF 5.500
6	CHF 5.500	

The excess amount is applicable to each claim for each single hire item.

Whenever, under the hire agreement, in the case of FIRE/THEFT SCHEME B, no excess category is provided for one or more items, then the item in question will be deemed to belong to category 6.

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