

MATERIAL HANDLING

Damage Service Terms and Conditions (DSTG) of Toyota Material Handling Deutschland GmbH (Last amended July 2021)

§1 Included and excluded services

1. Included services

Within the scope of this rental, full service or financing agreement, Toyota Material Handling Deutschland GmbH (TMHDE) offers a damage service for the associated machines on the following basis. This service applies to ready-to-use machines without

- a) Accessories, traction batteries, chargers;
 - b) Auxiliary and operating materials, consumables and working materials;
 - c) Other parts which, according to experience, have to be replaced several times during the service life of the items specified in the list of equipment;
 - d) Personal protective equipment
 - e) Software and software applications
- after delivery to the Lessee/Rental Customer in operational condition.

§2 Included and excluded risks and damages

1. Included risks and damages

TMHDE provides repair services including spare parts for unforeseen damage or destruction due to

- a) Operating errors, clumsiness;
- b) Faulty design, materials or workmanship;
- c) Short circuits, overcurrent or overvoltage;
- d) Failure of measurement, control or safety installations;
- e) Lack of battery water, cooling water, oil or lubricant.

2. Excluded risks and damages

Irrespective of any contributory causes, TMHDE shall not pay out any compensation for damage caused

- a) intentionally by the Lessee/Rental Customer or their representatives;
- b) by war, wartime events, revolution, rebellion or insurrection;
- c) due to civil commotion;
- d) by nuclear energy, nuclear radiation or radioactive substances;
- e) during the period of transport by sea;
- f) by faults that already existed upon conclusion of the leasing/rental agreement and that must have been known to the Lessee/Rental Customer or its representative;
- g) by inevitable, constantly recurring external effects of the use for the intended purpose, unless consequential damage is involved;
- h) by
 - aa) normal operational wear and tear;
 - bb) premature operational wear and tear;
 - cc) corrosive attack or abrasion;
 - dd) excessive build-up of boiler scale, sludge or other deposits;

i) by the use of an item that the Lessee/Rental Customer or its representatives should have known was in need of repair.

j) by gross negligence on the part of the Lessee/Rental Customer or its representative. This also includes damage caused by failure to instruct and/or train the operating personnel by the Lessee/Rental Customer or its representatives or by insufficient or insufficiently supervised instruction and/or training of the operating personnel;

k) by recurring damage occurring more than once a year with a similar appearance and cause of damage (same assemblies, same piece of equipment) reported by the Lessee/Rental Customer and already settled once via the TMHDE damage service;

m) by fire, lightning, explosion, collision or crash of an aircraft, its parts or its cargo;

n) by storm, frost, ice, earthquake, or flooding.

o) by theft, burglary or robbery. Burglary shall also be deemed to have occurred in the event of a break-in on the company premises, which are secured against simple access by appropriate fencing;

p) by third parties.

§3 Geographical scope

The damage service applies to damage and losses occurring on the business premises(s) defined in the agreement.

§4 Scope of costs covered

1. Restoration costs

In the event of damage or loss, a distinction is made between partial and total loss. A partial loss exists if the restoration costs plus the scrap value of the old equipment are not higher than the current market value of the subject of the agreement immediately before the damage or loss occurred. If the restoration costs are higher, a total loss is deemed to exist. The current market value is derived from the replacement value, deducting in particular allowances for age, wear and tear and technical condition.

2. Partial loss

All expenses necessary for the restoration of the former, ready-for-use condition less the value of the old equipment are covered.

a) The Lessee/Rental Customer shall be charged for any improvement in value through the replacement of

- aa) auxiliary and operating materials, consumables and working materials, as well as other parts, which, according to experience, must be replaced several times during the service life of the subject of the agreement, insofar as these parts are replaced in order to restore the subject of the agreement;
- bb) conveyor belts, cables, chains, ropes, belts, brushes, linings and tyres, forks, internal combustion engines, starter batteries, pipes and tools of all kinds;

in an appropriate amount of the replacement value, corresponding to the useful life of the replaced parts.

b) TMHDE shall not be liable for

- aa) costs of an overhaul or other measures which would also have been necessary irrespective of the damage or loss;
- bb) additional costs due to changes or improvements that go beyond the restoration;
- cc) costs of restoration by the Rental Customer;
- dd) loss of profit as a result of work carried out by the Rental Customer;
- ee) additional costs caused by a temporary or provisional restoration;
- ff) costs for work which is necessary for restoration but which is not carried out on the insured item itself;
- gg) pecuniary loss

3. Total loss

The rental agreement shall expire in the event of a total loss; the final settlement is governed by the other paragraphs of these terms and conditions.

4. Deductibles

The Lessee/Rental Customer shall be liable for a deductible in the amount of the value stated in the rental, full service or financing agreement plus the applicable VAT. If several damages occur, the deductible shall be deducted individually in each case. If several damages occur to the same item and there is also a causal relationship between these damages, the deductible will only be deducted once.

In the event of an unreasonable or disproportionate disparity between the claims payments and the calculated damage service rate, TMHDE shall be entitled to demand an adjustment of the deductible. If no agreement is reached with the Lessee/Rental Customer on the adjustment of the deductible under the aforementioned conditions, TMHDE shall be entitled to terminate the damage service agreement in accordance with Section 8.

§5 Loss adjustment process

Both TMHDE and the Lessee/Rental Customer shall have the right to instruct an expert to determine the amount of damage. The costs of the loss adjustment process shall be borne by the party commissioning the expert.

§6 Term and end of the agreement

The agreement is concluded for the period stated in the rental agreement.

§7 Obligations of the Lessee/Rental Customer

1. Obligations in the event of damage or loss

- a) In the event of damage or loss, the Lessee/Rental Customer shall
 - aa) endeavour to avert and reduce the damage as far as possible;
 - bb) notify TMHDE in writing of the occurrence of the damage immediately after it has become aware of it, at the latest within 5 working days;
 - cc) obtain instructions from TMHDE to avert/reduce the damage - if necessary also verbally or by telephone - circumstances permitting;
 - dd) follow TMHDE's instructions to avert/reduce the damage as far as reasonable;
 - ee) report damage caused by criminal acts against the subject of the agreement to the investigating authorities without delay;
 - ff) immediately submit to TMHDE and the investigating authorities a list of the lost items;
 - gg) leave the damage unchanged until the site of the damage or the damaged items have been released by TMHDE; if changes are unavoidable, the damage must be comprehensibly documented (e.g. by means of photos) and the damaged items must be kept until they are inspected by TMHDE;
 - hh) as far as possible, provide TMHDE without delay with any information - if requested, in writing - which is necessary to establish the damage/loss or the extent of TMHDE's liability to pay indemnity, and to permit any investigation into the cause and amount of the damage and the extent of the liability to pay indemnity;
 - ii) to provide any evidence requested by TMHDE which it can reasonably be expected to obtain; in the event of damage or loss, TMHDE shall be entitled to request proof of the qualification of the responsible operator in accordance with the Driving Licence Ordinance without delay.

2. Exemption from liability to pay indemnity in the event of a breach of obligation

If the Lessee/Rental Customer breaches an obligation according to No. 1 above, TMHDE shall be exempt from liability to pay indemnity.

§8 Termination following damage or loss

1. Right of termination

After the occurrence of damage or loss, either of the contracting parties may terminate the present agreement. Termination must be in writing subject to a notice period of four weeks to the end of the month. Termination shall not exempt the insurer from the settling damages for which compensation is due.

§9 No liability to pay for special reasons

TMHDE is exempt from the liability to pay indemnity if the Lessee/Rental Customer fraudulently deceives or attempts to deceive TMHDE about facts which are relevant to the reason for or the amount of the indemnification by TMHDE. If the deception or attempted deception has been established by a final verdict against the Lessee/Rental Customer for fraud or attempted fraud, the requirements of sentence 1 shall be deemed to have been established.

§10 Competent court

The place of jurisdiction for actions arising from the insurance relationship shall be Hanover.

§11 Applicable law

This contract is governed by German law.