

# **General Terms and Conditions of Ziegner+Frick GmbH for Borrowing Products for Testing**

## **§ 1 General**

1. The following terms and conditions ("GTC") for the borrowing of products for testing shall apply to all current and future business relations with our customers and shall exclusively apply to all concluded loan agreements.
2. Any necessary accessories, e.g. filters or hoses, that cannot be reused must be purchased by the borrower and shall not be included under the loan agreement.
3. Any other provisions, including but not limited to differing, opposing, or additional general terms and conditions of borrowers shall not become part of individual loan agreements, even if we are aware of them, unless we have expressly consented to their applicability in writing. Changes or amendments to loan agreements, or any side agreements, shall only be binding if confirmed in writing. Acceptance of the borrowed equipment by a company/business shall be deemed an acceptance of these GTC.

## **§ 2 Subject matter of the agreement**

1. The lender grants the borrower the right to use the objects identified in the loan agreement as intended. Both order acknowledgement and delivery note shall be essential parts of the loan agreement and contain specific information about the equipment type, loan period and costs, and the insurance value of the borrowed equipment.

## **§ 3 Loan period**

1. The loan period shall begin on the day of delivery or handover of the borrowed equipment to the borrower, the freight forwarder, carrier, or other person commissioned with shipping, and shall end on the day on which the borrowed equipment arrives at the lender's upon return, insofar as it can be expected that the borrowed equipment will be accepted at the hour at which it arrives under usual circumstances. An extension of the loan period requires the written form and the written consent of the lender.
2. If borrowed equipment is used by the borrower beyond the contractually agreed loan period without the express written consent of the lender, the borrower shall acknowledge that they owe the lender a usage fee in the amount of EUR100.00 for each week, or part thereof, beyond the agreed period.

## **§ 4 Borrower's obligations**

1. Upon receipt and before use, the borrower shall be obligated to examine the borrowed equipment for proper quality. Any damage must be reported to the lender immediately. With the commissioning of the borrowed equipment, the borrower acknowledges that the borrowed equipment was in proper condition at handover or delivery.
2. The borrower has received the borrowed equipment in proper and operable condition. The borrower must ensure that the borrowed equipment is operated by skilled personnel only. All instructions of the manufacturer and the lender must be strictly observed during the use of the borrowed equipment. The borrowed equipment and its functions must only be used as intended. The borrower shall not be authorized to carry out changes or repairs on the borrowed equipment or attempt to do so. Insofar as any fault is detected on the borrowed equipment, this must be reported to the lender immediately. The lender shall provide for the necessary repairs which are to be carried out during the regular working hours.
3. The borrower must not pledge, use as collateral, or leave it to third parties in any way. For the duration of the loan period, the borrower shall effect sufficient insurance coverage to insure the borrowed equipment against any imaginable risks. The borrower shall be obligated to notify the lender immediately if the borrowed equipment is lost or execution is levied upon the borrowed equipment. Insofar as the borrower is responsible for the loss or damage to the borrowed equipment, or insofar as execution is levied upon the borrowed equipment, the borrower shall owe the lender an additional 15% of the daily hire as a handling fee, unless and insofar as the borrower can prove that an additional expense for handling was not incurred or must be assessed at a lower amount.
4. The borrower shall be obligated to use all reasonable efforts in the event of any default in performance in order to remedy the default and to minimize any damage that may have been incurred.

## **§ 5 Lender's obligations**

1. The lender does not guarantee that the borrowed equipment is suitable for the intended purpose unless this was expressly agreed.

## **§ 6 Lender's liability**

1. The lender shall only be liable for wilful intent or gross negligence. In the event that the lender is responsible for behaviour that is deemed to be at least slightly negligent, they shall only be liable if they disregarded their duty of care towards third parties and this resulted in damage to life, body, or health. Any liability that comes with a right to claim damages shall otherwise be excluded. In particular, there is no entitlement to damages for downtimes or delays in production, or for cancelled or postponed events or presentations. Insofar as there is the risk that the borrower incurred especially high damage as a result of a failure of the borrowed equipment, the borrower must point out such circumstances when entering into the contract. In that case, instructions for possible repairs or similar measures can be provided free of charge.

## **§ 7 Transport cost and insurance**

1. The borrower shall bear the cost of transport and packaging. Transport shall be at the risk and for the account of the borrower. The risk of damage or loss shall pass to the borrower upon the lender's delivery of the borrowed equipment to the freight forwarder, carrier or other person or organisation commissioned with the shipping.
2. The borrowed equipment incl. accessories must be returned in appropriate packaging. The borrower must ensure that any damage to or loss of the borrowed equipment during the return shipment to the lender is excluded.

## **§ 8 Return**

1. The borrowed equipment incl. accessories shall be returned without any damage, cleaned, and in its original packaging. Any damage, dirt, missing accessories, or missing original packaging will be billed.

## **§ 9 Termination of contract**

1. The loan contract shall expire with the expiry of the contractually agreed loan period.  
2. The borrower shall be entitled to terminate the loan contract early by returning the borrowed equipment at any time.  
3. The lender can terminate the loan contract early and without notice only if there is an important reason. An important reason particularly exists if the borrower ceases to make payments, if insolvency proceedings are instituted or opened over the borrower's assets, if the borrower pledges or encumbers the borrowed equipment in violation of the contract provisions, leaves it to third parties or changes it without the lender's consent, if the borrowed equipment is seized by a creditor of the borrower, or if the borrower is in default with respect to their payments to the lender, irrespective of the legal basis.

## **§ 10 Loss of the borrowed equipment**

1. The borrower shall generally be liable for borrowed equipment that is lost. In the event that borrowed equipment is lost or not returned, the lender shall be entitled to bill the price for new equipment according to the price list as compensation, irrespective of the condition in which the borrowed equipment was handed over to the borrower by the lender.  
2. The borrower shall be entitled to prove that the damage incurred by the lender through the loss of the borrowed equipment is lower than the full price of new borrowed equipment.  
3. The borrower hereby assigns any claims against insurance companies under insurance policies that must be taken out for the borrowed equipment; the lender hereby accepts this assignment. In addition to the insurance coverage, the borrower shall be fully liable with respect to liquidated damages.  
4. In the event that the borrowed equipment is not returned in time and that damage claims are asserted, the lender shall be obligated to transfer the title to the borrowed equipment to the borrower upon full payment of the principal claim and the costs of proceedings, if any.

## **§ 11 Final provisions**

1. This agreement shall be governed by the laws of the Federal Republic of Germany. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.  
2. Should one of the provisions of these GTC be or become ineffective, in full or in part, the validity of the remaining provisions shall not be affected. Any partly or entirely invalid provisions shall be replaced with a provision that comes as close as possible to the economic intent of the invalid provision.  
3. If the customer is a businessperson, a corporate body under public law or special fund under public law, the place of jurisdiction for all disputes under this contract shall be the place of business of Ziegner + Frick GmbH, Heilbronn, provided that we shall also be entitled to file action at the place of a customer's registered office or location of a subsidiary. The same applies if a customer does not have its general place of jurisdiction within Germany or if a customer's registered or usual place of residence is unknown when an action is filed.  
4. Arbitration proceedings shall be excluded with respect to the contract or the GTC. The only valid procedure is the recourse to the courts.  
5. Customers agree that we will use the data provided to us by them within the framework of our business relations for our own business purposes within the meaning of the data privacy laws.  
6. Changes or amendments to these terms and conditions require the written form. Also, this requirement of written form can only be changed or amended in written form.

Effective as of: 01-Jan-2021