

NEC Display Solution Europe GmbH

General Lending Terms

1. Commencement of contract

The contract commences on the day on which (a) NEC delivers the loaned items (Goods) to (i) the borrower; or (ii) the forwarder along with all parts required for putting-into-operation; or, (b) if the borrower is obligated to pick up the Goods, at the time the Goods are scheduled to be picked up. In case a set of Goods is loaned, the contract commences at the day on which the last Good belonging to the set is loaded, delivered or made available. In case the borrower uses the Goods delivered prior to the delivery of the last Good, the contract for each one of these single Goods commences at the time they are put into operation.

2. Dispatch and pickup of the Goods

Dispatch is made ex storage NEC (Dispatch Location) to the borrower's address or to the delivery address stated in the contract. The Goods will be delivered to the borrower or to the delivery address stated in the contract on the first workday after the contract commences. If pickup by the borrower has been agreed, the borrower will pick up the appliance at NEC not before the day the contract commences.

3. Expiration of contract

(1) The contract term ends at the latest on the day on which the Goods along with all accessories arrive at the agreed destination or at any other location stated by NEC (section 4(1)). Section 8(1) shall apply. In case a set of Goods has been loaned, this stipulation shall apply to each individual Goods in this set.

(2) The borrower is obligated to notify NEC of the intention to return the Goods five calendar days in advance unless a definite period of use was agreed upon in the first place.

4. Return delivery of the appliance

(1) Return delivery shall be made to the NEC address. Should NEC request delivery to a different location, NEC will advise the borrower of such request in due time and will bear any additional costs. This may not be construed to be an extension of contract.

(2) Return delivery will be made in the original packing by a specialized forwarding company. The borrower will return the appliance in the condition corresponding to the original delivery condition under due consideration of the impairment of value due to the contractual use and under due consideration of the principles outlined in sections 6 and 7. Should the borrower have implemented any modifications to system settings, the settings will be restored to the original status.

(3) If the lending agreement was not concluded for an indefinite period of time, the borrower will deliver the Goods to NEC no later than the day the contractual agreement expires. In case pickup by NEC has been agreed, NEC may pick up the appliance on the last workday before expiration of the agreed contractual term.

5. Transportation/installation costs

(1) Unless otherwise agreed in writing, the borrower will bear

the costs both for the outgoing and the return transport.

(2) The hardware made available is pre-configured by NEC. Putting-in and taking-out of operation of the Good will be performed by the borrower at his own expense.

6. Borrower's specific duties

(1) The borrower is obligated (a) to protect the Goods against excessive strain of any kind; (b) to provide for maintenance and servicing of the Good; (c) to have the repairs – including replacement parts – required to upkeep functionality of the Goods during the contractual term carried out at his own expense immediately by qualified experts and to use original replacement parts or – subject to approval by NEC – equivalent replacement parts. The costs for repairs as a consequence of normal wear-and-tear will be borne by NEC. NEC reserves the right to decide who will carry out repairs required during the contractual period.

(2) The required replacement parts will be procured from NEC. Should NEC fail to respond immediately to the borrower's pertinent inquiry by stating that NEC is able to provide the required replacement parts in the same period of time and at no higher cost than the borrower would incur, the borrower is authorized to procure the replacement parts himself.

(3) The borrower without prior consent by NEC is not authorized to make any changes to the Goods, especially extensions or additions, or to remove any IDs attached by the manufacturer or NEC.

(4) The borrower without consent by NEC may not transfer any rights to the Goods (e.g. purchase, lease, lending) nor may he assign any rights ensuing from this contract. Approval is considered given for the purpose defined in the contract e.g. permitting the use by the borrower's customer for tests for a specified period of time.

(5) Should a third party assert any rights to the appliance by attachment, levy of execution, or similar action, the borrower is obligated to inform NEC in writing about such action immediately and to inform the third party in writing about such notification.

7. Violation of duties and compensation in damages

(1) If the Goods are returned in a condition indicating clearly that the borrower failed to discharge his duties stated in section 6, the borrower is obligated to compensation of suffered damages.

(2) The scope of defects and damages ensuing from repairs and maintenance deferred contrary to contractual stipulations will immediately be documented jointly in writing; the material and labour costs for repairs of defects and damages will be agreed upon prior to commencement of repairs. Should the parties be unable to agree on this issue, they will call upon an expert as stipulated in section 8 (2). The agreed repairs will be performed by NEC, the borrower will bear the costs.

(3) If the appliance is sent back with delay or if the delay is a consequence of other circumstances within the borrower's

responsibility, NEC may, until the appliance is returned, demand payment by the borrower of a compensation for loss of use of 0.4% per day of the list price stated on the front page up to an absolute total of 110%. The right to assert any further claims for damages – e.g. for loss of prospective profits – remains in effect. The borrower has the right to demonstrate that NEC suffered no damage or only significantly lower damage.

8. Inspection and examination of the appliance

(1) NEC or its agents following prior notification are authorized at any time to inspect the Goods and to have them examined. The borrower is obligated to assist NEC with the inspection in every way possible. NEC shall bear the costs for the inspection.

(2) In case the lender and the borrower disagree about the appliance's condition, the appliance upon request by one of the parties shall be examined by a qualified expert. Should the parties be unable to agree on the expert, the expert will be appointed by the chairman of the chamber of industry and commerce competent at the Good's location. The qualified expert will determine the scope of defects and damages and the estimated costs to remedy these as well as the required working hours and will document these in an expertise. The qualified expert's expertise is binding for both parties. The qualified expert will also determine the party obligated to bear the costs.

9. Quality of the Goods and notice of defects

(1) NEC will ship the Good or hold it available in flawless and operable condition. The Good must be fully operable throughout the entire contract term if used as stipulated in the contract and with normal maintenance. NEC shall be liable for defects or deficiencies in title for the Good acc. to § 600 BGB only to the extent these were not disclosed with the intention to deceive.

(2) Visible defects must be brought to notice inside of 3 calendar days after receipt of the Good at the agreed installation location.

(3) In case a hidden defect becomes obvious when putting the appliance into operation or during operation, the borrower must inform NEC immediately after the defect is discovered. Notices of defect must principally be made in writing.

(4) NEC will bear the costs for repairing defects in appliances not made available in flawless and operable condition.

(5) Proper return delivery of the Good will be considered acknowledged by NEC if a notice of defect to the borrower with accurate description of the determined defects is not dispatched within 14 days following receipt of the appliance at the proper destination.

10. Insurance / assignment

The borrower agrees to take out adequate property insurance for the Good at his expense (e.g. against fire, pipe water, light current, theft, etc.). The borrower hereby assigns any claims from the insurance to NEC up to an amount corresponding to the NEC' claims from the lending relation as assignment for security.

11. Termination

(1) The loan agreement concluded for an indefinite period of time may be terminated by either party with a termination period of four weeks.

(2) The loan agreement may be terminated by NEC without observance of a termination period: (a) if the borrower without approval by NEC uses the Good or a part thereof in violation of the contract (section 2 of the contract) or transports it to a different location (clause 3 of the contract), (b) if the borrower without approval by NEC leases the Good to a third party or assigns rights ensuing from this contract or transfers rights to the Good (section 6 (4)), (c) if an examination acc. to section 8 by a qualified specialist establishes that the Good is considerably at risk due to continued negligent disregard by the borrower of his maintenance duties (section 6(1)), to the extent the borrower did not comply with a prior request by the lender to take corrective action within a reasonable period of time. In such case the costs for the expertise will be borne by the borrower.

(3) Such termination must be made in writing. In case NEC exercises its right to termination acc. to section 2, the borrower must immediately return all the loaned Goods.

12. Extension of the lending agreement

An agreement concluded for a specified period of time may be extended upon application by the borrower and approval by NEC. In case the period of extension is not specified, the agreement will be considered as being extended for an indefinite period of time.

13. Limitation of liability

(1) In compliance with § 599 BGB, NEC in case of contract violations is liable only in case of intention and gross negligence. In all other respects, NEC's liability is limited to foreseeable direct average damages typical for this type of contract, performance or non-performance.

(2) To the extent NEC's liability is excluded or restricted, this also applies to the personal liability for damages of NEC's salaried employees, wage earners, subordinates, representatives, and persons employed in performing an obligation (§ 278 BGB).

(3) The above limitation of liability (with the exception of those stated in §599 BGB) shall not apply to the borrower's claims in compliance with the product-liability law and to claims due to injury or impairment of health or to loss of life

14. Sundry contractual provisions

(1) Any modifications of or amendments to this agreement must be made in writing.

(2) Should individual clauses in this agreement be ineffective, this will not affect the validity of the remaining clauses. The ineffective clause will be replaced by an appropriate clause which comes closest to what the contractual parties intended. The German version is solely authoritative for interpretation of this lending agreement.

(3) These terms shall be governed by the laws of Germany excluding its conflict of law rules. Each party agrees to submit to personal and exclusive jurisdiction of the courts located in Munich, Germany. The parties specifically exclude from application to the Terms of Service the United Nations Convention on Contracts for the International Sale of Goods.