

Contract of Loan for Use of Test and Production Equipment No.

13.03.2015

between

Company
Alfred Kärcher GmbH & Co. KG
Alfred-Kärcher-Straße 28-40

D-71364 Winnenden

- hereinafter referred to as "KÄRCHER" -

and

Company

including the corresponding production sites

- hereinafter referred to as "BORROWER" -

Preliminary Statement

KÄRCHER is the worldwide leader of cleaning equipment. The BORROWER is an enterprise active in the field of [please complete]. The BORROWER manufactures objects for KÄRCHER and supplies KÄRCHER on the basis of a contract for delivery independent of the present contract. For the testing and manufacture of these objects, KÄRCHER shall borrow the BORROWER the test and production equipment forming the subject matter of the contract (subject matter of the contract). The test and production equipment can (i) originate from KÄRCHER's stocks, (ii) be manufactured by the Borrower for KÄRCHER, or (iii) be manufactured by a third party for KÄRCHER.

§ 1

Subject matter of the Contract

- (1) To permit the BORROWER to test and manufacture objects which the BORROWER has to manufacture on the basis of orders placed by KÄRCHER separately or which KÄRCHER will place in future, KÄRCHER shall borrow the following equipment to the BORROWER:

Item	Quantity	Designation	used for
1	1	Test equipment	

Order of **XX.XX.XXXX** - AB

- hereinafter referred to as "equipment" -

- (2) If the subject matter of the contract designated under § 1 (1) must be manufactured by the BORROWER or by a third party, KÄRCHER's approval must be asked for, disclosing the name and address of the manufacturer or supplier, respectively, **b e f o r e** the manufacture is performed by the BORROWER or the third party is entrusted with the manufacture.

§ 2

Duration of Contract

- (1) The contract shall come into effect as of **XX.XX.XXX**.
- (2) Either party may terminate the contract only by giving a three months' notice to the end of a calendar month. To become effective, the notice must be sent by registered letter.
- (3) The contract shall end without notice on the day when the supply contract possibly existing between the parties is terminated or terminates, or when a skeleton contract possibly concluded between the parties terminates. The contract shall furthermore terminate with a claim for the return of the equipment according to § 10 subsections 2 and 3.

§ 3

Defects of the Equipment

- (1) The BORROWER must immediately inform KÄRCHER about defects of the equipment that eliminate or reduce their fitness for use provided in § 4 subsection 1 of the contract. The BORROWER must moreover immediately inform KÄRCHER when it is recognizable that the equipment will lose its fitness for use according to the contract within a foreseeable period due to wear.
- (2) If the manufacturer or the supplier of an equipment is a third party, the BORROWER shall be obliged to inspect the equipment for defects at the time of its delivery and later at adequate

intervals in a manner in conformity with legal provisions and with the respective General Terms and Conditions of the third party if these are included. If the equipment exhibits any defects at the time of delivery, the Borrower must not grant acceptance. The BORROWER binds himself to immediately indicate any defects that occur after acceptance to the third party presenting the authority enclosed to the present contract as Annex 1. In any case, the Borrower will immediately inform KÄRCHER about any defects. The BORROWER is not authorized to claim any warranty rights in the name of KÄRCHER. KÄRCHER shall make available to the BORROWER the documents required for the performance of the obligation stipulated in Sentence 1.

- (3) In a dispute, the BORROWER must evidence his proper performance of the obligations assumed in this § 3 subsections 1 and 2. If the BORROWER does not perform his obligations assumed in this § 3 subsections 1 and 2, he shall be obliged to indemnify KÄRCHER for the loss incurred to him due to this.

§ 4

Use, Maintenance, Care, Liability according to Contract

- (1) The BORROWER shall be entitled to only use the equipment exclusively for the testing/manufacture of the items ordered by KÄRCHER (use according to contract).
- (2) The BORROWER is obliged to treat the equipment properly and professionally, see to its proper care and perform, or have performed at his expense, the required maintenance and repair works immediately, properly and professionally.
- (3) The BORROWER shall refrain from any use or handling of the equipment not covered by Subsections 1 and 2. The BORROWER is not entitled to let the equipment to third parties. If KÄRCHER grants, in individual cases, permission to handling not covered by this § 4 subsections 1 and 2, the BORROWER shall be liable for any damage to the equipment which occur in connection with the authorized handling, including those occurring accidentally.
- (4) Any liability by KÄRCHER for losses incurred to the BORROWER by the equipment or its use shall be excluded. The BORROWER shall indemnify KÄRCHER from any claims for damages by third parties and from any costs for legal defence.

§ 5

Control of Inspection

- (1) If the equipment is provided with measuring devices that are employed for testing quality-relevant features (e.g. pressure, flow, current, voltage, etc.), these must be calibrated regularly, at least once per year, in conformity with the relevant standards (e.g. DIN ISO 9001).
- (2) As standards for the control of inspection, only sufficiently precise measuring equipment (the grade must be better than that of the test equipment at least by a factor 4, i.e. the admissible error of the comparison standard may be at most 1/4 of the test item) may be employed for which complete traceability to a national or international Standard (for example *PTB (Physikalisch-Technische Bundesanstalt) for Germany*).
- (3) The Borrower is obliged to perform the calibration himself at the required intervals, or to have it performed by an external calibration authority (recognized inspection authority) at his own expense.
- (4) The calibration evidence (calibration certificates with measured values) must be sent to KÄRCHER (Quality Assurance Department) within 30 days upon their request.
- (5) The Borrower shall be responsible for the proper performance of the control of inspection. Any questions as to the fitness of test equipment or the number of measuring points etc. must be clarified with KÄRCHER (Quality Assurance) before the first calibration.

§ 6

Damage of Equipment

- (1) If any equipment is damaged, the BORROWER must immediately cause the repair or fabrication of a replacement at his expense, independent of the cause of damage. The latter also applies to the destruction of equipment. The BORROWER may demand from KÄRCHER to replace these costs if he can evidence that the cause of damage or destruction does not lie within his own responsibility.
- (2) If the BORROWER fails to comply with one of his duties, it shall be assumed that this violation of duty is the cause of the damage of the equipment occurred until the BORROWER produces evidence to the contrary. If the BORROWER pleads that the damage of the equipment is due to a defect in quality, he shall also bear the burden of proof for this.

§ 7

Statute of Limitations

Any claims by KÄRCHER shall come under the statute of limitations at the earliest one year after the expiration of the contract.

§ 8

Ownership of the Equipment

- (1) If the BORROWER entrusts a third party with the manufacture of equipment or buys equipment from a third party, he has to see to it that the following clause is adopted in his contract with the third party on the manufacture or purchase of the equipment:

If the manufacturer/seller is only ready to transfer the ownership of the equipment conditionally on the complete payment of the equipment, we shall only agree to this condition if the manufacturer/seller authorizes us to transfer the ownership of the equipment transferred to us to our customer. We already now assign our claim against our customer to reimburse the manufacturing costs or the purchase price subject to the authorization for the transfer of ownership to the manufacturer/seller as a security. We remain authorized to collect the sum due. We oppose to a current account reservation with an extension of the reservation of title to other claims of the manufacturer/seller against us.

The BORROWER can only demand the reimbursement of the manufacturing costs or the purchase price from KÄRCHER if the above-mentioned clause has been effectively included in the contract with the third party. The BORROWER must submit a copy of the contract with the third party and the invoice of the third party to KÄRCHER and immediately inform KÄRCHER when the third party has delivered the equipment to the BORROWER. KÄRCHER can also perform his obligation to reimburse the costs for the equipment by paying the invoice of the third party to the amount of the costs of the equipment agreed upon between KÄRCHER and the BORROWER.

- (1a) As soon as the third party delivers the equipment to the BORROWER, KÄRCHER acquires ownership of the equipment. If the BORROWER only acquires an expectant right, he shall transfer this right to KÄRCHER.
- (2) If the BORROWER is the owner of equipment forming the subject matter of this contract, KÄRCHER shall acquire ownership on the commencement of the present contract, at the earliest on the acceptance of the equipment. This contract also includes old tools the BORROWER uses for the manufacture for KÄRCHER. The contracting parties agree that these old tools are also owned by KÄRCHER.

- (3) The BORROWER shall mark all equipment by a clear attachment of the name "KÄRCHER" and the part or drawing number. KÄRCHER shall be entitled to determine the type, size and exact location of the attachment.
- (4) If a creditor of the BORROWER executes against the property of KÄRCHER, the BORROWER is obliged to inform KÄRCHER immediately about this. The same applies in case it is requested to institute insolvency proceedings against the assets of the BORROWER. The BORROWER shall bear the costs KÄRCHER incurs for safeguarding his rights in this connection.

§ 9

Safety. Prevention of Accidents

- (1) The BORROWER shall be obliged to handle the equipment in such a manner that no danger for third parties emanates from it.
- (2) The BORROWER shall be liable for the observance of the regulations for the prevention of accidents of the professional association.
- (3) If any safety deficiencies occur at the equipment, or if a transformation of the equipment becomes necessary due to regulations for the prevention of accidents, the BORROWER must immediately inform KÄRCHER accordingly.

§ 10

Return of the Test Equipment. Claim for Return

- (1) At the termination of the contractual relationship, the BORROWER must immediately return the equipment to KÄRCHER.
- (2) KÄRCHER shall be entitled to immediately claim the return of the equipment from the BORROWER when the manufacture of the objects tested with the equipment is stopped. If the subject matter of the present contract includes several items of equipment, § 2 subsection 3 shall apply under the proviso that this contract still remains effective for the equipment not claimed back.
- (3) KÄRCHER shall furthermore be entitled to terminate this contract without notice for good cause and to claim the return of the equipment. Good cause shall also be given
 - (a) if the BORROWER becomes insolvent;
 - (b) notwithstanding § 7, subsection 4, if the BORROWER becomes illiquid (in particular if insolvency proceedings have been instituted against his assets or the institution of such proceedings is rejected for lack of assets), or if his enterprise is wound up, or he stops his business activity essential for the performance of the contract in any other way;
 - (c) if the ownership of the BORROWER changes; in a company, this is assumed if there are changes in the ownership of more than 20 % of the capital; KÄRCHER must be informed without delay about any change regarding the ownership of the BORROWER;
 - (d) if the BORROWER does not perform, within 60 days, a contractual obligation (including one stipulated in an annex to this contract) or an obligation assumed in the performance of this contract despite a reminder, or if he does not cease a behaviour in breach of contract within this term;
 - (e) - even without reminder - if the BORROWER violates an essential obligation again;
 - (f) - even without reminder or repeated violation - if due to the behaviour of the BORROWER, a maintenance of the contractual relationship is no longer reasonable.
- (4) There is no right of retention by the BORROWER, not even a right of retention acc. to § 369 German Commercial Code, unless KÄRCHER has grossly violated his duties under this contract of loan for use.

§ 11

Final Clauses

- (1) The place of venue shall be Stuttgart (Mitte). However, KÄRCHER shall also be entitled to have recourse to the court at the BORROWER's place of business.
- (2) Any amendments and/or supplements to this contract and the cancellation of the contract or parts of the contract must be made in writing to be effective. This formal requirement can only be waived by an explicit written agreement.
- (3) If any stipulation of this contract, or any stipulation adopted by it in future, is or will become completely or partially ineffective, the validity of the other stipulations of the contract shall not be affected. The same applies if it turns out that the contract contains a regulatory gap. Instead of the ineffective stipulation, or in order to fill the gap, a stipulation shall apply which is economically reasonably assumed to best correspond to the ineffective stipulation within the legally admissible limits, or in case of a gap, which takes into consideration what the contracting parties would have desired according to the sense and purpose of the contract if they had considered the item at the conclusion of the contract or at the later inclusion of a stipulation.

Winnenden, 13.03.2015

.....
Place and date

Alfred Kärcher GmbH & Co. KG

.....
Name and position of the person undersigning this declaration

.....
Stamp / Signature

Annex to the Contract of Loan for Use of Test and Production Equipment No.

The Company Alfred Kärcher GmbH & Co. KG, Alfred-Kärcher-Straße 28-40, D-71364 Winnenden

grants

the Company .

the

A U T H O R I T Y

to indicate defects at the test equipment let to her to the respective manufacturer and to accept the test equipment if there are no defects that would entitle to reject the approval.

Winnenden, 13.03.2015

Alfred Kärcher GmbH & Co. KG

