

ENDOMAGNETICS GMBH (“ENDOMAG”) – REPAIR LOANER TERMS AND CONDITIONS (DIRECT CUSTOMER) AS AT 21 DECEMBER 2022 - THESE REPAIR LOANER TERMS AND CONDITIONS ARE ANCILLARY TO ENDOMAG’S STANDARD CONDITIONS OF SALE AND APPLY WHENEVER ENDOMAG AGREES TO PROVIDE A REPAIR LOANER TO THE CUSTOMER

1. **Interpretation** In these Repair Loaner Conditions, unless the context otherwise requires, (i) the definitions set out in the Standard Conditions of Sale apply; and (ii) the following definitions also apply; **Customer**: the party to whom Endomag loans the Repair Loaner; **Parties**: together Endomag and the Customer and **Party** means either of them; **Repair Loaner**: any item loaned by Endomag to the Customer as a temporary replacement for Repaired Goods while Goods are with Endomag for repair; **Repair Loaner Conditions**: the terms and conditions set out in this document; **Repair Loaner Contract**: the contract for the loan of a Repair Loaner; **Returned Goods**: means the Goods returned to Endomag by the Customer for repair pursuant to the Standard Conditions of Sale; and **Standard Conditions of Sale** means Endomag’s standard terms and conditions of sale from time to time.
2. **Basis of Contract**
 - 2.1 From time to time, Endomag may agree (although is not obliged) to loan a Repair Loaner (subject to Condition 8) to the Customer. Any such loan shall be subject to these Repair Loaner Conditions and any other special conditions specified by Endomag.
 - 2.2 These Repair Loaner Conditions are ancillary to the Standard Conditions of Sale (which will continue to apply) and apply in addition when Endomag loans a Repair Loaner to the Customer. In the event of any inconsistency between the Standard Conditions of Sale and these Repair Loaner Conditions, these Repair Loaner Conditions will apply in relation to the loan of the Repair Loaner. References to “Conditions” are to conditions of these Repair Loaner Terms. References to “conditions” are to conditions of the Standard Conditions of Sale.
 - 2.3 The Standard Conditions of Sale and these Repair Loaner Conditions together set out the entire agreement and understanding between the Parties in relation to the loan of the Repair Loaner to the exclusion of all other terms and conditions including, but not limited to, those in any purchase order or other document issued by the Customer or which may be implied by custom, practice or course of dealing.
 - 2.4 The Customer shall comply with these Repair Loaner Conditions.
3. **Loan of a Repair Loaner**
 - 3.1 Any agreement by Endomag to loan a Repair Loaner is subject to availability.
 - 3.2 If Endomag agrees to loan a Repair Loaner to the Customer, it shall use reasonable endeavours to do so, but has no liability whatsoever if no Repair Loaner is provided.
4. **Delivery and Use of the Repair Loaner**
 - 4.1 Endomag shall deliver the Repair Loaner in accordance with INCOTERMS 2020, DAP at the location agreed by the Parties. Any delivery date indicated by Endomag is an estimate only and time of delivery is not of the essence. Endomag shall have no liability for any delay in delivery of the Repair Loaner.
 - 4.2 The Customer must inspect the Repair Loaner promptly on receipt and comply with any local hospital policies regarding receipt of goods. If it discovers any defect affecting the Repair Loaner it must immediately (i) quarantine the Repair Loaner to ensure that it is not used; and (ii) notify Endomag. Endomag may require the Customer to return the Repair Loaner to it. Endomag may, at its option, replace the Repair Loaner, subject to availability but shall, to the extent permitted by law, have no other liability whatsoever to the Customer.
 - 4.3 The Customer must at all times use the Repair Loaner in accordance with the relevant manufacturer’s instructions and IFU and otherwise in accordance with all applicable laws, regulations and guidelines from time to time. The Customer is solely responsible for the proper use, cleanliness, sterilisation and storage of the Repair Loaner and must provide appropriate training to all relevant personnel.
5. **Quality of the Repair Loaner**
 - 5.1 The Repair Loaner may not be new and may have been used by Endomag and/or by third parties.
 - 5.2 The Repair Loaner may not be sterile on delivery. It is the Customer’s sole responsibility to ensure that appropriate decontamination and sterilisation processes are carried out prior to the first, and each subsequent, use of the Repair Loaner in accordance with the manufacturer’s instructions and the Customer’s usual procedures.
 - 5.3 Endomag assumes no liability for defects in title or in kind regarding the Repair Loaner, unless Endomag has fraudulently concealed such defect. In such case, Endomag shall compensate the Customer for its damages in accordance with the provisions of Condition 9. If the Customer becomes aware that the Repair Loaner does not conform in all material respects with any applicable specification, Condition 4.3 shall apply.
6. **Title and Risk**
 - 6.1 Risk in the Repair Loaner shall pass to the Customer in accordance with INCOTERMS 2020, DAP. From that point the Customer is responsible for the safe keeping of the Repair Loaner and must keep it insured. Risk shall pass back to Endomag on safe receipt by it of the Repair Loaner.
 - 6.2 Title to the Repair Loaner remains with Endomag at all times and shall not pass to the Customer unless the Customer pays for the Repair Loaner in full pursuant to condition 8.3 or 8.4 in which case title will pass to the Customer on receipt by Endomag of payment in full.
 - 6.3 The Customer must: (a) store the Repair Loaner in a secure location, ensuring that it remains readily identifiable as Endomag’s property; (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Repair Loaner; (c) not alter the Repair Loaner or remove any component(s) from it; (d) maintain the Repair Loaner in satisfactory condition; (e) immediately notify Endomag if the Repair Loaner is lost or damaged or if there is an issue relating to it; and (f) provide any information relating to the Repair Loaner that Endomag may request from time to time.
7. **Loan Term and Termination**
 - 7.1 Endomag shall loan the Repair Loaner for the period agreed by it in writing subject to the termination provisions set out or referred to in these Repair Loaner Conditions.
 - 7.2 Without affecting any other right or remedy available to it, Endomag may terminate the Repair Loaner Contract (i) at any time on not less than one (1) week’s notice in writing; (ii) immediately on notice in writing if it becomes aware of a safety concern affecting the Repair Loaner; and/or (iii) pursuant to condition 13.2 of the Standard Conditions of Sale.
- 7.3 On the expiry or termination of the loan of the Repair Loaner, the Customer must immediately return it (at its cost and risk) to the location notified to it by Endomag and provide all documentation required by Endomag from time to time.
8. **Charges**
 - 8.1 If at any time Endomag becomes aware of any loss or damage to the Repair Loaner, other than regular wear and tear, Endomag shall be entitled to charge the Customer (i) for any repairs required; and/or (ii) for the full cost of the Repair Loaner (at a reasonable market rate).
 - 8.2 If Endomag does not receive the Repair Loaner in good condition (taking into account regular wear and tear) within thirty (30) days of expiry or termination of the Repair Loaner Contract, Endomag shall be entitled to invoice the Customer for the full cost of the Repair Loaner (at a reasonable market rate), provided that the Customer shall have the right to demonstrate that Endomag has incurred no loss or damage regarding the Repair Loaner, or a substantially lower reduction in value has occurred than one justifying charging the full cost.
 - 8.4 Endomag shall issue an invoice to the Customer for all amounts payable pursuant to these Repair Loaner Conditions. Conditions 8.4, 8.5 and 8.6 of the Standard Conditions of Sale shall, for the avoidance of doubt, apply to the payment of each invoice.
9. **Limitation of Liability**
 - 9.1 Subject to Condition 9.3, Endomag’s maximum aggregate liability, whether in contract, tort (including gross negligence), breach of statutory duty or otherwise, arising out of, or in connection with, these Repair Loaner Conditions and/or the loan of a Repair Loaner shall be limited to one thousand euros (€1,000). For the avoidance, Endomag’s liability for ordinary negligence is completely excluded.
 - 9.2 Subject to Condition 9.3, Endomag shall not in any circumstances whatsoever, whether in contract, tort (including gross negligence), breach of statutory duty or otherwise, be liable to the Customer for (a) loss of profit (whether direct or indirect); (b) loss of business; (c) loss of contracts; (d) loss of anticipated savings; (e) loss of use or corruption of software, data or information; (f) loss of or damage to goodwill; (g) any indirect or consequential loss; or (h) damage to property or persons; in each case arising out of or in connection with these Repair Loaner Conditions and/or the loan of a Repair Loaner.
 - 9.3 Nothing in these Repair Loaner Conditions is intended to exclude or limit either Party’s liability for (a) wilful misconduct, fraud or fraudulent misrepresentation; (b) death or personal injury caused by its negligence; or (c) any other liability which it is not legally permissible to exclude or limit.
 - 9.4 Without prejudice to the generality of Condition 10, condition 10 of the Standard Conditions of Sale shall, for the avoidance of doubt, apply to the loan of the Repair Loaner.
10. **General**

Condition 17 (General) of the Standard Conditions of Sale shall, for the avoidance of doubt and without limitation, apply to these Repair Loaner Conditions.
11. **Governing Law and Jurisdiction**

The Repair Loaner Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with German law. Each Party irrevocably agrees that the courts of Munich shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Repair Loaner Contract or its subject matter or formation.