

Equippo AG / V003 1.7.2017

Listing Terms and Conditions

By applying a tick in the box that is visible at the bottom of the 'Seller Sign Up' page (accessible via the following link: http://www.equippo.com/en/content/sellers_terms_conditions), next to the wording that states "I have read and accept the Listing Terms and Conditions": you (the **"Seller"**) appoint Equippo as the Seller's Undisclosed Sales Agent to from time to time sell and promote (the **"Services"**) used equipment owned by the Seller (each and collectively **"Equipment"**, as applicable) in accordance with the provisions contained herein, and acknowledge and accept that these Listing Terms & Conditions (which are accessible via the following link: http://www.equippo.com/en/content/sellers_terms_conditions) can be printed out or locally saved (the **"Listing Terms and Conditions"**): are between the Seller and **Equippo AG**, a company organized under the laws of Switzerland with its principal place of business at Baarerstrasse 141, 6300 Zug, Switzerland (**"Equippo"**).

The Listing Terms and Conditions apply in addition to any other written agreement executed between the Seller and Equippo (collectively the **"Parties"**) that specifically references these Listing Terms and Conditions (**"Individual Agreement"**) to the Services to be provided by Equippo.

In the provision of the Services, the Seller will be able to list Equipment on Equippo's electronic platform, which is designed as a virtual marketplace for the sale of industrial equipment to buyers in various countries around the world, and accessible via the following link: www.equippo.com (the **"Marketplace"**, and the **"Website"**, as applicable), in accordance with the Listing Procedure (**"Listing"**, **"List"** or **"Listed"**, as the context may require).

The Seller further acknowledges that the Listing Terms and Conditions apply in addition to Equippo's general terms and conditions for the use of the Website, accessible via the following link: http://www.equippo.com/en/content/website_terms_conditions (the **"Website Terms & Conditions"**), and that in the event of a discrepancy between the Website Terms & Conditions and the Listing Terms and Conditions, the latter shall prevail.

1. Term/Termination

The Listing Terms and Conditions commence on the Effective Date and continue until terminated in accordance with the following paragraph. In addition to any other remedies available at law, each Party is entitled to terminate the Listing Terms and Conditions immediately in the event the other Party materially breaches the Listing Terms and Conditions or breaches a material term of the Listing Terms and Conditions by providing the other Party 10 (ten) days prior written notice (the **"Notice Period"**), with an opportunity to remedy the breach fully within the Notice Period; and is entitled to terminate the Listing Terms and Condition for no cause subject to providing the other Party 30 (thirty) days prior written notice.

2. Sales, Listing and Orders

2.1. Sale as Undisclosed Agent

(a) The Parties agree that Equippo will provide the Services as the Seller's undisclosed sales agent **"Undisclosed Sales Agent"** (*Verkaufskommissionär*), acting for the account of the Seller (*Kommittent*) only to the extent that Equippo will always enter into a sales contract directly with any buyer (so that the identities of the buyer and the Seller will not be known to each other) that results from the provision of the Services (each a **"Buyer"**), but will never take ownership of any Equipment, it being understood that the transfer of ownership of any Equipment purchased as a result of the Services will occur between the Seller and the relevant Buyer. For the avoidance of any doubt, Equippo shall not act and shall not be deemed to act as an agent of the Seller, so that any Buyer that becomes a customer of Equippo shall under no circumstances become or be deemed to be a customer of the Seller.

(b) Equippo is entitled in its sole discretion to disclose the identities of the Seller and Buyer for the purpose of the assertion or enforcement of any rights (relating to any Equipment) of the Seller and/or a Buyer.

2.2. Listing Procedure

(a) The Listing Proposal. If the Seller desires to List Equipment it shall (the **"Listing Procedure"**): provide to Equippo a proposal containing the full legal name and address of the Seller; a unique identifier for each unit of Equipment (**"Unit"**) to be Listed; and the lowest acceptable selling price after deduction of the Sales Commission (as defined below) and net of any costs (the **"Net Seller Minimum"**). The Net Seller Minimum price is a guaranteed net minimum paid to the seller in case of a successful sale. The selling price prior to deduction of the Sales Commission, net of any costs, consists of the Net Seller Minimum plus the expected Sales Commission (the **"Minimum Selling Price"**), it being understood that Equippo may from time to time reduce its Commission in which case the lowest acceptable selling price shall be deemed lowered by the Parties by an amount that equals in money to such reduction without affecting the Net Seller Minimum; and the descriptions, pictures and other information and specifications (**"Specifications"**) applicable to the Equipment (the **"Listing Proposal"**).

(b) Acceptance/Rejection of a Unit in a Listing Proposal. The Parties agree that if Equippo decides to publish any Unit referenced in a Listing Proposal for Listing on the Marketplace, so that such Unit is made available for purchase by a prospective Buyer (**"Publishing"**, and **"Publish"** as the context may require), such Publishing shall be deemed an acceptance of the Listing Proposal with respect to that Unit (**"Accepted"**); so that (for the avoidance of doubt) in the event Equippo decides not to Publish a Unit, such will be deemed a rejection of the Listing Proposal with respect to that Unit (**"Rejection"**). Further, in the event of a Rejection, Equippo may contact the Seller via email to give the Seller an opportunity to provide Equippo with a revised Listing Proposal.

(c) The Parties acknowledge that Equippo will only List and provide the Services for Equipment that has been Accepted by Equippo; that Equippo may desire to inspect Equipment that the Seller desires to List prior and as a condition to its Listing; and that Equippo will never sell Equipment Listed lower than the Net Seller Minimum without prior written approval of the Seller.

2.3. Delisting and Unavailability

(a) Delisting. Equippo is in its discretion entitled to remove a Listing from the Marketplace (a **"Delisting"** and **"Delist"**, as the context may require) and will notify the Seller via email in the event it does so with the reason for the Delisting; and the Seller is entitled to request a Delisting by providing Equippo 1 (one) day prior written notice if the Seller has not already received an Order

Notice (in accordance with **section 2.4(a)** below) for the Equipment the Seller desires to Delist, in which case the Seller shall not be entitled to Delist the Equipment without a reason reasonably acceptable to Equippo.

(b) Unavailability. If the Seller in good faith becomes aware that any Listing has become unavailable for a sale through the Marketplace (the “**Unavailability**”), the Seller will immediately, but no later than within 1 (one) day from when the Seller in good faith becomes aware of the Unavailability, provide Equippo with a notice of the Unavailability via email.

(c) Unavailability Penalty. In the event the Seller fails to comply with its obligations as per **section 2.3(b)** above, the Seller shall pay Equippo a contractual penalty of an amount equal to five percent (5%) of the Minimum Selling Price of the relevant Listed Equipment, payable within ten (10) days upon issuance and delivery of a payment request by Equippo.

2.4. Order and Confirmation

(a) Equippo shall always provide the Seller with an order notice where it has received an order for Equipment from a prospective Buyer (“**Buyer Order**”) via email (the “**Order Notice**”).

(b) Where the Seller has received and accepted (via email) an Order Notice (“**Acceptance**”), it will notify Equippo of a date on which the ordered Equipment can be picked up by Equippo (the “**Pick-up Date**”), it being understood that the Pick-up Date shall not be later than ten (10) business days after the Acceptance (the “**Availability Notice**”); subsequent to receiving the Availability Notice Equippo confirms the Buyer Order to the Buyer and sends the Buyer a Pro Forma Invoice (“**Confirmation**”). The Parties explicitly agree that a contract between Equippo and the Seller for the sale of the Sold Equipment shall only exist upon the making of the applicable Final Sales Approval (as defined in **section 4.1(a)**), it being understood that the Availability Notice shall be deemed to be the Seller’s final irrevocable offer (irrevocable for a period of 10 days) for the sale of the applicable Sold Equipment (each an “**Irrevocable Sales Offer**”) and the Final Sales Approval the acceptance of the Irrevocable Sales Offer by Equippo.

(c) Without limiting the Seller’s warranties about the condition of the sold Equipment: the Parties agree that Equippo shall be entitled to inspect any Equipment to ensure it complies with the Specifications (“**Inspect**”); and acknowledges and understands that Equippo may Inspect any Sold Equipment prior to its shipment and the payment of Equipment Proceeds to the Seller. In the event certain Equipment does not conform to the Specifications, in addition to any other remedies available at law and per the Listing Terms and Conditions, the Net Seller Minimum for such Equipment will be amended reasonably and Equippo shall be entitled to cancel the applicable Order Notice.

3. Sales Commission

3.1 Definitions

The “**Buyer Payment**” is defined as the total payment received from the sale of Listed Equipment per Equippo’s invoice to the buyer, net of VAT. The “**Net Proceeds**” are defined as the Buyer Payment minus any of the following: transport costs to the buyer, non-recoverable VAT or similar taxes, duties, bank fees, inspection costs and other third party costs, and the Handling Fee on such costs. When the Net Proceeds minus the Base Commission exceed the Net Seller Minimum, such amount is defined as “**the Overage**”.

3.2 Commission

Where any Listed Equipment is sold via the Marketplace (and Subject to **section 2.2(a)**), Equippo shall be paid a sales commission of: (i) twelve percent (12%) of the Buyer Payment (the “**Base Commission**”); in addition to (i) fifty percent (50%) of any Overage (the “**Overage Commission**” - together the “**Sales Commission**”).

4. Payment of Invoices

4.1 Payment of Purchase Price by Buyer

(a) In every event where Equippo does not agree with a Buyer to receive its full Buyer Payment prior to the Seller relinquishing possession of the Equipment ordered by a Buyer (“**Sold Equipment**”), Equippo shall ensure the Buyer provides a security by way of payment into escrow, letter of credit or similar instrument (the “**Security**”) for the agreed net (exclusive of VAT or similar taxes) purchase price of the Sold Equipment (the “**Purchase Price**”), and will notify the Seller via email once the Security or Buyer Payment has been received (the “**Final Sale Approval**”), it being understood that shipment of any Sold Equipment is always on the pre-condition of and subject to Equippo receiving either the Buyer Payment or the Security; and that pursuant to a Confirmation, Equippo shall obligate the relevant Buyer to provide the Buyer Payment or the Security within 10 (ten) business days from the applicable Acceptance (the “**Collection Period**”).

(b) The Parties agree and acknowledge that Equippo shall issue any invoice to a Buyer in its own name, and (without prejudice to the remaining provisions of the Listing Terms and Conditions): Equippo will operate as the Seller’s collection agent with respect to the collection and transfer of the Equipment Proceeds to the Seller; and shall be entitled to obtain any proceeds from the Security as necessary to carry out its obligations and exercise its rights hereunder.

(c) In the event a Buyer does not provide the Buyer Payment/Security within the Collection Period with respect to any Sold Equipment, the Seller shall be entitled to request a cancellation of the applicable Irrevocable Sales Offer, and if the Seller does not cancel in accordance with the foregoing will agree to extend the Collection Period by a reasonable time, until Equippo cancels the Order.

4.2 Settlement Statement and Invoice

(a) Within five (5) business days of Equippo’s receipt of a Buyer Payment or cleared funds from Security, Equippo shall provide the Seller with a statement that outlines the amount payable to the Seller “**Equipment Proceeds**”, and additional details of the transaction including without limitation the Purchase Price; the costs incurred or otherwise estimated for transport; customs details; VAT details or similar taxes; bank fees and other third-party costs; the Handling Fee (as defined in **section 4.6(c)**); and the Sales Commission due to Equippo (the “**Settlement Statement**”).

(b) Upon receipt of the Settlement Statement, the Seller shall issue an invoice to Equippo that matches the net amount of the Settlement Statement and references the Equipment and therefore the Settlement Statement (each the Invoice and the Settlement Statement being an “**Invoice**”).

4.3 Payment

Equippo will pay the Seller any Equipment Proceeds within five (5) days of Equippo’s receipt and acceptance of the applicable Invoice, subject to the remaining terms of the Listing Terms and

Conditions, by wire transfer to the Seller's bank account, for which the Seller shall provide Equippo the details via email or in its invoice.

4.4 Vat and Customs (as applicable)

(a) The Seller confirms validity of its VAT number and shall inform as well as the current location and customs status of the Listed Equipment at the time of the Listing Proposal.

(b) For VAT purposes only, Equippo shall be deemed a principle of the sales transaction with the relevant Buyer and the Seller shall invoice Equippo as if it was an intermediate buyer of Listed Equipment.

(c) Equippo shall disclose the destination country to the Seller on the Settlement Statement.

(d) For any sale subject to local VAT, where the ship-to address is within the country where the Listed Equipment is located, it shall be the Seller's responsibility to apply the correct VAT treatment with respect to the deemed sale to Equippo, and it shall be Equippo's responsibility to apply the correct VAT treatment with respect to the deemed sale to the Buyer. Equippo may exclude buyers or delivery locations in the same country where the Listed Equipment is located in order to prevent the occurrence of domestic transactions subject to local VAT.

(e) For deemed intra-community supplies of goods from Seller to Equippo, the Seller shall invoice Equippo with a VAT rate of zero (0) in accordance with the EU VAT directive. Equippo shall provide the Seller with a VAT identification number issued by another EU member state than the country of dispatch of the Listed Equipment and any necessary proof of transport of the Listed Equipment to another EU member state or similar justification required by the laws and regulations in effect in Seller's country.

(f) For export sales of goods from the EU to non-EU countries the Seller shall invoice Equippo with a VAT rate of zero (0) in accordance with the EU VAT directive. Equippo shall provide the Seller with any necessary proof of export or similar justification required by the laws and regulations in effect in Seller's country at the time of export.

(g) Equippo shall be responsible to ensure the correct VAT treatment of the deemed sale of the Listed Equipment to the relevant buyer.

(h) For the avoidance of doubt, Equippo shall not be responsible for the Seller's responsibility of correct VAT treatment of the deemed sale to Equippo.

(i) The Settlement Statement and the Invoice shall include the appropriate VAT and VAT identification numbers, if different, of the Seller and of Equippo and information about any VAT payable by Equippo to the Seller, if applicable.

(j) Unless explicitly stated to the contrary herein, all purchase prices, commissions and fees referred to in the Listing Terms and Conditions are net of VAT.

(k) Notwithstanding the foregoing, in every customs declaration the Buyer will always be identified as the consignee/importer of record, and the Seller will always be identified as the consignor/exporter of record, with the exception of transactions that are deemed domestic or intra community transactions within the EU whereby Equippo, for VAT purposes, is deemed the buyer with its EU VAT Number and subsequently acts as the consignor/exporter of record.

4.5 Currency

All transactions under this Agreement shall be conducted in Euro, unless a different currency is agreed between the Seller and Equippo in the Listing Proposal and Acceptance process.

4.6 Transportation and Delivery

(a) In accordance with **section 2.4(b)**, the Seller shall make all Sold Equipment available for transport, complete with charged batteries, fuel and keys, within ten (10) business days after its receipt of an Order Notice.

(b) Without prejudice to the remaining terms of the Listing Terms and Conditions, in the event a breach of **section 4.6(a)** results in a cancellation of a Buyer Order and a refund of the applicable Buyer Payment to the applicable Buyer, Equippo shall be entitled to charge the Seller a default fee of twenty percent (20%) of the Minimum Selling Price.

(c) In consideration for the Handling Fee (as defined below), Equippo shall arrange and pay for the transportation of Sold Equipment to the location agreed with the relevant Buyer. The **“Handling Fee”** shall mean 10% of the actual transport costs incurred or the transport costs reasonably expected to occur (if all transport costs associated with any Sold Equipment have not yet been incurred) in relation to the transport of Sold Equipment at the time of issuance of the Settlement Statement. The Handling Fee shall be deducted from the Purchase Price in accordance with **section 4.2(a)**.

4.7 Power of Attorney

The Seller hereby grants a power of attorney to Equippo in its capacity as the Seller’s Undisclosed Sales Agent: for the limited purpose of appointing a customs broker for export of the Equipment; executing all related export documents; entering into sales contracts with any Buyer; transferring ownership and possession of the Sold Equipment to the Buyer and collecting the Buyer Payment from the Buyer – as necessary to perform its duties under the Listing Terms and Conditions; or enable the Seller to perform its duties contained herein.

4.8 Transfer of Ownership and Risk of Loss

Ownership of any Sold Equipment shall transfer directly from the Seller to the Buyer at the point when Equippo receives the applicable Buyer Payment or Security from the Buyer; and all risk of loss relating to any Sold Equipment shall pass directly from the Seller to the Buyer the moment the Seller has carried out all of the Seller’s delivery obligations under a specific Order Notice. In case Equippo conducts a sale under different terms regarding Risk of Loss, for example under standard Incoterms, Equippo assumes the Risk of Loss until it has passed to the buyer.

5 Representations, Warranties and Guarantees

The Seller hereby represents, warrants and guarantees in the sense of an independent guarantee pursuant article 111 of the Swiss Code of Obligations to Equippo, that the statements under **Sections 5.1 through 5.9** are true, correct and accurate in all respects for the term of the Listing Terms and Conditions, unless specifically stated otherwise in the Listing Proposal:

5.1 The Equipment (until sold to a Buyer) is owned by the Seller free and clear of any third-party rights such as liens or any other encumbrances or obligations.

- 5.2** The advertising or sale of the Equipment does not infringe upon any patents, trademarks or similar rights of any third parties.
- 5.3** The Seller is solvent and has not entered into any preparations for insolvency or bankruptcy or other similar proceedings.
- 5.4** The Equipment has been properly imported and is in free circulation in the country where the Equipment is located.
- 5.5** The Equipment is certified in accordance with the legal requirements applicable at its location.
- 5.6** The Equipment is in good and safe running condition, and the description and Specifications provided by the Seller for all Equipment is accurate.
- 5.7** The Seller has disclosed to Equippo, any and all major damages to the Equipment, the definition of a major damage being any damage with a repair cost in excess of EUR 500 (five hundred euros).
- 5.8** The Equipment is free from any major fluid leaks, cleaned and transport-ready for transport by truck and vessel by common standards. The Seller has disclosed any other fluid leaks even if considered as minor.
- 5.9** The Equipment is free of hazardous materials other than normal operating fluids.

6 Further Obligations of the Seller. The Seller shall:

- 6.1** Ensure all Equipment to be delivered to a Buyer is in a condition appropriate for shipment, and that any repair or cleaning cost resulting from an unacceptable condition will be borne by the Seller and may be deducted from the Equipment Proceeds;
- 6.2** Ensure that the usage indicators (such as engine hours or km) are accurately represented in the Specifications, and that the usage indicators represent the true usage of the Equipment;
- 6.3** Provide all user and parts manuals required for the operation of the Equipment; document the Equipment with photographs; and store the Equipment in an appropriate weather-protected place;
- 6.4** Provide all certificates of conformity issued or required with the Equipment (such as CE certificates of conformity for CE marked equipment) to Equippo by scan or digital photograph;
- 6.5** Ensure that the Equipment is not used after listing, except for the purpose of loading upon shipment to a buyer; and
- 6.6** Grant, and to the extent possible hereby grants, Equippo the license and right to use any content, images and videos provided by it for advertisement of the Equipment on the Marketplace and any other media and shall procure that such use shall not infringe any rights of third parties.

7 Remedies

The Seller (the **“Indemnifying Party”**) shall indemnify, defend, and hold harmless Equippo (the **“Indemnified Party”**), its employees, officers and contractors against any and all third party claims or demands for damages, liabilities, losses, actions and/or suits, including reasonable attorney’s fees and court or arbitration costs (hereinafter referred to as **“Losses”**) arising directly or indirectly as a result of the Seller’s breach of a provision of the Listing Terms and Conditions or breach of a

warranty by the Seller given herein, except to the extent that any such Losses are directly caused by the gross negligence or intentional misconduct of Equippo.

8 Non-circumvention.

The Seller agrees: not to contact; not accept any contact from; and to inform Equippo of any contact made by a prospective Buyer or a Buyer (each a **“Contact”**) identified and/or introduced (as applicable) by Equippo via the Marketplace, and shall refrain from taking any action that directly or indirectly leads to a sale to the Contact off the Marketplace without the prior written approval of Equippo (to be provided in its absolute discretion).

9 Miscellaneous

9.1. Taxes, Costs and Expenses

- a. Unless otherwise provided in the Listing Terms and Conditions, any and all taxes and other public charges imposed on one of the Parties in connection with the Listing Terms and Conditions and the transactions contemplated hereby are to be borne by the Party on which such tax or public charge is imposed.
- b. Unless otherwise provided in the Listing Terms and Conditions, each Party shall bear its own costs and expenses arising out of or incurred in connection with the Listing Terms and Conditions and all transactions contemplated hereby.

9.2. Amendments

- a. The Listing Terms and Conditions (including any amendment of this Section) may be amended only in writing (including by electronic communication).
- b. Any deviations from the Listing Terms and Conditions shall be agreed in writing and must be duly signed by an authorized signatory of Equippo.
- c. Equippo reserves the right to amend the Listing Terms and Conditions at any time.

9.3. Assignments

Neither Party shall be entitled to assign or transfer any rights resulting from a binding contract among the Parties or any of the rights or obligations thereunder to any third-party without the prior written consent of each other Party. Transfers or assignments in accordance with the Listing Terms and Conditions shall remain reserved.

9.4. Severability

If any part or provision of the Listing Terms and Conditions shall be held to be invalid or unenforceable, the other provisions of the Listing Terms and Conditions shall nonetheless remain valid. In this case, the invalid or unenforceable provision shall be replaced (by court order, as the case may be) by a substitute provision that best reflects the intentions of the invalid or unenforceable provision without being unenforceable. The same shall apply in case of any gap in the Listing Terms and Conditions.

9.5. Governing Law

These Buyer Terms & Conditions shall be governed by substantive Swiss law (to the exclusion of the conflict of laws provisions and the United Nations Convention on Contracts for the International Sale of Goods (CISG) dated 11 April 1980).

9.6. English Language

The Listing Terms and Conditions may be translated into other languages; the English version however shall be the superseding and sole legally binding language version.

9.7. Jurisdiction

Any dispute arising out of or in connection with the Listing Terms and Conditions shall be exclusively referred to the courts competent for the city of Zug, Switzerland.

9.8 Entire Agreement

The Listing Terms and Conditions, including any Individual Agreement that may have been executed between the Parties in writing and other documents referred to herein, and the Website Terms & Conditions constitute the entire agreement and understanding among the Parties with respect to the subject matter hereof, and shall supersede all prior oral and written agreements or understandings of the Parties relating hereto (including without limitation any terms and conditions of the Seller sent to Equippo as part of the Listing Proposal or similar communication).