

## General Terms and Conditions of the loan agreement for project-based loans between The Netherlands Musical Instrument Foundation and legal entity users

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These general terms and conditions constitute a part of every loan agreement for project-based loans involving a legal entity user concluded with The Netherlands Musical Instrument Foundation (hereinafter referred to as: the foundation). The latest version of these general terms and conditions applies from the moment the version is placed on the website and insofar as the changes are reasonable.

'Legal entity user' is understood to mean (representatives of) *stichtingen* [Dutch foundations], funds, associations, orchestras, ensembles, conservatoires and other institutions that have an instrument of the foundation on a project-based loan. For the sake of readability, the term 'user' will be used for 'legal entity user' throughout these General Terms and Conditions.

'Project-based loan' is understood to mean the loan of an instrument of the foundation for the duration of a short-term project.

'Short-term' refers to projects with a maximum duration of six months, including the time required for any preparation for this project.

The term 'instrument' is understood to mean all musical instruments provided on loan to the user by the foundation including bows and accessories, among other things.

### A. Obligations of the user

#### General obligations of the user

**Art. A 1** The user accepts full responsibility and liability for the instrument for the entire duration of the loan.

The user has a general duty of care with respect to the instrument: the user is required to exercise all possible care to prevent the occurrence of damage, theft or wear and tear with regard to the instrument under all circumstances (including during use, transport and storage of the instrument, for instance). This includes, but is not limited to, the obligation to ensure the safest possible protection of the instrument in the form of a transport cover or box. If damage or loss occurs as a result of failure to fulfil this duty of care, the user will be liable therefor.

#### Good condition and maintenance

**Art. A 2** The user undertakes to keep the instrument in good condition and to preserve and maintain it with all due and reasonable care.

#### Use by third parties

**Art. A 3** The user is solely permitted to make the instrument given on loan available to third parties who are in any way connected to the user. In this context, 'third parties' is understood to mean parties who can be considered as constituting part of the user (for example, due to being a member, student, teacher, employee or staff member). The user is prohibited from making the instrument available for use by other parties than the above-mentioned parties, or

to place it at the disposal of other parties than the above-mentioned parties, except when explicit written permission has been granted beforehand by the foundation. The foundation is entitled to request a list of persons' names from the user, prior to or during a project-based loan period, specifying who will receive or who has the instrument that has been loaned for the project. Any failure of the user to fulfil this condition may result in the foundation refusing or terminating the project-based loan. Only in situations and moments that this is clearly in the interests of the instrument's safety may the user temporarily place the instrument in the custody of a third party.

#### Notification obligation

**Art. A 4** The user is obliged to immediately notify the foundation and the police of any loss, theft or misappropriation of the instrument as well as any other damage resulting from a crime or suspected crime, and to immediately send a copy of the police report to the foundation.

#### Obligation to report loss or damage

**Art. A 5** The user is obliged to notify foundation immediately of any complete or partial loss of or damage to the instrument, and to provide the foundation or a third party designated by the foundation with all relevant information.

#### Use abroad

**Art. A 6** The user is prohibited from travelling abroad with the instrument, unless this has been explicitly agreed upon with the foundation in writing, upon entering into the loan agreement. If the user travels abroad with the instrument without permission from the foundation, the user will be liable for all associated risks.

#### Contribution towards foundation's operating expenses

**Art. A 7** The user is obliged to pay the foundation a contribution towards the foundation's collection expenses. The rates charged on concluding a new loan agreement are stated in the appendix to these General Terms and Conditions and are publicised on the foundation's website.

The user gives permission to send this invoice to his/her e-mail address. Payment is to be made within thirty days of the invoice date. The amount of the contribution is calculated on the basis of the number of weeks that the instrument is available to the user. The minimum loan period is one week.

#### Contact with the foundation

**Art. A 8** The user is obliged to respond to all requests by the foundation for information as quickly as possible, but in any case within one week, whether made via post, email, telephone or any other medium, insofar as this concerns matters related to the instrument on loan to the user or any matter pertaining to the loan agreement or the general terms and conditions. Persistent failure to respond to the foundation's questions or comments, or failure to respond in a timely fashion (as determined at the foundation's discretion) may result in the immediate reclaiming of the instrument by the foundation.

#### Information from the foundation

**Art. A 9** By signing a loan agreement the user declares that he/she agrees to periodically receive general information produced by the foundation, including but not limited to magazines, bulletins and digital or printed newsletters.

#### Specific obligations for user of keyboard instruments

**Art. A 10** The user of a keyboard instrument is subject to additional obligations which have been included in the Supplementary Conditions for Keyboard Instruments.

### **B. Inspection and Repairs**

#### Inspection

**Art. B 1** The foundation is entitled to inspect the instrument or arrange for its inspection at any time. If requested to do so, the user is obliged to immediately make the instrument available to this end.

#### Permission for repairs

**Art. B 2** The user is obliged to notify the foundation immediately and in advance of all intended repairs to the instrument and/or accessories. No repairs may be carried out until the foundation has given permission for them. The repairs may only be carried out by an expert designated by the foundation.

#### Specific rules maintenance and repair

**Art. B 3** The user of a keyboard instrument is subject to additional rules in respect of maintenance and repair which have been included in the Supplementary Conditions for Keyboard Instruments.

### **C. Insurance**

#### Insurance and policy conditions

**Art. C 1** The foundation has taken out insurance for the instrument on the basis of worldwide covering all damage to or loss of insured interests due to external causes. The policy conditions stipulate the following exceptions from cover:

- wilful recklessness or gross negligence on the part of the insured party
- gradual effects of the weather
- damage caused by normal wear and tear, oxidation and other gradual causes
- damage caused by vermin
- confiscation or seizure by customs or other lawful authorities
- damage caused by excrement
- damage, loss, costs or liability caused by contagious disease
- damage, loss, cost or liability caused by cybercrime
- excluded from the insured area are: Ukraine; Russian Federation; Belarus (Republic of Belarus); The Sea of Azov and the territorial waters of Ukraine and Russian Federation including the territorial waters of the Black Sea.

#### Damage or loss for the account of the user

**Art. C 2** Any damage or loss that is not covered by the insurance policy will be for the account of the user.

#### Amendment to policy conditions

**Art. C 3** In the event of an interim amendment to the policy conditions, the foundation will immediately notify the user in writing. The user will be bound to the new conditions. The current insurance and policy conditions will also be publicised on the foundation's website.

## **D. Promotional obligations and miscellaneous provisions**

### Promotional activities in general

**Art. D 1** During the loan period the user is obliged to make written or verbal mention of The Netherlands Musical Instrument Foundation (or to make mention of The Netherlands Musical Instrument Foundation in any other manner whatsoever) at every public occasion at which the user carries out or speaks about musical activities or communicates in any other way about music and/or instrument.

### Text of Acknowledgment with regard to concerts

**Art. D 2** The user undertakes to ensure that for every performance in which an instrument of the foundation is used the foundation receives acknowledgment in the form of:

- a (free) advertisement in the programme booklet of the relevant performance
- or an article about the foundation in the programme booklet
- or the insertion of an foundation donation brochure in the programme booklet.

The foundation determines which of the above-mentioned options will be used in consultation with the user.

The user undertakes to ensure that the programme booklet for every performance includes an acknowledgment that he/she plays on an instrument provided by The Netherlands Musical Instrument Foundation. The user is to make mention of this in the following way: [user's name] heeft een [instrument type] built by [maker, (place of construction, year of construction) uit de collectie van Het Muziekinstrumentenfonds in bruikleen.

In English texts, the Dutch name 'Het Muziekinstrumentenfonds' is to be replaced by 'The Netherlands Musical Instrument Foundation'.

### Text of Acknowledgment with regard to website, newsletter and social media

**Art. D 3** The user undertakes to ensure that the relevant website makes mention of Het Muziekinstrumentenfonds, with due observance of the provisions of Article D 2. Furthermore, the foundation's current logo is to be depicted and a link to the homepage of the foundation's website is to be included.

The user also undertakes to ensure that mention is made of Het Muziekinstrumentenfonds (in English: The Netherlands Musical Instruments Foundation) in the form of an item in the digital newsletter and on the social media used by the institution.

### Text of Acknowledgment with regard to CD/DVD and other audio-visual productions

**Art. D 4** If the user participates in a CD/DVD or other audio-visual production, the user is obliged to make mention of the foundation on the sound-recording medium concerned, in the manner described in Article D 2.

### Compliance with promotional obligations

**Art. D 5** Any failure to comply with one or more of the obligations as mentioned in Articles D 1-4, such failure as determined at the foundation's discretion, may result in repossession of the instrument and termination of the loan agreement.

## **E. End of the agreement**

### Return

**Art. E 1** The termination of the agreement only comes into effect once the instrument has been returned to the foundation and all outstanding accounts have been settled with the foundation. The user is not entitled to give notice of termination of the agreement on an earlier

date than the set end date. The signing of the agreement by the user implies that in all cases the user is required to pay the due loan contribution amount in full. If the instrument is returned late the user will owe a penalty equivalent to the standard contribution for a loan period of one week for every week or part thereof that the return of the instrument is overdue.

#### Termination of the agreement due to special or changed circumstances

**Art. E 2** The foundation expressly reserves the right to ascertain whether the facts or circumstances applicable at the time of the agreement's conclusion have not changed to such an extent during the term of the agreement as to no longer justify use of an foundation's instrument by the user. Such circumstances may include (but are not limited to) the following:

- if the foundation reasonably deems this to be the case or if the loan no longer meets the objectives of the foundation;
- withdrawal of the instrument from musical practice;
- transference of the user's musical activities abroad;
- bankruptcy, debt rescheduling, moratorium or guardianship of or an administration order levied against the user;
- The user's resignation or departure from the service of the institution that is represented by the user;
- failure to comply with any obligation as described in the General Terms and Conditions of the foundation.

In all these cases the foundation's executive board will be entitled to terminate this agreement prematurely.

#### Difference of opinion

**Art. E 3** If the foundation and the user have any difference of opinion regarding the application of these General Terms and Conditions, the user can lodge a written objection with the foundation's Supervisory Board. In certain cases, the Supervisory Board may obtain advice. The Supervisory Board shall endeavour to mediate and, where possible, propose a solution. If a dispute cannot be resolved by consultation, the District Court of Amsterdam shall in the first instance have exclusive jurisdiction to take cognisance of disputes. The loan agreement (of which these general terms and conditions form part) is governed by Dutch law.

#### Confidential counsellor

**Art. E 4** In the event that the user is of the opinion that he/she has experienced discrimination, sexual intimidation, aggression and violence or bullying in his/her contact with the foundation's office, the user can report this to the external confidential counsellor of the foundation, committed by contract, the Gimd company since June 2020. The reporting procedure [meldprocedure] is available on the foundation's website.

#### Acts or omissions in contravention of these conditions

**Art. E 5** If the user infringes or fails to comply with any provision of this agreement, the foundation may terminate this agreement with immediate effect without judicial intervention. The foundation is then entitled to immediately reclaim the instrument, without prejudice to the foundation's right to claim any amounts the user may still owe the foundation under the terms of this agreement. In such a case, the user will be obliged to return the instrument to the foundation or a third party designated by the foundation, in a complete state and in good condition, without prejudice to the foundation's right to have any damage to the instrument repaired at the user's expense.

## **F. Personal data**

### Processing of personal data, privacy statement

**Art. F 1** The foundation shall only process the user's personal data to the extent necessary for the execution of the agreement and/or to the extent that the user has given his/her consent.

The foundation has a privacy statement, which is applicable. The foundation reserves the right to make amendments to the privacy statement. The latest version of the privacy statement can be found on the foundation's website.

### Storing of personal data

**Art. F 2** The foundation only stores personal data as long as is necessary for the realisation of the purposes for which the data is being processed, and in any case as long as specific regulations require.

### Privacy rights

**Art. F 3** The user has the right to inspect his/her personal data, the right to request the correction, restriction or deletion of his/her personal data as well as the right to request the transfer of his/her data. Ultimately, the user can raise objections to the use of his/her data. If the processing of his/her data requires consent, the user can withdraw his/her consent at any time.