



TERMS AND CONDITIONS

1. NO WARRANTIES MADE BY LESSOR

A. CUSTOMER ACKNOWLEDGES THAT LESSOR HAS MADE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION OR PERFORMANCE OF THE EQUIPMENT (OR ANY PART THEREOF), ITS MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR WITH RESPECT TO PATENT INFRINGEMENT OR THE LIKE. LESSOR SHALL HAVE NO LIABILITY TO CUSTOMER FOR ANY CLAIM, LOSS OR DAMAGE OF ANY KIND OR NATURE WHATSOEVER, NOR SHALL THERE BE ANY ABATEMENT OF RENTAL, ARISING OUT OF OR IN CONNECTION WITH (I) THE DEFICIENCY OR INADEQUACY OF THE EQUIPMENT FOR ANY PURPOSE, WHETHER OR NOT KNOWN OR DISCLOSED TO LESSOR, (II) ANY DEFICIENCY OR DEFECT IN THE EQUIPMENT, (III) THE USE OR PERFORMANCE OF THE EQUIPMENT, (IV) ANY INTERRUPTION OR LOSS OF SERVICE OR USE OF THE EQUIPMENT, OR (V) ANY LOSS OF BUSINESS OR OTHER CONSEQUENTIAL LOSS OR DAMAGE WHETHER OR NOT RESULTING FROM ANY OF THE FOREGOING. CUSTOMER WILL DEFEND, INDEMNIFY AND HOLD LESSOR HARMLESS AGAINST ANY AND ALL SUCH BREACH OF WARRANTY CLAIMS, DEMANDS AND LIABILITIES ARISING OUT OF OR IN CONNECTION WITH THE POSSESSION OR OPERATION OF THE EQUIPMENT HEREUNDER.

B. Lessor hereby assigns to Customer and Customer shall have the benefit of any and all manufacturer's warranties, service agreements and patent indemnities with respect to the Equipment; provided, however, that Customer's sole remedy for the breach of any such warranty, indemnification or service agreement shall be against the manufacturer, and not against Lessor or any assignee of Lessor, nor shall any such breach have any effect whatsoever on the rights and obligations of either party with respect to this Agreement.

C. No agent of Lessor is authorized to waive or alter any term or condition of this Agreement, and no representation as to the Equipment or any other matter by Lessor's agents shall in any way effect the Customer's duty to pay the Rent and perform its other obligations under this Agreement.

2. OWNERSHIP OF EQUIPMENT

No title or right in or to the Equipment shall accrue to the Customer except the rights expressly granted in this Agreement. At the discretion of the Lessor plates or other markings will be affixed to or placed on the Equipment by the Lessor or by the Customer at the Customer's expense, indicating that the Lessor is the owner of the Equipment. Customer will not remove such markings during the term of this Agreement. On the termination of the Agreement, the Customer will immediately return the Equipment to the Lessor in as good condition as received less normal wear, tear and depreciation. The Equipment shall always remain and be deemed personal property even if attached to realty. All replacements, equipment, repairs, or accessories made to or placed in or on the Equipment shall become a component part thereof and title thereto shall be immediately vested in the Lessor and shall be subject to the terms of this Agreement.

3. CUSTOMER'S PRIOR INSPECTION

The Customer acknowledges that it has inspected the Equipment prior to the execution of this Agreement and accepts the Equipment in an "as is" and "where is" condition. Customer acknowledges that the Equipment is in good condition and repair, and that the Customer is satisfied with and has accepted the Equipment in such good condition and repair.

4. NO RIGHT OF OFFSET

The Customer hereby waives, and agrees not to assert, any and all existing and future claims, defenses and offsets against any Rent or other payments due hereunder. The Customer agrees to pay the Rent and other amounts hereunder regardless of any claim, defense, or offset which may be asserted by the Customer or on its behalf.

5. CUSTOMER'S USE OF EQUIPMENT

The Customer shall use the Equipment in a careful and proper manner and shall comply with all instructions, safety manuals, laws, ordinances, and regulations relating to the possession, use, or maintenance of the Equipment. Customer warrants and represents that all persons who shall operate the Equipment have been properly trained and instructed by the Customer, and that the Equipment shall only be used under the Customer's direct supervision, including but not limited to all OSHA regulations.

6. LATE CHARGES

If the Customer fails to pay any part of the Rent or any other sum required to be paid to the Lessor under this Agreement within ten (10) days after the due date, Lessor shall have the right to assess a late charge of five (5%) percent of the amount then due plus interest at one and one-half (1 1/2%) percent per month on the amount due and payable until paid by Customer. Such late charges shall be added to the Rent and shall be cumulative; and while any delinquency exists all payments made by Customer shall first be applied to cure the delinquency before any sums will be applied toward the Rent.

7. ALTERATIONS

The Customer shall not make any alterations, additions, or improvements to the Equipment without the prior written consent of the Lessor, which consent Lessor may withhold in its sole reasonable discretion. All additions and improvements of whatsoever kind or nature made to the Equipment shall belong to and become the property of the Lessor on the termination of this Agreement.

8. INDEMNIFICATION AND INSURANCE

A. Customer hereby agrees that it is solely responsible for the Equipment while it is in the Customer's care, custody or control. Customer shall, to the fullest extent permitted by law, indemnify, hold harmless and defend Lessor, its officers, agents and employees from and against any and all liabilities, damages, losses, causes of action, suits, claims, judgments, costs and expenses, including attorney's fees arising out of or in connection with the Equipment and its actual or alleged use, lease, operation, maintenance, manufacture, selection, delivery or possession, including but not limited to claims for personal injury to any person(s), including Customer's employees, and property damage to the Equipment or other property, including but not limited to loss of use arising directly or indirectly out of or in connection with the use or operation of the Equipment, whether such loss is caused, in whole or in part, by the negligent acts of the Lessor, Customer or anyone directly or indirectly employed by them or anyone for whose acts such person(s) may be liable. No loss or damage to the Equipment shall impair any obligation of the Customer under this Agreement, which shall continue in full force and effect.

B. Customer agrees that it will, at its own expense, maintain insurance on the Equipment against all physical loss or damage thereto in an amount equal to the full insurable value of the Equipment. Such insurance shall name the Lessor as an additional insured and loss payee. Customer further agrees that it shall provide comprehensive general liability insurance, including contractual liability coverage, with limits of no less than One Million (\$1,000,000.00) Dollars per occurrence/One Million Dollars (\$1,000,000.00) aggregate, for any and all claims, accidents, liability, damages, loss and expenses arising out of or in any way resulting from the lease, operation, maintenance, use, manufacture or selection of the Equipment that results in bodily injury, sickness, disease, death or injury to or destruction of property, including the loss of use resulting therefrom. The aforementioned first and third-party insurance coverage shall be primary for the Customer and the Lessor and shall not be cancelled or modified at any time without at least thirty (30) days written notice to the Lessor. Customer shall provide satisfactory evidence of the existence of such insurance in the form of a Certificate of Insurance from an insurer licensed to conduct business in the Commonwealth of Pennsylvania prior to the delivery of the Equipment.

9. RISK OF LOSS AND DAMAGE

The Customer hereby assumes and shall bear the entire risk of loss and damage to the Equipment from any and every cause during the term of this Agreement. No loss or damage to the Equipment or any part thereof shall impair any obligation of the Customer under this Agreement which shall continue in full force and effect. In the event of loss or damage of any kind to the Equipment, the Customer, at the option of the Lessor, shall: (i) place the same in good repair, condition, and working order; or (ii) replace the same with like equipment in good repair, condition and working order.

10. REPAIRS The Customer, at its own cost and expense, shall keep the Equipment in good repair, condition, and working order and shall furnish any and all parts, mechanisms and devices required to keep the Equipment in good mechanical and working order.

11. TAXES

The Customer agrees to use, operate and maintain the Equipment in accordance with all laws, to pay all licensing or registration fees for the Equipment, and to keep the same free of all levies, liens, and encumbrances; to pay all taxes, assessment, fees and penalties which may be levied or assessed thereon, including but not limited to all federal, state, and local taxes however designated, levied or assessed on Customer, the Lessor, the Equipment or on the sales, ownership, use or operation thereof. On written request of the Lessor, the Customer agrees to reimburse the Lessor for the costs incurred in collecting any taxes, assessments, or fees for which the Customer is liable hereunder and remitting the same to the appropriate authorities. The Lessor may pay such taxes and other amounts and may file such returns on behalf of the Customer if the Customer fails to do so as provided herein and all such payments made by the Customer shall be added to the Rent.

12. NET LEASE

This is a net lease agreement. All maintenance, taxes, insurance or utilities related to the Equipment shall be paid by Customer. All advances made by the Lessor to preserve the Equipment or to pay insurance premiums or to discharge and pay any taxes, assessment, fees, penalties, liens or encumbrances thereon shall be added to the unpaid balance of the Rent due hereunder and shall be payable by the Customer to the Lessor upon demand.

13. LESSOR'S RIGHT TO INSPECT

The Lessor, at any time during the regular business hours of Customer, shall have the right to inspect the Equipment upon two (2) hours prior notice to Customer.

14. DEFAULT

If Customer fails to pay the Rent when due or if Customer should otherwise breach any provision of this Agreement, or if Customer becomes insolvent or if a receiver shall be appointed for Customer, or if any proceeding be instituted by or against Customer under any of the provisions of the bankruptcy laws of any state or the United States, or if any judgment, writ or warrant of attachment shall be entered or filed against the Customer or the Equipment, or if Customer becomes insolvent, ceases doing business as a going concern, or makes an assignment for the benefit of its creditors, or if a tax lien is filed against Customer; then, in any of these events, Lessor, at its option, may by notice to the Customer declare the entire unpaid Rent and all taxes and other sums due from Customer to be immediately due and payable; and in addition to and without prejudice to any other remedies, may without court order or other legal process and without notice to Customer, repossess the Equipment. Such repossession shall not constitute a termination of this Agreement unless Lessor so notifies Customer in writing. Lessor at its option may then: (i) lease the Equipment or any part thereof to any third party upon such terms and conditions as Lessor may determine, or (ii) sell the Equipment or any part thereof to the highest bidder at public or private auction. The net proceeds of such leasing or sale, less Lessor's expenses incurred in connection therewith, including reasonable attorney's fees, shall be applied to the total unpaid Rent and other sums payable by Customer hereunder, and Customer shall be obligated to pay Lessor any deficiency. If the amount obtained by Lessor or its assigns upon a subsequent Agreement or sale of the Equipment is less than the balance of unpaid Rent and all other amounts due hereunder plus the Lessor's expenses incurred in repossessing, removing, repairing, storing and disposing of property, Customer shall pay all costs and reasonable attorney's fees incurred by Lessor in collecting or attempting to collect any sums owed under this Agreement or in securing possession of Equipment and the costs of reconditioning the Equipment.

15. ASSIGNMENT

Customer may not assign, pledge or encumber its rights under this Agreement, the Equipment or any interest or portion thereof to any person without the prior written consent of Lessor, which the Lessor may withhold in its sole discretion. In the event Lessor consents to any such assignment or subletting, Customer shall nevertheless remain fully liable to Lessor under this Agreement.

16. WAIVERS

The omission by the Lessor at any time to enforce any default or rights reserved to it or to require performance of any of the terms, covenants, or provisions of this Agreement by the Customer, shall not be a waiver of any subsequent default or right to which the Lessor is entitled, nor shall it in any way effect the right of the Lessor to enforce such provisions thereafter. The Lessor may exercise all remedies simultaneously, or consecutively pursuant to the terms hereof, and any such action shall not operate to Agreement the Customer until the full amount of the Rent due and to become due and all other sums to be paid hereunder shall have been paid.

17. NOTICES

Service of all notices under this Agreement shall be sufficient if mailed by certified mail or by standard overnight carrier to a party at its address set forth on the first page of this Agreement, or at such address as such party may provide in writing from time to time.

18. TIME

Time is of the essence in this Agreement and each and all of its provisions.

19. PARTIES BOUND

This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successors and permitted assigns.

20. GOVERNING LAW

This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania. Customer hereby consents to the exclusive jurisdiction of the Courts of Luzerne County, Pennsylvania and the U.S. District Court for the Middle District of Pennsylvania in the event of any lawsuit between the Lessor and the Customer.

21. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Lessor and the Customer and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter. It shall not be amended, altered, or changed except by a written agreement signed by the parties hereto.

22. LEGAL CONSTRUCTION

If anyone of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

23. SECURITY DEPOSIT

Any deposit paid by the Customer as indicated on the Rental Contract shall be held as security for Lessee’s obligation under this Agreement. If the Customer shall fully and faithfully perform all or the terms and conditions hereof, the security shall be returned to Customer or credited against outstanding invoices of Customer, in Lessor’s sole discretion. In the event that the Customer shall breach any terms of this Agreement, such deposit shall be retained by the Lessor subject to all other remedies provided by this Agreement or by law.

24. DELIVERY OF EQUIPMENT

The Equipment is rented F.O.B. Lessor’s warehouse in Plains, Pennsylvania unless otherwise stated in this Agreement.

25. SECURITY INTEREST

If the terms of the Rental Contract allow Customer to purchase the Equipment at the end of the Rental Contract or at any time prior to the expiration of the Rental Contract for a nominal fee or no fee at all, the Rental Contract and these Terms and Conditions shall act as Security Agreement granting Lessor a first lien security interest in the Equipment and all substitutions, parts, replacements, accessories, repairs, accessions and additions thereto and the proceeds thereof until all amounts due hereunder have been paid. Customer agrees that Lessor may file UCC-1 financing statements in the appropriate State and local offices in order to perfect Lessor’s security interest in the Equipment.

26. AGREEMENT

The Rental Contract together with these Terms and Conditions are referred to herein as “this Agreement.”

I agree to the Terms and Conditions as stated above.

Signature

Date

Print