

TERMS AND CONDITIONS OF RENTAL CONTRACT

This Equipment Lease Agreement (“Agreement”) is made and entered into as of the Effective Date set forth on Schedule A to this Agreement (the “Effective Date”), by and between **EQUIPPED RENTALS LLC**, an Ohio limited liability company (“Equipped Rentals”), and the Lessee identified on Schedule A (“Lessee”).

The parties hereby agree as follows:

1. Lease of Equipment. Equipped Rentals hereby lets and leases to Lessee, and Lessee hereby leases from Equipped Rentals, the equipment described on Schedule A to this Agreement (the “Equipment”). Lessee acknowledges that the equipment to be described on Schedule A may be agreed to in a separate acknowledgement.
2. Rent, Late Charges, Security Deposit. Lessee agrees to pay to Equipped Rentals all as identified on Schedule A, the rental charge as rent for the Equipment (“Rent”), the per day late charge if the Equipment is returned late (“Late Charge”), and the security deposit as security for the performance by Lessee of the terms of this Agreement (“Security Deposit”). Rent shall be payable on a monthly or other basis as agreed to by the parties payable on a monthly or other basis as agreed to by the parties.
3. Term; Acceptance. This Agreement shall commence on the Effective Date and shall continue until expiration per Schedule A, terminable by either party on no less than ten (10) days written notice to the other party (the “Lease Term”). Lessee acknowledges and agrees that: (i) it has inspected or had an opportunity to inspect the Equipment, (ii) that the Equipment is suitable for its use under the terms of this Agreement, and (iii) that Lessee unconditionally accepts the Equipment under this Agreement as of the Effective Date.
4. Delivery. Lessee shall be responsible for making arrangements to take delivery of the Equipment at such location as Equipped Rentals may designate.
5. No Cancellation, Setoff or Recoupment. Lessee acknowledges and agrees that its obligation to pay all Rent pursuant to this Agreement when due is unconditional. Lessee is not entitled to abate or reduce the Rent or any other amounts due Equipped Rentals, or to setoff or recoup any charges as against those amounts. Lessee hereby waives any right to claim setoff, recoupment, or any other defenses as against its obligations under this Agreement.
6. Use and Maintenance. Equipped Rentals is responsible for the routine maintenance of the Equipment and all costs related thereto. Equipped Rentals shall maintain the Equipment in good operating order, repair, condition and appearance, normal wear and tear excepted. Lessee shall be solely responsible for all costs related to any incidental or physical damage to the Equipment, including any damage to the body or frame of the Equipment. Equipped Rentals shall have the right to inspect the Equipment during normal business hours without prior notice, as needed in Equipped Rentals’ sole discretion. Lessee represents and warrants that: (i) no person shall operate the Equipment except Lessee, its employees, or independent contractors of Lessee, and that each such operator of the Equipment shall have the knowledge, training, experience, and licensing necessary or appropriate for the operation of the Equipment in accordance with good practices in the industry and the Equipment manufacturers’ recommendations and requirements; (ii) the Equipment shall at all times be used solely for its ordinary purpose; (iii) be used in compliance with all applicable laws and regulations, and (iv) be used only at the location identified on Schedule A (the “Site Location”). Usage of the Equipment during the Lease Term shall be limited as follows to prevent overuse: one (1) day Lease Term shall be a twenty-four (24) hour rental of the Equipment, but limited to eight (8) hours of clock time; one (1) week Lease Term shall be seven (7) consecutive days rental of the Equipment, but limited to forty (40) hours of clock time; and one (1) month Lease Term shall be twenty-eight (28) consecutive days rental of the Equipment, but limited to one hundred sixty (160) hours of clock time.
7. Risk of Loss. Risk of loss, theft, or damage to the Equipment shall at all times be that of Lessee. In the event of loss or damage, Equipped Rentals, in its discretion and at Lessee’s expense, may either: (i) repair the Equipment (in the event of damage) to the condition required by Section 6; or (ii) replace the Equipment with substantially similar equipment (which shall become the “Equipment” for purposes of this Agreement). No loss, theft, destruction, or damage to the Equipment shall abate or otherwise affect Lessee’s obligation to pay Rent and other amounts due Equipped Rentals under this Agreement, but Equipped Rentals shall use reasonable efforts to provide substitute Equipment to Lessee for use until the original Equipment is repaired or replaced.
8. Return of Equipment. Equipment shall be returned to Equipped Rentals to the location specified by Equipped Rentals no later than the close of business on the day on which the Lease Term expires, and such return shall occur in person between employees of Equipped Rentals and Lessee. Early return of the Equipment shall not entitle Lessee to receive a refund or credit as against the Rent. Anything remaining with, in or on the Equipment upon return shall be deemed abandoned and surrendered by Lessee to Equipped Rentals. Upon return of the Equipment, the Equipment shall: (i) be in as good of condition and repair as it was deemed to be as of acceptance, reasonable wear and tear excepted; (ii) have a full tank of fuel, and (iii) be in clean condition and in all respects suitable for immediate re-rental by Equipped Rentals. In the event the Equipment is not returned as required by this Section, Lessee shall be responsible for reimbursing Equipped Rentals all of its costs and expenses incurred in connection with the repair, maintenance, cleaning, and other activities required to cause the Equipment to be in the condition required by this Section, including the standard per day rental rate for the Equipment for each day the Equipment is not returned as required by this Section.
9. Casualty Insurance. Lessee agrees that, for the Lease Term, it will maintain property damage insurance insuring against risk of loss to the Equipment (“Loss Coverage”). The Loss Coverage shall: (i) be in an amount not less than the full replacement value of the Equipment and (ii) cover all risks of loss commonly covered under a “broad form” policy of insurance.
10. Liability Insurance. Lessee agrees that, for the Lease Term, it will procure and maintain comprehensive general liability insurance insuring against claims for bodily injury, death, and property damage (“Liability Coverage”). The Liability Coverage shall (i) be written on an “occurrence” as opposed to “claims made” basis; and (ii) be in an amount not less than \$1,000,000 per occurrence and \$1,000,000 in the annual aggregate.
11. Indemnification. Lessee agrees to indemnify, defend, and hold harmless Equipped Rentals, its members, managers, employees, representatives, and agents, from and against any and all claims, causes of action, damages, losses, liabilities, injuries to persons (including death) and property, costs and expenses (including but not limited to reasonable attorney fees) arising out of or relating to: (i) the selection, condition, maintenance, possession, use, and operation of the Equipment; or (ii) bodily injury or death to persons or damage to property resulting from any act or omission of Lessee and Lessee’s independent contractors, agents, employees, and representatives. This Section 11 shall survive the expiration or termination of this Agreement.
12. Taxes. Lessee shall promptly pay or reimburse Equipped Rentals for any and all federal, state, and local taxes, assessments, and fees (including but not limited to sales, use and excise taxes) arising out of or relating to Lessee’s possession or use of the Equipment, except any tax, assessment, or fee imposed on the net income of Equipped Rentals. Lessee shall indemnify, defend, and hold harmless Equipped Rentals from and against all such taxes, assessments, and fees.

13. Disclaimer of Warranties. The Equipment is being leased to Lessee “as is” and Equipped Rentals hereby disclaims any and all express and implied warranties that may be applicable to the Equipment including, but not limited to, implied warranties of merchantability and fitness for a particular purpose.

14. Disclaimer of Damages. Equipped Rentals hereby disclaims any and all consequential, incidental and indirect damages that may arise out of or relate to the Equipment, including but not limited to loss of use, lost profits, downtime, employee wages and benefits, and independent contractor expenses. In no event shall Equipped Rentals’ liability to Lessee or any third party arising out of or relating to the Equipment or this Agreement, whether for breach of contract, breach of warranty, or arising in tort or otherwise, exceed the amount of four times the rent amount for the Equipment to which the claim relates.

15. Default. Lessee shall be in default under this Agreement in the event: (i) Lessee fails to cure any breach of this Agreement within fifteen (15) days (or, in the case of breach of any payment obligation, five (5) days) following written notice from Equipped Rentals specifying such breach; (ii) voluntary or involuntary bankruptcy proceedings are filed by or against Lessee; (iii) a receiver is appointed for all or a material portion of Lessee’s assets; (iv) Lessee becomes insolvent or makes an assignment for the benefit of its creditors; (v) any person or entity attempts to levy, seize, or otherwise claim an interest in the Equipment; (vi) Lessee ceases doing business as a going concern; (vii) Lessee abandons the Equipment; (viii) Lessee assigns this Agreement without the prior written consent of Equipped Rentals; or (ix) Lessee makes or furnishes any materially false or misleading statements to Equipped Rentals. In the event of default by Lessee, all rent and other amounts due Equipped Rentals shall become immediately due and payable, and shall accrue interest on the unpaid balance at the maximum rate permitted under Ohio law. In addition, Equipped Rentals, in its sole discretion, may exercise one or more of the following remedies, without notice of election and without demand: (i) terminate this Agreement; (ii) take possession of, or render unusable, any of the Equipment, without court order or other process of law and without liability to Lessee for any damages occasioned by such action, which action shall not constitute a termination of this Agreement; (iii) require Lessee to deliver the Equipment to a location specified by Equipped Rentals; and (iv) exercise any other right or remedy available to Equipped Rentals at law or in equity. In addition, Lessee shall pay to Equipped Rentals all costs and expenses that Equipped Rentals may incur to maintain, safeguard or preserve the Equipment, and any other expenses incurred by Equipped Rentals in enforcing any of the terms, conditions or provisions of this Agreement (including reasonable attorney fees). All remedies of Equipped Rentals hereunder are cumulative, may be exercised concurrently or separately, and are in addition to any other remedies provided for by law. No failure on the part of Equipped Rentals to exercise and no delay in exercising any right or remedy shall operate as a waiver thereof. No waiver by Equipped Rentals of any default shall constitute a waiver by Equipped Rentals of any additional or subsequent default.

16. No Assignment. Neither party may assign any rights or delegate any duties arising out of or relating to this Agreement without the prior written consent of the other party. Any attempt at assignment or delegation without the prior written consent of the other party shall be voidable at the option of the non-assigning party.

17. Time is of the Essence. The parties agree that time is of the essence with regards to this Agreement.

18. Ownership. Equipped Rentals is the sole owner of the Equipment and retains all title, rights, and interests thereto. Lessee covenants that it will not pledge or encumber the Equipment or any right or interest in the Equipment in any manner whatsoever and shall not permit any liens to be attached thereto. The Equipment shall remain Equipped Rentals personal property.

19. Damage Waiver. **Lessee acknowledges that this damage waiver is not insurance and is optional.** By payment of an amount equal to twelve percent (12%) of the total Rent, Equipped Rentals agrees to waive certain minor direct physical damages to the Equipment, as Equipped Rentals determines in its sole discretion.

20. No Waiver. No waiver of a breach of this Agreement shall be deemed effective unless in a writing signed by the waiving party, and no waiver shall be deemed a waiver of any other breach or a waiver of the same breach that continues beyond the specified waiver period.

21. Amendments. This Agreement cannot be amended or modified except in a writing signed by the parties hereto.

22. Binding Effect. This Agreement shall be binding upon and inure the benefit of the parties hereto and their respective successors and assigns.

23. Entire Agreement. This Agreement (including any Schedules appended hereto together with any addendums or amendments thereto) constitutes the entire agreement between the parties with respect to the matters contemplated herein, and supersedes any prior or contemporaneous agreements, understandings, and negotiations.

24. Severability. In the event any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or enforceable, the remaining provisions hereof shall remain in full force and effect.

25. Governing Law; Exclusive Jurisdiction. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Ohio, without reference to conflict of law principles. Any claim, cause of action, or dispute arising out of or relating to this Agreement shall be subject to the exclusive jurisdiction of state courts of competent jurisdiction in Shelby County, Ohio, unless federal courts would have exclusive jurisdiction, in which case exclusive jurisdiction shall be in the District Court for the Southern District of Ohio. The parties hereby consent to jurisdiction and venue in accordance with this Section.

26. Counterparts; Execution. This Agreement may be executed in several counterparts and made effective by delivery of signature pages by facsimile or electronic transmission. Each counterpart shall be considered an original but all such counterparts taken together shall constitute but one and the same agreement. Lessee represents that the execution, delivery, and performance of this Agreement, has been authorized by all necessary corporate or company action, and that the individual executing this Agreement was duly authorized to do so.

27. No Third-Party Beneficiaries. This Agreement is not, and shall not be construed as being, for the benefit of any person or entity not a party to this Agreement.

28. Lessee Credit Card Authorization. Lessee authorizes Equipped Rentals to charge Lessee’s credit card for the Rent and other charges owed by Lessee per the terms of this Agreement, and waive all associated setoffs and chargebacks.

29. Font Size. Lessee acknowledges that the font size of this Agreement is easily viewable and readable, and that upon request Equipped Rentals can provide a larger font version.

