



**TERMS OF AGREEMENT (continued)**

ONLY AN EXECUTIVE OFFICER OF THE FINANCING COMPANY IS AUTHORIZED TO WAIVE OR ALTER ANY OF THE TERMS OF THIS AGREEMENT, AND THEN ONLY IN WRITING. IF THE EQUIPMENT FAILS TO OPERATE PROPERLY, OR THE VENDOR OR ANY OTHER PERSON FAILS TO PROVIDE ANY MAINTENANCE OR OTHER SERVICE, YOU WILL MAKE ANY COMPLAINT ONLY AGAINST THE VENDOR OR OTHER PERSON AND NOT AGAINST US (EITHER BY WAY OF A CLAIM, COUNTERCLAIM, DEFENSE OR EXCUSE TO PAYMENT).

**(c) WE MAKE NO WARRANTIES.** WE HAVE MADE NO STATEMENT, REPRESENTATION, OR WARRANTY REGARDING THE EQUIPMENT. WE DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE VENDOR MAY HAVE GIVEN YOU WARRANTIES, AND YOU CAN CONTACT THE VENDOR TO GET A STATEMENT OF ANY SUCH WARRANTIES. WE SHALL TRANSFER TO YOU ALL EXPRESS WARRANTIES, IF ANY, MADE BY THE EQUIPMENT VENDOR TO US, BUT THIS DOES NOT IMPLY THAT THERE ARE ANY SUCH WARRANTIES.

**(d) DISCLAIMER OF LIABILITY.** WE ARE NOT LIABLE FOR ANY LOSS, DAMAGE (INCLUDING LOST PROFITS, SPECIAL DAMAGES OR INCIDENTAL OR CONSEQUENTIAL DAMAGES) OR INJURY TO YOU, YOUR EMPLOYEES OR ANY OTHER PERSON OR PROPERTY CAUSED BY THE EQUIPMENT.

**5. PAYMENT AMOUNT; INTERIM RENT PAYMENT; LATE FEE; DOCUMENTATION FEE.** The monthly or other periodic payments you have agreed to pay is stated above. The payment amount is based on the estimated cost of all the Equipment and it may be adjusted higher or lower if the actual cost of the Equipment is higher or lower than the estimate. You also agree to pay a partial interim payment (interim rent) covering the period between the delivery date and the date the first regular payment is due. If we do not receive your payment by its due date, there will be a late fee equal to the greater of \$20.00 or 15% of the late amount (or, if less, the maximum amount allowable under applicable law), which you agree is a reasonable estimate of the costs we incur with respect to late payments and is not a penalty. Upon your request, we will waive the first assessed late charge. We may charge you a one-time documentation fee up to \$200.

**6. AGREEMENT COMMENCEMENT.** This Agreement will commence when the Equipment is delivered to you and will continue for the entire Agreement Term plus any interim payment period. The monthly (or other periodic) due date will be established by us. The due date for the first regular payment will also be established by us; however, it will not be greater than 30 days from the date on which the Equipment was delivered to you.

**7. ADVANCE PAYMENT(S) AND/OR SECURITY DEPOSIT.** You have paid us one or more advance payments and/or a security deposit in the amount(s) indicated above. If the Agreement does not commence for reasons other than our own negligence, we may retain such monies to compensate us for our credit and other administrative costs. You agree the security deposit will not bear interest and that we may apply it to any amount owed to us, and should we do so, you agree to restore the security deposit to its original amount. You may request the return of the security deposit only after all of your obligations under the Agreement have been met in full.

**8. EQUIPMENT DELIVERY.** You understand and agree that we are not responsible for packaging, delivery, installation or testing of the Equipment. You (and/or the Vendor, if you have made such arrangements with the Vendor) are responsible for all such matters. You agree that you will not have any complaint against us if the Vendor or any other person improperly packages the Equipment or delays in delivering or installing it.

**9. USE OF THE EQUIPMENT.** YOU REPRESENT TO US THAT THE EQUIPMENT WILL BE USED ONLY FOR COMMERCIAL, BUSINESS OR AGRICULTURAL PURPOSES, AND NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES. In addition, you agree not to attach the Equipment to any realty or otherwise permit to become a "fixture" to real estate or a structure thereon, nor will you trade it in, make alterations to it, sell or dispose of it without our prior written permission. You shall not allow any liens or encumbrances (for example, a mechanic's lien) to be placed on the Equipment. You will keep and use the Equipment only at the address listed above and will not move it or return it prior to the end of the Agreement Term.

**10. MAINTENANCE AND SERVICE.** You agree that we are not responsible for maintenance, repairs or service to the Equipment. You agree to use the Equipment strictly in the manner for which it is intended by the manufacturer, and you shall maintain the Equipment in good operating order. In the event we repossess the Equipment, you will be liable for all damage or distress to the Equipment.

**11. AGREEMENT ASSIGNMENT; RENTING OF EQUIPMENT.** THIS AGREEMENT WAS MADE TO YOU BASED ON YOUR OWN CREDIT. THEREFORE YOU AGREE THAT YOU MAY NOT ASSIGN, TRANSFER OR SELL ANY OF YOUR RIGHTS OR INTERESTS UNDER THE AGREEMENT TO ANY OTHER PERSON OR ENTITY UNLESS, NOR MAY YOU LEASE OR RENT ANY OF THE EQUIPMENT TO ANY OTHER PERSON OR ENTITY UNLESS WE ARE PROVIDED WITH LIKE, KIND AND QUALITY TO DEBTORS AND ITS OWNERS CREDIT AND FINANCIAL STRENGTH. HOWEVER, YOU AGREE THAT WE MAY ASSIGN, TRANSFER, SELL, PLEDGE OR OTHERWISE ENCUMBER ANY OR ALL OF OUR RIGHTS AND INTERESTS UNDER THIS AGREEMENT (INCLUDING OUR RIGHTS AND INTERESTS IN THE EQUIPMENT) TO OUR AFFILIATES OR ANY OTHER PERSON OR ENTITY (INCLUDING A BANK OR OTHER SECURED PARTY OR A BUYER) (COLLECTIVELY, A "THIRD PARTY") WITHOUT PRIOR NOTICE TO YOU. SUCH THIRD PARTY MAY ALSO ASSIGN, TRANSFER, SELL, PLEDGE OR OTHERWISE ENCUMBER ITS RIGHTS AND INTERESTS. IN THIS EVENT, YOU AGREE THAT SUCH THIRD PARTY, OR ITS ASSIGNEE OR TRANSFEREE, WILL RECEIVE ALL THE RIGHTS AND INTERESTS WE HAD UNDER THE AGREEMENT BUT NONE OF OUR OBLIGATIONS OR LIABILITIES; IF ANY, WE WILL CONTINUE TO BE RESPONSIBLE FOR ALL SUCH LIABILITIES AND WILL RETAIN AND HONOR ALL SUCH OBLIGATIONS, IF ANY. YOU PROMISE AND AGREE THAT YOU WILL NOT ASSERT ANY CLAIMS, COUNTERCLAIMS, DEFENSES OR SETOFFS AGAINST SUCH THIRD PARTY. YOU HEREBY ACKNOWLEDGE THAT ANY TRANSFER OF OUR RIGHTS AND/OR INTERESTS TO A THIRD PARTY WOULD NOT MATERIALLY CHANGE YOUR OBLIGATIONS UNDER THE AGREEMENT OR INCREASE YOUR RISKS.

**12. DAMAGE TO EQUIPMENT; RISK OF LOSS OF EQUIPMENT; INSURANCE.** You agree that we are not liable or responsible for any damage to the Equipment, or any loss of or casualty to the Equipment from any cause whatsoever. NO SUCH DAMAGE, CASUALTY OR LOSS WILL AFFECT YOUR RESPONSIBILITIES AND OBLIGATIONS UNDER THE AGREEMENT. You must maintain acceptable public liability insurance naming us as "additional insured". You must keep the Equipment insured against all risks of loss in an amount equal to the replacement cost and have us listed on the policy as "loss payee." If you do not give us proof of the property insurance within 30 days after the Agreement commences, then depending on the original cost of the Equipment we may either (i) obtain property insurance to cover our interests and charge you a fee for such coverage (including a monthly administration fee and a profit to us)

or (ii) charge you a monthly non-compliance fee up to \$50 (which provides no insurance benefit). You can cancel the insurance coverage fee or non-compliance fee at any time by delivering the required proof of insurance.

**13. TAXES AND CERTAIN FEES RELATING TO THE EQUIPMENT.** YOU MUST PAY WHEN DUE ALL TAXES RELATING TO THIS AGREEMENT AND THE EQUIPMENT (INCLUDING ALL SALES, USE, PROPERTY AND OTHER TAXES AND ANY PENALTIES). We may adjust this Agreement and the monthly (or other periodic) payment amount to finance for you any taxes due at inception. If we pay any of the taxes for you, you agree to reimburse us and pay us a tax administration fee up to \$15 for each payment we make on your behalf. We may bill you based on our estimate of the taxes.

**14. SECURITY INTEREST.** You hereby grant us a first priority, purchase money security interest in the Equipment and its proceeds to secure our obligations under this Agreement. You authorize us and our agents to file Uniform Commercial Code ("UCC") Financing Statements recording such security interest. You will provide any landlord or mortgagee waivers we request, and you agree to take any other action we request to protect our interest in the Equipment and our rights under this Agreement.

**15. YOUR REPRESENTATIONS TO US.** The person signing this Agreement on behalf of the customer hereby represents and warrants to the financing company that: this Agreement has been authorized by any and all action required of the corporation, partnership, limited liability company or other form of business (whichever applies in your case), and no consent of any other person or entity is necessary; the customer has complete power to enter into this Agreement, and the person signing on behalf of the customer has been authorized to do so; the Agreement is a legal, valid and binding obligation of the customer, and enforceable against the customer in accordance with its terms; all factual statements made in this Agreement and all other information supplied to us by the customer or your representatives, is accurate and complete in all material respects.

**16. DEFAULT DEFINED.** You will be in default under this Agreement if any of the following events occur: (a) you fail to make any payment or pay any other amount due under this Agreement by its due date; (b) you fail to comply with any other term or condition of this Agreement or any other agreement between us, or fail to perform any obligation imposed upon you relating to this Agreement or any such other agreement; or (c) you become deceased (if the customer under this Agreement is one or more natural persons), go out of business, admit your inability to pay your debts as they fall due, become insolvent, make an assignment for the benefit of your creditors, file (or have filed against you) a petition in bankruptcy, a trustee or receiver of your business assets is appointed, or you sell all or substantially all of such assets.

**17. OUR REMEDIES UPON DEFAULT.** In the event you default under this Agreement, as defined above, we will have the right to take ANY OR ALL of the following actions, in addition to any and all other remedies that may be available to us under law. We will provide written notice of default by certified mail and allow a period of 10 business days to cure.

(a) directly debit (charge) your bank account(s) and/or file a lawsuit against you to collect all past due payments AND ALL PAYMENTS THAT WILL BECOME DUE IN THE FUTURE DURING THE UNEXPIRED AGREEMENT TERM, plus all other fees, charges or amounts that are then due. You agree to pay all of our reasonable legal costs, including but not limited to reasonable attorney's fees, and reasonable overhead for employee time spent on preparing for suit or attempting to collect payments; and/or

(b) repossess the Equipment or apply to a court for an order allowing repossession. In this event, you agree that, after the Equipment is repossessed, you will have no further rights in the Equipment, and you agree we may resell, lease or otherwise remarket the Equipment without notice to you. You agree (and you waive any rights that may provide to the contrary) that we will NOT be required to repossess, resell, lease or otherwise remarket the Equipment at any time, and that our failure to do so will not affect our other rights of collection and other rights under this Agreement or under law.

**18. PERSONAL JURISDICTION OVER YOU IN MICHIGAN, AND PLACE FOR ANY LAWSUIT.** You hereby acknowledge that this Agreement was accepted by us in Michigan, where we maintain an office, and it did not take effect until we received the executed legal documents in our Michigan office. Accordingly, YOU AGREE THAT THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF MICHIGAN, COUNTY OF LIVINGSTON. YOU AGREE THAT ANY SUIT RELATING TO THIS AGREEMENT SHALL BE BROUGHT ONLY IN A STATE OR FEDERAL COURT IN MICHIGAN, AND YOU IRREVOCABLY CONSENT AND SUBMIT TO THE JURISDICTION OF SUCH COURTS. EACH PARTY WAIVES ANY RIGHT TO A JURY TRIAL. Any action by you against us must be commenced within one year after the cause of action arises or be forever barred.

**19. OTHER INDEMNIFICATION.** You understand that we have no control over your use of the Equipment and, as a result, we cannot agree to accept any financial, liability or other risks relating to the use or ownership of the Equipment. Accordingly, you agree to hold us harmless, indemnify (pay or reimburse) and defend us against all claims, liabilities, losses, suits, proceedings, damages, costs (including reasonable legal fees) relating to this Agreement or to the use or ownership of the Equipment, including but not limited to claims for death or injury to persons and claims for property damage. This duty to indemnify shall survive the termination of this Agreement.

**20.** Any action by you against us must be commenced within one year after the cause of action arises or be forever barred.

**AS A CONVENIENCE TO YOU (THE CUSTOMER) AND TO FURTHER EXPEDITE THIS TRANSACTION FOR YOU, YOU HAVE AGREED THAT A PHOTOCOPY OR FACSIMILE OF THIS AGREEMENT WHICH INCLUDES A PHOTOCOPY OR A FACSIMILE OF THE CUSTOMER'S AND GUARANTORS' (IF APPLICABLE) SIGNATURES SHALL BE AS VALID, AUTHENTIC AND LEGALLY BINDING AS THE ORIGINAL VERSION FOR ALL PURPOSES AND SHALL BE ADMISSIBLE IN COURT AS FINAL AND CONCLUSIVE EVIDENCE OF THIS TRANSACTION AND OF THE EXECUTION OF THE DOCUMENT.**