

## CONSIGNMENT AGREEMENT

THIS CONSIGNMENT AGREEMENT (“Agreement”) is made as of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_ (“Consignor”), a \_\_\_\_\_ corporation, located at \_\_\_\_\_ and Ferris State University (“Consignee”), a constitutional body corporate of the State of Michigan, located at \_\_\_\_\_.

### RECITALS

A. Consignee is a Michigan public institution of higher education with its main campus at Big Rapids, Michigan, and is engaged in the educational use of industrial machinery through the display, demonstration and use of such machinery in classroom activities.

B. Consignor is a \_\_\_\_\_ corporation which is the owner of certain industrial machinery described on the annexed Exhibit “A”(the “Consigned Machinery”).

C. Consignee desires to have the Consigned Machinery available for its educational use as aforesaid, and Consignor is willing to deliver the Consigned Machinery to Consignee for such use pursuant to the terms of this Agreement.

### AGREEMENT

Pursuant to the Recitals and in consideration of the mutual covenants set forth herein, Consignee and Consignor agree as follows:

#### **ARTICLE I. CONSIGNMENT AND ACCEPTANCE OF POSSESSION**

**Section 1.01. Consignment.** Subject to the terms, conditions and limitations of this Agreement, and at \_\_\_\_\_’s sole cost and expense, Consignor shall deliver and install the Consigned Machinery (as herein defined) to Consignee, on or before \_\_\_\_\_, 20\_\_, at a location of Consignee’s Big Rapids, Michigan campus to be selected by Consignee.

**Section 1.02. Acceptance of Possession.** Subject to the terms, conditions and limitations of this Agreement, Consignee does hereby agree to accept possession of the Consigned Machinery (as herein defined), and to hold and care for the same as the property of Consignor, it being agreed that the title to the Consigned Machinery, or its proceeds, is always vested in Consignor.

#### **ARTICLE II. ADDITIONAL TERMS OF CONSIGNMENT**

**Section 2.01. Condition.** Consignor warrants that the Consigned Machinery in accordance with Consignors standard warranty, attached hereto and incorporated herein as if fully set forth.

**Section 2.02. Maintenance and Repair.** No modifications shall be made to the Consigned Machinery by Consignee, unless approved by Consignor. \_\_\_\_\_ shall perform all scheduled repair and maintenance of the Consigned Machinery at

\_\_\_\_\_’s cost and expense. Consignee shall notify Consignor of the need for non-scheduled repairs and/or maintenance of the Consigned Machinery, and \_\_\_\_\_ shall thereupon perform at \_\_\_\_\_’s cost and expense all repairs and/or maintenance necessary in order to keep the Consigned Machinery in good working order; provided, however, that the cost of any repairs and/or maintenance of the Consigned Machinery which is necessitated by the use of the Consigned Machinery in a manner other than that for which it was designed and intended shall be the responsibility of Consignee. In order that Consignor may carry out its obligations under this Agreement, Consignee agrees that Consignor may have reasonable access during normal business hours to the location at which the Consigned Machinery is kept, with a representative of Consignee present at Consignee’s option.

**Section 2.03. Insurance and Indemnity.** Consignee shall keep the Consigned Machinery insured for the benefit of Consignor, while in Consignee’s possession, against loss by fire or other casualty, in an amount not less than the lesser of \$\_\_\_\_\_ or the depreciated value of the Consigned Machinery. Consignor waives any right of the recovery or causes of action which it may have against Consignee or Ferris State University, or their respective board members, officials, officers, employees or other agents by reason of loss, damage or destruction of the Consigned Machinery resulting from perils ordinarily covered by such insurance. Consignor and Consignee shall each keep general liability and personal injury insurance on the Consigned Machinery in an amount not less than \$1,000,000.00 aggregate, subject to a reasonable deductible, self-insured amount. A certificate of insurance evidencing such coverage shall be supplied by either party at the request of the other. Consignor shall indemnify and hold Consignee harmless from and against any loss, damage, liability, cost or expense (including attorneys’ fees) arising from any damage to persons or property to the extent caused by a failure of the Consigned Machinery.

**Section 2.04. Title.** Consignor is and shall remain at all times the owner and titleholder of the Consigned Machinery. The Consigned Machinery shall not be carried on Consignee’s books as an asset of Consignee, nor shall any cost thereof be carried thereon as a liability of Consignee. Consignee agrees to execute a Form UCC-1 financing statement covering the Consigned Machinery and deliver the same to Consignor upon request.

**Section 2.05. Term and Termination.** The term of this Agreement shall commence on the date the Consigned Machinery is delivered to Consignee, and shall continue until the earlier of June \_\_, 20\_\_, or the last day of the Consignee’s academic term, provided, however, that a written notice was provided 60 days’ prior to the end of that academic term. Upon the termination or expiration of this Agreement, Consignee shall uninstall and Consignor shall cause the Consigned Machinery to be removed from the premises of Consignee at \_\_\_\_\_’s sole cost and expense.

**Section 2.06. Exculpatory.** No board member, official, officer or employee or other agent of Consignee shall be personally liable to Consignor for any default or breach by Consignee of any obligation under the terms of, or growing out of, this Agreement.

**Section 2.07. Taxes.** Consignor shall be responsible for preparing and filing all tax returns and paying for all taxes and other charges assessed and levied on the Consigned Machinery while in Consignee’s possession.

### **ARTICLE III. MISCELLANEOUS**

**Section 3.01. Entire Agreement.** All Exhibits attached to this Agreement form a part of this Agreement and shall be given full force and effect, as fully as if set forth at length in this Agreement. This Agreement and its Exhibits set forth all the covenants, promises, agreements, conditions, and understandings between Consignee and Consignor concerning the consigned Machinery, and there are no covenants, promises, agreements, conditions, or understandings, either oral or written, between them concerning the Consigned Machinery other than as are set forth in this Agreement. No alternation, amendment, change or addition to this Agreement shall be binding upon Consignee or Consignor unless reduced to writing and signed by each party.

**Section 3.02. Relationship of Parties; No Third Party Beneficiaries.** Each of the parties to this Agreement is an independent entity, and nothing contained in this Agreement shall be deemed or construed by the parties to this Agreement, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties to this Agreement. Neither any provision contained in this Agreement, nor any acts of the parties to this Agreement shall be deemed to create any relationship between the parties to this agreement other than the relationship of Consignor and Consignee. Nothing contained in this agreement shall be construed to confer upon any person or entity other than Consignor and Consignee any rights, benefits or causes of action, except to the extent specifically otherwise provided in this Agreement.

**Section 3.03. Notices.** All notices, demands, request or other communications to be sent by one party to the other under this Agreement or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of the same in person to the intended addressee, or by depositing the same with a reputable private courier service for next business day delivery, or by depositing the same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, in any event addressed to the intended addressee at its address set forth in this Section 3.03 or at such other address as may be designated by such party as provided in this Section 3.03.

The respective addresses of the parties at the signing of this Agreement are as follows:

Consignee: \_\_\_\_\_  
Ferris State University  
\_\_\_\_\_  
Big Rapids, Michigan 49307

Consignor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

**Section 3.04. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan. If any provision of this Agreement or the application of any such provision to any person or circumstances shall, to any extent, be illegal, invalid, or unenforceable, the remainder of this Agreement shall not be affected by such illegality, invalidity or unenforceability, and each remaining provision of the Agreement shall be valid and enforceable to the full extent permitted by law.

**Section 3.05. Binding.** This Agreement and all of its provisions shall be binding upon, inure to the benefit of, and be enforceable by and against the respective successors and assigns of the Consignor and the Consignee.

**Section 3.06. Authorization.** Consignor and Consignee warrant and represent that they are properly authorized by their respective boards to enter into this Agreement.

**IN WITNESS WHEREOF,** Consignee and Consignor have signed and sealed this Agreement as of the day and year first above written.

Ferris State University

<insert Consignor's name>

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_