

# Equipment Purchase Agreement

- 🔊 See also, "Bill of Sale" but you will find this sample contract to be much more comprehensive – especially if there is unusual financing applied to your deal.
- 🔊 The first part of the Memorandum should be completed and distributed to the other party along with a copy of the Equipment Purchase Agreement.

Date: **[Month, Day, Year]**

To: **[Name of Customer]**

From:  **[Owner/Founder]**  
**[Company]**

Subject: **Equipment Purchase Agreement**

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Attached is an Equipment Purchase Agreement to establish the terms and conditions of our transaction. Usually a simple Bill of Sale is a sufficient purchase agreement, but due to the creative nature of this transaction we require that a more comprehensive understanding be in place.

I believe that it embodies everything we discussed.

Please read the agreement carefully.

We recommend that you also have it reviewed by your own qualified legal counsel.

Time is of the essence.

Please sign and return it to me asap.

Thank you very much!

# From JIAN

## NOTICE:

We wish we could provide an agreement that was tailored *exactly* to your business. While this is not always possible, we feel that we've come very close and that this document provides you with the head-start that you need to get your deal moving. Nevertheless, we must make this disclaimer:

- 🔴 **Do Not Use This Agreement 'As-Is.'**
- 🔴 **This Agreement Is Not Legal Advice.**
- 🔴 **Read it Thoroughly and Make All Appropriate Changes to Fit Your Requirements.**
- 🔴 **You Should Have this Agreement Reviewed and Approved by a Qualified Attorney at Law Before Using It.**
- 🔴 **JIAN Accepts No Liability for the Effectiveness of This Document For Your Purposes.**

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We're building a network of business experts who are eager to help you when you need it. They can review your work, make suggestions, handle unique situations and introduce you to influential people. On our website you can search by expertise and location, then e-mail or jump straight to their website. Although they are professionals and charge for their services, most offer an initial consultation free of charge. They're in your area and you can contact them directly.

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## Ongoing Update Service Keeps You Current

Things change, laws change, the world changes... new ideas come along all the time. When you register, you can access our website to get updates and changes... like new and improved spreadsheets and documents. They can be downloaded directly to your computer.

- Please visit our website under [Updates](#).
- Remember to bookmark our website: [www.JIAN.com](http://www.JIAN.com)

## Editing Your Sample Contract

Since this entire agreement is formatted in Word, you can edit it like any other Word document. You can jump from variable to variable by clicking the above  green arrows (JIAN Menu) which will take you forward / backward and highlight the entire sample text identified within the “[ ]” brackets – simply edit / type-over with your information.

To make sure you have filled in all the variables, use Word's 'FIND' function to locate any “[ ]” which may contain an unedited variable.

- Click the  icon in the JIAN menu above to turn the expert comments on/off.
- Upon completion, delete any unnecessary blank lines that remain.
- You may format this document any way you like.
- Delete this page.



### 3. Delivery

- Section 3 is a description of delivery terms. F.O.B. means free on board; thus F.O.B. supplier's warehouse would mean that the Customer would be responsible for delivery charges as well as any damage to the equipment once it leaves [Company]'s warehouse.
- Generally, the first insert would be F.O.B. Dealer's warehouse. However, [Company] may be delivering the equipment himself. You should describe the method. In the second insert describe the carrier to be used, and in the third insert enter the address where the equipment should be delivered.

All Equipment will be delivered [F.O.B. Dealer's warehouse / others). The method of Shipment is [common carrier / overnight delivery / UPS / Ground). Deliver to the Customer at [Address mentioned above / the address Equipment should be delivered to].

### 4. Installation

- Section 4 discusses installation. The Customer must prepare the installation site and cooperate with [Company]. In the brackets, enter the address where the equipment will be installed.

The Customer will prepare the installation site according to [Company]'s instruction and cooperate with [Company] in installing the Equipment. The install site is [Address first mentioned above / the address where the equipment will be installed).

### 5. Training

- Section 5 describes the location and duration of training to be provided to the Customer. If training is required, provide the location and duration of the training in the brackets.

[Dealer will provide [Enter number) hours / days of training over a period of [Enter number) days / months at a location to be designated by Customer / Dealer).

### 6. Payment

- Section 6 discusses method of payment. This mode of payment depends upon whether this is a credit / cash transaction, or a rental or lease that converts to a sale. If it's a credit / cash method, then select the first option, if it's a lease, select the second option, and if it's a rental, select the third.

(Credit term is as follows for installed Equipment to be converted to purchase: [enter credit term) / payment in full is due on the date the lease Agreement governing the installed Equipment is terminated / payment in full is due on the date the rental Agreement governing the installed Equipment is terminated.) The Customer agrees to pay all freight, insurance, handling, shipping, and delinquent payments at the maximum lawful rate and agrees to pay for collection costs and any attorney fees incurred by [Company] in collecting payment.

### 7. Taxes

- In Section 7, the customer agrees to pay any applicable taxes.

The Customer agrees to pay amounts equal to any tax resulting from this Agreement or any activities under the terms stated here exclusive of taxes based on net income. The Customer bears any personal property tax levied on the Equipment to the carrier.

### 8. Warranty

- Section 8 describes the standard warranty provisions. You may wish to modify or delete any sections that do not comply with your policies.
- Section 8.1 states that [Company] will replace or repair any parts of the equipment found to be defective within the period of delivery (entered in brackets).

- ☞ Insert the initial warranty period. Generally, this is 90 days, though you can increase or decrease this period as desired.

## 9. Equipment

[Company] warrants for a period of [ninety] days after the date of delivery that the Equipment, excluding consumable supplies, will be free from the defects in material and workmanship. [Company]'s sole obligation under this warranty is to repair or replace the defective parts at no charge to the Customer. All replaced parts shall become the property of [Company].

- ☞ Section 9.2 describes exclusions to the warranty: [Company] will not have to repair or replace the equipment where damage is the result of normal wear and tear or catastrophe, where an unauthorized repairman has worked on the equipment, where the equipment is used incorrectly, where the Customer does not inform [Company] of the problem in writing during the warranty period, or where the equipment is sold used to the Customer or is previously installed under a rental or lease Agreement.

9.2 **Excluded Claims.** [Company] will have no obligation under this Agreement if: (1) repair or replacement of the Equipment or parts is required as a result of normal wear and tear or necessitated in whole or in part by catastrophe or causes external to the Equipment; (2) the Equipment has been maintained, repaired, relocated or reconfigured other than by an authorized representative or has been modified or adapted in any manner; (3) the Equipment has not been properly used or maintained in accordance with then applicable operating and maintenance manuals; (4) the Customer does not notify [Company] in writing during the warranty period with detail on any defect or error in the Equipment; and (5) the Equipment has been previously installed under a rental or lease Agreement with the Customer or is sold to the Customer as used Equipment.

- ☞ Section 8.3 states that this is the only warranty and that no other warranties apply or are in effect.

9.3 **Exclusive Warranty.** The Foregoing warranties are exclusive of and are in lieu of all other warranties, express or implied, including without limitation any warranty of merchantability or fitness for a particular purpose.

## 9. Patents

- ☞ Section 10 addresses patent suits brought by third parties where the Customer is brought in as a defendant.
- ☞ Section 9.1 provides that [Company] will pay for any damages and costs the Customer incurs in a patent infringement suit provided that the Customer gives [Company] immediate notice of a pending suit (i.e., as soon as the Customer has such notice).

9.1 **Indemnification.** [Company] will defend the Customer against a claim that the Equipment furnished under the terms stated here infringes on a United States patent or copyright. [Company] will pay resulting costs, damages, and attorney's fees finally awarded, provided that the Customer gives [Company] immediate written notice of any such claim and sole control of the defense and all related settlement negotiations.

- ☞ Section 9.2 addresses exclusions. Where the Customer uses the equipment in a manner for which it was not intended or modifies the equipment so that as modified it infringes on a patent, [Company] will not be responsible.

9.2 **Exclusions.** However, [Company] will have no liability for any claim based upon or arising out of (1) combination, operation, or use of any Equipment in a manner for which it was neither designed nor contemplated; or (2) any modification of any Equipment by the Customer or any third party that causes the Equipment to become infringing. This Section 9 states the entire obligation of [Company] with respect to infringements.

- ☞ Section 10 limits [Company]'s liability. [Company] is not liable where he cannot do something, and that failure to act is beyond his control. For example, to deliver the equipment where the road to the Customer has washed out. Damages are specifically limited to actual damages (i.e., the cost to replace the equipment) up to a limit of any amounts paid for the equipment.

## 10. Limitation of Liability

- (1) [Company] is not liable for failure to fulfill its obligations due to causes beyond its control;
- (2) in no event will [Company] be liable for any lost savings, lost profits, lost data, or other consequential on incidental damages, even if [Company] has been advised of the possibility of such potential damages or for any claim against the Customer by any other Party; and
- (3) [Company]'s total liability to the Customer for damages, from any cause whatsoever, and regardless of the form of action, whether in contract or in tort, including negligence, is limited to actual damages up to the purchase price or license fee paid for the specific Equipment under the Agreement that caused the damages or that is the subject matter of the Agreement or is directly related to the cause of action. This limitation of liability will not apply to personal injury caused by [Company].

- ☞ Section 11 sets a statute of limitations of the period of time, after which the Customer cannot bring a cause of action against [ ]er. In the brackets, you should enter the amount of time when a cause of action can be brought.

## 11. Statutes of Limitation

No action, regardless of form, arising out of this Agreement may be brought by either party more than [Eighteen (18)] months after the cause of action has arisen or, in the case for non-payment, more than [Eighteen (18)] months from the date the last payment was due.

- ☞ The Customer must receive the written consent of [Company] in order to assign this Agreement.

## 12. General Provisions

- ☞ The General Provisions that follow are fairly standard. These provisions enhance the balance of the Agreement by defining certain common issues such as notice, assignment, legal remedies, waiver, and attorney fees, etc.

12.1 **Independent Contractors.** The relationship between both parties established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to give either party the power to direct and control the day-to-day activities of the other. Neither party is an agent, representative or partner of the other party. Neither party shall have any right, power or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture or partnership between the parties or to impose any liability attributable to such relationship upon either party.

- ☞ You may or may not want to make this deal public – at least limit that event by this agreement and work out if/how/when you want to do that later.

12.2 **Publicity.** Neither party will make any public announcement or issue any press release concerning the terms of this Agreement without the prior approval of both parties. If the parties mutually agree to issue a press release concerning the issues described in this Agreement, the parties shall cooperate to mutually agree on a press release describing the relationship based on this Agreement, and to issue such press release in the normal course of business.

- ☞ Make it clear that you will not try to hire away each others employees. If you do or it happens then there is compensation built-in and you can avoid further legal proceedings.

12.3 **Non-Solicitation.** Neither party shall solicit for employment or hire the other's current or future employees, either directly or indirectly, during the Term of this Agreement, without obtaining the other's prior written approval. Should an employee change employment from one party to the other, the new employer shall pay the old employer a fee equivalent to Twenty Percent (20%) of the employee's new compensation, annualized for the first year.

☞ You must decide which state governs this Agreement and where any legal action would be taken. Generally, it is your (company's) state of residence.

12.4 **Governing Law & Jurisdiction.** This agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of [State], without reference to conflict of law principles. The parties hereby expressly consent to the jurisdiction and venue of the federal and state courts within the state of [State]. Each party hereby irrevocably consents to the service of process in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to such party at its address set forth in the preamble of this Agreement, such service to become effective thirty (30) days after such mailing.

☞ This Agreement is intended to be the only Agreement, and that no other documents or communications are binding. Therefore, it is very important to make sure that everything [Company] and [Client] have agreed to is included in this Agreement. Otherwise, it is as if it was not agreed to.

12.5 **Entire Agreement.** This Agreement, including the attached exhibits, constitutes the entire Agreement between both parties concerning this transaction, and replaces all previous communications, representations, understandings, and Agreements, whether verbal or written between the parties to this Agreement or their representatives. No representations or statements of any kind made by either party, that are not expressly stated in this Agreement, shall be binding on such parties.

☞ Any changes to this Agreement must be in writing and signed by the party against whom that writing is to be used.

12.6 **All Amendments in Writing.** No waiver, amendment or modification of any provisions of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom such waiver, amendment or modification is sought to be enforced. Furthermore, no provisions in either party's purchase orders, or in any other business forms employed by either party will supersede the terms and conditions of this Agreement.

☞ All notices between the parties must be in writing and either delivered in person or by certified or registered mail, return receipt requested.

12.7 **Notices.** Any notice required or permitted by this Agreement shall be deemed given if sent by registered mail, postage prepaid with return receipt requested, addressed to the other party at the address set forth in the preamble of this Agreement or at such other address for which such party gives notice hereunder. Delivery shall be deemed effective three (3) days after deposit with postal authorities.

☞ In the event of a lawsuit or any legal proceeding involving this Agreement, the losing party will have to pay the winning party his or her costs and expenses, including reasonable attorney fees.

12.8 **Costs of Legal Action.** In the event any action is brought to enforce this Agreement, the prevailing party shall be entitled to recover its costs of enforcement including, without limitation, attorneys' fees and court costs.

☞ Legal remedies, i.e., money damages, may not be sufficient; therefore, both parties agree to equitable remedies such as an injunction where the breaching party would be required to do or not to do something.

12.9 **Inadequate Legal Remedy.** Both parties understand and acknowledge that violation of their respective covenants and Agreements may cause the other irreparable harm and damage, that may not be recovered at law, and each agrees that the other's remedies for breach may be in equity by way of

injunctive relief, as well as for damages and any other relief available to the non-breaching party, whether in law or in equity.

☞ Assuming the parties wish to use Arbitration in the event of a dispute, the following section should be included. You take your chances with an arbitrator, but it keeps legal costs down and keeps you out of a drawn out legal process.

**12.10 Arbitration.** Any dispute relating to the interpretation or performance of this Agreement shall be resolved at the request of either party through binding arbitration. Arbitration shall be conducted in [County], [State] in accordance with the then-existing rules of the American Arbitration Association. Judgment upon any award by the arbitrators may be entered by any state or federal court having jurisdiction. Both parties intend that this Agreement to arbitrate be irrevocable.

☞ Merely delaying to bring an action that one party has a right to bring does not cause that party to lose or waive his right to pursue that action.

**12.11 Delay is Not a Waiver.** No failure or delay by either party in exercising any right, power or remedy under this Agreement, except as specifically provided in this Agreement, shall operate as a waiver of any such right, power or remedy.

☞ Neither party will be blamed if there is a problem resulting from something beyond its control, such as an earthquake, flood, .

**12.12 Force Majeure.** In the event that either party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of any Act of God, strike, fire, flood, governmental acts, orders or restrictions, Internet system unavailability, system malfunctions or any other reason where failure to perform is beyond the reasonable control and not caused by the negligence of the non-performing party (a “Force Majeure Event”), the party who has been so affected shall give notice immediately to the other party and shall use its reasonable best efforts to resume performance. Failure to meet due dates resulting from a Force Majeure Event shall extend such due dates for a reasonable period. However, if the period of nonperformance exceeds sixty (60) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been affected may, by giving written notice, terminate this Agreement effective immediately upon such notice or at such later date as is therein specified.

☞ This section limits the ability of either party to transfer any of its rights or delegate any of its duties to third parties.

**12.13 Non-Assignability & Binding Effect.** Without the prior written consent of [Company], the Customer may not assign the Agreement. Any attempt by the Customer to assign any of the rights or obligation of the Agreement without such consent is void.

☞ If any part of this Agreement is unenforceable or invalid, the balance of the Agreement should still be enforced. Basically, ignore any sections that are invalid.

**12.14 Severability.** If any provisions of this Agreement are held by a court of competent jurisdiction to be invalid under any applicable statute or rule of law, they are to that extent to be deemed omitted and the remaining provisions of this Agreement shall remain in full force and effect.

☞ The headings of the various sections are meant to explain or otherwise give meaning to those sections; they are for convenience only.

**12.15 Cumulative Rights.** Any specific right or remedy provided in this Agreement will not be exclusive but will be cumulative upon all other rights and remedies described in this section and allowed under applicable law.

**12.16 Headings.** The titles and headings of the various sections and sections in this Agreement are intended solely for convenience of reference and are not intended for any other purpose whatsoever, or to

explain, modify or place any construction upon or on any of the provisions of this Agreement.

🔊 Every copy shall be just as valid as the original.

**12.17 Counterparts.** This Agreement may be executed in multiple counterparts, any one of which will be considered an original, but all of which will constitute one and the same instrument.

🔊 Even after the termination of the Agreement, the parties may still have certain responsibilities such as keeping information confidential.

**12.18 Survival of Certain Provisions.** The warranties and the indemnification and confidentiality obligations set forth in the Agreement shall survive the termination of the Agreement by either party for any reason.

### Understood, Agreed & Approved

We have carefully reviewed this contract and agree to and accept all of its terms and conditions. We are executing this Agreement as of the Effective Date above.

Customer



[Company]

\_\_\_\_\_  
[Customer Name]

\_\_\_\_\_  
[Owner/Founder]

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

