

EQUIPMENT CONSIGNMENT AGREEMENT

This Agreement is made and entered into as of this _____ day of _____, 20__, by and between _____ (“Customer”), and _____ (“Dealer”).

In consideration of the mutual obligations and undertakings hereafter set forth, Customer and Dealer hereby covenant and agree as follows:

1. Consignment. Customer hereby delivers to Dealer, on a consignment basis, all of the equipment individually identified on Exhibit A attached hereto and incorporated herein (collectively the “Equipment”). This means that Customer owns the Equipment and is responsible for all expenses of the Equipment until sold to a third party purchaser. In no event shall Dealer own the Equipment, but will have the right to sell such Equipment on behalf of Customer.

2. Retention of Title. In no event shall title to any of the Equipment be deemed to be transferred to Dealer and the title to the Equipment shall be retained by Customer until such time as the Equipment is sold to a third party purchaser.

3. Listing Fee. Upon delivering Equipment to Dealer, Customer shall pay Dealer a nonrefundable fee of _____ (\$_____) per Equipment item for the cost of listing an Equipment item for sale, including but not limited to costs associated with storing and advertising the Equipment for sale (“Listing Fee”).

4. Sale of Equipment; Allocation of Proceeds; Payments to Customer Upon Sale.

(Check the applicable section.)

Customer hereby authorizes Dealer to sell any or all of the Equipment listed on Exhibit A attached hereto in the ordinary course of Dealer’s business on Customer’s behalf and further agrees that Dealer shall retain a _____% of the sale as a consignment fee for Dealer’s sale of such Equipment item. Promptly after Dealer’s receipt of payment for the sale of such Equipment item, Dealer shall subtract its consignment fee and remit the remaining amount to the Customer.

or

Customer hereby authorizes Dealer to sell any or all of the Equipment listed on Exhibit A attached hereto at the base net price (“Base Net Price”) listed on Exhibit A for each Equipment item in the ordinary course of Dealer’s business on Customer’s behalf, so long as the amount of cash received equals or exceeds the Base Net Price of the Equipment item being sold. The parties agree that if an Equipment item is sold using the Base Net Price method, then upon the sale of any Equipment item (a) Customer shall be entitled to a cash amount equal to the Base Net Price for such Equipment item and (b) Dealer shall be entitled to retain all additional proceeds received on the sale of such Equipment item as a consignment fee for its sale of such Equipment item. Promptly after Dealer’s receipt of payment for the sale of such Equipment item, Dealer shall remit payment of the Base Net Price of the item of Equipment to Customer.

5. Financing the Sale of Equipment. In no event shall Dealer provide financing for the sale of any Equipment item. Notwithstanding anything herein, Dealer may sell an Equipment item to a third party purchaser with third party financing.

6. Delivery; Repairs; Maintenance. Customer shall be solely responsible for the performance of, or any costs associated with, the delivery of an Equipment item to a third party purchaser or any repair work required as a condition to the sale of such Equipment item. Customer shall be responsible for the maintenance of the Equipment, at its sole cost and expense. If in the event that Customer and Dealer agree that Dealer is to make any repairs to any Equipment item or make any delivery arrangements, the Base Net Price for an Equipment item may be reduced by any delivery costs or repair costs incurred by Dealer with respect to the Equipment.

7. Risk of Loss or Damage. Customer shall assume all liabilities associated with the Equipment during the term of this Agreement until such Equipment item is sold. Customer shall hold Dealer harmless from loss of Equipment by theft, fire, vandalism, flood, deterioration, etc. or damage to the Equipment.

8. Representations and Warranties by Customer. Customer has good and marketable title to the Equipment, none of which will be subject to any liens or other encumbrances, including blanket liens, except any that may be listed on Exhibit A.

9. Warranties. Dealer shall not offer any warranties on the sale of an Equipment item except to the extent a warranty is required by law and cannot be disclaimed. The following language shall appear in bold, all capital letters on each bill of sale, purchase order or other contract for sale used in connection with a sale of an Equipment item:

“TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE ITEM SOLD IS BEING SOLD ON AN “AS IS – WHERE IS” BASIS, WITHOUT ANY WARRANTY, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER SHALL NOT BE LIABLE FOR LOSS OF REVENUES OR PROFITS, INCONVENIENCE, EXPENSE FOR SUBSTITUTE EQUIPMENT OR SERVICE, STORAGE CHARGES, LOSS OR ANY OTHER SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES CAUSED BY THE USE OR MISUSE OF, OR INABILITY TO USE THE ITEM SOLD. IN NO EVENT SHALL SELLER’S LIABILITY EXCEED AMOUNT BUYER PAID TO SELLER TO PURCHASE THE ITEM SOLD. BUYER ASSUMES ALL RISK AND LIABILITY FOR LOSS, DAMAGE OR INJURY TO BUYER AND BUYER’S PROPERTY AND TO OTHERS AND THEIR PROPERTY ARISING OUT OF USE OR MISUSE OF, OR INABILITY TO USE THE ITEM SOLD.

AS SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR DO NOT ALLOW LIMITATION ON IMPLIED WARRANTIES, THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO YOU. YOU MAY HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE.”

All statements required by this section shall be printed in a font size of 10 point or higher.

10. Transfer of Title. Customer and Dealer agree to cooperate with one another to execute such documents and take such actions as may be reasonably required to transfer title to an Equipment item to a third party purchaser. Customer hereby appoints Dealer as its attorney-in-fact for the limited purpose of transferring title to Equipment items sold to third party purchasers in accordance with the terms of this Agreement. Customer's appointment of Dealer as its attorney-in-fact shall be deemed to be revoked with no further action upon the transfer of the last Equipment item.

11. Sales Tax. Dealer agrees that it is responsible for the collection of all sales, use or other transfer tax owed on the sale of the Equipment and agrees to collect the applicable taxes and report the same on its applicable sales, use or other transfer tax returns.

12. Insurance. During the term of this Agreement, Customer shall be responsible for maintaining any and all insurance on the Equipment. In no event shall Dealer be responsible for obtaining any insurance or paying any insurance premium for the Equipment.

13. Amendment. This Agreement may not be altered or amended, and no right hereunder shall be waived, except by an instrument in writing duly executed by the party or parties to be charged with such amendment or waiver. No waiver of any of the provisions of this Agreement shall be deemed or constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

14. Termination. Upon fifteen (15) days written notice to the other party, either party may terminate this Agreement. Upon termination of this Agreement, Customer shall, at its sole expense, remove all of the Equipment delivered to Dealer from Dealer's premises and Dealer shall afford Customer reasonable access and time to remove the Equipment.

15. Notices, etc. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given when actually (i) received by the party to whom it is addressed if hand delivered or (ii) sent by registered or certified mail (return receipt requested) or telecopy (if transmission is confirmed):

(a) If to Dealer, to:

(b) If to Customer, to:

16. Parties in Interest. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Except as expressly set forth herein, no party hereto shall assign, delegate or transfer, or grant a security interest in, its rights, duties or obligations hereunder to any third party.

17. Arbitration. Any controversy or claim arising out of or relating to this Agreement, or any breach hereof except as set forth below, shall be decided and settled by binding arbitration in accordance with Title 9 of the U.S. Code (United States Arbitration Act) and the Commercial Arbitration Rules of the American Arbitration Association then in effect. The place of arbitration shall be _____.

18. Governing Laws. This Agreement shall be construed and enforced in accordance with the laws of the State of _____ without regard to the provisions thereof regarding conflicts of laws.

19. Entire Agreement; Prior Agreements. This Agreement represents the entire agreement of the parties with respect to the matters contemplated herein. All prior agreements, representations, warranties, covenants or understandings, verbal or written, regarding the subject matter hereof are hereby terminated and superseded by the execution and delivery of this Agreement, and shall be of no further force or effect.

20. Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

IN WITNESS WHEREOF, the undersigned parties hereto have duly executed this Agreement on the date first above written.

THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

CUSTOMER:

By: _____
Name: _____
Title: _____

DEALER:

By: _____

Name: _____

Title: _____

EXHIBIT A

Description of Equipment	Base Net Price (if applicable)	Lienholder