

Information & Instructions: Business equipment lease

PREVIEW

1. The lease in the following form is useful for the lease of business equipment. It contains standard boilerplate clauses applicable to the Lessor's rights and remedies against the Lessee and provides for specified damages in the event of default.

Information & Instructions: Equipment lease- Checklist

The following checklist is for use in gathering all the information necessary to drafting a lease of business equipment.

1. Date of lease: _____

2. Lessor's name and business address, including County: _____

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3. Lessee's name and business address, including County: _____

4. List machinery or equipment leased (quantity, model No., equipment description, and serial No.): _____

5. Lease shall be effective for: _____ years from commencement date.

6. No. of equal installments: _____

7. Amount of each installment: \$ _____

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8. First installment due on: _____ [the first day of _____ (date)].

9. Full term of lease: _____ years.

10. Address including County where above described equipment is to be stored: _____

11. Amount of Lessee's deposit as pursuant to paragraph 24 of the lease: \$ _____

12. All rent payments are payable to: _____ [name] at _____ [address]

13. Name of Maintenance Company: _____

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14. This agreement shall be effective from date of execution until: _____ [date]. This agreement shall remain in force from year to year until terminated by either party on at least _____ days prior written notice.

15. Amount parties agree upon as punitive and/or liquidated damages for said parties' noncompliance: \$ _____

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Form: Equipment lease

PREVIEW

EQUIPMENT LEASE

This Lease is made on _____, by and between [name] ("Lessor"), whose address is [address] and [name] ("Lessee"), whose principal place of business is [address].

For and in consideration of the mutual covenants and promises set forth below, the parties agree as follows:

1. **LEASE.** Lessor agrees to lease to the Lessee the following item of personal property, variously referred to in this agreement as machinery or equipment: [set forth quantity, model no., equipment description and serial no.].

2. **DELIVERY AND POSSESSION.** Lessee shall take possession of said equipment on the effective date of this agreement, as provided below, at Lessee's principal place of business.

3. **TERM.** The term of this lease shall commence on the date of the delivery of the equipment specified above or of any part thereof, and shall continue in full force and effect for a period of _____ years from the date of commencement.

4. **RENT.** As rent for the equipment, the Lessee shall pay _____ equal installments of \$ _____, the first payment being due on the first day of _____, and all subsequent payments on the first day of each calendar month thereafter.

5. **RENEWAL.** The Lessor hereby grants to the Lessee an option to enter into a lease, effective upon the termination of the full _____ year term of this lease, of the subject equipment on the then current terms and conditions, provided that the Lessee in all respects continues to meet the Lessor's standards of qualification for Lessee, is not in breach of the terms and conditions of the lease, and notifies the Lessor of its election to exercise the option at least sixty (60) days prior to the termination of this lease.

6. **STORAGE.** The above-described equipment shall be stored at _____.

7. **DEPOSIT.** The lessee herewith deposits the sum of \$ _____ pursuant to Paragraph 24 of this lease.

8. **PLACE OF PAYMENT.** All payments of rent are due in advance and are payable to [name] at [address], or to such other person and at such other place as the Lessor may from time to time designate in writing.

9. **USE.** The Lessee shall use the equipment in a careful and proper manner and shall comply with and conform to all national, state, municipal, police, and other laws, ordinances and regulations in any way relating to the possession, use, or maintenance of the equipment. If at any time during the term of this Agreement the Lessor supplies the Lessee with labels, plates, or other markings stating that the equipment is owned by the Lessor, the Lessee shall affix and keep the same on a prominent place on the equipment.

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10. **LESSEE'S RIGHT OF INSPECTION.** The Lessee shall inspect the equipment within forty-eight (48) hours after receipt thereof. Unless the Lessee within said period of time gives written notice to the Lessor, specifying any defect in or other proper objection to the equipment, the Lessee agrees that it shall be conclusively presumed, as between the Lessor and the Lessee, that the Lessee has fully inspected and acknowledged that the equipment is in good condition and repair, and that the Lessee is satisfied with and has accepted the equipment in such good condition and repair.

11. **INSTALLATION AND SERVICE.** The Lessor shall extend to the Lessee all the vendor's warranties and guarantees, if any, but makes no representation or warranty with respect to the equipment and assumes no obligation with respect to the operation or maintenance thereof. The Lessee, at its sole expense, will throughout the rental period maintain the equipment in good and efficient running order and shall make all rental payments under this agreement when due notwithstanding that such equipment or any part thereof is for any reason not in good and efficient running order.

12. **LIABILITY OF LESSOR.** Lessor shall not be liable for any loss or damage whatsoever incurred as a result of delay or failure to furnish equipment under this agreement regardless of the cause of the failure. Lessor shall not be liable for any damages by reason of failure of the equipment to operate or of faulty operation of the equipment or system. Lessor shall not be held responsible for any direct or consequential damages or losses resulting from the installation, operation, or use of the products or materials furnished by the Lessor.

13. **LESSOR'S RIGHT OF INSPECTION.** The Lessor shall at any and all times during business hours have the right to enter on and into the premises where the equipment may be located for the purpose of inspecting the same or observing its use. The Lessee shall give the Lessor immediate notice of any attachment or other judicial process affecting any item of equipment and shall, whenever requested by the Lessor, advise the Lessor of the exact location of the equipment.

14. **ALTERATIONS.** Without the prior written consent of the Lessor, the Lessee shall not make any alterations, changes, additions or improvements to the equipment except changes that are initiated and recommended by the manufacturer of the equipment to improve performance or for modernization. All additions and improvements of whatsoever kind or nature made to the equipment shall belong to and become the property of the Lessor upon the expiration or earlier termination of this lease.

15. **REPAIRS.** The Lessee, at its own cost and expense, shall keep the equipment in good repair, condition, and working order and shall furnish any and all parts, mechanisms, and devices required to keep the equipment in good mechanical and working order and shall maintain a renewable maintenance agreement with [name of service company] on the equipment.

16. **RISK OF LOSS AND DAMAGE.** The Lessee hereby assumes and shall bear the entire risk of loss and damage to the equipment, for any and every cause whatsoever. No loss or damage to the equipment or any part thereof shall impair any obligation of the Lessee under this

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lease, which shall continue in full force and effect, including, but not limited to, the obligation of the Lessee to make rental payments.

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17. SURRENDER. On the expiration or earlier termination of this lease, the Lessee shall return all items of equipment to the Lessor. On such return the equipment shall be in good repair and condition, and in working order, ordinary wear and tear resulting from proper use thereof excepted.

18. INSURANCE. The Lessee shall at all times insure the equipment against all risk of loss or damage from every cause whatsoever, for not less than its full replacement value as determined by the Lessor, and shall carry public liability, contractual liability, and proper damage insurance covering the equipment, its operation and use. All such insurance shall be in form and amount and with companies approved by the Lessor, and shall be in the joint names of the Lessor and Lessee. The Lessee shall pay the premium thereon and deliver said policies and duplicates thereof to the Lessor. Each insurer shall agree, by endorsement upon the policy or policies issued by it or by independent instrument furnished to the Lessor, that it will give the Lessor thirty (30) days' written notice before the policy in question shall be altered or cancelled. The proceeds of such insurance, at the option of the Lessor, shall be applied:

- a. Toward the replacement, restoration, or repair of the equipment, or
- b. Toward payment of the obligations of the Lessee under this agreement.

19. NOTICE. Service of all notices under this Lease shall be considered sufficient when made in writing and mailed to the other party at its address set forth in this agreement, or at such address as the party may provide in writing from time to time. Any such notice mailed to such address shall be effective when deposited in a United States mail depository duly addressed and with postage prepaid. Either party may change its address for notice by sending a written notice to the other party.

20. REMOVAL OF EQUIPMENT. The equipment shall not be removed from the location stated above without Lessor's prior written consent. Lessee's removal of said equipment from the above described location constitutes a significant and material breach of lease and shall entitle Lessor to any and all rights of default stated below, including, but not limited to, right of attachment, sequestration, or temporary restraining order, temporary injunction, or permanent injunction. The above rights are in addition to any other rights that Lessor may have in civil or criminal courts of law.

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21. ASSIGNMENT. Lessee shall not, without prior written consent of Lessor, assign, transfer, pledge, hypothecate or otherwise dispose of this lease, the leased equipment, or any interest therein, or sublet or lend said equipment or permit it to be used by anyone other than Lessee during the term of this agreement. Lessor may assign the monies to be paid by Lessee under this lease in whole or part without notice to Lessee. If Lessee is given notice of assignment, Lessee agrees to acknowledge receipt of said assignment in writing, and in such event Lessee shall be deemed to have assigned all of the rights contained in this agreement, including, but not limited to, the right to receive or lease payments. Lessee shall not

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assert against assignee of Lessor any claims or defenses by way of abatement, defense, set off, counterclaim, recoupment or the like that Lessee may have against Lessor. Lessee shall defend, indemnify and hold any such assignee harmless from any and all claims, actions, loss or damage, including, but not limited to, reasonable attorney's fees, obligations, liabilities, and liens, including any of the foregoing arising or imposed in connection with latent or other defects under the doctrine of strict liability arising out of the purchase, lease, possession, operation or condition, return, or use of this equipment or by operation of law, excluding, however, any of the foregoing resulting from negligence or misconduct of Lessor or its assignee. Notwithstanding any such assignment, Lessor warrants that the Lessee shall quietly enjoy the use of said equipment subject to the terms and conditions of this lease. Subject to the above this lease shall inure to the benefit of and is binding upon successors and assigns of the parties.

22. OFFSETS. Lessee hereby waives any and all existing and future claims and offsets against rent payments or other amounts due and agrees to pay such rent payments and other amounts due regardless of any offset or claim which may be asserted by Lessee on its behalf, including, but not limited to, claims for maintenance or warranty.

23. DELINQUENT PAYMENTS.

a. Service Charge - since it is impracticable or difficult to fix Lessor's actual damages for collecting and accounting of late payments, if any payment is not made to Lessor on or before its due date, Lessee shall pay to Lessor an amount equal to five percent (5%) of any the late payment.

b. Default - if the Lessee fails to pay when due any lease payments or other amounts required to be paid by Lessee, or Lessee makes an assignment for the benefit of creditors, whether voluntary or involuntary, if a petition is filed by or against Lessee under the Bankruptcy Act, or if Lessee defaults in any other provisions stated in this agreement, Lessor shall have the right to exercise any one or more of the following remedies in order to protect its interest in its reasonably expected profits and bargains of this lease agreement:

(1) Lessor may recover from Lessee all rent and other amounts then due as they shall become due;

(2) Lessor may accelerate the total of all unpaid lease payments without any offsets, credits or deductions that may be claimed by Lessee in opposition thereto;

(3) Lessor may take possession of and all items of equipment covered under this agreement wherever they may be located without demand or notice, without any court order or other process of law, and without liability to Lessee for any damages occasioned by such repossession. Any such taking of repossession shall not constitute a termination of Lessee's liability to Lessor for lease payments stated above;

(4) Lessor may sell the equipment in a commercially reasonable manner, and may recover from Lessee any deficiency amounts owed under the lease, a deficiency amount being the total of payments owed less monies received on sale of the equipment leased under this

agreement in a commercially reasonable manner. Any such sale shall be with or without notice at public or private bid upon any terms and conditions that Lessor may dictate;

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(5) Lessor shall apply the net proceeds after deducting all expenses, including, but not limited to, attorney's fees, to the monies owed by Lessee;

(6) Lessor may also pursue any other rights or remedies at law or equity that it may have;

(7) A bulk transfer of furniture, furnishings, fixtures, equipment or inventory by Lessee shall confer on Lessor the right at law or equity to declare this lease in default. Such rights include, but are not limited to, suit for damages and/or specific performance, and/or obtaining an injunction;

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(8) No right or remedy conferred on Lessor by this agreement is exclusive of any other right or remedy provided by or permitted at law or equity but shall be cumulative of every other right or remedy under this agreement or existing at law or in equity, by statute or otherwise. Such rights may be enforced concurrently from to time; however, Lessor or its assignee shall not be entitled to recover a greater amount in damages than could have been gained by receipt of Lessee's full, timely and complete performance of its obligations stated in this agreement.

24. TERM. This agreement shall be effective from the date of execution hereof and shall extend to _____ and shall remain in force from year to year thereafter until terminated by either party upon at least _____ days prior written notice by return receipt requested mail to the non-terminating party. Such a termination may be made by agreement of the parties. This agreement may be cancelled prior to the execution of the above stated term by any of the following events:

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- a. by mutual agreement;
- b. in the event either party files for relief under federal bankruptcy proceedings;
- c. in the event involuntary bankruptcy proceedings are initiated against either party hereto;
- d. in the event of death, liquidation, or physical or mental incapacity of either party hereto; or
- e. in the event of fraud or misrepresentation by one of the parties hereto.

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25. AMENDMENT OR MODIFICATION. This agreement shall represent the entire agreement by and between the parties except as otherwise provided agreement and it may not be changed except by written agreement duly executed by all of the parties.

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26. CORPORATE AUTHORITY. If any party hereto is a legal entity, including but not limited to, association, corporation, joint venture, limited partnership, partnership, or trust, such party represents to the other that this agreement and the transactions contemplated in this agreement and the execution and delivery hereof have been duly authorized by all necessary corporate partnership or trust proceedings and actions including, but without limitation to, action on the part of the directors, officers, and agents of said entity. Furthermore, said party represents that appropriate corporate meetings were held to authorize the aforementioned obligations and certified copies of such corporate minutes and corporate resolutions authorizing this transaction have been delivered to all parties to this agreement prior to or at the time of execution of this agreement.

[either]

7. DISPUTE OR CONFLICT; ATTORNEY'S FEES. In the unlikely event that a dispute occurs or a cause of action in law or equity arises out of the operation, construction, interpretation, or enforcement of this agreement, the losing party shall bear the expense of the attorney's fees incurred by the prevailing party and any and all costs applicable thereto, including, but not limited to, court costs, deposition fees, out of pocket expenses, and travel expenses incurred by the prevailing party.

[or]

27. ARBITRATION. In the unlikely event that a dispute occurs out of the operation, construction, interpretation or enforcement of this agreement, the parties hereby agree to submit said dispute to a commercial arbitrator so that the matter may be arbitrated in lieu of resolving said dispute in a court of law or equity. The parties shall choose an arbitrator from the American Arbitration Association pursuant to the following process:

a. The parties shall request from the American Arbitration Association a list of nine (9) commercial arbitrators, and each party, assuming there are two parties to the agreement, shall have four strikes, thereby striking from said list the arbitrators they do not wish to use.

b. The remaining arbitrator, the one that has not been stricken, shall be the arbitrator to hear the matter.

c. The parties agree to follow the American Arbitration Association rules, guidelines and procedures. The Arbitrator shall set the matter for hearing and shall control the procedures used therein

d. The parties shall abide by the Arbitrator's decision which shall be final and binding. The parties agree that there shall be no right to appeal the Arbitrator's decision. In the event the losing party refuses to comply with the Arbitrator's decision, the parties hereby agree to an award of \$ _____ as punitive and/or liquidated damages for said party's noncompliance with the arbitrator's decision. The losing party furthermore agrees to reimburse the prevailing party for any and all attorney's fees and costs of litigation incurred in order to compel the losing party's performance in compliance with the arbitrator's decision.

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28. CONFIDENTIAL INFORMATION. The parties agree that the information and data at each other's disposal during the term of negotiation, operation, and enforcement of this agreement is considered proprietary information and is confidential. Such information, if disseminated to third parties, would be detrimental to the owner of said proprietary data. Accordingly, the parties agree to take any and all reasonable precautions to restrict the dissemination of such information by their employees, agents or subcontractors. This obligation shall continue notwithstanding the termination of this agreement for a period of five (5) years from the effective of this agreement. During the term of this agreement or an extension thereto neither party shall permit access to said proprietary information without the other party's written permission.

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29. INDEMNITY. It is the specific and express intent of the agreement of the parties that in the event one party shall cause or incur either directly or indirectly, damage, loss, destruction, liability, or claims against said party as a result of intentional conduct, negligence or otherwise, said party shall assume and pay for any and all defense in said matter, and shall hold harmless and indemnify the other party from any and all obligations, liabilities, causes of action, law suits, damages, assessments, or other legal proceedings, that result from said party's intentional actions or negligence. This indemnification shall survive this agreement and be enforceable as a separate agreement in the event indemnification becomes necessary.

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30. FORCE MAJEURE. Neither party shall be liable or responsible to the other party for any delay, damage, loss, failure, or inability to perform caused by "Force Majeure." The term "Force Majeure", as used in this agreement, shall mean an act of God, strike, act of a public enemy, war, the use of mines or other items of ordinance, blockage, public rioting, lightning, fire, storm, flood, explosions, inability to obtain materials, supplies, labor, permits, servitudes, or rights of way, acts or restraints of any governmental authority, epidemics, landslides, lightning storms, earthquakes, washouts, arrests, restraints of rulers and peoples, civil disturbances, breakage or accident to machinery or lines of equipment, temporary failure of equipment, freezing of equipment, and any other cause whether of the kinds specifically enumerated above or otherwise which are not reasonably within the control of the parties or which by the exercise of due diligence the parties are unable to prevent or overcome. Provided, however, that events reasonably within the control of party suffering the difficulty shall not constitute "Force Majeure" and shall be remedied with the exercise of due diligence. Any such cause or contingency affecting the performance of this agreement by any party shall not relieve such party of liability in the event of its concurrent negligence or in the event of its failure to remedy a situation within the party's reasonable control. Nor is a party relieved of liability if the party could reasonably remove the cause preventing its performance. The parties shall use all reasonable dispatch to remove all contingencies effecting the performance of this agreement. This clause shall not relieve any party from its obligations to make payments of amounts then due for previous work or obligations contemplated and performed under this agreement.

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A party shall give a full and complete notice of the particulars which it considers to excuse its performance under this "Force Majeure" clause

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In the event time limits are not met under this agreement as a result of "Force Majeure", the parties hereby agree to an extension of said time limit for a period for the number of days for which the "Force Majeure" condition existed. After the "Force Majeure" condition has ended, the contract shall continue under the same operations and circumstances as existed prior to the "Force Majeure" event.

31. FURTHER ASSURANCES. Each party further agrees that it shall take any and all necessary steps, sign and execute any and all necessary documents or agreements required to implement the terms of the agreement of the parties contained in this contract and each party shall refrain from taking any action either expressly or impliedly which would have the effect of prohibiting or hindering the performance of the other party to this agreement. This agreement and exhibits attached hereto and incorporated herein contain the entire agreement of the parties. There are no representations, inducements, promises, agreements, arrangements, undertakings, oral or written, between the parties other than those expressly set forth in this agreement and duly executed in writing. No amendment of any kind shall be binding upon either party until the same has been made in writing and duly executed by both parties. On execution of this agreement by all parties, all previous agreements, contracts, arrangements, or undertakings of any kind relative to the matters contained in this agreement are hereby cancelled and all claims and demands not contained in this agreement are deemed fully completed and satisfied.

32. INDEPENDENT STATUS. It is agreed and understood that any work requested by the parties shall be performed under the terms of the agreement and that all parties are considered independent contractors. Each party is interested only in the results obtained under this agreement and has the general right of inspection and supervision in order to secure the satisfactory completion of such work. Neither party shall have control over the other party with respect to its hours, times, or method of accomplishing the work. Under no circumstances shall either party be deemed an employee of the other nor shall either party act as an agent of the other party. Any and all joint venture or partnership status is hereby expressly denied and the parties expressly state that they have not formed either expressly or impliedly a joint venture or partnership.

Furthermore, the parties warrant that the obligations shall be performed with due diligence in a safe, competent, and workmanlike manner and in compliance with any and all applicable statutes, rules, and regulations.

33. CAPTIONS AND PARAGRAPH HEADINGS. The captions, numbering sequences, titles, paragraph headings, and punctuational organization used in this agreement are for convenience only and shall in no way define, limit, or describe the scope or intent of this agreement or any part thereof.

The paragraph headings used in this lease are descriptive only and shall have no legal force or effect whatsoever other than to aid a reasonable interpretation of the agreement.

The titles to each of the various articles and paragraphs are included for convenience or reference only and shall have no effect on or be deemed part of the text of this agreement.

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Use of neuter or singular pronouns to refer to a party described in this lease shall be deemed a proper reference even though the party may be an individual, partnership, corporation, association, trust, or a group of two or more individuals, partnerships, corporations or joint venture. Any necessary grammatical changes required to make the provisions of this agreement applicable to corporations, associations, partnerships, trust, individuals, or groups of individuals, or to females as well as males, shall in all instances be assumed as though each case were fully expressed.

If any word, phrase, clause, paragraph, or other provision of this agreement is deemed, adjudicated, or otherwise found to be against public policy, void, or unenforceable, said words or provisions shall be deleted or modified in keeping with the express intent of the parties to the extent necessary to render this agreement valid and enforceable. All such deletions or modifications shall be the minimum required to effect the foregoing and the intent of the parties to this agreement.

34. MULTIPLE COUNTERPARTS. This agreement may be executed in several counterparts, each of which shall be deemed an original and all of which when taken together shall constitute but one and the same agreement. In the event that a comparison of said multiple counterparts reveals that said counterparts contain differences or inconsistencies when compared with each other, the agreement which is first executed and signed by all of the parties shall be deemed the original agreement; all other such counterparts, although duly signed by the parties, shall be deemed inferior and subordinate to the first signed counterpart.

35. TIME. Time is of the essence in this lease and of each and all of its provisions.

Signed on **THIS DOCUMENT**

LESSOR

By:

[Typed name and title]

LESSEE

THANK YOU

[Typed name and title]

State of Texas
County of _____

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This instrument was acknowledged before me on _____ by

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Notary Public, State of Texas

Notary's typed or printed name

My commission expires: _____
[or Notary's Stamp]

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THIS DOCUMENT

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