

**MINIMUM RENTAL PERIOD:** Unless otherwise agreed, rental payment shall begin on the date specified in the lease agreement for delivery of equipment, and shall continue until the equipment is returned. Lessee agrees to return equipment on the date specified in the Lease. Full daily rates shall be charged for each day the equipment is not returned past the date specified for its return. A full additional day's rental will be charged for any equipment not returned by 10:30am. When on a daily schedule, daily rates will be charged for each day, Sunday and Holidays included if the equipment is used. The daily rate will be charged for each full day or any portion thereof.

**PAYMENT: TERMS OF PAYMENT ARE NET 30 DAYS (OAC).** Payments due for 31 days or more shall be considered past due. For each month or part of month thereafter, an interest rate of 1.5% per month shall be charged. Lessee agrees to pay to DTC the rental for said equipment for not less than the minimum rental period as defined herein and for such other time thereafter and until Lessee returns equipment to DTC's place of business as provided therein. Lessee agrees to pay for missing and/or damaged equipment within 10 days after billing.

Lessee shall pick up and return said equipment on the dates set forth in this Rental Agreement. Lessee shall also return said equipment to the same DTC store location as equipment was picked up from unless permission is granted in writing by DTC. DTC shall be entitled to compensation because of Lessee's cancellation of all or part of an order.

**USE OF EQUIPMENT:** Neither this lease, nor Lessee's rights hereunder can be assigned except with the written consent from DTC. The conditions and terms hereof shall bind any successors and permitted assignee of Lessee. Lessee shall not sublease said equipment nor part thereof without consent of DTC inasmuch as DTC agrees that this equipment is rented for the purpose of Lessee's use only.

**DELIVERY & RETURN:** All equipment shall be picked up by Lessee at DTC's place of business (**1280 65<sup>th</sup> St., Emeryville, CA 94608; 935 SE Ankeny, Portland, OR 97214**), or at Lessee's request, DTC shall arrange shipment to a location designated by Lessee. DTC agrees to deliver to Lessee or its authorized agents, or to ship the rented equipment in the manner specified by Lessee within the time period agreed upon. DTC is not responsible for non-availability or shipping delays of said equipment, nor for any failure of Lessee, its agent or designated carrier to accept or pick up said equipment.

Delivery of equipment to Lessee shall be deemed complete at DTC's premises when the equipment is placed on Lessee's transportation with a carrier arranged by Lessee. Lessee bears all risks of loss or damage to equipment from time of delivery to Lessee (as defined) until the return of equipment to DTC's premises during normal business hours. Return of equipment to DTC shall be deemed to occur when the equipment has been off-loaded onto DTC's premises, whether the return is by Lessee or arranged carrier. Collect shipments will not be accepted or considered returned without prior approval of DTC.

Lessee shall not ship the equipment out of the State of California without prior consent of DTC.

**NO WARRANTIES:** Lessee acknowledges that the equipment listed herein has either been examined and tested by a representative of the Lessee, or that the opportunity to examine and test the equipment was permitted, and that it is in good working condition and accepts the same as is, and without any rental reductions or claims therefore. Lessee agrees that equipment is leased without warranty or guarantee of any kind, express or implied, and that DTC assumes no responsibility, express or implied, in fact or in law for the performance or nonperformance of said equipment other than as expressly agreed herein (whether the failure is caused by the negligence of Lessee, DTC or any other person or entity.)

Lessee agrees to notify DTC immediately when equipment is not in working order and return same equipment to DTC at Lessee's expense. Lessee agrees to bear the risk of loss direct and consequential for any equipment found in workable condition. DTC's only obligation shall be to use reasonable efforts to repair or replace said equipment in which defect existed at time of delivery and which was not readily apparent from inspection, or to refund any rental payments for equipment.

**INDEMNITY:** Lessee agrees to and does hereby indemnify and hold DTC, its officers and employees, harmless from and against any and all losses, damages, demand of liability of any kind or nature whatsoever, including legal expenses arising from the use, condition (including without limitation latent and other defects) of operation of the equipment rented, and by whatsoever used or operated during the term hereof. This indemnity shall continue in full force and effect during and after the terms of this lease for causes arising during the lease terms.

**INSURANCE:** Lessee shall at its own expense provide and maintain in full force and effect insurance covering the equipment rented for FULL REPLACEMENT COSTS and for loss of rents of said equipment for the date of this Lease until the equipment is actually returned including any damage while the equipment is in transit or storage. Insurance shall name DTC as LOSS PAYEE and any act or neglect or breach of condition shall not affect the rights of DTC under such by the Lessee. Insurance shall cover risks of physical loss or damage. Lessee shall also name DTC as ADDITIONAL INSURED as regards liability insurance and Lessee's liability insurance shall be deemed prime insurance should there be a claim or suit. Lessee shall provide to DTC a CERTIFICATE OF INSURANCE prior to delivery of equipment for a term that covers the rental period. Notwithstanding this paragraph, Lessee shall remain primarily liable for full performance under this Lease. Rentals and billing will only be made to the Lessee as named on the insurance certificate.

**LOSS & DAMAGES:** If equipment is returned in damaged or non-working condition, the Lessee will be charged for repairable damage including parts and labor. In the event that any equipment is lost, stolen, destroyed, otherwise disappears or is not returned, Lessee will pay the replacement cost of said equipment. The liability for lost, damaged, destroyed or missing equipment shall belong to the Lessee, no matter what the circumstance and who might be or might not be to blame.

**TITLE:** Title to equipment is retained by DTC. Lessee covenants that it will not assign, pledge or encumber equipment in any manner, nor permit any liens to become effective thereon.

**INSPECTION BY DTC:** Inspection of equipment may occur at any time during the term of this Lease. Lessee shall make arrangements necessary to permit DTC access to the location of the equipment. A breach of this shall be deemed material and entitle DTC to exercise any of the remedies set forth in this lease.

**DEFAULT & BREACH OF TERMS:** In the event of default by Lessee in payment of equipment rental billing, or Lessee's breach of any terms of the lease, or if Lessee assigns or attempts to assign equipment to any interest therein, as security or otherwise, or if any lien or encumbrance is placed against equipment by anyone claiming rights against Lessee, or if Lessee becomes insolvent or executes an assignment for the benefit of creditors, or if a petition of bankruptcy is filed by or against Lessee, or if Lessee misuses or mishandles equipment, or damages same, or attempts to remove equipment from the State of California or without consent, then DTC may at its option exercise one or more of the following remedies:

To declare all rentals due and payable from the time of said breach, sue for and recover all rents or other sums due to accrue thereafter under the terms of this Lease, take possession of equipment without demand to notice without liability for trespass; to terminate this lease, which means DTC does so by reason of Lessee's breach so then DTC may recover from Lessee the value at the time of termination of the rent reserved for the balance of the rental term over the rent DTC is actually able to secure for the said equipment or, if DTC is unable to re-rent said equipment for the balance of the rental over the reasonable rental value, and/or to pursue any other remedy at law or inequity using all remedies concurrently or separately.

In the event DTC is required to take any action to enforce legal right or provisions of the Lease or to secure payment for loss of rents, including arbitration or other steps, DTC shall be entitled to attorney fees and costs incurred by it, whether Lessee or Lessee's insurer is ultimately responsible for the dispute or payment. THIS LEASE AGREEMENT SHALL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERE DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF THIS LEASE'S ORIGIN.

Any dispute arising from or concerning the subject matter of this Lease, or any performance or damages due herein shall be resolved by arbitration held in accordance with Title 9 of the California Code of Civil Procedure, section 1280 et seq. The parties shall agree on a neutral arbitrator whose decision shall be final and binding. If the parties are unable to agree on said arbitrator one shall be appointed in accordance with the procedure set forth in California Code of Civil Procedure S1281.6. Any suit or proceeding hereunder shall be brought in the County of Alameda or San Francisco.

