



**ASHTEAD TECHNOLOGY, CANADA LTD
(‘ASHTEAD’).
TERMS AND CONDITIONS OF EQUIPMENT
RENTAL**

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Date Amended: 9th May 2009

1. **Payment:** Lessee agrees to make punctual and full payment of all rental charges (“Rent”) and other amounts due under this contract for equipment which it rents from Ashtead (the “Equipment”). All Rent and other amounts required to be paid by the Lessee shall be paid without any deduction, abatement or legal or equitable set-off.

2. **Duties and Taxes.** The Lessee shall pay any sales taxes, goods and services taxes, value added or other taxes imposed on the Equipment or the use thereof or on the payment of the Rent, imposed by any government or authority whether the same be assessed to the Lessor or to the Lessee and any applicable import and excise taxes, duties, customs charges, and similar charges levied on or respecting the Equipment by any government or authority.

3. **Rental Period.** The rental period on the Equipment begins at the time it leaves Ashtead’s premises and continues until it is returned, except as otherwise agreed in writing. The rental period will be calculated daily, weekly or 4 weekly, part of day being charged as if it were a full day.

4. **Return of Equipment.** Lessee shall return the Equipment to Ashtead at the end of the Rental Period or such sooner time as Ashtead may demand in the same condition in which it was received by Lessee, less normal wear and tear. The lessee shall be responsible for the costs of returning the equipment to its condition at the time of delivery plus an administration charge of fifteen percent (15%). Where the equipment is incapable of being restored to its previous condition, the lessee shall be responsible for the full replacement cost.

5. **Repairs and Maintenance.** Lessee shall be responsible for all damage to, and repairs and maintenance of the Equipment while the Equipment is in Lessee’s possession or in transit between Ashtead and Lessee, including and any repairs and maintenance made necessary by Lessee’s use of the Equipment, provided that all repairs shall be effected only by persons expressly authorized by Ashtead in writing.

Lessee shall take care of normal needs of the Equipment, including daily checking of general condition, replacing batteries, supplying consumables and other routine maintenance. If the Equipment becomes disabled, Ashtead will not be responsible for furnishing substitute Equipment, and will for in no circumstances be held liable for special or consequential damages or economic loss resulting from such disablement.

6. **Obligations of Lessee:** The Lessee agrees with Ashtead as follows:

(a) Lessee shall use all Equipment in a careful, prudent manner, and to comply with all laws, regulations, rules or ordinances of lawfully constituted authorities relating to the possession, use, storage and transport thereof.

(b) Lessee shall maintain effective control of the equipment and maintain the equipment in a secure location when not in use.

(c) Lessee shall ensure that the Equipment is operated only by suitably competent persons duly instructed with its safe operation in accordance with manufacturer’s operating manuals, instructions and safety warnings.

(d) Lessee shall not remove, alter, disfigure or cover up any numbering, lettering or insignia displayed upon the Equipment or any warnings or instructions thereon. Lessee shall see that the Equipment is not subjected to careless or needlessly rough usage.

(e) Lessee shall not to copy or reproduce in any way or manner the Equipment or any part or component thereof;

(f) Until the return of the Equipment to Ashtead, the Lessee shall maintain the Equipment as moveable personal property and subject to the rights of Ashtead hereunder; Lessee shall insure that the Equipment is not installed in such a manner that it might be considered attached to realty;

(g) The Equipment shall be used only in Canada, except with the prior written consent of Ashtead;

(h) Lessee shall not perform, or allow any person to perform, any work in or upon or make modifications, changes, alterations, repairs to or perform other than routine daily maintenance on the Equipment unless such person is approved by Ashtead in writing;

(i) Lessee shall allow Ashtead at all reasonable times to inspect the Equipment;



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(j) Lessee shall not assign this Agreement or any part thereof and shall not loan, lease, sublease, license or grant any right to any other person to use the Equipment, and shall not part with possession thereof during the rental period;

(k) Lessee shall keep the Equipment free and clear of any and all liens, claims, charges and encumbrances during the rental period;

(l) Except as may be necessary for the competent operators to operate the Equipment or as otherwise required by law, Lessee shall not disclose any information, data, plans or specifications which have been provided to it by Ashtead concerning the Equipment, including, without limitation the terms of this Agreement, all information, drawings, specifications and manuals relating to the technology used in the Equipment to any person in obtaining knowledge of the working mechanism of any part of the Equipment unless such information:

(i) is designated as non-confidential by Ashtead;

(ii) is or has become public knowledge otherwise than through Lessee's fault;

(iii) is rightfully obtained by Lessee from a third party not under any obligation of confidentiality to Ashtead;

(iv) is shown by the Lessee to have been in its possession before it received the information from Ashtead; or

(v) is information which Lessee can show was developed by it independently of confidential information received from Ashtead;

7. Title: Title to the Equipment remains in Ashtead. Lessee shall give Ashtead immediate notice in the event any Equipment is levied upon, claimed or for any reason is threatened with seizure.

8. LESSEE AGREES TO INDEMNIFY AND HOLD ASHTEAD HARMLESS FROM AND AGAINST ALL LIABILITY AND EXPENSES (INCLUDING LEGAL COSTS ON A FULL INDEMNITY BASIS) HOWSOEVER ARISING OR INCURRED, BASED UPON DAMAGE TO PROPERTY OR INJURY TO, OR DEATH OF ANY PERSON OR ECONOMIC LOSSES OR CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF, OR ATTRIBUTABLE TO THE LESSEE'S POSSESSION OR USE OF THE EQUIPMENT OR ANY BREACH BY THE LESSEE OF THE TERMS OF THIS AGREEMENT.

Delivery dates are quoted by Ashtead without commitment thereto, it is expressly agreed that Ashtead shall not be under any liability to the Lessee arising as a result of late delivery or of the condition of the Equipment or otherwise. Lessee further agrees to assume full responsibility for loss or destruction of, or damage to the Equipment while in Lessee's possession or in transit. Lessee agrees to pay Ashtead in cash for the full value of the Equipment in the event the Equipment is lost or destroyed, or the full cost of repairs if damaged. Cost of repairs is to be determined by Ashtead, and if are undertaken, they are to be done by Ashtead and/or others Ashtead designates. Ashtead will not be liable for or reimburse Lessee for any charges not expressly authorized by Ashtead. Full value at the time of any loss or destruction shall mean manufacturer's list price. "Lost" shall mean lost and unrecovered for whatever number of days the Lessee's insurance carrier deems sufficient time to await a possible recovery before settling a claim, but in no event more than thirty (30) days. "Destroyed" shall mean damaged to the extent that the cost of repairs, determined by Ashtead, exceeds the manufacturer's list price. Lessee agrees that the rental rate for any lost, damaged or destroyed Equipment shall continue until Ashtead has been paid in full for damages as above. At all times that Lessee has physical possession of the equipment (whether or not Lessee is then being charged with rental fees) and during transit, Lessee is responsible for, and bears all risk of loss, or damage to the equipment.

9. Liability Insurance: Lessee shall, at its own expense, provide and maintain liability insurance throughout the Rental Period in amounts satisfactory Ashtead, including but not limited to, coverage for the contractual liability of the hold harmless clause contained in Paragraph six (6) hereof. Lessee shall, also at its own expense, provide and maintain insurance against loss by all risks of physical loss or damage such as at least that normally provided by a contractor's equipment floater policy, in an amount equal to the manufacturer's list price and general liability insurance minimum \$2 million limit. Lessee shall, upon request of Ashtead, provide Ashtead with certificates of insurance evidencing the coverage required above, and naming Ashtead as an insured party under the policies and including waiver of subrogation in favour of Ashtead. Such certificates shall provide that Ashtead be given at least ten (10) days prior written notice of the cancellation of such coverage and, if requested by Ashtead, shall be provided to Ashtead before shipment or delivery of equipment to Lessee. If Lessee fails to place or maintain insurance or provide satisfactory evidence thereof to Ashtead, Ashtead may do so on its behalf and at its costs. If Lessee is self insured, it shall furnish written evidence of such fact all to the satisfaction of Ashtead. **THE PROVIDING OF ANY INSURANCE REQUIRED HEREIN DOES NOT RELIEVE THE LESSEE OF ANY OF THE RESPONSIBILITIES OR OBLIGATIONS ASSUMED BY THE LESSEE IN THIS AGREEMENT, OR FOR WHICH THE LESSEE MAYBE LIABLE BY LAW OR OTHERWISE.** If requested by Ashtead, Lessee at its own expense shall furnish a bond in the amount of the value of the equipment with sureties satisfactory to Ashtead, to insure fulfillment of Lessee's obligations under this agreement.



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10. Lessee agrees that if it fails to pay the Rent when due, or if it commits an act of bankruptcy or insolvency, goes into receivership, or fails to abide by any of the provisions of this agreement, or if Ashtead at any time considers in its sole discretion that the equipment ought to be returned, the Lessee will return said equipment forthwith to Ashtead. Ashtead has the right and privilege, upon reasonable notice to the Lessee, to inspect the equipment on the premises of the Lessee or wherever located and to observe the use of the equipment and at its sole option in lieu of having the Equipment returned, Ashtead shall be entitled to make any needed repairs or to perform the continuing obligations of Lessee in respect of which Lessee is in default, at Lessee's expense.

11. Terms are NET 30 days from date of invoice subject to approval by Ashtead's credit department. Invoices will be issued at the earliest of, (a) the end of the rental, (b) month end, or (c) the 16th calendar day from commencement of rental period. A service charge of 1 1/2% per month shall be assessed on all delinquent accounts, which remain thirty (30) days past due.

12. Credit card customers must complete a credit card authorization form prior to commencement of the rental period. Rental charges to credit card customers will be billed at the commencement of the rental. Credits due will be applied on the completion of the rental, including any ancillary charges such as repairs above and beyond normal wear and tear. Additional charges will be applied to the credit card depending on the nature of the rental, either weekly or 4 weekly.

13. The Lessee shall pay to Ashtead all cost and expenses, including attorney legal fees, on a full indemnity basis, incurred by Ashtead in exercising any of its rights or remedies hereunder or in enforcing any of the terms, and conditions hereof.

14. DISCLAIMER: ASHTEAD MAKES NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE EQUIPMENT AND HEREBY DISCLAIMS THE SAME.

15. There are no oral or written promises, terms, conditions, representations of quality or fitness for any purpose, or warranties, express or implied, concerning the Equipment other than those contained herein in writing, if any.

16. LIMITATION OF LIABILITY: The liability of Ashtead with respect to this contract and the Equipment, or anything done or omitted to be done in connection therewith such as (by way of illustration and not limitation) the performance or breach thereof, or with respect to the design, manufacture, sale delivery, resale, fitness, installation, breakdown, malfunction, defect in or use of any Equipment or any warnings or instructions given or not given in connection therewith,, whether in contract, in tort, under any warranty, or otherwise, shall not exceed the total rental charges paid by the Lessee under this contract.

17. Lessee acknowledges its understanding that the equipment is subject to export control laws and regulations. Lessee is responsible for determining whether any export or re-export licenses or other authorizations are required for any export, re-export, deemed export, and/or deemed re-export, and for obtaining any such required licenses or authorizations prior to exporting or re-exporting the equipment. Lessee is also responsible for obtaining any required licenses or other authorizations necessary for return of the equipment. Lessee acknowledges its responsibility for ensuring that no unauthorized transfers or diversions of the equipment occur.