



TCS - NEW YORK

**TCS- Technological Cinevideo Services, Inc.**

Building 77, Suite 901 | 141 Flushing Ave | Brooklyn, NY 11205 • 212-247-6517

## **EQUIPMENT RENTAL AGREEMENT TERMS AND CONDITIONS**

This Equipment Rental Agreement Terms and Conditions (the "Agreement") is agreed to by TECHNOLOGICAL CINEVIDEO SERVICES, INC. with offices at 141 Flushing Ave Building 77, Suite 901, Brooklyn, NY 11205-1338 (the "Rental Company"), and \_\_\_\_\_ ("Customer") and shall govern any and all rentals of camera-related equipment (which shall be specifically identified on a document furnished by Rental Company to Customer) (collectively and individually referred to as the "Equipment") made by Customer.

1. **Representations, Warranties and Agreements:** Customer has selected the Equipment without relying upon any suggestion or recommendations of Rental Company and Customer understands and agrees that Rental Company assumes no responsibility for the Equipment as being fit for any particular purpose. Customer agrees that the Equipment was selected by it. Rental Company represents and warrants as follows: (1) the Equipment is free from known defects and is in good working order to the best of their knowledge at the inception of the rental; (2) Rental Company is responsible for routine repair and maintenance of the Equipment (3) (if applicable) all services provided by Rental Company will be performed in a professional and competent manner; (4) Rental Company has the right to enter into the rental of the Equipment and (5) Rental Company has complied and will continue to comply with all applicable manufacturer's specifications relating to the Equipment. Customer agrees as follows: (a) except as set forth in Rental Company's representations and warranties above, the Equipment is rented to Customer without any warranty or guaranty of any kind, express or implied, and specifically, there is no warranty of merchantability or fitness for a particular purpose; (b) Rental Company shall not be held responsible with respect to production downtime, loss of profits, extra expense, indirect damages, production delays; and (c) except as set forth in Rental Company's representations and warranties above, Customer is responsible for all costs associated with any repair or replacement (without deduction for depreciation), hidden or latent defects excepted, of the Equipment necessitated as a result of Customer's usage, possession, transportation or failure to return the Equipment for any reason, including, without limitation, as a result of the negligence or willful misconduct of Customer, its employees, agents, or contractors. Customer represents warrants and agrees that Customer has complied and will continue to comply with all manufacturer's specifications as to the safe use of the Equipment.
2. **Testing:** Customer acknowledges that its representative has inspected and tested all Equipment at the time of rental and that all Equipment is in good and working order and acceptable to Customer.
3. **Non-Working Equipment:** Customer shall notify Rental Company immediately of any malfunction and/or alleged damage of any Equipment. In the event Equipment is not functioning and/or damaged other than as a result of Customer's negligence or willful acts, Customer shall have the option of accepting other like Equipment in exchange for such non working Equipment or returning all Equipment and canceling this agreement should Rental Company not be able to provide substitute Equipment in a timely fashion. The rental charges for all such non-working Equipment so returned to Rental Company shall be abated from the time of acceptance and return to Rental Company. Likewise, rental charges shall accrue and be owed for any replacement Equipment.
4. **Technician/Operation:** Customer shall only allow the Equipment to be used by qualified technicians and/or, if licensing is required by law for the use of any Equipment, duly licensed personnel, and only in strict accordance with the instructions of the Equipment manufacturer. Such qualified or licensed technicians and personnel should know all the proper protocols to safeguard the public, data and Equipment, and should be competent with regard to the normal operation of the Equipment. Customer shall keep the Equipment in their sole custody and shall not permit the Equipment to be used in violation of law. Customer shall process and or view their footage and back-up their content or data in a timely manner.
5. **Risk of Loss:** Customer assumes all risk of loss whether or not covered by Customer's insurance coverage, except to the extent of any loss arising from the negligence or willful misconduct of Rental Company, its employees, agents, or contractors. Customer is deemed to have taken possession of the Equipment the moment Equipment is in Customer's custody and control. In addition, if Rental Company ships the Equipment at Customer's request, except to the extent of any loss arising from the negligence or willful misconduct of Rental Company, its employees, agents, or contractors. Customer shall be responsible for both the risk of loss in transit and the transportation costs. Customer's responsibility

shall include, but not be limited to, risks while in transit by any means (other than transit supplied by Rental Company), at all locations named and unnamed, at all studios, while on Customer's premises, and while in Customer's use. Customer is responsible for picking up and returning the Equipment to/from the rental facility during normal business hours. If Rental Company delivers and/or picks up the Equipment, Rental Company will be responsible for the risk of loss in transit while the Equipment is in the custody of Rental Company and Customer will be responsible for transportation costs.

6. **Storage:** Customer bears the risk of loss for all property not provided by Rental Company (including but not limited to camera(s), props, sets, and wardrobe) stored and/or transported by Rental Company for Customer's ultimate use, except for loss or damages caused by the negligence or willful misconduct of company.
7. **Insurance:** Customer shall at its expense, and at all times during the rental, maintain in full force and effect a limit of insurance covering all Equipment and/or Vehicles rented hereunder, from all sources, as herein provided. All Equipment shall be insured for the full replacement cost without deduction for depreciation. All Vehicles shall be insured at actual cash value. In addition, all Equipment and Vehicles shall be insured for actual verifiable loss of use of the Equipment or Vehicles (i.e. rental charges based on the greater of either the actual verifiable loss of business or the average rental history of the Equipment or Vehicles, as computed for the period of time the Equipment or Vehicle(s) is being repaired and/ or replaced not to exceed 90 days). Customer shall deliver to Rental Company evidence of Customer's insurance coverage prior to Customer taking either constructive or actual possession of the Equipment and/or Vehicle(s). Customer will forward a Certificate of Insurance evidencing Customer's liability, automobile, property and worker's compensation insurance with a reputable insurance carrier acceptable to Rental Company that complies with coverage requirements as enumerated within this rental agreement. Customer shall be liable for the (a) full replacement cost of Equipment without deduction for depreciation, (b) actual cash value for Vehicles, and (c) loss of use of the Equipment and Vehicles (i.e. rental charges based on the greater of either the actual verifiable loss of business or the average rental history of the Equipment or Vehicles, as computed for the period of time the Equipment or Vehicle(s) is being repaired and/ or replaced not to exceed 90 days), arising or resulting from any failure by Customer to maintain the policies and limits of insurance set forth above and for any and all claims, losses, liabilities, damages and expenses (including, without limitation, reasonable outside attorneys' fees and court costs) which, for any reason (other than a final, nonappealable judicial determination that same arose or resulted from the negligence or willful misconduct of Rental Company) shall not be covered or paid by Customer's insurance, including, without limitation, deductibles and any of same exceeding the coverage and limits of insurance set forth above.
  - a. **Property Insurance:** Customer's insurance shall be on a worldwide, replacement cost basis without deduction for depreciation, shall name Rental Company as Loss Payee for loss or damage to the property rented; shall cover "All Risk" of loss or damage to Equipment; shall include the perils "Comprehensive" and "Collision" for Vehicle physical damage coverage; and shall provide notice will be delivered in accordance with the policy provisions should the policy be canceled before the expiration date thereof. In determining whether the Equipment (not including Vehicles) shall be repaired or replaced, the manufacturer's judgment shall be conclusive upon both parties. Limits shall be sufficient to encompass all property at risk, regardless of source. Rental Company will not accept insurance covering the Equipment that contains a theft exclusion from unattended vehicle(s).
  - b. **Liability Insurance:** Customer shall name Rental Company as an additional insured on their liability insurance. Customer's liability insurance shall meet the following minimum limits: Commercial General Liability \$1,000,000 per occurrence and annual aggregate; Automobile Liability (including non-owned and hired automobiles) \$1,000,000 combined single limit; Umbrella Liability in the amount \$2,000,000 per occurrence and annual aggregate; Foreign Liability, if filming outside of the United States and Canada, \$1,000,000 per occurrence; Aircraft Liability, if filming from any aircraft, \$5,000,000; Watercraft Liability, if filming from any watercraft, \$5,000,000 (Note rented Vehicle(s) will only be driven by licensed driver(s) employed by Customer). IF VEHICLE IS PROVIDED WITH A DRIVER EMPLOYED BY THE RENTAL COMPANY THE RENTAL COMPANY WILL PROVIDE THE PRIMARY AUTOMOBILE LIABILITY INSURANCE ON THE VEHICLE AND PROOF OF WORKER'S COMPENSATION INSURANCE.
  - c. **Rental Company Insurance:** Rental Company will maintain their own insurance program consisting of not less than: Commercial General Liability \$1,000,000 per occurrence and annual aggregate; Automobile Liability (including owned, non-owned and hired vehicles) \$1,000,000 combined single limit; Umbrella Liability in the amount \$2,000,000 per occurrence and annual aggregate, Miscellaneous Equipment and Worker's Compensation and Employer's Liability in an amount not less than \$1,000,000 Covering Claims arising out of the operations of Rental Company. Rental Company will provide Customer evidence of the Coverage enumerated herein upon their request with an insurance carrier acceptable to the Customer.
  - d. **Primary Coverage:** Customer's property, automobile and liability coverage is the primary coverage for Equipment and/or Vehicle(s) and said coverage must be issued on a non-contributory basis. Furthermore, Customer's insurance carrier shall agree that the rights of Rental Company under Customer's insurance policy

shall not be affected by any unintentional act, neglect or breach of condition by Customer, other than non-payment of premium, subject to policy terms and conditions. Customer shall remain primarily liable to Rental Company for full performance under the terms and conditions of this rental agreement in the event of a dispute with their insurance carrier and for uninsured losses. Lapse or cancellation of Customer's insurance, as required by this agreement, shall allow Rental Company to immediately and automatically terminate this agreement, at its option unless Customer provides Rental Company with written confirmation that such insurance is in full force and effect.

8. Missing and Damage: Rental Company shall provide Customer (with a copy to the accounting department of Customer and another department or person if otherwise designated) with a list of missing and damaged Equipment, if any, within three business days after the Equipment has been returned to Rental Company. Rental Company upon receipt of the compilation of the repair or replacement cost estimates will forward these estimates to Customer. Customer shall have the option of making arrangements with Rental Company to have their crew member(s) verify the Equipment physically returned to Rental Company at a time that is mutually agreeable within the first day of return.
9. Clearing of Data: Customer is responsible for clearing any and all images (in any form) prior to the return of the Equipment to Rental Company, and Customer authorizes Rental Company to clear the Equipment of any and all images, content or data immediately upon return of the Equipment to Rental Company. It shall be the sole responsibility and obligation of Customer to arrange for the safeguarding and storage of Customer's images, content or data prior to the return of the Equipment to Rental Company. In no event shall Rental Company exploit any images on any Equipment and Rental Company shall first notify Customer of any images, provide Customer an opportunity to collect, and thereafter destroy such images.
10. Title: Customer specifically acknowledges Rental Company's superior title and ownership of the Equipment and must keep the Equipment free of all liens, levies and encumbrances except those caused by or resulting from Rental Company's acts. Customer may not assign or pledge the Equipment.
11. Default: In the event that Customer (a) fails to make payment when due hereunder, (b) fails to obtain or maintain the insurance required under Section 7 above throughout the rental term, or (c) becomes insolvent, files a petition in bankruptcy, seeks the appointment of a receiver (or has a receiver appointed) for all or a substantial portion of its property, or has an involuntary petition in bankruptcy filed against it, Customer shall be in default hereunder. Upon such default, Rental Company may, in its sole discretion, after reasonable notice and an opportunity to cure, terminate this rental agreement and, and to the extent permitted by law, immediately repossess the Equipment, the receiver, bankruptcy trustee, assignee for the benefit of the creditors, or levying officer. Customer hereby grants to Rental Company the right and permission to peaceably and lawfully enter the Customer's premises where the Equipment is kept following any such default for the purpose of repossessing the Equipment.
12. Indemnity: Customer agrees to indemnify, defend and hold harmless Rental Company and its officers, employees, agents and licensees against any and all claims, actions, damages, liabilities and expenses arising from the use, possession or operation of the Equipment and by whomsoever operated at the direction of the Customer, Customer's breach of any representations or warranties made herein, or from the negligence or willful conduct of Customer, its employees, agents or contractors. This indemnification shall survive the term of the rental agreement. Rental Company agrees to indemnify, defend and hold harmless Customer and its officers, employees, agents and licensees against any and all bodily injury and property damage claims, actions, damages, liabilities and expenses arising from Rental Company's gross negligence or willful misconduct of Rental Company, or that of Rental Company's employees, agents, or contractors, Rental Company not having the right to rent the Equipment or Rental Company's failure to maintain insurance enumerated in 7c above. This indemnification shall survive the term of the rental agreement.
13. Rights: Rental Company shall not make any claims with respect to Customer's intellectual property rights and interests (including copyright) to photographs and recordings made by Customer using Equipment; all of said rights and interests, including, without limitation, of distribution, exploitation and advertising in connection with the production in which said rented equipment is used shall be vested in Customer.
14. Remedies: The rights and remedies of the Rental Company in the event of any breach by the Customer of this Agreement shall be limited to the Rental Company's right to recover actual damages, if any, in an action at law, and replevin and other rights, in equity, to the return of Equipment. In no event shall Rental Company be entitled to enjoin or restrain or otherwise impair in any manner Customer's business activities or any parts or elements thereof, or the use, publication or dissemination of any advertising, publicity or promotion in connection therewith. Except as specifically provided with respect to the return of Equipment, Rental Company irrevocably waives any right to other equitable, or injunctive relief for any claim, loss, or cost of any kind arising through or in connection with this Rental Agreement or the subject matter hereof. In no event will any party hereto be liable for or have any obligation to pay to the other consequential and/or incidental and/or special and/or punitive damages, all of which are expressly excluded, and the parties hereby waive any right to recover any such damages from the other.

15. Governing Law: This rental agreement has been entered into in the State of New York and shall be governed by laws of the State of New York, without reference to any conflicts of law principles. Customer and Rental Company agree to the State of New York, having the sole jurisdiction to govern any and all disputes arising between Customer and Rental Company as respects the rental of Equipment. If any portion of this agreement is found to be invalid, unenforceable, waived or otherwise deficient, it shall be severable from the remaining provisions and all other provisions shall remain in full force and effect.
16. Definitions: As used in the Rental Contract and these Terms and Conditions, the following terms have the following meanings: "Customer" shall mean the entities and/or individuals so identified on page 1 of the Rental Contract; "Equipment" shall mean all equipment and/or vehicle(s) so listed in the Rental Contract; "Rental Company" shall mean the entities and/ or individuals so identified on page 1 of the Rental Contract; and, "Vehicle" shall mean those motorized and other means of conveyance so listed in the Rental Contract.
17. Entire Agreement: Customer agrees that they have read and fully understand and accept all provisions of this agreement prior to executing this agreement. The signed Rental Contract together with these Terms and Conditions constitute the entire agreement between Rental Company and Customer. In the event of conflict between any terms or provisions of the Rental Contract and these Terms and Conditions, the terms and provisions of these Terms and Conditions shall govern and control. Any changes must be made in writing and signed by both parties. If Customer is a corporation or other entity, the person executing the Rental Contract represents and warrants that he/she has full power and authority to execute the Rental Contract on behalf of the entity and bind such entity to the agreements, terms and conditions hereof. Customer acknowledges that a photocopy or electronic version of this document shall constitute the same consent as an original.

**The undersigned has read and agrees to all of the terms and conditions above and represents and warrants that they are fully authorized to do so.**

## **TCS**

Representative Name:

Signature:

Date:

## **CUSTOMER**

Company:

Representative Name:

Title:

Signature:

Date: