



Terms of Rental

These Equipment Rental Terms (the “**Terms of Rental**”) govern all transactions between TriMark USA, LLC or its affiliates (each, for purposes hereof, “**TriMark**”) and its customers (“**Customer**”) for equipment rentals, temporary equipment placements, replacement equipment programs, and related rental transactions. Any rental transaction between Customer and any affiliate of TriMark shall be subject to these [Terms of Rental](#) and the applicable quote, rental schedule, proposal, or other transaction document (collectively, the “**Agreement**”), and shall be deemed a separate agreement between Customer and the applicable TriMark entity providing the Equipment. Customer shall look solely to that entity for fulfillment of obligations and any claims arising therefrom. Any Customer-provided terms are rejected unless expressly agreed to in writing by an authorized representative of TriMark. The parties agree that no course of dealing, course of performance, or usage of trade shall be used to interpret, supplement, or modify the Agreement.

- 1. Rental of Equipment.** TriMark hereby grants and Customer hereby accepts rental from TriMark of the equipment listed in the applicable quote, including any replacement parts, additions, change-outs, upgrades, repairs, and accessories incorporated therein or affixed thereto (collectively, the “**Equipment**”). TriMark may substitute new or refurbished equipment that is functionally equivalent and of equal or greater utility, capacity, or performance. Equipment may consist of new, used, or refurbished units. Serial numbers may be assigned after shipment/installation. The Equipment Use Location identified in the quote constitutes the approved installation location under the [Terms of Rental](#). In the event of a conflict between the quote and these [Terms of Rental](#), the quote shall govern solely with respect to commercial terms expressly stated therein, and these [Terms of Rental](#) shall govern all other matters.
- 2. Inspection of Equipment.** Customer shall inspect the Equipment and notify TriMark of any defects within forty-eight (48) hours of receipt. If Customer fails to provide timely notice, Customer shall be conclusively presumed to have accepted the Equipment in its then-present condition.
- 3. Term.** The Agreement shall commence upon the effective date identified in the quote and continue through the Initial Term and any renewal terms unless earlier terminated. The rental term shall begin upon delivery or installation of the Equipment (“**Rental Start Date**”) and continue for the period identified in the quote (“**Initial Term**”). The Agreement and rental shall automatically renew for successive one (1) year periods unless either party provides at least thirty (30) days’ prior written notice of nonrenewal. TriMark may revise pricing for any renewal term upon at least thirty (30) days’ prior written notice before expiration of the Initial Term or then-current renewal term. If Customer rejects such pricing increase, Customer must provide written notice prior to the renewal date, in which case the Agreement shall terminate upon expiration of the then-current term. If no written rejection is received, the revised pricing shall be deemed accepted. TriMark may terminate this Agreement for any or no reason upon thirty (30) days’ notice, or immediately for nonpayment or default. Obligations intended to survive termination shall survive.
- 4. Rental Payments.** Upon signing, Customer shall pay all required first payments, deposits, filing fees, and other upfront charges identified in the quote. During the Term, Customer shall pay all rental payments, taxes, service charges, trip charges, reconnection fees, late fees, delivery charges, removal charges, and other amounts invoiced by TriMark. TriMark may impose a surcharge on credit card payments not greater than TriMark’s cost of acceptance. Returned checks shall incur a \$30.00 administrative fee.
- 5. Interest & Late Payment Penalties.** If any rental payment or other amount due under this Agreement is not received within ten (10) days after the applicable due date, Customer shall pay interest at the rate of one and one-half percent (1.5%) per month or the maximum rate permitted by law until paid in full. Customer shall bear all collection costs, including reasonable attorneys’ fees. TriMark may suspend or terminate the rental and repossess the Equipment in the event of nonpayment. If suspended or terminated, TriMark may charge a reconnection fee of \$150.00 and require reimbursement of reconnection expenses. If terminated due to nonpayment, Customer shall be liable for liquidated damages equal to all remaining rental payments due for the applicable Term, discounted to present value, and less amounts recovered by TriMark through re-rental of the Equipment. The parties acknowledge that actual damages would be difficult to determine and that such liquidated damages represent a reasonable estimate of anticipated damages and are not a penalty.
- 6. Taxes; Liens.** Customer shall prepare and file all required forms and pay all license fees, registration fees, assessments, utility charges, inspection fees, personal property taxes, municipal taxes, state taxes, federal taxes, and other governmental charges associated with leasing, possessing, operating, or use of the Equipment, excluding taxes based solely on TriMark’s income. Customer shall keep the Equipment free and clear of all levies, liens, and encumbrances and shall indemnify TriMark from any liability arising from failure to comply with this Section.
- 7. Use, Maintenance & Repair.** Customer shall operate and use the Equipment carefully and properly in accordance with all operating manuals and in compliance with all applicable federal, state, and local laws, regulations, and manufacturer requirements. The Equipment shall be used solely for Customer’s business operations by Customer and its employees and only at the approved installation location unless otherwise authorized in writing by TriMark. TriMark shall not be liable for losses arising from Equipment inoperability or underperformance. During the Term, TriMark shall maintain and repair the Equipment in good mechanical condition and operating order. If

TriMark is unable to repair or replace Equipment within twenty-four (24) hours after inspection and confirmation of a reported issue, TriMark may, in its discretion, provide a rent abatement equal to 1/30th of the monthly rental payment for each full day the affected Equipment remains unrepaired. Such rent abatement shall constitute Customer's sole and exclusive remedy arising from the affected Equipment's unavailability, inoperability, or underperformance. TriMark shall be responsible for obtaining replacement mechanical parts and repair materials necessary to satisfy TriMark's maintenance obligations under this Agreement.

- 8. Dish Machine Chemicals.** To the extent dish machine(s) are included within the Equipment, Customer agrees to purchase all dishwashing chemicals, glass cleaners, floor cleaners, degreasers, and related cleaning products exclusively from TriMark during the Term and any renewals thereof. Chemicals and related products are not included in the monthly rental payments and will be billed separately as incurred by Customer. Violation of this Section constitutes a default.
- 9. Return of Equipment.** Upon expiration or termination of this Agreement, Customer shall make the Equipment available and provide full access to it at Customer's expense and responsibility. The Equipment shall be returned in substantially the same condition as delivered, ordinary wear and tear excepted, free of grease, chemicals, food product, and debris.
- 10. Ownership & Inspection.** The Equipment is and shall always remain the sole and exclusive property of TriMark. Customer shall have no ownership interest in the Equipment. The Equipment shall remain personal property even if installed in or attached to real property. Customer shall not remove, obscure, or alter any labels or markings identifying TriMark's ownership interest and shall affix additional ownership labels upon request. TriMark may enter the premises upon reasonable notice and during normal business hours to inspect the Equipment or observe its use.
- 11. Risk of Loss.** Customer assumes all risk of loss or damage to the Equipment from any cause whatsoever, except to the extent caused by TriMark's gross negligence or willful misconduct. In the event of loss or damage, Customer shall immediately notify TriMark and either repair the Equipment to TriMark's satisfaction or reimburse TriMark for the Equipment's replacement value. No loss or damage shall impair Customer's obligations under this Agreement.
- 12. Insurance.** Customer shall maintain insurance covering the full replacement cost of the Equipment through insurers rated A-VII or higher by A.M. Best and shall provide evidence of such coverage upon request. Policies shall provide at least thirty (30) days' notice prior to cancellation or material change. TriMark shall be named as additional insured and loss payee on a primary and non-contributory basis with waiver of subrogation in favor of TriMark. If Customer fails to maintain required coverage, TriMark may procure such coverage and invoice Customer for the cost plus a \$50.00 handling fee.
- 13. Limited Warranty.** To the extent permitted, Customer shall receive the benefit of applicable manufacturer warranties. EXCEPT AS EXPRESSLY PROVIDED IN WRITING, THE EQUIPMENT IS PROVIDED "AS IS" WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR PERFORMANCE.
- 14. Limitation of Liability.** TRIMARK SHALL NOT BE LIABLE FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, LOST PROFITS, FOOD SPOILAGE, PRODUCT LOSS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING FROM THE EQUIPMENT OR THIS AGREEMENT. TRIMARK'S AGGREGATE LIABILITY SHALL NOT EXCEED THE RENTAL PAYMENTS PAID DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM. Customer acknowledges that the rental pricing reflects this allocation of risk.
- 15. Default.** Customer shall be in default if: (a) Customer fails to satisfy payment obligations and such failure continues for ten (10) days after notice; (b) Customer ceases business operations; (c) insolvency or bankruptcy proceedings are commenced by or against Customer; (d) Customer attempts to transfer, encumber, relocate, or sublease the Equipment without consent; or (e) Customer otherwise breaches this Agreement.
- 16. Remedies.** Upon Default, TriMark may: (a) terminate the Agreement; (b) accelerate all rental amounts; (c) require return of the Equipment; (d) enter the premises and repossess the Equipment with or without notice or judicial process to the fullest extent permitted by law; and (e) pursue all remedies available at law or equity. Remedies are cumulative.
- 17. Indemnification.** Customer shall indemnify, defend, and hold harmless TriMark and its affiliates, officers, directors, employees, and agents from and against all claims, damages, liabilities, losses, costs, and expenses (including reasonable Attorney's fees) arising from or relating to the possession, operation, maintenance, or use of the Equipment, including personal injury, property damage, breach of this Agreement, negligence, or willful misconduct of Customer or its personnel.
- 18. Offset.** Customer waives all rights to offset or deduct from rent or other amounts due under this Agreement and agrees to make payment regardless of any dispute or claim.
- 19. Force Majeure.** TriMark shall not be liable for any delay or failure in performance resulting from events beyond its reasonable control, including acts of God, governmental actions, labor disputes, supply chain disruptions, material shortages, transportation delays, utility interruptions, or manufacturer delays. TriMark shall be entitled to a reasonable adjustment in schedules, delivery dates, service obligations, and pricing resulting from such events.
- 20. Arbitration & Governing Law.** Any controversy or claim arising out of or relating to this Agreement shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. Claims shall be heard by a

single arbitrator. TriMark may elect AAA Commercial Expedited Procedures. The place of arbitration shall be Boston, Massachusetts. The Agreement and arbitration shall be governed by the laws of the State of Delaware. The arbitrator shall award attorneys' fees and costs to the prevailing party. The parties agree to arbitrate solely on an individual basis and waive the right to bring class or representative proceedings. Either party may seek interim injunctive relief from a court of competent jurisdiction.

- 21. Miscellaneous.** This Agreement constitutes the complete agreement between the parties and supersedes all prior communications relating to the Equipment. No modification, amendment, or waiver of this Agreement shall be effective unless in writing and signed by an authorized representative of TriMark. No failure or delay in exercising any right or remedy shall constitute a waiver thereof. Customer may not assign this Agreement without TriMark's prior written consent. TriMark may assign this Agreement without Customer consent. Notices shall be in writing. TriMark may update these Terms of Rental from time to time, and such updates shall apply to quotes, rental schedules, and Agreements issued thereafter. If any provision is deemed unenforceable, the remaining provisions shall remain effective. The parties are independent contractors. Electronic signatures and approvals shall be binding and enforceable. Sections 4-21 and any obligations which by their nature survive termination shall survive. Failure of TriMark to enforce any provision of this Agreement shall not constitute a waiver of such provision or any other right.
- 22. Texas Rentals.** For Equipment located in Texas, the rental transaction may be regulated by the Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, 1-800-803-9202, www.tdlr.texas.gov.