



theflug.com 236 w 30th st new york ny 10001 212-244-8300

## RENTAL AGREEMENT

**DESCRIPTION OF PROPERTY:** The property ("Property") subject to this Agreement shall be the specific items of equipment listed on the Rental Agreement prepared by Scheimpflug at the time of delivery of such equipment to or on behalf of the customer, whose name appears above ("Customer"). Such Rental Agreement, which specifies the rental rate, shall be deemed as part of this Agreement, as if fully incorporated herein. Upon pickup of the Property by Customer at Scheimpflug's place of business, or upon receipt by Customer after a shipment, it is Customer's responsibility to determine that the order is complete and to immediately notify Scheimpflug prior to taking delivery, of any discrepancies.

**TERM OF RENTAL:** Unless otherwise specified in the Rental Agreement, all Property shall be rented on a day-to-day basis and all rental rates shall apply to each full day or any fraction thereof which has elapsed between the time the Property is delivered to Customer and the time it is returned to Scheimpflug. The manner by which "delivery" and "return" are to be accomplished are described herein below. Pickup by the Customer from Scheimpflug or shipment by Scheimpflug of the Property after 4:00 PM shall not be deemed a rental day. Return of the property to Scheimpflug after 10:00 AM will be deemed an additional rental day. Where the Property has not been returned to Scheimpflug by the date specified in the Rental Agreement, rent shall continue to accrue on the Property on a day-to-day basis at the rate contained on the applicable invoice, until such time as the property has been returned to Scheimpflug in the manner provided for below. Regardless of the period of rental specified in the Rental Agreement, Scheimpflug, by notice to the customer, may cancel an order at any time during the term of rental if Scheimpflug deems that the customer is misusing equipment, the terms of this Agreement are not being met, or customer has breached this Agreement in any other manner.

**DELIVERY:** CUSTOMER, BY SIGNING THIS AGREEMENT ACKNOWLEDGES THAT THE PROPERTY WILL BE DEEMED "DELIVERED" TO IT FOR ALL PURPOSES WHEN IT LEAVES SCHEIMPFLUG PLACE OF BUSINESS IN THE POSSESSION OF THE CUSTOMER, ANY AGENT OF THE CUSTOMER OR ANY THIRD PARTY CARRIER. CUSTOMER BEARS FULL RESPONSIBILITY FOR ALL TRANSPORTATION ARRANGEMENTS FOR THE PROPERTY (INCLUDING SELECTION OF A THIRD PARTY CARRIER IF REQUIRED), UNLESS OTHER ARRANGEMENTS ARE MADE IN A WRITING SIGNED BY AN AUTHORIZED REPRESENTATIVE OF SCHEIMPFLUG. Should the Customer fail to specify in writing the exact manner by which transportation and delivery shall be accomplished, customer shall be deemed to have authorized Scheimpflug to employ methods of delivery that Scheimpflug, in its sole discretion, deems to be appropriate for the particular circumstances under which the transportation and/or delivery will occur, including the use of any third party carriers, drayage houses, and/or storage facilities, with the customer bearing the entire risk of loss and/or damage to any Property once it has left Scheimpflug's place of business. In the event Scheimpflug agrees in writing to deliver the Property to a location away from Scheimpflug's place of business, the Customer shall provide Scheimpflug with detailed written instructions for the manner and location of such delivery. If the Customer fails to provide such instructions, or if such instructions fail to address specific aspects of the delivery process, Customer shall be deemed to have authorized Scheimpflug to accomplish delivery in any manner that Scheimpflug, in its sole discretion, deems to be appropriate for the particular circumstances under which the delivery will occur, including delivery to a drayage house or storage facility, with the Customer bearing the entire risk of loss and/or damage to the Property once it is no longer in the physical custody of authorized Scheimpflug's employees.

**RETURN:** THE PROPERTY SHALL BE DEEMED "RETURNED" TO SCHEIMPFLUG WHEN IT HAS BEEN DELIVERED TO SCHEIMPFLUG'S OPERATIONS DEPARTMENT. THE CUSTOMER SHALL CONTINUE TO BEAR ANY AND ALL RISK OF LOSS AND/OR DAMAGE TO THE PROPERTY UNTIL RETURN HAS BEEN ACCOMPLISHED IN THIS MANNER. Equipment that has been damaged or destroyed while in the possession of the Customer, an agent of the Customer or any third party carrier shall not be deemed to have been "returned" to Scheimpflug until such time as it has been repaired (as provided below) and Customer has released in writing by an authorized representative of Scheimpflug from liability for any further rent, or Scheimpflug has received full replacement value from the Customer or the Customer's insurer, including payment of any unpaid and/or continuing rental charges. Likewise, equipment that has been lost, stolen or seized by a governmental agency while in the possession of the Customer, an agent of the Customer (including, but not limited to, drayage houses, storage facilities and/or Hotel concierge desks) or any third party carrier shall not be deemed to have been "returned" to Scheimpflug until Scheimpflug has received full replacement value from the Customer or the Customer's insurer, including payment of any continuing rental charges, or the equipment has been released by the governmental agency or third party and is in the physical condition of Scheimpflug, in an undamaged condition. Under no circumstances shall Scheimpflug be deemed to have accepted return delivery of or otherwise "signed off" on particular items of equipment until such time as each item has been unpacked from its shipping container, examined by Scheimpflug's employees and individually bar code scanned into Scheimpflug's computerized inventory system as returned and undamaged.

**RATES AND CHARGES:** The rent payable for any item of Property shall be that set forth in the Rental Agreement. This rate is offered to Customer based upon Customer's credit information available to Scheimpflug at the time of rental. This completed Rental Agreement must be signed and returned to Scheimpflug at least three (3) days prior to the first rental. If this information is incorrect or changes during the course of a rental, Scheimpflug may revise the applicable rate without notice. Rent is payable according to the terms contained on Scheimpflug's Rental Agreement and/or Invoice to the Customer. If not paid when due, rent shall bear interest at the rate of one and one-half percent (1 1/2 %) per month from the date rental charges were incurred. Any discounts granted by Scheimpflug may be revoked at any time after thirty (30) days. Scheimpflug's published rates are subject to change at any time without notice. All rates are FOB Scheimpflug, and Customer is responsible for all shipping and delivery charges. Scheimpflug may assess an additional charge in accordance with its then current rate schedule for pickup and delivery, early pickup services during non-business hours, and technical support for the operation of equipment. Cancelled orders will be subject to Scheimpflug's then current cancellation charge. No allowance will be made for items delivered to but not used by the Customer. The Customer shall pay all taxes, transportation charges, duties, broker's fees, bonds or other costs imposed on the rental of the property by the Customer.

**LIMITED WARRANTY:** Scheimpflug warrants that, when delivered to the Customer, all Property will be operational to accepted manufacturer specifications. IN THE EVENT OF A MALFUNCTION, CUSTOMER MUST NOTIFY SCHEIMPFLUG IMMEDIATELY AND SCHEIMPFLUG WILL HAVE NO RESPONSIBILITY FOR ANY MALFUNCTION REPORTED AFTER TERMINATION OF THE RENTAL FOR SUCH PROPERTY. CUSTOMER SHALL NOT ATTEMPT TO SERVICE OR REPAIR ANY OF THE PROPERTY AND ANY ATTEMPT BY THE CUSTOMER TO SERVICE OR REPAIR THE PROPERTY, WILL VOID THE LIMITED WARRANTY PROVIDED HEREIN. THE LIMITED WARRANTY PROVIDED HEREIN SHALL NOT APPLY TO ANY MALFUNCTION RESULTING FROM MISHANDLING OR IMPROPER OPERATION OF THE PROPERTY AFTER DELIVERY TO THE CUSTOMER. SCHEIMPFLUG SHALL HAVE NO LIABILITY ARISING OUT OF THE CUSTOMER'S INABILITY TO OPERATE THE PROPERTY IN ACCORDANCE WITH MANUFACTURER'S INSTRUCTIONS AND CONTEMPLATED USE, EXCEPT AS SET FORTH HEREIN, SCHEIMPFLUG MAKES NO WARRANTY WITH RESPECT TO THE PROPERTY AND EXPRESSLY DISCLAIMS ANY WARRANTY, IMPLIED OR OTHERWISE, THAT THE PROPERTY IS SUITABLE FOR THE CUSTOMER'S INTENDED USE. SCHEIMPFLUG SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES AND ITS LIABILITY FOR ANY BREACH OF THE WARRANTY GRANTED HEREUNDER SHALL BE, IN SCHEIMPFLUG'S DISCRETION, REPLACEMENT OR REPAIR OF ANY DEFECTIVE PROPERTY OR A REFUND OF ANY RENT PAID BY THE CUSTOMER IN CONNECTION WITH SUCH PROPERTY.

**DAMAGE AND INSURANCE:** THE CUSTOMER ACKNOWLEDGES THAT WHEN THE PROPERTY IS DELIVERED TO THE CUSTOMER, THE CUSTOMER WILL HAVE EXAMINED THE PROPERTY AND FOUND IT TO BE IN GOOD WORKING ORDER. THE CUSTOMER SHALL HAVE FULL RESPONSIBILITY AND LIABILITY TO SCHEIMPFLUG FOR THE ACTUAL COST TO REPAIR OR REPLACE ANY PROPERTY WHICH DURING THE PERIOD BETWEEN DELIVERY TO THE CUSTOMER AND SCHEIMPFLUG HAS BEEN LOST, STOLEN, OR DAMAGED FROM ANY CAUSE WHATSOEVER (OTHER THAN FROM A MALFUNCTION TO WHICH SCHEIMPFLUG'S LIMITED WARRANTY APPLIES OR ORDINARY WEAR AND TEAR). THE CUSTOMER ASSUMES ANY AND ALL RISK OF LOSS ONCE THE PROPERTY LEAVES SCHEIMPFLUG'S PLACE OF BUSINESS UNTIL SUCH TIME AS

THE PROPERTY IS RETURNED TO SCHEIMPFLUG IN THE MANNER PROVIDED HEREIN, EXCEPT AT SUCH TIMES AS THE EQUIPMENT IS IN THE EXCLUSIVE CONTROL OF AUTHORIZED SCHEIMPFLUG EMPLOYEES. THE CUSTOMER SHALL ALSO BE LIABLE TO SCHEIMPFLUG FOR ANY CONTINUED RENTAL CHARGES DURING A REASONABLE TIME REQUIRED TO REPAIR OR REPLACE DAMAGED EQUIPMENT, TO THE EXTENT THE CUSTOMER IS RESPONSIBLE UNDER THIS AGREEMENT FOR SUCH DAMAGE OR LOSS, THE CUSTOMER SHALL BE LIABLE TO SCHEIMPFLUG FOR THE FULL REPLACEMENT COST OF ALL PROPERTY WHICH MUST BE REPLACED AS A RESULT OF DAMAGE, LOSS OR THE CUSTOMER'S FAILURE TO RETURN THE PROPERTY TO SCHEIMPFLUG. THE LIABILITY OF CUSTOMER HEREUNDER IS PRIMARY AND SHALL ONLY BE REDUCED IN THE EVENT THAT SCHEIMPFLUG ACTUALLY RECEIVES ANY APPLICABLE INSURANCE PROCEEDS. Acceptance by Scheimpflug of the return of any Property shall not be deemed a waiver by Scheimpflug of any claims which Scheimpflug may have against the Customer under this paragraph, even though any damage for which the Customer is liable hereunder is discovered later. Prior to taking delivery of the Property, the Customer shall provide to Scheimpflug a Certificate of Insurance acceptable to Scheimpflug, with Scheimpflug named as the loss payee, in a form and amount satisfactory to Scheimpflug, evidencing Customer's insurance covering all risk of loss to the Property at replacement cost value plus any continuing rental charges at the same rate set forth on the Rental Agreement (such payments to continue until the date of receipt of the replacement cost by Scheimpflug), including coverage of the Property while in transit. THE CUSTOMER'S INSURANCE MUST INCLUDE RENTED OR LEASED EQUIPMENT COVERAGE AND MUST PROVIDE COVERAGE DURING THE ENTIRE TIME OF RENTAL OR LEASE, INCLUDING TRANSPORTATION OF THE EQUIPMENT TO AND FROM SCHEIMPFLUG'S PLACE OF BUSINESS, EVEN IF SUCH TRANSPORTATION IS ACCOMPLISHED BY A THIRD PARTY CARRIER.

USE OF PROPERTY: The Customer shall at all times retain the Property in his own custody.. The Customer shall operate the Property in accordance with the manufacturer's instructions and contemplated use and shall not use the Property in any manner which will subject it to abnormal or hazardous conditions, including, but not limited to: not using the Property in accordance with manufacturer's instructions and contemplated use, negligence (defined as, but not limited to, failure to provide prudent security measures to prevent theft or carelessness in maintaining the equipment properly); or misuse (defined as, but not limited to, improper use of the equipment causing damage due to the utilization of the equipment in a manner for which it is not designed). The Customer shall not make any alterations or improvements to the Property without the prior written consent of Scheimpflug and shall not deface, remove, or cover any nameplate on the Property showing Scheimpflug ownership. All Property shall be operated in accordance with applicable Federal, State or local law.

INDEMNIFICATION: THE CUSTOMER HEREBY AGREES TO INDEMNIFY AND HOLD SCHEIMPFLUG HARMLESS FROM AND AGAINST ANY AND ALL LOSSES AND/OR CLAIMS, INCLUDING ATTORNEYS' FEES, ARISING OUT OF CUSTOMER'S POSSESSION, USE OR OPERATION OF THE PROPERTY DURING THE TIME BETWEEN DELIVERY OF THE PROPERTY TO THE CUSTOMER AND ITS RETURN TO SCHEIMPFLUG.

TITLE MATTERS: This Agreement constitutes a lease and not a sale of the Property or the creation of a security interest therein. No part of the rental payments made under this Agreement shall be deemed payment towards the purchase of any of the Property. Title to the Property shall remain at all times in Scheimpflug. The Customer hereby acknowledges Scheimpflug's ownership and title in the Property and agrees to keep the Property free of all liens, levies, and encumbrances. This Agreement constitutes a lease to the Customer exclusively and the Customer shall not assign any rights under this Agreement (or sublease the Property to any other person or entity). Scheimpflug shall have the right to assign its rights and obligations under this Agreement without the consent of the Customer. In the event of any such assignment, the Customer waives the right to assert any claim by the Customer against Scheimpflug as a defense against any such assignee.

RIGHT OF ENTRY AND INSPECTION: Scheimpflug shall have the right to inspect the Property at any time during the rental term. Customer shall make any and all arrangements necessary to permit a qualified representative of Scheimpflug's access to the location of the Property. If a breach of any of the provisions of the Rental Agreement occurs, Scheimpflug has the right to remove all of the Property without liability to Customer, and without prejudice to Scheimpflug's right to receive rent due or accrued, up to and including the date of removal of the Property.

GOVERNING LAW: This Rental Agreement shall be governed by and construed in accordance with the laws of the State of New York for all purposes related to this Agreement. The prevailing party in any proceeding shall be entitled to an award of attorneys' fees and litigation costs.

MISCELLANEOUS: This Agreement, the Rental Agreement and any extension of the rental term set forth in the Rental Agreement issued by Scheimpflug from time to time shall constitute the entire Agreement of Scheimpflug and the Customer with respect to the Property. This Agreement may not be modified without a writing signed by both the Customer and an authorized representative of Scheimpflug. All obligations of the Customer hereunder shall survive expiration of the rental term set forth on any Equipment Delivery Receipt or any extension of the rental term set forth in the Sales Order. Any notice required or permitted to be sent under this Agreement shall be deemed sent (1) when delivered to the business office of the addressee by messenger or express mail delivery or (II) three (3) days after deposit in the US Mail with first class postage prepaid to the address set forth on the most recent Equipment Delivery Receipt. Notwithstanding any prohibition on assignment, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties. The person signing this Agreement on behalf of the Customer warrants that such individual has been duly authorized to execute this Agreement and to bind the Customer to its terms. In the event any provision of this Agreement is held to be unenforceable, such provision shall be severed from this Agreement and the remainder shall be deemed fully enforceable.

The Customer hereby represents to the best of its knowledge, that all information provided is true and correct. By signing this Account Establishment Form and accepting delivery of equipment from Scheimpflug, the Customer agrees to be bound by all of the Rental Terms and Conditions in effect from time to time, as set forth in this document. Further, by signing below, the signatory hereby represents that they are an authorized agent of the Customer or are otherwise authorized to bind the Customer to this Agreement.

**PLEASE FILL IN ALL OF THE FOLLOWING INFORMATION:**

Lessee (PRINT): \_\_\_\_\_ Signature: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Cell: \_\_\_\_\_

Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Driver's License Numer: \_\_\_\_\_ Birth Date: \_\_\_\_\_ DL Exp. Date: \_\_\_\_\_

Credit Card Type: \_\_\_\_\_

CC#: \_\_\_\_\_ Exp. Date: \_\_\_\_\_ CC Security Code: \_\_\_\_\_