

UPS RENTAL AGREEMENT TERMS AND CONDITIONS

1. DEFINITIONS. As used in these Terms and Conditions, "Agreement" shall mean these Terms and Conditions, any price list or schedule, quotation, acknowledgment, scope of work, or invoice and all documents incorporated by specific reference herein or therein, and shall constitute the complete and exclusive statement of the terms governing the transaction. The person or entity renting Equipment or parts from ThermFlo is referred to as "Customer". "Equipment" shall mean any one or more of the items identified as such on the first page of the Agreement, and shall include any accessories, attachments or other similar items delivered to Customer. "ThermFlo" shall mean ThermFlo, Inc., an Illinois corporation with its principal offices at 875 Busch Parkway, Buffalo Grove, IL 60089. Any discrepancies between the terms of the above referenced documents shall be resolved by ThermFlo. ThermFlo's acceptance of Customer's purchase order is expressly conditional on Customer's assent to all of the terms of this Agreement, including terms and conditions that are different from or additional to the terms and conditions of Customer's purchase order. ThermFlo reserves the right in its sole discretion to refuse orders.

2. AUTHORITY TO SIGN. Any individual signing the Agreement represents and warrants that he or she is of Legal age, and has the authority and power to sign the Agreement as or for the Customer.

3. WARRANTIES AND DISCLAIMERS OF WARRANTIES. ThermFlo makes no warranties, express or implied, as to the merchantability of the Equipment or its fitness for any particular purpose. There is no warranty that the Equipment is suited for Customer's intended use, or that it is free from defects. ThermFlo warrants that (i) it will perform its obligations in a good and workmanlike manner, and (ii) all Equipment furnished hereunder shall conform to all requirements and specifications identified in the Agreement or provided to ThermFlo by Customer pursuant to this Agreement, and shall be in full operational condition upon delivery to Customer. ThermFlo agrees to use its reasonable efforts to meet the date specified by Customer and perform in accordance with any schedule specified by Customer. Except as may be specifically set forth in the Agreement, ThermFlo disclaims all other warranties, either express or implied made in connection with the Agreement.

4. INDEMNITY. Customer will take all necessary precautions to protect all persons and property from injury or damage while in possession of the Equipment. Each party (as the "Indemnifying Party") agrees to indemnify and hold harmless the other party from and against any and all liability, claims and damages of any kind (including attorney's fees) for injuries or death to persons and damage to property arising out of this Agreement, to the extent proximately caused by (a) the Indemnifying Party's negligence or fault, or the negligence or fault of its employees, agents, subcontractors or those under its control or (b) a breach of any representation, warranty, or undertaking made by the Indemnifying Party in this Agreement. The foregoing indemnity obligation shall be apportioned based on the relative fault or negligence of all parties contributing thereto, such that the indemnity obligation of the Indemnifying Party shall be limited to its relative degree of allocable fault or negligence. The Indemnifying Party agrees that it will, when requested and given reasonable notice of the pendency of any such suits, claims or demands, assume the defense of the other and its respective successors and assigns against any such suits, claims or demands.

5. LIMITATION OF REMEDY AND LIABILITY. THERMFLO SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND THE REMEDIES OF CUSTOMER SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL THERMFLO'S LIABILITY TO CUSTOMER EXCEED THE PRICE PAID BY CUSTOMER UNDER THIS AGREEMENT. CUSTOMER AGREES THAT THERMFLO'S LIABILITY TO CUSTOMER SHALL NOT EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use, revenue, reputation and data, costs incurred, including without limitation, for capital, fuel, power and loss or damage to property or equipment. It is expressly understood that any technical advice furnished by ThermFlo with respect to the use of the Equipment is given without charge, and ThermFlo assumes no obligation or liability for the advice given, or results obtained, all such advice being given and accepted at Customer's risk.

6. SHIPMENT AND DELIVERY. Unless otherwise specified by ThermFlo, all shipments of Equipment are made on an Ex Works (EXW) ThermFlo's Shipping Point basis, per Incoterms 2010, with ThermFlo responsible to load Equipment on Customer's nominated vehicle and risk of loss shall pass from ThermFlo to Customer upon delivery to and receipt by carrier at ThermFlo's shipping point. Any claims for damages suffered in transit are the responsibility of Customer and shall be submitted by Customer directly to the carrier. Shortages or damages must be identified and signed for at the time of delivery.

7. RECEIPT AND INSPECTION OF EQUIPMENT. Customer agrees to inspect the Equipment upon taking possession thereof, and will notify ThermFlo immediately if the Equipment is not in good working order and repair upon receipt. Customer acknowledges that the Equipment is suitable for Customer's needs, and that Customer is familiar with the proper operation and use of each item of Equipment.

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8. USE OF EQUIPMENT. Customer agrees to use the Equipment in accordance with any instructions provided by ThermFlo. Customer will not use or allow anyone to use the Equipment: (a) for an illegal purpose or in an illegal manner, (b) without a license, if required under any applicable law, or (c) who is not qualified to operate it. Customer agrees, at Customer's sole expense, to comply with all applicable municipal, state, and federal laws, ordinances and regulations (including O.S.H.A.) which may apply to Customer's use of the Equipment. Customer agrees to visually inspect the Equipment daily and to immediately notify ThermFlo Services in the event the Equipment malfunctions while it is in Customer's possession.

9. CUSTOMER'S REPRESENTATION. Customer represents and warrants that it is not renting ThermFlo's Equipment for the purposes of competitive analysis, reverse engineering, design copying or a similar purpose.

10. MALFUNCTIONING EQUIPMENT. Should the Equipment become unsafe, malfunction or require repair, Customer shall immediately cease using such Equipment and immediately notify ThermFlo. If such condition is the result of normal operation, ThermFlo will repair or replace the Equipment with similar Equipment in working order. ThermFlo has no obligation to replace Equipment rendered inoperable by the negligence of Customer. In addition to the rights and remedies available to Customer under this Agreement, or in equity or at law, Customer's remedy for any failure or defect in the Equipment shall be the termination of any rental charges accruing after the time of failure. The Equipment must be returned to any ThermFlo facility or location within three (3) business days from the time of defect in order to terminate rental charges.

11. RETURN OF EQUIPMENT. DAMAGED AND LOST EQUIPMENT. At the expiration of the applicable rental period, Customer will return the Equipment to the designated ThermFlo or Vertiv facility during respective companies' regular business hours, such Equipment to be in the same condition and repair as when delivered to Customer, subject to reasonable wear and tear, as defined below. Customer shall be liable for all damages to or loss of the Equipment resulting from Customer's acts, negligence or willful misconduct, or Customer's inability or failure to return same to ThermFlo for any reason whatsoever. In the event of total loss or destruction of any of the Equipment caused by or arising out of the negligence or willful misconduct of Customer, Customer shall pay ThermFlo the greater of a) the original purchase price of the Equipment, minus depreciation; or b) 65% of the original purchase price, together with the full rental rate in the purchase order for the lost or destroyed Equipment. In the event of partial damage to the Equipment caused by or arising out of the negligence or willful misconduct of Customer, Customer shall pay ThermFlo the reasonable cost of repair together with the full rental rate as specified in the purchase order. Repairs to the Equipment shall be made to the reasonable satisfaction of ThermFlo and in a manner which will not adversely affect the operation, manufacturer's design or value of the Equipment. In the event ThermFlo and Customer agree that Customer will purchase from ThermFlo any damaged, destroyed or lost Equipment, Customer shall (in lieu of payment for repair) i) pay ThermFlo the then full replacement value of the Equipment, ii) accept the Equipment so purchased in an "AS IS" condition; and iii) accept and acknowledge ThermFlo's disclaimer of any warranties, express or implied in connection with the sale.

12. REASONABLE WEAR AND TEAR. Reasonable wear and tear of the Equipment shall mean only the normal deterioration of the Equipment caused by ordinary and reasonable use. Damage from any negligent operation, including overloading or exceeding the rated capacity of the Equipment shall not be considered reasonable wear and tear.

13. RENTAL PERIOD AND CALCULATION OF CHARGES. Rental charges commence when the Equipment leaves the ThermFlo facility and end when the Equipment is returned thereto. Rental charges accrue during Saturdays, Sundays and holidays. Customer's right to possess the Equipment terminates on the expiration of the rental period set forth on the Purchase Order and retention of possession after this time will result in Customer's payment of overtime rates, as specified in Exhibit A. In the event Customer fails to return any Equipment when due, rental charges will continue to accrue until the Equipment is returned to ThermFlo. In addition to the foregoing, for each item of Equipment which is not returned to ThermFlo within (21) days of the due date, Customer will be charged for the then full replacement value of the Equipment.

14. DEPOSIT. In addition to securing the payment of rental charges hereunder, Customer agrees that any rental deposit shall be deemed to be a guaranty by Customer of the full and complete performance of each and all of the terms, covenants, and agreements to be performed by Customer hereunder, and in the event of any breach by Customer thereof said deposit shall be credited against any damages, costs or expenses incurred by ThermFlo as a result of such breach.

15. PAYMENT. All undisputed charges due hereunder shall be payable in full within thirty (30) days of receipt of ThermFlo's invoice. Customer acknowledges that timely payment of all charges is essential to ThermFlo's business operations and it would be impractical and extremely difficult to fix the actual damages caused by late payment. Customer and ThermFlo agree that there shall be added to all past due charges a late payment fee of 1.5% per month (18% per annum), or the maximum amount allowed by applicable law.

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16. FAILURE TO DELIVER. Customer releases and discharges ThermFlo from any and all liability or damages (including consequential and special damages) which might be caused by ThermFlo's failure or inability to deliver any Equipment by any specified date or time.

17. TITLE/NO PURCHASE OPTION/NO LIENS. This agreement is not a contract of sale, and title to the Equipment shall at all times remain with ThermFlo. Unless covered by a specific supplemental agreement signed by ThermFlo, the Customer has no option or right to purchase the Equipment. Customer shall keep the Equipment free and clear of all mechanics and other liens and encumbrances.

18. DEFAULT. Should Customer in any way fail to perform, observe or keep any provision of this Agreement, ThermFlo may at its option do any one or more of the following: (a) terminate this Agreement; (b) declare the entire rent immediately due and payable and commence legal action therefor; (c) retake possession of the Equipment, holding the Customer liable for all rental and other charges; or (d) pursue any other remedies available by law. Should ThermFlo in any way fail to perform, observe, or keep any provision of this Agreement, Customer may pursue any remedy available under contract, equity, or law.

19. REPOSSESSION OF EQUIPMENT. In the event of any actual or anticipatory breach by Customer, ThermFlo's employees or agents may, without notice or legal process, go upon the property where the Equipment is located and take all action reasonably necessary to repossess the Equipment. ThermFlo acknowledges and hereby agrees that Customer has no authority, and consequently grants no license therefor, to authorize or permit ThermFlo's employees or agents access to a third party's property/premises.

20. CUSTOMERS INSURANCE COVERAGE. Customer agrees to maintain and carry, at its sole cost, adequate liability, physical damage, public liability, property damage and casualty insurance or self-insurance extended coverage endorsement to cover any damage or liability arising from the handling, transportation, operation or use of the Equipment while the Equipment is in the care, custody, and control of Customer. Prior to performing the Work under this Agreement, ThermFlo shall furnish to Customer Certificate(s) of Insurance evidencing the following insurance coverage: (a) Workmen's Compensation: Statutory Limits; (b) Employer's Liability: \$1,000,000; (c) General Liability Insurance: Combined Single Limit- \$1,000,000 per occurrence and annual aggregate of \$2,000,000; such insurance shall include, but not be limited to, contractual liability, products and completed operations, and personal injury liability; (d) Automobile Liability: \$1,000,000 per occurrence; such insurance shall cover injury (or death) and property damage arising out of the ownership, maintenance or use of any private passenger or commercial vehicles and of any other equipment required to be licensed for road use.

21. ENTIRE AGREEMENT/ONLY AGREEMENT. This Agreement represents the entire agreement between the Customer and ThermFlo. There are no oral or other representations or agreements not included herein. None of ThermFlo's rights or Customer's rights may be changed and no extension of the terms of this Agreement may be made except in writing, signed by both ThermFlo and Customer. The use of Customer's purchase order number on this Agreement is for Customer's convenience only. This Agreement supersedes any purchase order or other Customer provisions or forms whether sent to or received prior, or subsequent to, this Agreement.

22. NO ASSIGNMENT, LENDING OR SUBLETTING. Customer shall not sublease, subrent, assign or loan the Equipment, and any such action by Customer shall be void. Customer agrees to use and keep the Equipment at the Equipment Delivery Address on the first page of this Agreement unless ThermFlo approves otherwise in writing.

23. ADDITIONAL PROVISIONS. Any failure of ThermFlo to insist upon strict performance by Customer of any terms and conditions of this agreement shall not be construed as waiver of ThermFlo's right to demand strict compliance. Customer has carefully reviewed this Agreement and waives any principle of law which would construe any provision hereof against ThermFlo as the draftsman of this Agreement. Customer agrees to pay all reasonable costs of collection, court, attorneys' fees and other expenses incurred by ThermFlo in the collection of any charges due under this Agreement or in connection with the enforcement of its terms. Customer shall pay the rental charges without any offset or deduction of claims. All questions with respect to the construction of this Agreement and the rights and liabilities of the parties hereto shall be determined in accordance with the laws of the State of Illinois. Customer and ThermFlo agree that the proper venue for all actions arising in connection herewith shall be only in Illinois and the parties agree to submit to such jurisdiction. Trial by jury is waived. Service of process may be effected by certified mail, return receipt requested. ThermFlo shall be entitled to decrees of specific performance (without posting bond or other security) in addition to such other remedies as may be available. ThermFlo hereby accepts exclusive liability for withholding requirements, payroll taxes, Unemployment Taxes, Federal Insurance Contributions Act Taxes and all state taxes relating to unemployment compensation laws as well as all interest and penalties provided for in such laws, or in any similar laws which may hereafter be enacted, with respect to the wages and salaries of ThermFlo employees.