

# Digital Flamingo, Inc

## RENTAL AGREEMENT – TERMS AND CONDITIONS

These terms and conditions from the rental contract (the "Rental Contract") between the Lessee (Customer / Client / Production Company) and the Lessor, Digital Flamingo, Inc and apply to all equipment and / or vehicles ("Equipment") rented by the Lessee. In the event of a conflict between these terms and conditions hereof and the Rental Contract, the terms of the Rental Contract shall prevail. Prior to shipment or delivery of equipment (including, but not limited to lighting equipment, motor vehicles and mobile equipment) as described on the reverse side of this instrument, Lessee acknowledges and agrees to the terms and conditions of the Lessor as set forth below:

**1. PRE-PRODUCTION – TESTING THE EQUIPMENT. TEST THE EQUIPMENT ("EQUIPMENT") INCLUDES ALL TYPES OF RENTAL PRODUCTION EQUIPMENT, DOLLIES, GENERATORS, AND / OR VEHICLES.** LESSEE will always have an opportunity to test and examine the equipment to determine that the Equipment is in good working order. Lessee may test the Equipment at the rental Facility, on location or at another place approved by Lessor. Lessee acknowledges that he has made his own inspection of all equipment, without suggestion or recommendation by Lessor, and Lessee understands and agrees that Lessor makes no guarantees, warranties or representations; expressed, implied, oral, written or otherwise, as to the condition, performance, operation, fitness for any use, use ability, or any other matter. Lessee further acknowledges that Lessor is not liable for any costs occurred due to generator failure. Lessee acknowledges that he has inspected and tested all the equipment listed herein at the time of rental and acknowledges that he has received all equipment in good working condition and accepts the same as is, and without any rental reductions or claims therefore. Lessee agrees that he will re-inspect and re-test all such equipment prior to the commencement of each occasion use thereof.

**2. TRANSPORTING EQUIPMENT – PICK UP & DELIVERY.** LESSEE WILL PICK UP AND RETURN EQUIPMENT AT THE RENTAL FACILITY DURING BUSINESS HOURS. IF LESSEE DOES NOT PICK UP AND / OR RETURN THE EQUIPMENT AT THE RENTAL FACILITY LESSEE IS RESPONSIBLE FOR TRANSPORTATION TO AND / OR FROM ANY LOCATION. At Lessee's request and expense, the Lessor may arrange shipment of the Equipment to your designated location. Lessee is responsible for all costs (transportation charges, taxes, duties, brokers fees, bonds, insurance, fuel, location permits, travel permits and any other costs) incurred during transit. The Lessor is not responsible for shipping delays once equipment is delivered to your carrier (and / or carrier approved by Lessee). The Lessor will not except / collect shipments from Lessee.

**3. FOREIGN USE (OUTSIDE THE U.S. A.)** LESSEE MUST NOTIFY LESSOR OF THE INTENTION TO USE THE EQUIPMENT OUTSIDE THE U.S.A. AND GAIN THE LESSOR'S PERMISSION TO DO SO PRIOR TO RENTAL. TERMS AND CONDITIONS WILL APPLY. All of the terms and conditions set forth on said Rental Agreement apply to Equipment which is rented from Lessor and is transported to a location outside the U.S.A.

**EVENT OF A SHIPMENT OUTSIDE THE U.S.A.** Lessor will only allow shipment through an established Customs Broker, contracted by Lessee. Said U.S. Customs Broker is to register the Equipment with the United States Customs Form 4456, prior to the Equipment leaving the U.S.A. A Certified copy of the registration form must be returned to the rental facility OR said Customs Broker will arrange a Carnet through the United States Council of International Chamber of Commerce, stipulating the Lessee; "Shall (1) Return the said products described in the Carnet to the U.S.A... or (2) Pay such customs duties, excise taxes, and / or charges which may be imposed by any country for its failure to return said products" A certified copy of the Carnet must be returned to the Lessor. LESSOR WILL PROVIDE AN ITEMIZATION OF ALL EQUIPMENT, Listing, brand name, country of origin / manufacturer item: serial numbers, and replacement value. ALL BROKERAGE CHARGES AND SHIPPING CHARGES, fees and taxes are to be borne by Lessee prepaid prior to shipment. RETURNING SHIPMENTS SHOULD BE CONSIGNED TO ORIGINATING CUSTOMS BROKER for Clearance and re-entry into the U.S.A. In no cases is the equipment to be shipped directly back to the Lessor. Returning shipments should contain instructions to the Customs Broker regarding the disposition of the Equipment after clearing the U.S. Customs (i.e., deliver equipment to the Rental Facility at Lessor's U.S. address)

**LESSEE ACKNOWLEDGES THAT RENTAL CHARGES ACCRUE** for time in transit, including but not limited to the time Equipment may be in the hands of the designated Customs Broker, or U.S. Customs Service. Lessee acknowledges and agrees that the payment of U.S. Import Duty Taxes which may be levied for foreign made goods is your responsibility, even though Lessee followed the above procedures.

**CONFIGURATION BY FOREIGN GOVERNMENTS OF EQUIPMENT** is the sole responsibility of the Lessee and all rental terms and conditions expressed herein apply.

**4. LESSEE ' S RESPONSIBILITY WITH REGARD TO THE EQUIPMENT.** Lessee assumes all risks of loss. Once Lessee has taken delivery of Equipment, Lessee's responsibility includes, but is not limited to, risks while in transit, at all locations named and unnamed, at all studios, while on Lessee's own premises, and while in use, or storage on the Lessor's Premises. LESSEE ' S RESPONSIBILITY ENDS WHEN THE EQUIPMENT IS RETURNED AND THE RENTAL TERM HAS EXPIRED. Equipment will not be deemed to have been returned all of the following conditions have been met by Lessee: (1) Property has been brought back to premises during normal business hours; (2) an inventory has been completed and a missing and damaged list has been compiled, if needed; and second, the terms of the Rental Contract has expired. LESSEE IS RESPONSIBLE FOR ALL EQUIPMENT BEING STORED FOR LESSEE BY LESSOR. LESSEE IS RESPONSIBLE FOR all equipment (including but not limited to camera(s), props, sets & wardrobe) which is picked up or stored by the Lessor for Lessee's ultimate use. The Lessor shall be acting as your agent in storing any such property which belongs to third parties. All risks of physical loss to property that is transported or stored by the Lessor for the benefit of the Lessee shall remain the responsibility of Lessee.

**5. RENTAL CHARGES AND LATE CHARGES.** LESSEE MUST RETURN THE EQUIPMENT ON THE DATE SPECIFIED IN THE RENTAL CONTRACT OR BE SUBJECTED TO ADDITIONAL CHARGES.

The last rental day shall be the day specified in the Rental Contract or up until 10:00 AM of the next Business Day. A full additional day's rental will be charged for any Equipment not returned by 10:00 AM Full daily rates shall be charged for each day Equipment is not returned after date specified for the return of the equipment.

IF LESSEE RETURNS EQUIPMENT IN DAMAGED OR NON-WORKING CONDITION, the Lease period will extend by the shortest reasonable time necessary to repair such damage or replace non-repairable equipment and return, the item(s) to the Lessor's general inventory. The extended rental period will be extended rental period shall apply to the damaged or non-working item(s), unless the item(s) forms a waiver by the Lessor of any claims that the Lessor may have against Lessee.

**RENTAL CHARGES FOR THE DAMAGED OR NON-WORKING ITEM(S)** shall occur at full rental rate for the item(s) irrespective of any package discounts or other discounts agreed to at the inception of the rental contract, until the item(s) is repaired and / or replaced and the invoice for damages has been paid in full to the Lessor. If requested Lessee shall advance the money in order to allow Lessor to repair or replace Equipment.

**WEEKENDS AND HOLIDAYS.** When on a daily schedule, Lessee will be charged the daily rate for rental rate for weekend days and Holidays if Equipment is used. **MINIMUM CHARGES.** There may be a minimum rental period and / or special minimums applicable to Equipment to be used other than locally.

**6. EXPENDABLES, FUEL AND MILAGE FEES.** Lessee is responsible for any used or opened expendables during the course of rental period along with any fuel costs for vehicles or generators. Lessee agrees to pay \$0.50 / Mile on any vehicle(s) rented for production.

**7. RESTRICTIONS ON USE OF THE EQUIPMENT – LOCAL USE ONLY, UNLESS OTHERWISE AGREED.** In each contract there is a condition that states in which geographic territory Lessee may use Equipment. Geographic restrictions can be removed from Lessee by mutual agreement between Lessee and Lessor. **USE BY QUALIFIED TECHNICIANS ONLY.** The Equipment may be used only by your duly qualified employees and / or agents and in strict accordance with the use contemplated in the Rental Contract. Lessee shall keep the Equipment in Lessee's sole custody and shall not permit equipment to be used in violation of any laws. **NO SUBLEASE BY YOU IS PERMITTED.** Lessee may not sublease all or any part of the Equipment without written consent of the Lessor. **DO NOT REMOVE SERIAL NUMBERS OR COVER COMPANY LOGOS.** Lessee may not remove or cover any serial numbers, tags, nameplates, or identifying logos on the equipment showing ownership by the Lessor.

**8. NO WARRANTY OR GUARANTY.** Except as provided by the law, Equipment is rented to without warranty or guaranty of any kind, expressed or implied, and the Lessor assumes no responsibility unless agreed to in writing.

**9. EQUIPMENT DAMAGED OR DESTROYED WHILE IN THE FIELD.** AS SOON AS LESSEE DISCOVERS THAT EQUIPMENT IN THE FIELD IS DEFECTIVE, Lessee should notify the Lessor of the problem and if necessary return the Equipment to the Lessor, freight pre-paid for evaluation. The Lessor will make a reasonable effort to repair or replace the Equipment in the shortest amount of time. **LOSS AND DAMAGE.** Upon return of damaged Equipment, the Lessor will make a determination of the extent of the damage and the required repairs. Lessee and / or Lessee's representative(s) will have reasonable amount of time to inspect the damage. In determining whether Equipment shall be replaced or repaired, the Lessor's judgment shall be conclusive upon Lessee. Should the Lessor determine that the equipment must be replaced, Lessee will be responsible for the cost to replace the same item or the closest compatibly equipped model, at current retail price, less any discounts available, without deduction for depreciation.

**10. CREDIT INFORMATION AND PAYMENT TERMS.** THE TERMS OF PAYMENT ARE BASED UPON CREDIT INFORMATION LESSEE SUPPLIED AT THE TIME OF RENTAL. SHOULD there be any change in such information, Lessee agrees that the Lessor may demand immediate payment without prior notice.

**PAYMENT** of invoices, expendables invoices, and loss and damage invoice are payable upon receipt of invoice and not later than net 10 Days. Payments due for more than 30 days or more shall be considered past due. IN THE EVENT A CREDIT CARD NUMBER WAS SUPPLIED AS PART OF THE APPLICATION FOR CREDIT, LESSEE AGREES THAT LESSOR IS AUTHORIZED TO SUBMIT ALL CHARGES TO THE CREDIT CARD ACCOUNT PROVIDED ON SAID CREDIT CARD APPLICATION LESSOR WILL NOT SUBMIT SAID CHARGES UNLESS PAYMENT IS MORE THAN (30) DAYS PAST DUE. For each month or part of a month thereafter, a past due or late charge may be assessed which Lessee is expected to pay. If Lessor places the account in the hands of an attorney or other agency for collection, Lessee agrees to pay reasonable collection cost, attorney's fees and court costs. Lessee agrees to pay the Lessor directly or as directed by Lessor or its agent. **RENTAL PAYMENTS DO NOT APPLY TO PURCHASE PRICE.** Rental payments may not be applied to the purchase price of any equipment. **CANCELLATION PENALTIES.** The Lessor shall be entitled to compensation, not to exceed the lease payments for any losses the Lessor may sustain because of the Lessee's cancellation of all or part of an order. In the event of cancellation when on a daily or weekly schedule, cancellation charges may apply in consideration of the Lessor's preparing, holding in reserve or sub-renting Equipment, facilities or vehicles on Lessee's behalf. By keeping the Lessor informed or the Lessee's shooting schedule, Lessee can either minimize or avoid cancellation fees.

**11. INSURANCE REQUIREMENTS – LESSEE MUST INSURE ALL THE EQUIPMENT.** Lessee shall, at his expense, and at all times during the rental maintain in full force and effect insurance, covering all Equipment rented from all sources for full replacement costs without deduction for depreciation, except vehicles which are at actual cash value, and for lost of use (rents) of the Equipment. Coverage must begin from the time Lessee or Lessee's agent accepts delivery of Equipment and continue until the time the Equipment is returned. Lessee shall deliver to Lessor upon request evidence of the insurance coverage, typically a certificate of insurance satisfactory to the Lessor, showing Liability Coverage, Property Insurance and Workers Compensation Insurance prior to taking possession of Equipment. Such insurance shall be written by reputable insurer's acceptable to Lessor; Lessee's insurers shall agree to the primary insurers of such Equipment during the rental period. Notwithstanding this paragraph, Lessee shall remain primarily liable to Lessor for full performance under the terms and conditions of the Rental Contract. The Lessor may enforce its remedies directly against Lessee without resort to your insurance.

**PROPERTY INSURANCE.** Lessee's insurance should be on a world wide basis, shall name the Lessor as Lost Payee for the loss or damage to the property rented, shall cover "All Risks" or loss or damage for equipment, vehicles physical damage coverage shall include the perils of "Comprehensive" and "Collision" before any policy shall be modified or cancelled. Limits shall be sufficient to encompass all property risk, regardless of source, but in no event less than \$1,000,000.00

**LIABILITY INSURANCE:** Lessee shall name the Lessor as an additional insured on Lessee's Liability insurance and shall be deemed primary and non-contributory insurance in the event of any claim or suit. Liability insurance shall meet the following minimums:

- Commercial General Liability: \$1,000,000.00 per occurrence & annual aggregate.
- Automobile Liability: \$1,000,000.00 combined single limit.
- Foreign Liability, if filming outside the U.S.A. or Canada, \$1,000,000.00 per occurrence limit.
- Aircraft Liability, if filming from an aircraft, \$5,000,000.00

IN THE EVENT that this Rental Contract incorporates the lease of vehicle(s) or other Equipment, Lessee shall provide automobile liability coverage at Lessee's own cost and expense and in an amount not less than \$1,000,000 for any person or accident. Such insurance shall be primary over any other coverage in effect. The lessee shall, at his own expense and during the term of rental, keep and maintain in Lessee's own custody the specified vehicles in good condition and repair. Lessee shall at the termination of the rental either return said Equipment in good condition or shall pay to Lessor the cost of repairing or replacing any damaged or lost vehicles and further agrees to compensate Lessor for all lost rental as a result of replacement or need of repair. Such lost rental income shall be calculated on Lessor's highest standard weekly rental rate, computed to the date of restoration, whether or not the Equipment is replaced or repaired and exclusive of Lessor's ability to inability to rent such vehicles.

**THE RIGHTS OF THE LESSOR ARE NOT AFFECTED BY LESSEE ' S NON PERFORMANCE:** Lessee insurer's shall agree that the rights of the Lessor may, but shall not be obligated to cost of maintaining in force the insurance specified in the Rental Contract or to provide the Lessor upon request with satisfactory evidence of insurance shall be an immediate and automatic default of this agreement.

**12. TITLE AND OWNERSHIP.** Lessee specifically acknowledges the Lessor's superior title and ownership of the equipment and must keep the Equipment free of all Liens, levies and encumbrances Lessee may not assign, pledge, or otherwise dispose of the Equipment.

**13. RIGHT OF ENTRY AND INSPECTION.** The Lessor shall have the right to inspect the Equipment at any time during the rental term. Lessee shall make any and all arrangements necessary to permit a qualified employee of the Lessor access to the location or the Equipment. If a breach of any of the provisions of the Rental Contract occurs, the Lessor has the right to remove all of the Equipment without liability to Lessee, and without prejudice to the Lessor's right to receive rent due or accrued to, including the date of removal of the Equipment.

**14. INDEMNIFYING THE LESSOR.** Digital Flamingo, Inc Lessee Agrees to Indemnify the Lessor and to hold the Lessor and its employees and agents harmless from and against any and all losses, damages, claims, demand or liability of any kind or nature whatsoever, including legal expense, arising from the use, condition (including without limitation, latent and other defects) or operation or the equipment, and by whomsoever used or operated during the rental term. This indemnification shall continue in full force and effect during and after the term of the rental for cause arising during the term of the rental.

**15. MISCELLANEOUS ASPECTS OF THE RENTAL AGREEMENT.** THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF FLORIDA and Lessor may file legal proceedings in the Circuit Court, Broward County, Florida, and serve summons and / or pleadings upon Lessee by U.S. Mail at the address shown on the reverse side hereof. Further, Lessee hereby consents to said Jurisdiction, submits to said venue and agrees to waive the election of a jury trial. In the event of any action or proceeding to enforce or interpret of this Rental Agreement, the prevailing party shall be entitled to receive or recover its attorney's fees. WHEN LESSEE IS A CORPORATION, the person executing the Rental Agreement on behalf of such corporation warrants that he / she has full authority for such corporation to sign the Rental Agreement and obligate the corporation. If Lessee is an individual, corporation or business entity, the person signing this Rental Agreement, the individual, corporation and / or business entity shall be jointly and severally liable for all rentals and other sums that may be at any time due and owing to Lessor under the terms of this Rental Agreement. **DEFAULT AND BREACH OF TERMS:** Each Rental Agreement includes provision of remedies in the event of default by Lessee in payment of rent, or Lessee's breach of any terms of the Rental Agreement, etc. PLEASE READ THESE SECTIONS IN THE RENTAL AGREEMENT CAREFULLY TO FULLY UNDERSTAND THE RIGHTS OF THE LESSEE.

**16. ENTIRE AGREEMENT.** The Signed Rental Agreement and these Terms and Conditions constitute the entire agreement between Lessee and Lessor. Any Changes must be made in writing and agreed to by both parties. This agreement contains the entire understanding between the parties hereto-including representations and any charge thereto must be in writing. Lessee hereby certifies that he / she has read and full understands all the provisions of this Rental Agreement prior to executing / signing this Agreement.

Signature of Lessee \_\_\_\_\_

Date \_\_\_\_\_