

Terms of Service

This Terms of Service ("TOS") document is dated as of the date you execute or click the "I Accept" button for this Agreement ("Effective Date") and is made by and between you as the owner of the Equipment (as defined below) ("Owner") and Rentagious, Inc. ("Rentagious"), a Utah corporation.

1. **Equipment.** For and in consideration of the covenants and agreements hereinafter contained, Owner has provided the Equipment and/or Services posted on Rentagious.com (hereinafter referred to as "Equipment") for Rentagious to advertise for lease, commencing on the Effective Date and ending when either Owner or Rentagious notifies the other party of termination of this Agreement ("Listing Term"). Owner acknowledges that Rentagious is a venue to allow Owner to offer to loan Equipment to others. Rentagious may facilitate payment flow and receive a security deposit, but is not otherwise responsible for the actual transaction between Owner and lessees. Rentagious has no control over and does not guarantee the quality, safety or legality of the Equipment loaned or the trustworthiness or financial stability of the lessee. If there is a dispute of damage between Owner and a lessee, it is up to Owner and lessee to resolve the dispute. If Rentagious holds a security deposit from lessee during a lease, Rentagious will charge such deposit to lessee at Owner's request and will transfer funds to Owner, net of any payment processing fees incurred by Rentagious.
2. **Fees.** Rentagious charges certain fees, such as transaction fees on completed transactions. The most current Rentagious fees are available at www.Rentagious.com/fees and these fees may be updated from time to time, upon written notice from Rentagious.
3. **Maintenance, Repairs, and Operation.** Owner shall, at its expense, maintain each item of Equipment in good mechanical condition and running order.
4. **Taxes and Other Assessments.** Owner shall be responsible for, and shall hold Rentagious harmless from, all taxes (including sales, use, excise, personal property, ad valorem, stamp, documentary and other taxes, license fees, assessments, charges, fines, penalties, currently or later levied or imposed by any state, local, Federal or foreign authority (all such expenses, taxes, license fees, assessments, charges, fines, penalties, being called "Assessments") upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title, all of which Assessments Owner assumes and agrees to pay on demand in addition to the other payments to be made by it provided for in this Agreement.
5. **Risk of Loss.** Owner assumes all risk of loss, damage, theft or destruction of the Equipment. No such loss, damage, theft or destruction of the Equipment, in whole or in part, shall impair the obligations of Owner under this Agreement, all of which shall continue in full force and effect.
6. **Default.**
 - i. If Owner defaults in paying any fee due or if Owner breaches any other term, covenant, or condition of this Agreement, Rentagious shall have the right to terminate this Agreement.
 - ii. If any step is taken by legal action or otherwise by Rentagious to enforce this Agreement or to collect monies due hereunder, Owner shall pay Rentagious the monies expended or charges incurred by Owner, including reasonable attorney's fees.
7. **Representations and Warranties of Owner.** Owner represents and warrants: (i) Owner is duly authorized, executed and delivered this Agreement; (ii) Owner has good title to the Equipment free and clear of all claims, liens and encumbrances of every kind resulting from any act of Owner and Owner has the lawful right to provide the Equipment in accordance with the terms of this Agreement and allow Rentagious to provide the Equipment to lessees; (iii) Owner shall be able to offer, possess and use the Equipment during the term of this Agreement free from any liens or encumbrances or claims or causes of action resulting from acts or transactions of Owner; and (iv) Owner will not give a mortgage or mortgages securing the Equipment.

8. **Indemnification of Rentagious.** Owner agrees to protect, defend and hold Rentagious, its owners, officers, directors, employees, affiliated companies, and licensees ("Rentagious Indemnified Parties") harmless against any and all losses or damage to (i) Equipment by fire, flood, explosion, tornado, theft, or any other reason; or (ii) any tangible or intangible property, including personal property caused by the Equipment or a lessee. Furthermore, Owner shall protect, defend and hold Rentagious Indemnified Parties harmless against any death or personal injury, including death or personal injury to lessees and anyone related to lessees caused by the Equipment. Owner hereby assumes all liability to any person arising from the location, condition, or use of Equipment, and shall indemnify and does indemnify the Rentagious Indemnified Parties of and from all liability, claims, and demands whatsoever arising from the location, condition, or use of Equipment whether in imperfect or defective condition, and from every other liability, claim, and demand whatsoever during the term of this Agreement or arising while Equipment is in the possession of a lessee.

9. **Limitation of Liability.**

- i. IN NO EVENT SHALL RENTAGIOUS BE LIABLE UNDER ANY THEORY OF LIABILITY, WHETHER IN AN EQUITABLE, LEGAL, OR COMMON LAW ACTION ARISING HEREUNDER OR FROM THE EQUIPMENT FOR CONTRACT, STRICT LIABILITY, PRODUCT LIABILITY, INDEMNITY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, FOR DAMAGES WHICH, IN THE AGGREGATE, EXCEED \$100 AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.
- ii. IN NO EVENT SHALL RENTAGIOUS BE LIABLE UNDER ANY THEORY OF LIABILITY, WHETHER IN AN EQUITABLE, LEGAL, OR COMMON LAW ACTION ARISING HEREUNDER FOR CONTRACT, STRICT LIABILITY, INDEMNITY, PRODUCT LIABILITY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND AND HOWEVER CAUSED INCLUDING, BUT NOT LIMITED TO, BUSINESS INTERRUPTION OR LOSS OF PROFITS, BUSINESS OPPORTUNITIES, OR GOODWILL ARISING HEREUNDER OR OUT OF THE EQUIPMENT EVEN IF NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGE, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

10. **Miscellaneous.**

- i. Each provision of this Agreement is a separately enforceable provision. If any provision of this Agreement is determined to be or becomes unenforceable or illegal, such provision shall be reformed to the minimum extent necessary in order for this Agreement to remain in effect in accordance with its terms as modified by such reformation.
- ii. This Agreement shall constitute the entire agreement between the parties regarding the subject matter hereof and supersede all proposals and prior discussions and writings between the parties with respect thereto. Any signed copy (including an electronic signature or "I Accept" button clicking) of this Agreement shall be considered an original.
- iii. Owner shall not assign or transfer this Agreement whether by operation of law, change of control, or in any other manner. Any attempt to assign or transfer this Agreement shall be null and void.
- iv. Except as otherwise provided herein, the parties agree that this Agreement cannot be altered, amended or modified, except by a writing signed by an authorized representative of each party.
- v. The provisions set forth in Sections 2, 4, 5, 6, 7, 8, 9, and 10 of this Agreement shall survive termination or expiration of this Agreement.
- vi. No failure or delay in enforcing any right or exercising any remedy will be deemed a waiver of any right or remedy. Headings are for reference purposes only, have no substantive effect, and shall not enter into the interpretation hereof.

- vii. Rentagious is an independent contractor and nothing in this Agreement shall be deemed to make Rentagious an agent, employee, partner or joint venturer of Owner. Owner shall not have authority to bind, commit, or otherwise obligate Rentagious in any manner whatsoever.
- viii. This Agreement is a result of arms-length negotiations between the parties, both of whom were represented by counsel or had adequate opportunity to seek counsel or be represented by counsel. Therefore, this Agreement is the product of both parties. To this effect, no part of this Agreement should be construed against either party as the drafter. Each party waives any potential claim of ignorance as to the terms and conditions of this Agreement.
- ix. In the event that Rentagious brings any action, proceeding, or suit to enforce any of its rights under this Agreement and is entitled to judgment, then in such action, proceeding or suit Rentagious may recover expenses; including attorneys' fees, and the amount shall be included in such judgment. In the event that Rentagious has incurred any expenses and attorneys' fees in the enforcement of any of its rights under this Agreement without having brought any action, proceeding or suit to so enforce any such right, then Rentagious may recover from Owner any reasonable expenses so incurred, including attorneys' fees.
- x. This Agreement shall be governed by the laws of the State of Utah, excluding the conflicts of law provisions of any state or jurisdiction. Any action arising out of or related to this Agreement shall be brought in the state and/or federal courts located in Provo, Utah and each party hereby submits to the exclusive jurisdiction of such courts.