



ADVANCED LIGHTING & PRODUCTION SERVICES, INC.

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ADVANCED LIGHTING & PRODUCTION SERVICES, INC. (ALPS) PURCHASE, RENTAL AND SERVICES AGREEMENT TERMS & CONDITIONS

1. **PHYSICAL CONDITION OF RENTED ITEM.** Customer acknowledges that prior to taking any rented item, he has examined it, saw it in operation (if appropriate), he is aware of its condition and that it is in good condition except for any defect noted on this contract. It shall be lawful for ALPS or its agents at all reasonable times to enter the premises upon which any rented item is kept for the purpose of viewing the state and condition of said rented item. Customer agrees to return all rented items in the same condition as received, except for ordinary wear and tear.
2. **USE OF ITEM.** Customer agrees he is satisfied with the instruction given by ALPS for, or that he is familiar with, the proper and safe manner of using all items, and he represents to ALPS that he is so familiar. All items shall be used in accordance with the manufacturer's and ALPS's instructions and manuals. Customer further agrees that all rented items will be used solely by him at the address designated and solely for the purpose for which such items were manufactured and intended. Assignment, loaning, subleasing or improper use of any rented item is prohibited.
3. **RESPONSIBILITY FOR USE - INDEMNITY.** From the time any rented item leaves ALPS's premises until its return, Customer is responsible for such rented item and its use. Customer assumes all risks inherent in the operation and use of any item and agrees to assume the entire responsibility for the defense of, and to pay, indemnify and hold ALPS harmless from, and hereby releases ALPS from any and all claims for damage to property or bodily injury (including death) resulting from the use, operation or possession of any item, whether or not it be claimed or held that such damage or injury resulted in whole or in part from ALPS's negligence, from the defective condition of the item or from any cause.
4. **RESPONSIBILITY FOR ITEM.** From the time any rented item leaves ALPS's premises until it is returned, the Customer is responsible for such rented item. If such rented item is lost, stolen or damaged under any circumstances while rented, regardless of fault, the Customer shall be responsible for all charges, including labor costs, to repair or to replace the rented item and for lost rental during the time the rented item is being repaired or replaced. If the rented item is returned not clean, a cleaning charge will be imposed.

Unless Customer shall have paid for insurance as provided on the front of this contract, the Customer shall, at his own cost and expense, but for the benefit of the ALPS, immediately insure the rented item for its full replacement value against loss or damage by fire, theft, or casualty by a qualified reputable insurance company and shall deliver the said insurance policy to ALPS, together with the receipt for premiums thereunder, upon request of ALPS. If ALPS, by reason of such insurance, shall receive any sum or sums of money, such amounts may be retained and applied by it towards the repair or replacement of the said rented item, or toward rental or other charges at ALPS's option.

5. **ITEM FAILURE.** Customer agrees to discontinue immediately the use of any rented item should it at any time become unsafe or in a state of disrepair, and will immediately (one hour or less) notify ALPS of the facts and ALPS agrees in its discretion and at its option to make the item safe within a reasonable time, provide Customer with a like item, make a like item available at another time, or adjust the rental charges (unless the rented item has been subjected to misuse, abuse, or neglect; improper installation, repair or maintenance; or has been repaired by persons not authorized by ALPS or the relevant manufacturer or with manufacturer non-approved parts, in which case ALPS shall not be obligated to do any of the foregoing.) This provision does not relieve Customer from the obligations imposed by other Paragraphs, including 4 and 6.

In all events, ALPS shall not be responsible for any indirect, incidental, special or consequential damage resulting from equipment failure or defect or for any other reason under this agreement or otherwise.

6. **RETURN OF ITEM.** All rented items are the property of ALPS and are rented to the Customer subject to this agreement for rental charges and for the period of time noted on the front. Customer agrees to return rented items at the location where rented (or other location designated by ALPS) at the time and date specified on the front under "To." Customer agrees that if he desires to extend the term of his rental beyond such time and date, he will immediately so notify ALPS to obtain ALPS's approval and the terms for such extension. If this agreement has not been extended and the Customer fails to return any rented item when due in, ALPS shall, in addition to all other remedies, be entitled to rental at two times the quoted rate. In addition, Customer acknowledges that the failure to return any rented item within the contract time, and the sale or concealment of rented property, are prohibited, and that such action may constitute a crime.
7. **PAYMENT.** The Customer and any representative or principal shall be responsible for and shall pay ALPS all charges (including rental and service charges) and/or purchase prices hereunder and shall promptly reimburse ALPS for the cost of fulfilling all obligations of Customer which ALPS elects to perform pursuant to Section 8 (c) below (all of the foregoing, along with all other amounts owing to ALPS hereunder, hereinafter collectively referred to in this agreement as "charges"). All charges not paid in advance are due upon return (in the case of rented items), at the time services are completed, or at the time otherwise called for hereunder. If any charges are charged to someone other than the Customer, the Customer represents he is the agent of such party and has the right to charge this rental or purchase. The Customer nevertheless will remain liable for the charges and for the other obligations and responsibilities of the Customer hereunder. If charges are not paid within 10 days of their due date, ALPS shall be entitled to interest at the maximum rate permitted by law.
8. **DEFAULT.** If the Customer shall default on any of the terms, covenants and conditions herein, or in punctually making any of the payments called for herein, or if any execution or other writ or process shall be issued in any action or proceeding against the Customer, whereby any rented item (or purchased item not fully paid for) may be seized or taken or distrained, or if a proceeding in bankruptcy, receivership or insolvency shall be instituted by or against the Customer or his property, or if the Customer shall enter into any arrangement or composition with his creditors, or in the event that any judgment is obtained against the Customer, then and in any such event, in addition to all other remedies ALPS may have, (a) all charges shall then become immediately due and payable without notice or demand, (b) ALPS shall have the option to retake immediate possession of any rented item (or purchased item not fully paid for) and (c) ALPS shall, at its option, have the right to perform Customer's obligations at Customer's expense. ALPS, its agents or employees may enter upon any premises where said items may be and may remove the same therefrom, with or without force and with or without notice of intention to retake the same without being liable to any suit or action or other proceeding by the Customer.

Upon ALPS retaking possession of any rented item or purchased item not fully paid for pursuant to the provisions of this agreement, this agreement shall terminate without prejudice to any right or claim for arrears of rent, purchase price or other amounts, if any, on account of any preceding breach or breaches of this agreement, or the loss of rental for the balance of the unexpired term herein, or for any other claim that ALPS may have against the Customer.
9. **EVIDENCE OF ALPS'S OWNERSHIP.** The Customer agrees not to remove or cover any tag, nameplate or other thing on any rented item showing ownership of ALPS.
10. **EMERGENCY RETURN.** The Customer does hereby grant to ALPS an option to terminate any rental or obligation to perform services under this agreement on 24 hours' written notice by registered mail or personal service. On the occurrence of said event, the Customer shall immediately return to ALPS at the Customer's risk and expense, any rented items as to which this rental agreement has been terminated, in the same condition as when first rented, and ALPS shall, thereupon said receipt, refund the unexpired portion of the rental. ALPS shall refund an appropriate portion of any fee charged for services terminated pursuant to this Section, such portion to be determined by ALPS in its reasonable judgment.
11. **NO WAIVER.** The acceptance of the return of any rented item is not a waiver by ALPS of any claims that it may have against the Customer nor a waiver of claims for latent or patent damage to any rented item.
12. **NO PLEDGES.** The Customer agrees not to pledge, mortgage or in any way encumber any rented item herein.
13. **PUBLICITY.** In all programs printed and distributed at all performances in which the rented item shall be used, credit for electric materials and lighting equipment shall be given to Advanced Lighting & Production Services, Inc.
14. **COLLECTION COSTS.** Customer agrees to pay attorneys' fees, collection fees, court costs and any other expenses incurred in collecting any charges or enforcing any of ALPS's rights under this agreement, in retaking any rental item or any purchased item not fully paid for, or otherwise in enforcing the terms of this agreement.

15. **LIMITATION OF WARRANTY.** EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH HEREIN, ALL SERVICES PROVIDED, ALL ITEMS RENTED AND ALL ITEMS PURCHASED UNDER THIS AGREEMENT ARE PROVIDED, RENTED OR PURCHASED AS IS AND WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

WITH RESPECT TO ANY RENTED ITEM WHICH BREACHES ANY WARRANTY, ALPS, AT ITS OPTION, SHALL REPAIR OR REPLACE SUCH ITEM, OR ACCEPT RETURN OF THE RENTED ITEM IN EXCHANGE FOR A REFUND OF RENTAL CHARGES FOR THE UNEXPIRED PORTION OF THE RENTAL TERM, AND THIS SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF WARRANTY WITH RESPECT TO ANY RENTED ITEM.

WITH RESPECT TO ANY SERVICE PROVIDED HEREUNDER WHICH BREACHES ANY WARRANTY, ALPS AT ITS OPTION, SHALL RE-PERFORM SUCH SERVICE OR REFUND ANY APPROPRIATE PORTION OF THE CHARGE PAID THEREFORE, AND THIS SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF WARRANTY WITH RESPECT TO ANY SERVICE PERFORMED HEREUNDER.

WITH RESPECT TO ANY PURCHASED ITEM, ALPS HEREBY ASSIGNS ANY MANUFACTURER'S WARRANTY TO CUSTOMER, TO THE EXTENT SUCH ASSIGNMENT IS PERMITTED. WITH RESPECT TO PURCHASED ITEMS, CUSTOMER'S SOLE REMEDY SHALL BE AGAINST THE MANUFACTURER UNDER THE MANUFACTURER'S WARRANTY.

16. **MODIFICATION OF AGREEMENT.** No right of ALPS may be modified and no extension of the term of this contract may be enforced against ALPS except in writing signed by ALPS and made a part of this agreement.
17. **LIMITATION OF DAMAGES.** IN NO EVENT SHALL ALPS BE LIABLE FOR DAMAGES RESULTING FROM OR RELATING TO ANY ITEM OR SERVICE WHICH EXCEED (AS RELEVANT) THE CHARGE FOR THE SERVICE, THE PURCHASE PRICE OR THE AMOUNT OF THE RENTAL PAID THEREFORE. UNDER NO CIRCUMSTANCES SHALL ALPS BE LIABLE FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND.
18. **OTHER TERMS.** This agreement shall be construed under the laws of Massachusetts (without reference to conflicts of laws), and no action to enforce or interpret this agreement shall be brought except in the courts of the Commonwealth of Massachusetts or the Federal courts located in Massachusetts. The unenforceability of any provision of this agreement shall not affect the other terms and provisions hereof, which shall remain in full force and effect. This agreement contains the entire agreement of the parties and supersedes and integrates all prior agreements, representations, warranties or covenants, written or oral. Captions are for convenience of reference and shall not be used in interpreting this agreement.
19. **CERTAIN DEFINITIONS.** As used herein, the term "rented item(s)" refers only to item(s) which are rented under this agreement. The term "purchased item(s)" refers only to item(s) which are purchased under this agreement. The term "item(s)" refers to purchased and rented item(s) without distinction.

I, the undersigned, have authority to enter into this contract, have received in good working order and hereby rent, purchase or contract the services described in order # _____, subject to the conditions set forth within this agreement.

Received By _____
Signature

Date _____

Print name _____

Company/Organization _____

Address _____
