

TERMS AND CONDITIONS - SALES AND LEASES

1. **ACCEPTANCE BY CUSTOMER** - Prices quoted shall be valid for 30 days from date of proposal, thereafter prices are subject to change without notice. Unless otherwise specified, acceptance of this proposal must be made on the exact terms and conditions of this agreement. Any acceptance by the Customer of the equipment described herein shall be deemed an unconditional acceptance of this proposal. Customer waives and releases any terms and conditions of any proposal, purchase order or other document submitted by Customer to Advance which are in addition to, inconsistent or different from the terms and conditions hereof.
2. **ACCEPTANCE BY ADVANCE** - This agreement shall be binding upon Advance only when approved by one of its authorized managers. Advance reserves the right to revoke this proposal at any time before acceptance. All offers are subject to the availability of equipment.
3. **RENTAL TERM** - Rental term for each item of rental equipment commences on date of shipment and terminates on the date equipment is returned to Advance. Minimum rental term is one 28 day period, unless noted otherwise. Rental beyond the initial 28-day period shall be prorated on a daily basis as shown on front side or on pricing worksheet.
4. **PAYMENT TERMS AND TAXES** - Payment for all rentals, sales and other work is due within 30 days after the date of invoice and is payable in full, without offset, claim or counterclaim and in accordance with the laws of the State of Minnesota. Payments not received by the due date shall accrue interest at the rate of 1 1/2% per month, compounded monthly, or the maximum rate permitted by law, whichever is less. All applicable taxes related to the use or sale of equipment hereunder are the responsibility of Customer, and Customer shall furnish Advance with evidence that correct taxes have been paid.
5. **SHIPPING COSTS** - Shipment will be made as promptly as possible subject to availability of equipment. Unless otherwise stated, all goods shall be shipped F.O.B. shipping point. Delivery by Advance to carrier shall be deemed delivery to the Customer; risk of loss passes to Customer on such delivery. Customer agrees to pay all shipping charges for delivery from shipping point (usually, but not limited to, Advance's St. Paul warehouse) to destination and for return to Advance's St. Paul warehouse, or other return location as specified by Advance.
6. **LOADING, UNLOADING, DAMAGE/SHORTAGE** - Customer shall unload and load all equipment at jobsite. Upon delivery, customer must note all defects and shortages in equipment on bill of lading or shipping ticket, and must obtain acknowledgment thereof in writing from driver making delivery. Advance shall not be responsible for any damage during loading or unloading. In addition customer must notify Advance in writing, by certified mail, return receipt requested, of all defects and shortages within ten (10) days after delivery. In the event of Customer's failure to do so, equipment shall be conclusively presumed to have been received by Customer in good condition and in quantity shown on bill of lading or ship ticket. Equipment must be packed for return in a reasonable manner or additional charges will be billed to the customer for excess unloading time.
7. **SHORTAGE OR DAMAGED RETURN** - All equipment rented by Customer shall, at the termination of this lease, be returned to Advance in good order and repair, normal wear and tear excepted, and in clean and presently usable condition. Any equipment not returned shall be billed at Advance's retail unit price in effect at the time of such billing. Any equipment damaged by drilling, torching, bending, sawing, or by use other than careful use, shall be repaired or replaced in such manner as, in the sole discretion of Advance, is deemed necessary, and at the expense of the Customer.
8. **OWNERSHIP** - Equipment rented under this Agreement shall at all times remain personal property, and title thereto shall not pass to Customer unless specifically purchased. Equipment rented shall not become a fixture by reason of its use in construction of any building or its annexation to any building or realty. It is the intention of the parties to create a bona fide lease arrangement and it is not their intention to create a security interest in the equipment.
9. **RENTAL CONVERSION** - If at any time Customer elects to convert the equipment from a rental to a purchase, Advance will determine the unit sale price, and rental payments will not apply to reduce the purchase price unless otherwise agreed by Advance in writing. All sales are subject to the Terms and Conditions of this Agreement and are made "as is" and "where is".
10. **LOCATION ASSIGNMENT AND ACCESS** - Equipment rented under this Agreement shall be used by Customer only at that location specified in this Agreement, and will not be removed from that location without prior written consent of Advance. Customer will not sell, assign, sublease, transfer or otherwise dispose of its rights under this Agreement, nor shall customer loan, rent, sublease, mortgage or otherwise encumber rented equipment. Customer will at all times permit Advance to enter any premises where Advance believes any of its rented equipment to be for the purpose of inspecting said equipment.
11. **ADDITIONAL EQUIPMENT** - In the event additional equipment other than that specifically covered by this Agreement is requested by Customer for this project, the additional equipment shall be subject to the prevailing unit prices or rental rates, and terms and conditions as are part of this Agreement.
12. **LAYOUT DRAWINGS AND USE OF EQUIPMENT** - Any layout drawings or other assistance furnished by Advance to Customer are provided as a service to the Customer to illustrate conceptually the assembly of Advance-furnished equipment only. Such layout drawings are not directive, nor do they include engineering details for safe or effective use of Advance-furnished equipment or equipment furnished by others, nor interconnection therewith. Any assistance given by Advance in this area shall be evaluated and followed in the sole discretion of Customer, and Advance accepts no responsibility for such voluntary assistance. Advance shall not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures or for safety precautions and programs relating to Advance-furnished equipment. Customer shall be responsible for the proper use of the equipment in accordance with all applicable laws, regulations, industry standards, safety rules and guidelines. Customer shall ensure that only trained, qualified and competent people use the equipment.
13. **WARRANTY** - Advance warrants that it will repair or, at its option replace F.O.B. shipping point, any equipment which is defective at time of delivery. Any claim under the above warranty must be made in writing within ten (10) days after delivery. Charges by Customer for correcting defects will not be allowed. This warranty will not apply to any equipment that has been subject to misuse, neglect, or accident. **ADVANCE MAKES NO EXPRESS OR IMPLIED WARRANTIES, INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OTHER THAN THOSE CONTAINED IN THIS AGREEMENT. The customer has made the selection of the equipment based upon their own judgment and expressly disclaims any reliance upon any statement or representations made by Advance or their representative.**
14. **LIMITATION OF LIABILITY** - Under no circumstances shall Advance be liable for the costs of any downtime or delays in delivery or consequential, special, or indirect damages, or for the failure of any parts to operate. In the event Advance is in some way held liable for damages, the extent of that liability shall be limited to five times the rental value for one 28 day rental period or, in the case of a sale, the purchase price. Any claims against Advance must be asserted against Advance by lawsuit within one year of the earliest event giving rise to the claim or such claims are waived and barred forever.
15. **INDEMNIFICATION** - Customer agrees to bear entire risk of loss relating to the ownership, use, or condition of the equipment. To the fullest extent permitted by law, Customer shall indemnify and save harmless Advance from and against any and all claims, liability, losses, damages (direct or consequential), expenses (including without limitation legal fees and disbursements) relating in any way to the ownership, use, or condition of the equipment, to any negligence of Customer in whole or in part, to any breach by Customer of this Agreement, including the failure to make payments when due, or to the enforcement by Advance of any of its rights under this Agreement.
16. **INSURANCE** - Customer shall indemnify Advance against all loss or damage to equipment during the lease, provide all risk insurance in an amount of \$ 2,000,000, naming Advance as the loss payee, and furnish Advance with a certificate of insurance. Customer shall carry general liability insurance listing Advance as an additional named insured covering personal injuries, death or property damage arising in connection with the ownership, use or condition of the rented equipment in an amount not less than two million dollars per occurrence, and furnish Advance with a certificate of insurance.
17. **DEFAULT AND TERMINATION** - In the event Customer (a) defaults in the payment of any amounts due hereunder or (b) breaches any other term or condition hereof or (c) Advance deems itself insecure or (d) Advance deems the rented equipment in danger because of strikes or otherwise, then in any such event Advance may at its option and in addition to and without prejudice to any other remedies, terminate this Agreement and Customer's right to possession of the rented equipment and declare the entire amount of any unpaid rental due and payable and without notice or legal process enter upon the premises where the rented equipment is located and repossess and remove the rented equipment. Customer expressly waives any claims for damage occasioned by such repossession. In any such event, Customer shall be liable to Advance for and agrees to pay all costs and expenses incurred by Advance in the repossession of the equipment and the enforcement of any of the terms and conditions of this Agreement, including all costs of removal, freight, demurrage, storage, labor and other charges and attorney's fees.
18. **NONWAIVER** - The failure to Advance at any time to enforce any of its rights hereunder or to require performance by the Customer of any provisions hereof shall in no way affect the right of Advance thereafter to enforce the same. Nor shall the waiver by Advance of any breach of any provisions hereof be taken or held to be a waiver of any succeeding breach of such provisions or as a waiver of the provisions itself.
19. **MODIFICATION** - This Agreement, incorporated with Advance's delivery ticket, is the final expression of the agreement between Advance and Customer and is the complete and exclusive statement of the terms and conditions of that agreement. This Agreement can be modified or rescinded only in writing, signed by the party to be charged or their duly authorized agent. The signing or referencing of Customers purchase order after the Customers acceptance of this Agreement, either by signature or acceptance of equipment, merely incorporates the Customers purchase order into Advances Agreement and does not replace said Agreement. In the event of any inconsistent terms this Agreement shall control.
20. **JURISDICTION OF DISPUTES AND APPLICABLE LAW** - Customer consents to the exclusive personal jurisdiction of the courts of Minnesota over it for all disputes relating to this Agreement or Advance. Venue of any litigation relating to this Agreement or Advance shall be in Minnesota State District Court for Ramsey County. This Agreement shall be governed by the laws of the State of Minnesota.
21. **SEVERABILITY** - If any provision of this Agreement is determined to be unenforceable or invalid, the unenforceable or invalid part thereof shall be deemed severed from this Agreement. The remaining portions of this Agreement shall be carried out with the same force and effect as if the severed portions had not been part of this Agreement.