

## ORBITALUM NORTH AMERICA® EQUIPMENT RENTAL TERMS AND CONDITIONS

All rentals made by or through Orbitalum North America® (hereinafter called "Lessor") to its equipment rental customers (hereinafter called "Lessee") are subject to the following Equipment Rental Terms and Conditions. Lessee's acceptance of these terms and conditions shall be made by either (a) Lessee providing a purchase order number to Lessor or (b) Lessee's acceptance of any rented equipment and/or accessories ("Products") from Lessor, whichever occurs first. These terms apply to all Products rented by or through Lessor including equipment, accessories, plugs, and tools manufactured or supplied from Lessor's rental partners.

**1. Availability, Acceptance and Governing Provisions.** All Product rentals are subject to availability of those Products at time of order. No orders for rentals or products of Orbitalum North America shall be binding upon Lessor until accepted in writing by an authorized official; and in all events any such order shall be subject to these terms and conditions which shall be deemed part of such order upon acceptance thereof by Lessor. No additional agreements will be binding upon Lessor unless specifically agreed to in writing. Failure of Lessor to object to provisions contained in any purchase order or other communication from a Lessee shall not be construed as a waiver of these terms and conditions, nor an acceptance of any such provisions. This contract and these terms and conditions shall constitute the entire agreement between Lessor and Lessee, and shall be governed by and shall be construed according to the internal laws of the State of Illinois.

**2. Rental Period.** The rental period begins on the day of shipment from the originating rental facility, and ends on the day of the Product's return to the originating facility. No allowance is made for Sundays, Holidays or time in transit. Lessee is obligated to return Products to the originating facility or incur additional expense unless other arrangements have been agreed to in writing by Lessor's authorized official.

**3. Product Usage.** Lessee warrants that it is knowledgeable and experienced in the safe operation of all Products rented from Lessor including but not limited to orbital cutting equipment, portable weld prep machining equipment, and isolation and test tools. Lessee agrees that it shall only allow those individuals qualified and sufficiently trained in the safe and proper use of the applicable Products to operate the Products. Training, proper handling, and safe operation is solely the responsibility of Lessee. Lessee agrees that this Product rental does not grant Lessee any title or property rights in the Products, all title and property rights shall remain with the Lessor and/or its rental partners.

**4. Condition of Products.** Lessee hereby acknowledges receipt of the Products in good working order. Lessee further acknowledges that it has examined the Products and declares that it has received all of such Products in secure and good working condition. Lessee's failure to object in writing to the condition of the Products within 6 hours after receipt thereof shall be deemed conclusive that all of the Products were in good working order when delivered.

**5. Minimum Order and Returns.** All orders shall be subject to Lessor's minimum order amount of \$100.00 USD, or a surcharge may be assessed. Lessee may order additional items (such as tooling) at order acceptance to meet minimum order amount. Standard tooling, bits and blades (new in original sealed factory packaging) with a combined retail value of \$100.00 USD or greater may be returned. Returned standard tooling with a combined retail value under \$100.00 USD will not be accepted for return, and shall remain the property of the Lessee. Non-standard, specially designed & manufactured tooling will not be accepted for return. All returns must be pre-approved by Lessor and returned in resalable condition at Lessee's expense. All tooling returns are not subject to a restocking fee, however freight charges are non refundable.

**6. Payment.** All prices are quoted, and payments must be received, in U.S. Dollars (USD). Unless otherwise expressly stated all prices are subject to change without notice. Terms of payment are Net 30 days on open account, Letter of Credit or Sight Draft. Visa, MasterCard and American Express are also accepted, COD or cash in advance may be required. Invoices are due and payable within 30 days of invoice date ("due date") unless otherwise expressly indicated, and a late payment charge of one and one-half percent (1-1/2%) per month may be added to any invoiced amounts unpaid when due.

**7. Shipping and Freight Charges.** The Lessee is responsible for all freight charges incurred on all rental Products and accessory orders, both outbound and inbound, from the originating Lessor's facility. Freight shipments arranged by Lessor are prepaid, and will be added to the Lessee's invoice subject to an additional handling charge as applicable. Products may be shipped Freight Collect or charged to the Lessee's shipping account if Lessor is supplied Lessee's carrier information at order acceptance.

**8. Taxes and Other Charges.** Lessee shall bear applicable federal, state, municipal, and other government taxes (such as manufacturer's tax, retailer's occupation tax, use tax, sales tax, excise tax, duty, custom, inspection or testing fee, etc.) Taxes, fees or charges of any nature whatsoever imposed by any governmental authority, on or measured by the transaction between Lessor and Lessee, are not included in prices shown and must be added in sales record of Lessee. Exemption certificates, valid in the place of delivery, must be presented to Lessor at order acceptance and prior to shipment if they are to be honored.

**9. Damage, Loss or Missing Components.** Lessee agrees to pay for any damage or loss of the Products, regardless of cause, and keep the Products, tools, and accessories in good repair and operating condition at all times. Products returned from Lessee inoperative, damaged or with missing components will be refurbished to original working order by Lessor at Lessee's expense. Lessee shall be notified of refurbishing and missing component costs, including parts and labor, prior to the repair. All Products which cannot be returned to Lessor due to nuclear contamination or other causes will be invoiced to Lessee at its current published list price.

**10. Loaner Products.** Loaner Products are subject to these terms and conditions, ask your sales representative for details. As per equipment rental agreements, customer shall be responsible for all outbound and inbound prepaid freight charges, plus lost or damaged parts, on machines loaned while awaiting delivery of new Products. Customer will be allowed (1) week after receipt of new Products to return loaner Products to the originating Wachs facility. Standard weekly rental rates will be billed from 8th day onward until the loaned Products have been received at the originating Wachs facility.

**11. Liability and Indemnity.** The Lessee shall be liable for all damage arising from Products rental use, misuse or negligence of Lessee, including any accidents to persons or property arising thereof. Lessee covenants and agrees to indemnify and hold harmless Lessor free from any and all claims, actions, suits, damages and liabilities, including attorney's fees, arising out of, connected with, or resulting from the rented Products and/or its complementary tools or attachments. This includes, without limitations, the manufacture, selection, delivery, possession or use of the rented Products.

**12. Service Warranty.** Lessor warrants that (a) it will perform services in a timely, competent and professional manner and in accordance with industry standards; and (b) the services shall conform to any applicable specifications or statement of work.

**13. Limitation of Liability.** The Lessor shall not be responsible or liable for any damage resulting from improper storage, handling, or use of Product prior to placing the apparatus in service, and will not assume any responsibility, expense or liability for unauthorized repairs. Lessee is solely responsible for

determining if a Product is fit for a particular purpose and suitable for Lessee's method of application. Accordingly, and due to the nature and manner of use of the Products, Lessor is not responsible for the results or consequences of use, misuse or application of its Products.

LESSOR SHALL NOT BE LIABLE, AND LESSEE WAIVES ALL CLAIMS AGAINST LESSOR, FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, DOWN TIME, LOST PROFITS OR COMMERCIAL LOSSES, WHETHER OR NOT BASED UPON LESSOR'S NEGLIGENCE OR BREACH OF WARRANTY OR STRICT LIABILITY IN TORT OR ANY OTHER CAUSE OF ACTION. IN NO EVENT WILL LESSOR'S LIABILITY IN CONNECTION WITH THE AGREEMENT OR SALE OF THE PRODUCTS EXCEED THE RENTAL PRICE OF THE SPECIFIC PRODUCTS AS TO WHICH THE CLAIM IS MADE.

**14. Intellectual Property.** All intellectual property rights embodied in or associated with the Products, including but not limited to: patents, trademarks, copyrights, trade secrets, trade dress, service marks, and designs ("Intellectual Property"), are and shall at all times remain the sole and exclusive property of Lessor. Other than a limited right to use the Products as intended in accordance with the rental hereunder, no rights or licenses of any kind are granted by Lessor with respect to the Intellectual Property. Lessor does not waive any rights in any Intellectual Property whether presently owned or hereafter acquired. Lessee has no interest in, and shall make no claim with respect to, any of the Intellectual Property. Lessee agrees not to reverse engineer any of the Products or the technology embodied therein. Lessor represents and warrants that the Products and their use as intended do not knowingly infringe or otherwise violate the intellectual property rights of any third parties.

**15. Trademarks.** Lessee shall not use, directly or indirectly, in whole or in part, Lessor's name, or any other trademark or trade name that is now or may hereafter be owned by Lessor (collectively the "Trademarks"), as part of Lessee's corporate or business name, or in any way in connection with Lessee's business, except in a manner and to the extent authorized herein or otherwise approved by Lessor in writing. Lessee hereby acknowledges Lessor's ownership of the Trademarks and the goodwill associated therewith. Lessee shall not infringe upon, harm or contest the validity of any Trademarks.

**16. Confidential Information.** All information furnished or made available by Lessor to Lessee in connection with the subject matter hereof shall be held in confidence by Lessee. Lessee agrees not to use (directly or indirectly), or disclose to others, such information without Lessor's prior written consent. The obligations in this section will not apply to any information that: (a) at the time of disclosure was or thereafter becomes generally available to the public by publication or otherwise through no breach by Lessee of any obligation herein; (b) Lessee can show by written records was in Lessee's possession prior to disclosure by Lessor; or (c) is legally made available to Lessee by or through a third party having no direct or indirect confidentiality obligation to Lessor with respect to such information.

**17. Compliance.** Lessee agrees to comply with all applicable federal, state, local and foreign rules, regulations, ordinances and laws applicable to Lessee's obligations hereunder and Lessee's use of the Products, including import/export laws, labor laws and anti-corruption laws. If Lessee delivers Products to others who may use the Products outside the United States, Purchaser acknowledges and shall advise others that the Products are controlled for export by the U.S. government, and that the Products may require authorization prior to export from the United States or re-export from any location beyond the U.S. Lessee agrees that it will not export, re-export or otherwise distribute Products in violation of any export control laws or regulations of the United States. Lessee further warrants that it will not export or re-export, directly or indirectly, any Products to embargoed countries or sell Products to companies or individuals on the Consolidated Screening List which is comprised of lists by the Department of Commerce, Department of State (BJS and DOTC) and the Department of the Treasury which identifies parties that the United States government maintains restrictions on as to certain exports, re-exports or transfers of items. Lessee

shall indemnify and hold Lessor harmless for any violation by Lessee or any of Lessee's assignees, vendees or transferees.

**18. Default.** In the event of Lessee's default or breach of any term or condition of this agreement, Lessor may terminate this agreement and declare the entire unpaid balance immediately due and payable, and in addition to any remedy provided by law, at Lessor's request Lessee shall immediately: (a) assemble the Products and make it available to the Lessor at Lessee's premises, or at such other place as Lessor may designate; (b) permit Lessor to enter upon Lessee's premises and remove the Products or render it unusable; or (c) permit Lessor to dispose of the Products on Lessee's premises in such manner as Lessor may determine.

**19. General.** These terms and conditions, as published on the Orbitalum North America website located at [www.orbitalum.us](http://www.orbitalum.us) at the time of Product rental, are the complete equipment rental terms and conditions between Lessor and Lessee, and may be amended from time to time without notice at Lessor's sole discretion.

*Equipment Rental Terms and Conditions Revised 9/19/2022*