

# FENCEWORKS



LIC # 1071302

## LEASE AGREEMENT TERMS & CONDITIONS

1. **Lease.** Fenceworks Rental Systems, Inc., its subsidiary companies, and independent contractors (hereinafter collectively referred to as “Lessor” or “fence owner”) shall provide such fence panels, roll fence fabric, gates, posts, stands and shade-screen (the “Fence”) as identified on the reverse side hereof (the “front page”) to Customer/Lessee (hereinafter referred to as “lessee”) who agrees to lease the Fence from Lessor, pursuant to this Lease Agreement (the “Agreement”). Lessee shall pay Lessor for delivery, installation, repair, replacement, removal, initial rental charge and other services in the amount shown on the front page, plus all applicable taxes thereon, for the time between the installation date and removal date (the “initial Lease Term”). Lessor may use more, or fewer fencing items than initially expected as shown on the front page, and the initial rental charge and the monthly rental rate shall be adjusted accordingly. Early termination of lease will not result in pro-ratio of lease amount due Lessor from Lessee.

2. **Extensions.** If not in default or breach, Lessee may extend initial Rental Term for up to 1 year by written notice received by Lessor during the Initial Lease Term. Following Initial Lease Term, all subsequent charges will be billed to Lessee at month-to-month lease rates unless Lessor is notified in writing prior to expiration of lease period. Lessee shall pay Lessor for all extensions at the monthly rental rate on the front page, plus applicable taxes.

3. **Delivery.** Lessor shall install and remove the Fence within a reasonable time following the date shown on the front page. Unless otherwise arranged, the Fence will follow ground level. Lessee shall fully cooperate in allowing Lessor’s installation by : (a) clearing sufficient working area of all obstructions, debris, weeds/plant & tree growth, rubbish and removable hazards; (b) surveying, grading, locating, staking Fence line and verifying all property lines and identifying all utility lines; (c) notifying and safeguarding Lessor’s crew of all potential work area hazards; and (d) coordinating Lessor’s work with the activities of all persons at the job site, including but not limited to other contractors, crews, supervisors, architects and owners. If Lessee fails to provide, in a timely manner, a safe and unobstructed work area, Lessor may, at its option, terminate this Agreement or postpone the Initial Lease Term and install the Fence after Lessee complies herewith. In either case, Lessor may recover all expenses incurred as a result of such delay, including labor at the rate shown on the front page. If Lessee, after Lessor has begun or completed its installation, requests relocation of the Fence or the departure from the information on the front page, Lessee shall pay all expenses associated with such change order.

4. **Inspection.** Lessee shall inspect the Fence within twenty-four (24) hours of completed installation and immediately notify Lessor in writing of any objection to or defect in the Fence. Lessee’s failure to do so shall constitute an acceptance of the Fence “as is” and an acknowledgement that the fence is in good repair and in safe, usable condition. Upon timely receipt of a notice of legitimate objection or defect, Lessor shall, within a reasonable time, reasonably cure the problem.

5. **Removal.** Upon the happening of any event, which allows Lessor to remove the Fence, Lessee shall freely surrender the Fence in good repair and condition, and shall allow for its safe and unobstructed removal, consistent with the assurances contained in paragraphs 3 & 4. If Lessee fails to comply herewith in a timely manner, Lessee shall pay for all delay, additional labor, damage, and losses and for all destruction at the rates shown on the front page.

6. **Repair and Maintenance.** During this Agreement, and at all times prior to Lessor’s removal of the Fence, Lessee shall repair and maintain the Fence and be solely responsible for such costs. If the Fence requires maintenance, repair, or civil authority ordered relocation, Lessor may, but shall not be required to, enter onto any property where the Fence is located and appropriately maintain, repair, or relocate the Fence and charge Lessee all costs associated therewith.

7. **Protection and Use.** Lessee bears all risk of loss, stolen, missing, damage and/or destruction until the Fence is returned. Lessor in full compliance with this Agreement. Lessee shall not; (a) allow any lien, charge or encumbrance to be levied against the Fence; (b) sell, dispose of, transfer, assign, pledge or relocate the Fence; (c) allow others to take or assume possession of or control over the Fence or allow it to become affixed to any real property; (d) allow any alteration of or diminution to the fence; or (e) allow any personal property to be connected to the Fence. Lessee shall immediately notify Lessor of any attempt of any of the aforementioned events or any events or incidents which may be reasonably assumed to result in any manner of legal claim or lawsuit. Lessee shall obtain, pay for, and maintain all necessary licenses, permits and permission for Lessee’s use of the Fence. Lessee shall comply with all laws, rules, regulations, and orders of any authority having the power to regulate, police or supervise the possession, use or maintenance of the Fence.

8. **Indemnity.** To the fullest extent permitted by law, Lessee shall indemnify, defend, and hold and save Lessor harmless from all claims and expenses, including but not limited to court costs and attorneys’ fees, for any damaged or injuries to persons or property which are related in any manner, directly or indirectly, to this lease of the Fence (including all components, accessories and parts thereof), regardless of whether any such injury or damage is caused in the whole or in part by the negligence, of the Lessor or any other act or omission of the Lessor, but to no extent for injury or property damage directly resulting from the sole negligence or willful misconduct of Lessor.

9. **Insurance.** Separate, independent and in addition to the obligations under section 8 (“Indemnity”) above, Lessee shall purchase and maintain, at its own expense, general liability insurance (including broad form contractual liability coverage which shall apply to liability assumed by Lessee under section 8 (“Indemnity”) of this Agreement, in an amount not less than one million dollars (\$1,000,000) per occurrence, naming Lessor as an additional insured using ISO endorsement CG 20 28 11 85 or CG 20 34 03 97 or substantially equivalent endorsement. Such insurance shall be primary, and any insurance that Lessor may have or hereafter acquire shall be deemed secondary and excess coverage.

10. **Breach.** Lessee shall be in breach upon the happening of any of the following events: (a) Lessee's failure to pay, in a timely manner, any rental payment or other amount provided for herein; (b) Lessee's failure to comply with paragraphs 3, 4, 7, and 8; (c) Lessee's failure to satisfy any other provision of this Agreement within 5 days after written demand by Lessor; or (d) Lessee's cessation of business as a going concern, assignment for the benefit of creditors; insolvency, bankruptcy, or admission of inability to pay debts.

11. **Remedies.** If Lessee breaches any term of this Agreement, Lessor may exercise any one or more of the following remedies; (a) allow Lessee to remain in possession of the Fence and recover 120% of all rents as the same shall become due, plus all other amounts due hereunder; (b) recover the Fence, wherever located, with or without demand, notice court order or other process of law, and recover all unpaid rents due hereunder up to the time of such repossession, plus liquidated damages in an amount equal to 50% of all rental which would have become due from the date of repossession to the end of the term of this Lease, plus all other amounts due hereunder, and/or (c) pursue any other remedy at law or in equity, including the exercise of lien rights. All remedies available to Lessor shall be cumulative and exercisable separately or concurrently. Any suit to enforce this Agreement may be brought, at Lessor's option, in Riverside County, California, or at any place where Lessee resides or does business, or at the place where the Fence is or was located. Lessee hereby waives all objections to such jurisdiction and venue. This agreement shall be construed in accordance with California law.

12. **Lien Rights.** Lessee acknowledges that Lessor has and may exercise any and all lien rights and hereby waives any objections in defects in such lien documents. If Lessee is not the owner of the property on which the Fence is to be located, Lessee shall obtain the owner's written consent to Lessor's full exercise of all lien rights. Lessor's exercise or non-exercise of lien rights will not alter or release Lessee's obligation.

13. **Payments; Interest; Collection Expenses; and Application of Payments.** Lessee's obligation to pay rent or any other amount due hereunder is an independent covenant, and Lessee shall not withhold payment or assert any set off against such obligations for any reason whatsoever. Lessee's payment shall be due on or before the 15<sup>th</sup> day following Lessor's mailing of its billing statement to Lessee at the address on the front page. Interest shall accrue on all amounts not timely paid at 1.75% per month, or at the maximum rate permitted by applicable law. Lessor shall recover all expenses incurred in enforcing this Agreement, including all collection agency charges, lien fees, costs, court costs, attorneys' fees, and all expenses incurred in collecting on any judgment. Payments received by Lessor shall be applied in the following order: (a) to any attorneys' fees, court costs, lien fees and collection charges; (b) to any unpaid interest; and (c) to the outstanding rental obligations and other amounts due under this Agreement. Any form of payment directing any other application may be deemed to be no payment at all and returned to Lessee.

14. **No Warranty.** EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, THERE ARE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION OR PERFORMANCE OF THE FENCE, ITS MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND LESSOR SHALL HAVE NO LIABILITY TO LESSEE FOR ANY CLAIM, LOSS OR DAMAGE OF ANY KIND OR NATURE WHATSOEVER.

15. **Financial information.** Lessee shall give true, accurate and complete credit information to Lessor who may verify and/or demand supplementation thereof. LESSEE MUST HAVE A CURRENT CREDIT APPLICATION ON FILE WITH LESSOR.

16. **Amendments; Waiver.** Except by a specific written document executed by both parties, the terms, covenants, representations, warranties or conditions of this Agreement shall not be waived, amended, modified, suspended or canceled. Forbearance or delay shall be deemed a waiver. A single or partial exercise of any right or remedy shall not preclude further exercise thereof or the exercise of any other right or remedy. Any written waiver shall be strictly construed and not extendable.

17. **Entire Agreement.** This agreement contains the parties' entire understanding and supersedes all prior and contemporaneous agreements and understandings, oral, written, or implied. All documents and instruments created hereafter and concerning this lease transaction, including any work orders and purchase orders, shall not prevail over this Agreement.

18. **Severability.** If any provision of this Agreement is held to be unenforceable, Lessor may sever such unenforceable provision from this Agreement, which shall then be construed as if it did not contain the severed language, and both the Lessor's and Lessee's rights and obligations shall be construed and enforced accordingly. Alternatively, and its sole option, Lessor may cancel this entire Agreement.

19. **Headings.** All paragraph headings are for reference only and shall not be considered in interpreting the intent of the parties with respect to the matters set forth in the Agreement.