

# Visioneer® Rental Program - Terms & Conditions

## Parties

These terms and conditions apply to the rental of certain scanner equipment, including software, cables and consumables (collectively the "Equipment") by a customer ("Customer") from Visioneer, Inc. ("Visioneer") under the Visioneer Rental Program. These terms and conditions are strictly for the benefit of Visioneer and the Customer. The written or electronic order for the Equipment, together with these terms and conditions shall constitute the agreement (the "Agreement").

## Scope

These terms and conditions apply to Equipment rented through the Visioneer Rental Program and certain software and services provided by Visioneer in connection with that Equipment rental. These terms and conditions do not apply to scanners or services purchased, leased or rented from a third party or from Visioneer outside of the Visioneer Rental Program. Visioneer Rental Program services may only be purchased directly from Visioneer, a Xerox Trademark Licensee Partner since 2003.

## Term

The Visioneer Rental Program offers weekly and monthly rental periods. If Customer does not return Equipment to Visioneer at the end of its then current rental period as provided in the "Return" clause below, the term of such rental will automatically be extended an additional week, in the case of equipment rented on a weekly basis, or month, in the case of equipment rented on a monthly basis. If equipment rented on a weekly basis is not returned to Visioneer at the end of a fourth week, such equipment shall be converted to a monthly rental period. The rental period begins on the day after the equipment is received by Customer.

## Equipment

The Visioneer Rental Program rents factory reconditioned scanner equipment. From time to time Visioneer may, at its sole discretion, include new scanner equipment in the Visioneer Rental Program to meet rental demand. At no time does Customer have the right to request, nor will Visioneer be required to provide, new scanner equipment for any particular order.

Visioneer represents and warrants that all reconditioned models:

- Have been expertly refurbished, cleaned and factory inspected,
- Come with new consumables,
- Are tested before shipping to the Customer and are in excellent working condition, and
- Are free from defects or faults.

Customer is required to inspect the Equipment immediately upon delivery and advise Visioneer of any defects or faults in the Equipment. If Customer fails to notify Visioneer of any defects or faults in the Equipment within twenty-four (24) hours of delivery, the Equipment shall be deemed to have been delivered in excellent working condition free from defects and faults.

## Location of Equipment

During the rental period, Customer shall ensure that the Equipment is located at the address to which it is shipped by Visioneer, unless expressly agreed otherwise in writing by Visioneer.

## Warranty and Service

If at any time a scanner rented under the Visioneer Rental Program has problems or isn't working properly, Customer should call the Visioneer Technical Support department at **1-800-648-0410**. The Technical Support department will work with Customer to try to resolve the problem. If the Technical Support department is unable to resolve the issue, Visioneer will immediately ship a replacement rental unit by overnight delivery. Customer will be responsible for packing and returning the defective unit to Visioneer in accordance with the "Return" clause below, using the prepaid shipping label included with the Equipment. If it is determined that Equipment returned for replacement is working properly or if it is determined that the Equipment failure was caused by Customer failure to operate and maintain the Equipment in accordance with the applicable user's manual, Visioneer is authorized to charge Customer for applicable costs.

In addition, an online knowledgebase for troubleshooting and support information is also available 24/7 at [www.xeroxscanners.com](http://www.xeroxscanners.com).

CUSTOMER ACKNOWLEDGES THAT NCR OR CARBONLESS PAPER HAS A CHEMICAL COMPOSITION WHICH CAN DAMAGE SCANNER ROLLERS AND USE OF SUCH PAPER IN EXCESS OF THE AMOUNTS RECOMMENDED IN THE APPLICABLE USER'S MANUAL MAY CAUSE CUSTOMER TO BE CHARGED FOR REPAIRS, CLEANING AND/OR EXCESS USAGE OF CONSUMABLES.

## Shipping

Visioneer will ship the initial rental order, after payment confirmation, via ground service at no additional cost to the Customer within the lower 48 states, (Hawaii, Alaska, and Canadian customers will be charged for expedited shipping service). Customers in the lower 48 States have the option to pay for expedited service. All Visioneer Rental Program rentals come with return authorization material instructions and shipping label prepaid by Visioneer. If Customer loses the prepaid shipping label, Customer will be responsible to pay for shipping to return the Equipment to Visioneer including an duties, broker fees, and VAT that may apply.

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## Consumables and Maintenance

Consumables (including feeding rollers and ink for optional imprinters) are provided by Visioneer to Customer at no additional cost, including free overnight shipping provided that Customer first calls Visioneer to confirm that the scan count, cleaning cycles, and media (paper) comply with manufacturer recommended maintenance guidelines as set forth in the applicable user's manual. The user's manual for each scanner model rented under the Visioneer Rental Program can be found at [www.xeroxscanners.com](http://www.xeroxscanners.com). Customer is responsible for cleaning, maintaining and operating all Equipment (including software DVDs, cables and consumables) in compliance with the applicable user's manual and applicable law. Customer's failure to clean, maintain or operate the Equipment properly in accordance with the applicable user's manual may result in factory cleaning or repair. If Visioneer determines that cleaning or repair is required due to, or excess consumable usage is a result of, Customer's failure to operate and maintain the Equipment in accordance with the recommended maintenance guidelines set forth in the applicable user's manual, Visioneer is authorized to charge Customer for applicable costs and expenses.

Without limiting the generality of the foregoing paragraph, Customer shall not operate or use the Equipment or permit it to be operated or used in violation of applicable law or in any manner likely to cause damage to the Equipment.

Customer is responsible for providing a computer system (workstation or laptop) to run scanner driver and software that complies with the recommended computer specifications and operating system(s) at [www.xeroxscanners.com](http://www.xeroxscanners.com). Customer is also responsible for installation and document preparation in compliance with the applicable user's manual. Any down time arising from failure to comply with such user's manual in any respect is not the responsibility of Visioneer and will not be eligible for a refund or a no-charge extension of the rental period. The Visioneer Rental Program includes customer care and technical support at 1-800-648-0410 free of charge. Visioneer also offers installation, training and scanning services for an additional fee. Contact a Visioneer Rental Program solutions representative at [csr@visioneer.com](mailto:csr@visioneer.com) or 1-800-648-0410 for more details.

## Software

Customer agrees that all software included with the rented scanner may only be used during the rental period, and shall be removed from any of Customer's computer systems at the end of the rental period.

## Payment and Refunds

Visioneer accepts all major credit cards, checks in advance and wire transfers. At Customer's request, Visioneer will make reasonable efforts to cancel a Customer order but payments will be refunded only if Visioneer is able to halt the order prior to shipping. If Customer fails to return equipment at the end of its rental period, the term will be extended as provided in the "Term" clause above and Customer agrees that Visioneer is authorized to charge Customer for the extension period at Visioneer's standard rates. In addition, Customer agrees and acknowledges that Visioneer may charge Customer for:

- Any missing parts, trays, cables, DVD software, scanners, accessories and options;
- Replacement packaging, if required;
- Any damage to Equipment while in Customer's possession or during shipping if due to improper packaging by Customer;
- Optional services requested by Customer, if any;
- Applicable taxes;
- All fines, penalties, court costs and other expenses relating to the Equipment assessed against Visioneer or the Equipment during the rental period, unless due to the fault of Visioneer;
- All expenses Visioneer incurs due to Customer's failure to return the Equipment including any attorney's fees and costs and costs incurred in locating and recovering the Equipment;
- All costs incurred to collect unpaid monies due; and
- Twenty-five dollars (\$25.00) or the maximum amount allowed by law, whichever is greater, for making payment with insufficient funds.

## Return

Customer is responsible for returning the Equipment (including all software DVDs, cables and consumables) to Visioneer in good, clean, condition, ordinary wear excepted, at the end of the rental period to avoid charges for extensions of the rental period. Customer must save all original packaging and use such packaging to ship the Equipment back to Visioneer. Customer is responsible for scheduling pickup or taking equipment to the authorized carrier shipping location. If Customer loses their prepaid shipping tag or ships via any other method, then Visioneer is NOT responsible for reimbursement of any related shipping costs and or carrier delivery terms and such costs and expenses will be solely for the account of Customer.

**IMPORTANT REGARDING RETURN SHIPMENT:** Customer must confirm return shipment by providing proof of carrier shipping tracking number by email to [csr@visioneer.com](mailto:csr@visioneer.com) within 2 working days after expiration of weekly rental periods and within 3 working days after expiration of monthly rental periods. If Customer fails to provide a valid tracking number by such date, Customer will be deemed to have elected to keep the rented scanner and the term of the rental period will be extended as provided in the "Term" clause above.

## Indemnification and Liability

Customer shall indemnify, defend and hold harmless Visioneer from and against any claim, demand, cause of action, loss or liability (including attorney's fees and expenses of litigation) for any infringement, violation of law, property damage or personal injury arising from Customer's use of Equipment by any cause, except to the extent solely caused by Visioneer's negligence or willful misconduct or arising from a defect or fault in the Equipment. The provisions of this clause shall survive the termination of rental period with respect to any claims or liability accruing before such termination. IN NO EVENT SHALL VISIONEER BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL LOSS OR

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DAMAGES ARISING FROM CUSTOMER'S USE OF THE EQUIPMENT, INCLUDING BUT NOT LIMITED TO LOST PROFITS AND LOST REVENUE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

## Ownership

Visioneer shall at all times retain ownership and title to the Equipment. Customer shall immediately notify Visioneer in the event Equipment is levied, has a lien attached or is threatened with seizure. Customer shall indemnify and hold Visioneer harmless against all loss and damages caused by such action. The Equipment shall be deemed at all times to be personal property, whether or not it may be attached to any other property.

## Waiver

No failure of Visioneer to exercise or enforce any of its rights under this Agreement shall act as a waiver of subsequent breaches; and the waiver of any breach shall not act as a waiver of subsequent breaches. Visioneer's acceptance of payment with knowledge of a default by Customer shall not constitute a waiver of any breach.

## INDIVIDUAL ARBITRATION AND CLASS ACTION WAIVER

NOTE: THIS AGREEMENT CONTAINS A BINDING INDIVIDUAL ARBITRATION AND CLASS ACTION WAIVER PROVISION BELOW THAT AFFECTS CUSTOMER'S RIGHTS UNDER THIS AGREEMENT WITH RESPECT TO ANY "DISPUTE" (AS DEFINED BELOW) BETWEEN CUSTOMER AND VISIONEER.

## Arbitration

As used in this Agreement, the term "Dispute" means any dispute, claim, or controversy between Customer and Visioneer regarding any Visioneer services or the use of any devices sold, leased or rented by Visioneer, whether based in contract, statute, regulation, ordinance, tort (including, but not limited to, fraud, misrepresentation, fraudulent inducement, or negligence), or any other legal or equitable theory, and includes the validity, enforceability or scope of this clause (with the exception of the enforceability of the Class Action Waiver clause below). "Dispute" is to be given the broadest possible meaning that will be enforced. If Customer has a Dispute with Visioneer or any of Visioneer's officers, directors, employees and agents that cannot be resolved through negotiation within the time frame described in the "Notice of Dispute" clause below. Other than those matters listed in the "Exclusions from Arbitration" clause, Customer and Visioneer agree to seek resolution of the Dispute only through arbitration of that Dispute in accordance with the terms of this Agreement, and not litigate any Dispute in court. Arbitration means that the Dispute will be resolved by a neutral arbitrator instead of in a court by a judge or jury.

## Exclusions from Arbitration

Customer and Visioneer agree that any claim filed by Visioneer to recover possession of the Equipment is not subject to the arbitration terms contained in this Agreement.

## Notice of Dispute

If Customer has a dispute with Visioneer, Customer must send written notice to Visioneer Rental Program Disputes, 5696 Stewart Avenue, Fremont, California, 94538, to give Visioneer the opportunity to resolve the dispute informally through negotiation. Customer agrees to negotiate resolution of the Dispute in good faith for no less than 60 days after notice thereof. If such Dispute is not resolved within 60 days from receipt of notice of the Dispute, Customer or Visioneer may pursue such claim in arbitration pursuant to the terms of this Agreement.

## CLASS ACTION WAIVER

ANY DISPUTE RESOLUTION PROCEEDINGS, WHETHER IN ARBITRATION OR COURT, WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS OR REPRESENTATIVE ACTION OR AS A NAMED OR UNNAMED MEMBER IN A CLASS, CONSOLIDATED, REPRESENTATIVE OR PRIVATE ATTORNEY GENERAL ACTION, UNLESS BOTH CUSTOMER AND THE RELEVANT VISIONEER ENTITY SPECIFICALLY AGREE TO DO SO IN WRITING FOLLOWING INITIATION OF THE ARBITRATION. THIS PROVISION IS NOT APPLICABLE TO THE EXTENT SUCH WAIVER IS PROHIBITED BY LAW.

## Arbitration Procedures

The party wishing to initiate arbitration for any Dispute shall commence such arbitration in Alameda County, California before one arbitrator. The arbitration shall be administered by JAMS pursuant to the expedited procedures set forth in the JAMS Comprehensive Arbitration Rules and Procedures as those Rules exist on the effective date of this Agreement, including Rules 16.1 and 16.2 of those Rules. Judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

## Choice of Law

This Agreement and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of the State of California, exclusive of conflict or choice of law rules.

The parties acknowledge that this Agreement evidences a transaction involving interstate commerce. Notwithstanding the provision in the preceding paragraph with respect to applicable substantive law, any arbitration conducted pursuant to the terms of this Agreement shall be governed by the Federal Arbitration Act (9 U.S.C., Secs. 1-16).

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## Severability

If any clause within this Agreement (other than the "Class Action Waiver" clause above) is found to be illegal or unenforceable, that clause will be severed herefrom, and the remainder of this Agreement will be given full force and effect. If the Class Action Waiver clause is found to be illegal or unenforceable, this entire arbitration provision will be unenforceable, and the Dispute will be decided by a state or Federal court located in Alameda County, California and Customer and each applicable Visioneer Entity hereby irrevocably waives to the fullest extent allowed by law (i) objections to the jurisdiction of such courts, (ii) objections to venue and convenience of forum, and (iii) any trial by jury.

## Continuation

The arbitration, choice of law and submission to jurisdiction provisions shall survive any termination of this Agreement or the provision of Visioneer products or services to Customer.

## Miscellaneous

This Agreement represents the entire understanding relating to the subject matter hereof and prevails over any prior or contemporaneous, conflicting or additional communications. This Agreement can only be modified by a written amendment signed by the party against whom enforcement of such modification is sought. Customer may not, without the prior written consent of Visioneer, transfer or assign the Equipment or this Agreement or any part thereof. Any attempt to do so shall be a material default of this Agreement and shall be void. Clause headings used in this Agreement are for reference only and shall not be used or relied upon in the interpretation of this Agreement.

I have read and agree to the Visioneer Rental Program terms including without limitation the Waiver of Class Action Rights.

Customer Name

Customer Signature

Company

Date