
XTRACOM Phone Lease Program and Rental Agreement

XTRACOM's Phone Lease Program and Rental Agreement ("Rental Agreement") is available to those customers who have entered into a contract for the purchase of Office Services, through a XTRACOM Office Plan Purchase Agreement with a minimum Initial Term of at least twenty-four (24) months and a Renewal Term of at least twelve (12) months. For clarification, the Rental Agreement must be contemporaneous with the XTRACOM Office Plan Purchase Agreement and for an Initial Term of at least twenty-four (24) months, and the customer must enter into the Rental Agreement at the same time as the Start Date of the XTRACOM Office Plan Purchase Agreement. This Phone Rental/Lease Program is offered and available to United States Customers only.

The terms governing this Rental Agreement are further subject to the general XTRACOM End User License Agreement and Terms of Service (the "General EULA," available at xtracom.com), the terms of which are incorporated herein by reference. To the extent there is any conflict between the terms of the General EULA and this Rental Agreement, the applicable terms of this Rental Agreement shall govern. Any capitalized terms not defined herein will have the same meaning as in the General EULA or the XTRACOM Office Plan Purchase Agreement, as applicable.

Rental Services

This Rental Agreement is for the rental of certain telephone hardware (each a "Rental Device") from XTRACOM (collectively, the "Rental Services"). XTRACOM charges a recurring monthly fee for each Rental Device (collectively, the "Rental Fees"). As a part of your recurring bill from XTRACOM, you agree to pay the Rental Fees for all Rental Devices, using the same payment method and payment period as your payments for XTRACOM Office Services, as defined in your XTRACOM Office Plan Purchase Agreement. XTRACOM will pro-rate the Rental Fees for any equipment that is rented, for the initial period from the start of the rental period until the end of then-current billing period for the Office Services, and the start of the rental will begin on the date a Rental Device is recorded as delivered by a designated courier (the "Rental Start Date").

The Rental Services with respect to a Rental Device shall commence on the Rental Start Date and terminate upon the earliest to occur of (a) either Party delivers written notice of termination of this Agreement to the other Party at least thirty (30) days prior to the applicable termination date (with such termination date being at the end of the Office Services billing period in which the end of such 30 day period occurs, (b) the termination of the XTRACOM Office Plan Purchase Agreement. Notwithstanding the above, at any time within thirty (30) days after the Rental Start Date, you may terminate the Rental Services with respect to a Rental Device immediately upon written notice from you to XTRACOM, without paying any Rental Fees for such Rental Device.

Upon any termination of the Rental Agreement or Rental Services, you agree to return or purchase a Rental Device (including all accessories and materials that were provided with the primary hardware device) consistent with XTRACOM's written instructions and in accordance with the Return or Purchase Rights section of this Rental Agreement, and that Rental Device will no longer be considered a Rental Device upon the completion of a return or purchase. If you do not return a Rental Device (subject to XTRACOM's inspection and acceptance of the returned Rental Device in its reasonable discretion) within five business days following the termination of the Rental Services for such Rental Device, you will be deemed to have purchased that device at a purchase price equal to (1) during the first 12 months after you received the Rental Device, 100% of the Rental Device's then-current Market price available on XTRACOM's web site by request (access code), or (2) after such 12 month period, 80% of such list price, and you agree to pay the applicable purchase price.

If you wish to upgrade a Rental Device, the replacement of the current Rental Device shall be deemed a termination of the Rental Services with respect to the current Rental Device and be subject to the termination provisions hereof, including the return or purchase provisions for the Rental Device set forth in the Return or Purchase Rights section of this Rental Agreement; provided that the Rental Services for the current Rental Device shall be deemed to terminate, and the Rental Services of the replacement Rental Device shall commence, on the date the replacement Rental Device is recorded as delivered by a designated courier.

The Rental Fees for the Rental Services do not include additional services you may select, taxes, fees, international usage, and other additional services. Sales tax varies by jurisdiction of purchase or rental and may be calculated based on full retail price or XTRACOM cost price, as determined by the tax law in the jurisdiction of purchase or rental.

Rental Devices Ownership; Damage and Loss

XTRACOM is and will remain the owner of each Rental Device unless title is conveyed to you in writing following XTRACOM's confirmation to you of its receipt of your payment in full of the purchase price for the Rental Device. You will not grant any third party any right to use, possess, or control any Rental Device, sublease any Rental Device, attempt to dispose of any Rental Device, grant any interest or right in a Rental Device to any third party, or otherwise do anything that undermines XTRACOM's ownership of each Rental Device. XTRACOM may, without notifying you, assign XTRACOM's interest in any Rental Device, and in that event, XTRACOM's assignee will have all of XTRACOM's rights in the Rental Device under this Agreement, but none of XTRACOM's obligations. You agree not to assert against XTRACOM's assignee any claims, offsets, or defenses you may have against XTRACOM. Upon XTRACOM's request, you will execute and deliver to XTRACOM any documents or forms for protecting XTRACOM's ownership and interest in each Rental Device, including finance statements under the Uniform Commercial Code.

Upon receipt of each Rental Device, you will examine each Rental Device, and unless you notify XTRACOM within five business days of your receipt of a Rental Device to any issue with a Rental Device, each Rental Device is deemed to be in good working order at the time of receipt. In the event that any Rental Device delivered to you is stolen, lost, damaged, or transferred to any third party, regardless of the circumstances or cause, you will immediately notify XTRACOM in writing and pay XTRACOM a purchase price equal to (1) during the first 12 months after you received the Rental Device, 100% of the Rental Device's then-current XTRACOM list price shown on XTRACOM's web site, or (2) after such 12 month period, 80% of such list price. This obligation does not apply to any damage to a Rental Device that is covered by the manufacturer's warranty.

Rental Device Usage

You will ensure that: (a) each Rental Device will only be used in a careful and proper manner and in accordance with the written instructions provided with it by XTRACOM, as may be updated by XTRACOM or the manufacturer of the Rental Device from time to time; (b) each Rental Device will be used with due care and will not be defaced, modified, or used or operated in any manner or for any purpose in violation of any federal, state, or local law or regulation; (c) each Rental Device must remain within the United States and may not be exported or re-exported to any country contrary to U.S. export laws; (d) any regulatory or certification markers affixed to a Rental Device may not be removed, defaced, or otherwise obstructed; and (e) each Rental Device will only be repaired subject to XTRACOM's express written authorization and in accordance with XTRACOM's instructions and requirements.

Return or Purchase Rights>Returns

When you return a Rental Device, you agree to return a fully functional and non-damaged Rental Device to XTRACOM, at your risk and cost, and you agree that, to the extent that you do not do so, you will be obligated to pay XTRACOM a thirty-five dollar (\$35.00) re-stocking fee per device. You agree to pay all shipping and handling charges related to any Rental Device and related hardware returns.

All Rental Devices and related hardware must be fully functional, include all components, manuals, peripheral devices, and all other accessories that were originally shipped with the Rental Device. At our discretion, we may decline your return or charge you an additional fee of thirty dollars (\$30) for each missing item or for each item that we determine is damaged or not in good working condition.

Before returning any Rental Device or hardware that has data in its memory, please transfer all files you wish to retain to another file source. Once the hardware is returned, your files cannot be recovered and you release us of any liability for any lost, damaged, or destroyed files, data, or other information.

Purchases

You may purchase a Rental Device at any time following 12 months from the date you received the Rental Device. You agree to purchase the Rental Device for 80% of the Rental Device's then-current XTRACOM list price shown on XTRACOM's website.

Other Remedies

If you are obligated to return or purchase a Rental Device subject to this Return or Purchase Rights section of this Rental Agreement, and you have not returned a Rental Device or you have defaulted in any obligation to pay the purchase price due for a Rental Device to be purchased, XTRACOM may, in addition to those remedies available at law, in equity, or as otherwise set forth in this Agreement, take possession of any or all Rental Devices without demand, notice, or legal process, wherever each Rental Device may be located, and you hereby waive any and all damages occasioned by that taking of possession.

Warranty Disclaimer

EACH RENTAL DEVICE AND ANY TELEPHONE HARDWARE PURCHASED IN CONNECTION WITH THIS RENTAL AGREEMENT IS PROVIDED "AS IS" AND "AS AVAILABLE" AND XTRACOM MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY SIMILAR WARRANTY, WHETHER SAID WARRANTY ARISES UNDER PROVISIONS OF ANY LAW OF THE UNITED STATES OR ANY STATE THEREOF OR ANY COUNTRY. XTRACOM MAKES NO REPRESENTATIONS OR WARRANTIES THAT ANY RENTAL DEVICE WILL BE DELIVERED TO YOU BY A PARTICULAR DATE OR IS FREE OF RIGHTFUL CLAIMS OF ANY THIRD PARTY FOR INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY OR OTHER PROPRIETARY RIGHTS (INCLUDING PATENT AND TRADE SECRET RIGHTS). THE ENTIRE RISK ASSOCIATED WITH THE USE OF ANY RENTAL DEVICE SHALL BE BORNE SOLELY BY YOU.

SOME JURISDICTIONS DO NOT PERMIT THE DISCLAIMER OF CERTAIN IMPLIED WARRANTIES, SO CERTAIN OF THE FOREGOING DISCLAIMERS MAY NOT APPLY TO YOU. TO THE EXTENT THAT XTRACOM CANNOT DISCLAIM ANY SUCH WARRANTY AS A MATTER OF APPLICABLE LAW, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW.

General Terms

You authorize us to collect any payment owed by you hereunder from your payment method, as provided in your XTRACOM Office Plan Purchase Agreement or the EULA TOS, as applicable. This Rental Agreement, which is subject to and incorporates by reference the XTRACOM Office Plan Purchase Agreement, and the EULA TOS, constitutes the complete, final, and exclusive embodiment of the entire agreement between you and the Company regarding the Rental Services. In signing the Agreement, the undersigned represents to XTRACOM that the undersigned has full power and authority to perform all of its obligations hereunder. This Rental Agreement is the binding obligation of the undersigned, enforceable against the undersigned in accordance with its terms.

XTRACOM may, in its discretion, update or change the terms and conditions of this Rental Agreement, and the version of this Rental Agreement applicable to each Rental Device, is the version of this Rental Agreement then in effect at the start of the rental for that Rental Device, including the start of the rental for an upgrade Rental Device. This Phone Rental/Lease Program is offered and available to United States customers only. Customer must agree to a Service Commitment Period for XTRACOM Office Services with an Initial Term of at least 24 months to be eligible to participate in the Phone Rental/Lease Program.