

TENNIS BALL MACHINE RENTAL AGREEMENT

IMPORTANT: THIS AGREEMENT INCLUDES A RELEASE OF LIABILITY (SECTION 6) AND AN INDEMNITY (SECTION 7(g)). PLEASE READ IT CAREFULLY BEFORE BOOKING.

This Tennis Ball Machine Rental Agreement (hereafter "Agreement") is entered into as of the date the Customer books (hereafter "Agreement Date"), by TBM Rentals (hereafter "Lessor"), and the person who books the rental (hereafter "Customer").

1. Rental

- a. Lessor shall make available, for pickup at one of Lessor's rental locations (as listed on tbmrentals.com, currently Houston, Texas and San Jose, California, with San Antonio, Texas opening soon) or by delivery to an address the Customer provides, the following equipment (the "Equipment"):
 - Tennis ball machine (Tennis Tutor Plus or Spinfire Pro 2), with its power cord, battery or charger,
 - Ball hopper,
 - Pressureless tennis balls, if booked,
 - Any extras booked, such as a wheel base or extra carrying capacity.
- b. Customer acknowledges that the Equipment is provided for Customer's own use, and use by people the Customer supervises, for practicing tennis on a tennis court that Customer has authorization to use. Customer shall not sublet, sell or lend the Equipment to anyone else.
- c. Lessor shall provide the Equipment clean and in good working order. Customer should check the Equipment at pickup or delivery and tell Lessor about any problem before using it. If the Equipment stops working during the rental through no fault of the Customer, Lessor will, at Lessor's choice, repair or replace it or refund the rental fee for the time lost.
- d. The Equipment remains Lessor's property at all times.

2. Rental period

- a. This Agreement covers every rental the Customer books. The pickup or delivery time, the return time (the "Return Time") and the location of each rental are set when the Customer books on tbmrentals.com (the "Booking"), or as later agreed in writing, including by email or text message.
- b. The Equipment shall be returned by the Return Time to the pickup location, or, for delivered rentals, made ready for collection at the delivery address.

3. Rental fees and charges

- A. Customer shall pay, in advance, the rental fee shown at checkout when booking. This covers the rental days, any balls and extras, and delivery if chosen.

- B. Customer shall be charged a rate of \$5.00 for each hour past the Return Time that the Equipment is not returned, up to the daily rental rate for each 24 hours. These charges reflect the rental time lost by Lessor and by the next customer.
- C. Customer shall be charged \$2.00 for each tennis ball not returned, which is the cost of replacing it.
- D. If the tennis ball machine is not returned within 24 hours after the Return Time, and Customer has not agreed a new return time with Lessor, Customer shall be charged the full cost of replacing the Equipment at current retail price, plus any reasonable cost of recovering it. If the Equipment is later returned in working order, Lessor will refund that charge, less any other charges owed under this Agreement. Customer agrees to provide a current mailing address on request.
- E. Customer is responsible for any loss, theft or damage to the Equipment from the time of pickup or delivery until it is returned, other than normal wear and tear. Customer shall pay the reasonable cost of repair or, if the Equipment cannot be repaired, the cost of replacing it at current retail price.
- F. Refundable deposit hold. The card used to book is saved for this purpose. About 2 hours before pickup or delivery, Lessor places a refundable hold of \$250 on that card. A hold is not a charge. For rentals longer than 6 days, the hold is renewed during the rental so it does not lapse. Lessor releases the hold after the Equipment is returned in good condition, and no later than 2 days after the return date.
- G. Customer authorizes Lessor to charge any amount owed under this section to the card used to book, first from the \$250 hold and, if the amount is higher, as a separate charge to the same card. Lessor will tell the Customer the amount and the reason before charging. Customer may contact Lessor within 7 days to dispute a charge.
- H. Cancellations. Customer may cancel a Booking for a full refund by contacting Lessor at least 24 hours before the pickup or delivery time. Later cancellations are not refunded, unless Lessor cancels the Booking or the Equipment is not available.

4. Use by minors

- a. Customer confirms that they are at least 18 years old.
- b. Customer further warrants that the Equipment shall not be used by minors under the age of 18 without the minor's parent or legal guardian's prior written consent, and in no case shall any minor use the Equipment without adult supervision.
- c. If Customer allows a minor to use the Equipment, Customer agrees to Sections 6 and 7(g) on behalf of themselves and, where Customer is the minor's parent or legal guardian, on behalf of the minor, to the fullest extent the law allows.

5. Safe use and assumption of risk

- a. Customer acknowledges that the tennis ball machine, if not used properly, can cause serious bodily injury or harm.

- b. The Equipment should not be used on wet surfaces, in the rain, or with faulty electrical outlets or power sources. Customer shall follow the manufacturer's instructions for setup, use and charging, shall not stand in front of the machine while loading or adjusting it, and shall keep children and pets away from it while it is running.
- c. Customer understands that playing tennis and using a ball machine carry risks, including being hit by balls, tripping on balls, falls, strains and electrical hazards. Customer voluntarily accepts these risks.

6. Release of liability

- a. **TO THE FULLEST EXTENT THE LAW ALLOWS, CUSTOMER RELEASES LESSOR AND LESSOR'S OWNERS, FAMILY MEMBERS, EMPLOYEES AND HELPERS (THE "LESSOR PARTIES") FROM ANY AND ALL LIABILITY FOR INJURY, DEATH, OR DAMAGE TO PROPERTY ARISING OUT OF THE RENTAL OR USE OF THE EQUIPMENT, INCLUDING WHILE THE EQUIPMENT IS NOT UNDER LESSOR'S CONTROL, AND INCLUDING LIABILITY CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF ANY LESSOR PARTY.**
- b. **THIS RELEASE DOES NOT APPLY TO GROSS NEGLIGENCE, WILLFUL OR INTENTIONAL MISCONDUCT, FRAUD, OR ANY LIABILITY THAT THE LAW DOES NOT ALLOW TO BE RELEASED.**

7. Miscellaneous provisions

- a. No provision of this Agreement shall be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing, including by email, by Lessor and by Customer.
- b. No waiver by either party of any breach of, or compliance with, any condition or provision of this Agreement by the other party shall be considered a waiver of any other condition or provision or of the same condition or provision at another time.
- c. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision, which shall remain in full force and effect.
- d. This Agreement, together with the Booking confirmation, is the whole agreement between the parties. No other agreements, representations or understandings (whether oral or written, express or implied) have been made by either party about its subject matter.
- e. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the state where the rental location used for the Booking is located (for example, Texas for Houston and San Antonio rentals, and California for San Jose rentals), without regard to choice-of-law rules.
- f. Any dispute arising out of this Agreement shall be brought in the courts of the county where the rental location used for the Booking is located (for example, Harris County for Houston, Bexar County for San Antonio, and Santa Clara County for San Jose), except where the law gives the Customer the right to have the case heard elsewhere. Either party may use small claims court.
- g. **TO THE FULLEST EXTENT THE LAW ALLOWS, CUSTOMER WILL INDEMNIFY AND DEFEND THE LESSOR PARTIES FROM ALL CLAIMS, LOSSES, DAMAGES AND COSTS (INCLUDING REASONABLE ATTORNEY'S FEES) FOR INJURY TO ANY PERSON, INCLUDING A MINOR OR**

ANYONE ELSE CUSTOMER LETS USE THE EQUIPMENT, OR DAMAGE TO PROPERTY, ARISING FROM CUSTOMER'S RENTAL OR USE OF THE EQUIPMENT, INCLUDING CLAIMS CAUSED IN PART BY THE NEGLIGENCE OF A LESSOR PARTY, BUT NOT CLAIMS CAUSED BY A LESSOR PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

h. Notices may be sent to the Customer at the email address or phone number given in the Booking, and to Lessor at tennisballmachinerentals@gmail.com or 832-413-1363.

8. Acceptance

By ticking "I agree to the terms and conditions" when booking on tbmrentals.com, the Customer confirms that they have read and accept this Agreement, including the release of liability in Section 6 and the indemnity in Section 7(g). That electronic acceptance has the same effect as signing on paper. The Customer's name, email address, phone number and the date of the Booking are recorded with the Booking.