

The Fine Print

What's Inside Fleet Lease and Service Agreements



Elizabeth Stomberg

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Mead & Hunt
Middleton, WI

- **Mead & Hunt, Inc.**
- Two years fleet experience
- Focus on processes improvements for gathering and recording fleet information

Janis Christensen, CAFM

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Mercury Associates
Las Vegas, NV

- **Senior manager, Mercury Associates** since 2006, where she is responsible for directing corporate fleet consulting projects
- Previously owner Christensen & Day Group, a fleet consulting firm
- Previously 15 years as a fleet manager at TRW, where she was responsible for all aspects of fleet management of 1,700 vehicles, alternative transportation, and telecommuting programs (today, referred to as “mobility” programs)
- She has conducted presentations and workshops for thousands of industry professionals for a variety of prominent industry and professional associations, has authored dozens of articles, and has written several published policies and procedures manuals
- Her driver’s agreement template, designed in 1984, has helped hundreds of fleet managers implement comprehensive change in the management of individuals authorized to operate company vehicles
- Recipient of the NAFA’s highest honor, the Distinguished Service Award for leadership, innovation, education and advocacy of professional fleet management, in 1999

Steve Saltzgiver, CAFS, MAOM

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Mercury Associates
Salt Lake City, UT

- **Manager, Mercury Associates** since 2015, where he works with both corporate and government fleets
- >40 years' experience beginning as a truck assembly worker, commercial driver and fleet maintenance journey technician, local municipal fleet manager, and director over two large state government fleets (Utah and Georgia)
- Vice President of fleet operations for two Fortune 500 corporate operations (Coca-Cola and Republic Services)
- Directed 50,000 unit fleet with \$1.5 billion annual capital and operating budget
- Currently serving on the NAFA Board of Directors
- Recipient of multiple industry awards including 2000 Honda Motors Environmental Leadership award, 2015 Sustainable Fleet Award, 2017 Government Hall of Fame Inductee and Legendary Achievement Award
- Holds Business Management and a Masters of Organizational Management degrees from the University of Phoenix

Learning Objectives

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- Learn how to make sense out of terms, conditions, provisions, disclaimers, and exclusions – and the impact on your organization
- Design benchmarking performance terms and conditions for fleet contracts and service level agreements

- Typical Fleet Management Company leases and services
- Not closed-end or full-service maintenance leases

Disclaimer

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**“We need to send the right guy for this negotiation ...
someone who’s adorable, cuddly, cute as a button ...
who could it be?”**

Open-end Operating Leases

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TERMS AND CONDITIONS

costs and expenses (including any legal costs and expenses) in connection with the making, issuing, and payment of the same, and the costs and expenses of the Bank or its successors in connection with the making, issuing, and payment of the same, shall be paid by me/us, at such rates as may be determined in its absolute discretion. I will also pay the same in the manner and, at such times, as may be determined in its absolute discretion.

- (d) That any and all amounts credited to the account of me/us in connection with the making, issuing, and payment of the same, shall be paid by me/us, at such rates as may be determined in its absolute discretion. I will also pay the same in the manner and, at such times, as may be determined in its absolute discretion.

Lessor Limitation of Liability

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- **Consequential damages**, damages for loss of use, loss of profits or income, punitive, or any incidental or **indirect damages**
- Odometer disclosure



"Oh, come on, they wouldn't sell it if it wasn't safe."

- Will ask Lessee to indemnify all **direct** and actual damages for claims, losses, liabilities due to breach of Agreement, negligence, or willful misconduct?
- Claims when vehicle is **not in possession of Lessee** (during shipment, at upfitter, at dealer, picked up for sale, at reseller, after sold)?



- Commencement date
 - First day of the month
 - 1st day of month after accepted delivery?
 - 1st day of month delivered if delivered by 15th day?
 - 1st day of next month if delivered on or after 16th day?
 - Delivery
 - Actual date Lessee takes possession?
 - "X" number of days at dealer before deemed "delivered"?



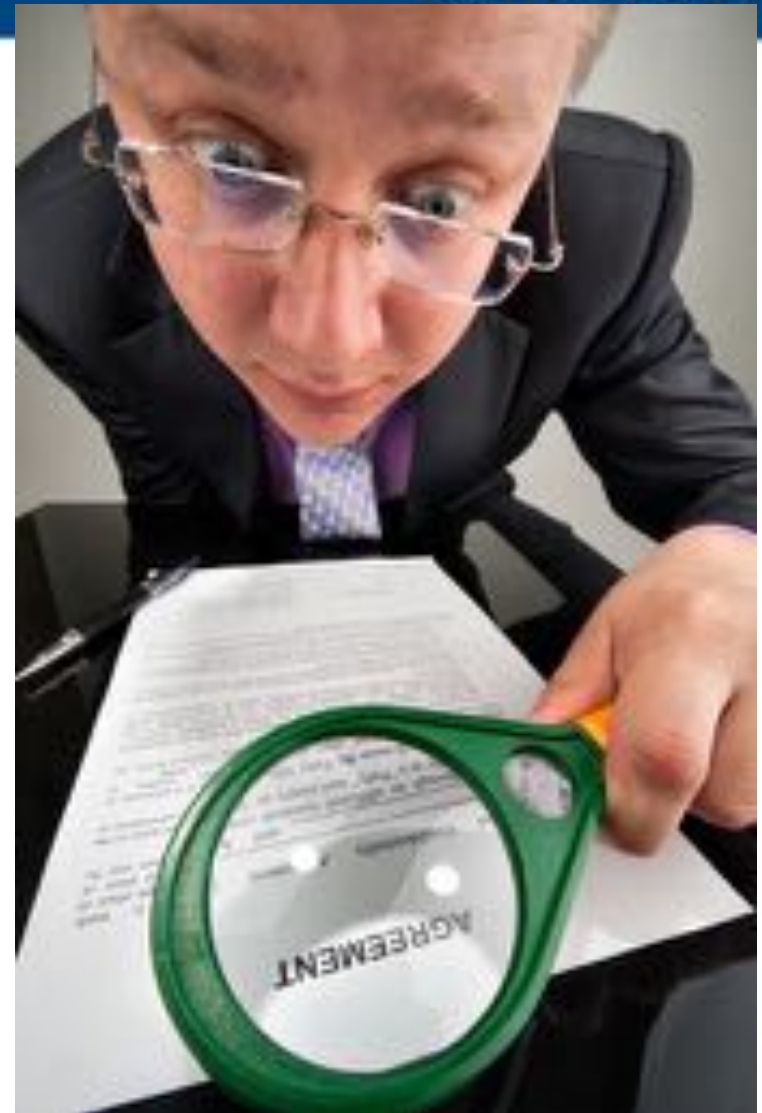
- End date for lease “rental”
 - Date Lessor picks up vehicle from Lessee?
 - Last day of month prior to “sold” date?
- End date exceptions
 - Sold to employee
 - Date paperwork received by Lessor?
 - Date payment from employee received by Lessor?
 - Totaled or stolen vehicle (Date of crash / theft? date proceeds received?)



Lease Term

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- Early Termination
 - Calculation (prior to 12, 24, 36, 48 months)?
 - Rental, interest, fee
 - Residual value or other calculation
- Residual guaranty TRAC lease
 - Guaranty: net proceeds must equal certain percentages of vehicle fair value or capitalized cost



- Carrying cost – interim interest calculation
 - Per diem rate (**365 versus 360 days**)?
 - Index (Prime, LIBOR, other) and mark-up?
 - Index published source (H.15, WSJ) and date?
 - Start date
 - Date OEM invoices Lessor?
 - Date Lessor pays OEM?
 - End date
 - Date delivered to dealer?
 - Date Lessee takes delivery?
 - Last day of month before lease starts?



- During lease term
 - Same per diem and Index questions as with carrying rate (previous slide)
 - Rounding, issuance, processing, administrative fees?
 - May be adjusted based on depreciation term, changes in lending market conditions?
- Back end
 - Until funds received – interim at Prime from lease end to funds received (“sale date”)



Capitalized Cost

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- Vehicle
- Upfit
- Delivery
- Storage
- License and title
- Taxes
- Carry cost
- Handling fee
- OEM discount



- How is reserve for depreciation calculated?
- Rent ends
 - Start date of replacement lease?
 - What if surplus vehicle (no replacement)?
 - Last day of month prior to month “sold”?
- Interim Rent
 - **Front end:** date of delivery to end of month per-diem fee that does not reduce book value
 - **Back end:** begins month of sale until “date of sale” which may be date payment is received by Lessor



Payments and Pass-through

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- No invoice adjustments of **any** kind?
- **Limits** on 3rd party pass-through expenses?



- Privacy issues
- Use of Lessee data
- Use of “de-personalized” data
- Who owns Lessee data?



SERVICE AGREEMENTS



- Will ask Lessee to indemnify all **direct** and actual damages losses, expenses?
- Who has duty to inspect or screen service facilities and service personnel?
- FMC "hold harmless" any and all liability for its performance or its vendors' performance?
- What if vehicle is not in possession of Client (during service)?



- How many hours or days before a fuel card is deemed cancelled?
- Is client responsible for all subsequent charges even if card is cancelled?
- Indemnity for loss, liability, or damage resulting from enacting authorization controls (reject purchase)?
- When are rebates paid to Client?



Crash Management

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- Subrogation – what's included?
 - Repair cost
 - Diminished value
 - Rental car cost
 - Loss of use



Rental Vehicles

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- “National account” rates
- Local rental agency prevailing rate
- Insurance decisions
- Management of vehicle type, repair delays, weekend rental



Data

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- Privacy issues
- Use of Client data
- Use of “de-personalized” data
- Who owns Client data?



Motor Vehicle Records

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- Employment purposes
- Insurance purposes
- Written consent (Fair Credit Reporting Act)
- Employees and non-employees
- Use of private data
- Liability for negligence or gross negligence or willful misconduct?



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Fleet Administration

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- Driver questions
- Policy
- Driver guidebook
- Driver order management
- Unassigned vehicles
- Database changes
- Bulk mailings



Fringe Benefit Taxation

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- Who is responsible for compliance with tax laws?
- Legality of payroll deductions?



Fees and Payment

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- Are contract fees consistent with the proposal?
- Can fees not included in the Agreement be added?
- Can fees in the Agreement be adjusted with notice to Client?
- Does Client pay before FMC pays the 3rd party?
- Does Client pay any third party bill regardless when the service occurred?



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Maintenance Management

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- In-network
 - “National accounts”
 - Repair facilities that are national but not a “national account”
 - Dealers
 - Independent shops
- Outside network
- Prices charged to Client (less “re-billing” fee)
 - Amount billed to Client is more than amount FMC paid to its vendor – “short-pay”



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Maintenance Management

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- Fee start date
 - Date replaced by another vehicle?
 - First day of the month?
 - Mail date of service credit cards 15/16 rule?
- Fee end date
 - Date replaced by another vehicle?
 - Last day of the month picked up for sale?
 - Last day of month when "sold"
 - Last day of month when service credit card is returned to FMC
- When are rebates paid to Client?



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Unplanned Events

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- Breakdowns and other non-maintenance repairs
 - Who manages downtime?
 - Recalls
 - Routine
 - Vehicle deemed unsafe



(As far as we know, picture is public domain)



(As far as we know, picture is public domain)



(As far as we know, picture is public domain)



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Service Level Agreements

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**Design benchmarking performance terms and conditions
for fleet contracts and service level agreement”**



Potential Metrics for a SLA

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- Days to order
- Delivering dealer distance
- Vehicle invoice accuracy
- Relocation days
- On-time registration renewal
- Driver satisfaction
- Call centers speed to answer
- Call centers abandoned calls
- Network coverage
- On-time PM
- Roadside response time
- Work order hours for completion

Potential Metrics for a SLA

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- Remarketing residuals vs. index
- Days to pick up
- Days to sell
- Invoice adjustment percent
- Subrogation recovery percentage
- Replacement fuel card days
- Fuel level 3 data
- FMIS uptime
- Visits to Client

SLA Components

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- Purpose: Terms of agreement
- Parties involved: Areas of responsibility
- Procurement: Asset order and delivery
- Asset upfitting and modifications
- Registration and titles
- Maintenance and repairs management
- Crash reporting and repair management
- Service calls and towing



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SLA Components

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- Rental vehicles
- Fuel card management
- Data management
- Reporting intervals
- Customer service
- Performance standards



DEPRECIATION



- Make, model choice
- Timing
- Mileage
- Condition

CRASH REPAIRS



- Crash severity
- Incorrect classification of incidents

OEM POST WARRANTY



- Magnitude of events in any given year

Hard to Measure

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Discussion

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