

## Terms & Conditions

- 1. RENT.** In addition to the amounts coming due under any other provisions(s) of this Contract, You agree to pay Us the Rent specified on Page 1, without reduction or setoff, for the period commencing upon the Time Out and continuing without interruption until the Actual Time In. If You fail to return any Equipment when it is Due In, You will continue to pay us Rent on the basis set forth on Page 1 for all additional time elapsed (a "Late Period") until the equipment is returned to, and accepted by Us.
- 2. EXCESS USAGE.** Most Rental rates are established for normal and reasonable use of the Equipment on a single-shift basis, not exceeding 8 hours per day, 5 days per week. Unless otherwise specified on Page 1, You will be charged Rent for an additional full Rental Period if and to the extent any greater use of any of the Equipment is made (e.g., over 8 hours per day; 40 hours per 7-day period; or 160 hours per 4-week period).
- 3. TAXES AND FEES.** You will also be responsible for paying all taxes, fees, environmental charges, and governmental assessments, including without limitation, sales and use taxes, applicable to the rental of the Equipment.
- 4. SECURITY DEPOSIT.** You agree that We may deduct any amount You owe US from any deposit (whether identified as a "Security Deposit" or otherwise) You have provided Us. The amount of such deposit is not a limit of Your liability or responsibility for the Equipment. You will not be entitled to interest on the Security Deposit.
- 5. DELIVERY AND PICK UP.** We will deliver and/or pick up the Equipment in exchange for the "Delivery/Pick Up Charge" specified on Page 1. You agree to provide Our personnel with reasonable access to the delivery Site at all times and agree to refrain from interfering with Our delivery, setup and/or pick up of the Equipment. YOU HEREBY RELEASE AND DISCHARGE US FROM ANY AND ALL LIABILITY AND DAMAGES (INCLUDING INCIDENTAL, CONSEQUENTIAL, SPECIAL AND PUNITIVE DAMAGES) ARISING FROM OR ASSOCIATED WITH OUR DELIVERY AND/OR PICK UP OF THE EQUIPMENT, AS WELL AS ANY DELAY, FAILURE OR INABILITY TO DELIVER, SET UP OR PICK UP ANY EQUIPMENT.
- 6. POSSESSION/TITLE.** We own the Equipment, and title in and to all of it will remain Ours at all times. You are entitled only to use and possess the Equipment for the Rental Period; subject to the terms of this Contract. If You retain any of the Equipment beyond the agreed Term without Our express written consent, You will be deemed to have materially breached this Contract. You will not take, grant or permit the taking of any (and You hereby waive any and all) liens or other similar claims on any portion of the Equipment, and You will take such actions as may be necessary, at Your sole cost and expense, to ensure that any and all such liens are released as soon as possible.
- 7. CREDIT CARD AUTHORIZATION.** Subject to such limitations as may be set forth in applicable law, you irrevocably and unconditionally authorize Us to immediately submit for payment on the credit card (if any) You have provided Us all estimated charges coming due under this Contract, and You agree to indemnify, defend and hold harmless the Rental Company with respect to the same.
- 8. WARRANTY WAIVER.** The equipment is provided "as-is" and "with all faults." We make no warranty, express or implied (including without limitation, any and all warranties of suitability, merchantability, and/or fitness for any particular purpose), nor do we make any warranty against interference, infringement, that the equipment is fit for your intended use, application or environment, or that it is free from defects (latent or patent). No warranties shall be deemed to exist with respect to the equipment, except as expressly set forth in this contract. Accordingly, you hereby waive any and all implied warranties. We will not be responsible to you or to any third party for any liabilities, claims, injuries, losses, costs or damages arising from or associated with the use or any failure of, or any unknown defect in or with respect to, any of the equipment. Your sole remedy for any failure of or defect in or with respect to any of the equipment is termination of the accrual of rental charges at the time of failure.
- 9. ASSUMPTION OF RISK.** You acknowledge that the possession, use, transportation and/or storage of the Equipment may give rise to the risk of personal injury and/or property damage. YOU VOLUNTARILY ASSUME ALL SUCH RISK AND RELEASE AND DISCHARGE US AND THE EQUIPMENT FROM ANY AND ALL LIENS, LIABILITIES AND CLAIMS ARISING IN CONNECTION WITH THE SAME, INCLUDING WITHOUT LIMITATION, ANY AND ALL CLAIMS ARISING FROM OR IN CONNECTION WITH OUR NEGLIGENCE (OTHER THAN OUR INTENTIONAL MISCONDUCT).
- 10. HOLD HARMLESS/INDEMNITY.** You assume all risks associated with possession, use, transportation and storage of the Equipment. Accordingly, you hereby waive any and all liens and claims arising from or associated with, and agree to indemnify, defend and hold harmless the Rental Company from and against, any and all liabilities, claims, damages, losses, costs and expenses (including without limitation, attorneys' fees, claims for bodily injury(ies) (including death), property damage, loss of time and/or inconvenience) resulting from or arising in connection with such possession, use, transportation and/or storage, regardless of the cause and including any injuries and/or damages suffered by you, your employees and/or any third party(ies), except to the extent directly resulting from our intentional misconduct.
- 11. RECEIPT/INSPECTION OF EQUIPEMENT.** You acknowledge that You have received, inspected, examined and accepted the Equipment, and that, as delivered to You, it is safe and in good operating condition and repair and otherwise in all ways acceptable to You. You have selected the Equipment based on Your determination that is appropriate for your purposes, use,



application and environment, and not based on any warranty by Us as to its condition or appropriateness for Your purpose, except as expressly set forth in Paragraph (13) "Replacement by Us."

12. **EQUIPMENT FAILURE.** In the event any of the Equipment fails to start, breaks, malfunctions, becomes unsafe or is in need of maintenance or repair, You agree to immediately discontinue use, notify Us, and if directed to do so, return the Equipment to Us. *You further agree You will not repair or have anyone else repair any Equipment.* Failure to timely notify Us will result in Your being charged for all Time Out.
13. **REPLACEMENT BY US.** If the Equipment proves inoperable or defective, malfunctions, becomes unsafe or otherwise fails to function in accordance with the manufacturer's specifications, You agree to immediately discontinue using it and notify Us within one (1) hour. Failure to notify Us promptly will result in Your being charged for all Time Out. If You do so and immediately return the Equipment to Us, We will, at Our option: (a) promptly repair the Equipment; (b) provide You with reasonably similar replacement Equipment, if available; (c) make similar Equipment available to You as soon as it becomes reasonable available to Us; or (d) cancel this Contract; and adjust the Rental Charge. **You agree that foregoing will constitute Your exclusive remedy for Equipment malfunctions, and that We will have no obligation other than as set forth in this Paragraph with respect to any Rented Item that fails to function properly.** You will not be entitled to collect from us, and you expressly waive any and all claims against us for any damage, loss or expense you may incur as a result of the failure or malfunction of the equipment, including without limitation, lost time, lost profits, cost of cover (obtaining replacement equipment and/or performance from another source), incidental, consequential, special and/or punitive damages.
14. **USE OF EQUIPMENT.** The Equipment is authorized for use only by You and Your agents and employees (each of whom must be skilled, experienced, trained and authorized in its operation), at the location given as the "Ship To" site or "Job Address" on Page 1 (the "Site"). The Equipment is authorized for use only for its ordinary purpose. You agree not to and to ensure that Your employees do not: (a) use the Equipment or any portion thereof for any other purpose; (b) use it for any illegal purpose; (c) except with respect to vehicles and trailers, remove it from the Site unless authorized in writing by Us; (d) use it without first ensuring that it has been properly maintained and that all oil, pressure and fluid levels are within the limits specified by Us, the OEM and the applicable operating and/or maintenance manual(s); (e) use it in any unsafe condition or manner; (f) permit its use by any person other than Yourself or those of Your employees who are fully trained and competent in its use; (g) attempt to repair it without Our prior specific written approval; (h) abuse, misuse, overuse, commit waste of, or otherwise permit any damage to or destruction of the Equipment; or (i) surrender possession of it to any other person, except a licensed common carrier that You retain to return it to Us with Our prior written approval. **YOU AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS the Rental Company (US) FROM AND AGAINST ANY AND ALL LIABILITIES, CLAIMS, DAMAGES, LOSSES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES) ARISING FROM OR ASSOCIATED WITH YOUR BREACH OF ANY ONE OR MORE OF THE TERMS OF THIS PARAGRAPH.**
15. **COMPLIANCE WITH LAWS.** You agree to comply fully, at Your sole cost, with all laws and regulations applicable to the storage, use and transportation of the Equipment.
16. **LOSS OR DAMAGE.** You are the insurer of the Equipment during the Term. You bear all risk of loss, theft, damage or destruction to the Equipment, regardless of cause (Ordinary Wear and Tear excepted). If the Equipment is lost, stolen, damaged or destroyed during the Term, whether or not the same is Your fault, **You will notify Us immediately,** and You will pay Us (a) the retail value of the parts and labor necessary to repair the Equipment if damaged, or (b) its replacement cost, if lost, stolen, destroyed or damaged beyond Our reasonable ability to repair it; and in either case, all packing, shipping, handling, storage and other associated costs, Rent previously due or paid will not be applied against the above-referenced charges. **RENT WILL CONTINUE TO ACCRUE DURING ALL REPAIR AND REPLACEMENT PERIODS.**
17. **CARE OF EQUIPMENT.** You must protect the Equipment against misuse, exposure to adverse conditions and any other abuse or neglect, ensure that it remains in good operating condition and is returned to Us at the end of the Term in the condition required in Paragraph (18) "Return of Equipment." You will provide a qualified operator for the Equipment, pay all costs of its operation, and provide all necessary fuel, lubricants, accessories and supplies. You are the insurer of the Equipment during the Term. As such, You bear all risk of loss, theft, damage or destruction to the Equipment, regardless of cause (Ordinary Wear and Tear expected). If You fail to return the Equipment to Us in the condition required, You agree to pay all costs associated with returning it to such condition (which may include, if We reasonably deem it necessary, its full current replacement cost, including without limitation, all packing, shipping and handling charges). Accrued Rent will not be applied against the purchase or replacement of lost, stolen, damaged or destroyed Equipment.
18. **RETURN OF EQUIPMENT.** You agree to return the Equipment to Us during Our normal business hours at or before the end of the Term. Nonetheless, We may terminate this rental at any time by written notice to You and/or by retaking possession or control of the Equipment. Rent will continue to accrue until We receive the Equipment, and Your only right with respect to the Equipment is to use it during the Term in compliance with this Contract. You agree to ensure that, upon return to Us, the Equipment will be clean, free of all regulated or hazardous substances (including without limitation, substances identified as "Hazardous Materials" under the Resource Conservation and Recovery Act ("RCRA"), the Toxic Substances Control Act ("TSCA") and/or any other federal, state or local laws, rules and/or regulations purporting to deal with toxic or hazardous



substances), rental-ready, and otherwise in substantially the same order, condition and repair as at the Time Out, "Ordinary Wear and Tear" (as defined in Paragraph (19)) excepted. You agree to pay a reasonable charge for Equipment returned in any other condition including but not limited to cleaning, tire repair or replacement or any other additional cost.

19. **ORDINARY WEAR AND TEAR.** "Ordinary Wear and Tear," meaning normal deterioration resulting from the proper and intended use of the Equipment in accordance with the terms of this Contract, will not be considered damage. Damage which is not "Ordinary Wear and Tear" (and for which You will be solely responsible) includes without limitation, theft, mysterious disappearance, damage due to overloading or exceeding rated capacities, nonstandard use, overturning, tire damage, and transportation or operation without required or recommended coolants, lubricants, hydraulic fluid, air pressure levels, supports and/or safety equipment, improper use, misuse, abuse, neglect, accidents and intentional damage.
20. **LOADING AND UNLOADING.** You are responsible for loading and unloading of the Equipment. If Our employees assist in loading or unloading the Equipment, **YOU AGREE TO ASSUME THE RISK OF DAMAGE OR INJURY OCCASIONED THEREBY AND TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE RENTAL COMPANY FROM AND AGAINST ANY LOSS, COST OR EXPENSE (INCLUDING ATTORNEY'S FEES AND EXPENSES) ARISING FROM OR RELATED TO THE SAME, WHETHER OR NOT CAUSED, IN WHOLE OR IN PART, BY OUR NEGLIGENCE OR THE NEGLIGENCE OF OUR EMPLOYEES, AGENTS OR ASSIGNS. TO INCLUDE BUMPER DAMAGE OR OTHER DAMAGE TO YOUR VEHICLE.**
21. **ASSIGNMENT AND SUBLETTING.** We may, at Our sole option, assign all or any portion of Our rights and/or remedies under this Contract without Your consent. **YOU MAY NOT ASSIGN YOUR RIGHTS OR REMEDIES UNDER THIS CONTRACT, NOR MAY YOU SUBLEASE OR LOAN ANY OF THE EQUIPMENT TO ANY THIRD PARTY WITHOUT OUR PRIOR WRITTEN CONSENT. ANY SUCH ATTEMPTED ASSIGNMENT OR SUBLEASE BY YOU WILL, AT OUR OPTION, BE DEEMED VOID AB INITIO.**
22. **INSURANCE.** If any of the Equipment is to be used for a commercial purpose or is otherwise designated as "Customer Insured" on Page 1, You agree to maintain (a) property damage and casualty insurance on an "all risks" basis for the full replacement cost of the Equipment (including without limitation, all risks of loss or damage covered by the standard extended coverage endorsement) with such deductibles, if any, as may be acceptable to Us in our sole discretion; and (b) commercial general liability insurance with minimum limits of \$1,000,000 per occurrence. Such insurance shall cover all operations and contractual obligations, as well as any and all damage or liability arising in connection with the handling, transportation, maintenance, operation, use or possession of the Equipment during the Term, and shall name Us as an additional insured and loss payee on a "closed clause" basis. All such insurance shall be primary, without any self-insured retention, and shall waive subrogation against Us. You agree to provide to Us copies of the proper endorsements for the above coverages specifying that they will not be cancelled during the Term. Any insurance We carry will be deemed to be in excess of Your insurance.
23. **FAILURE TO TIMELY RETURN.** You agree to return the Equipment to Our premises during Our regular business hours, or if We have agreed to retrieve it, make it available for such retrieval at the end of the Term. If You fail to timely return any item of Equipment or make it available for Our retrieval, You agree to pay (a) an additional charge equal to the amount(s) specified in Paragraph (2) for each such item, and (b) all costs and expenses (including without limitation, attorneys' fees) We incur arising from or in connection with any: (i) collection and/or repossession activities We elect to pursue; (ii) loss of or damage to any Equipment; and/or (iii) injuries or damages to persons or property, directly or indirectly resulting there from.
24. **INTEREST ON UNPAID AMOUNTS.** All amounts due and coming due under this Contract will bear interest at the lesser of (a) 24% per annum, or (b) the highest rate permitted under applicable law until paid in full.
  - a. **DEFAULT/REMEDIES.** If You fail to comply with any provision of this Contract or any other agreement between You and Us in a timely manner, if You seek bankruptcy protection or if an involuntary proceeding in bankruptcy is commenced against You, the same will be deemed an immediate and material breach of, and an event of default under, this Contract, whereupon We may, at Our option, exercise any or all of the following remedies:
  - b. We may terminate Your right to possess and use the Equipment, enter upon any premises where the Equipment may be located **WITHOUT NOTICE** and retake possession of, immobilize and/or render unusable the Equipment, **WITH OR WITHOUT PROCESS OF LAW;**
  - c. If Your default deprives Us of the use of any item of Equipment, We may purchase other replacement Equipment and recover the cost of the replacement Equipment, together with any associated costs (e.g., packing, transportation, storage, delivery and taxes) from You;
  - d. We may declare all Rent due and coming due under this Agreement, together with interest and late fees, if any, as well as attorneys' fees, immediately due and payable;
  - e. We may seek immediate relief from any automatic stay in bankruptcy; and/or
  - f. We may pursue any other remedy available to Us under this Agreement or under applicable law. Our exercise of any one of these remedies will not constitute an election of remedies or a waiver of any other remedy We may have, it being understood that all such rights and remedies shall be cumulative.
25. **RETAKE OF EQUIPMENT.** If any Equipment is not returned to Us upon Your default, the expiration or termination of the Term, or if in Our view, it shall become necessary for Us to retake the Equipment to protect it from loss or damage, We shall



be entitled, at Our option, to immediately and WITHOUT NOTICE, retake possession and control of, immobilize and/or render inoperable, any or all such Equipment without interference from You and WITHOUT PROCESS OF LAW. In the event We elect to do so, You agree (a) to provide Us with immediate access to each premises where the Equipment or any portion thereof may be located; (b) to gather and make the Equipment available for retrieval by Us; (c) to render such other assistance as We may deem necessary, and (d) that neither We nor Our agents will be liable for property damage, trespass, forcible entry, unlawful detainer or other similar transgression. You hereby irrevocably appoint Us as Your attorney-in-fact, which appointment is coupled with an interest, for the purpose of taking such actions and executing such documents as We may deem appropriate, in order to effect the foregoing remedies (or any of them). You, for Yourself and for Your heirs, administrators, representatives, employees, agents, successors and assigns, hereby waive, and agree to indemnify, defend and hold harmless the Rental Company, its owners, shareholders, members, managers, officers, directors, employees and agents from and against, any and all liabilities, claims, damages, losses, costs and expenses (including without limitation, attorneys' fees, freight, storage, labor, packing and shipping) arising from or associated with such retaking.

26. **WARNING REGARDING CRIMINAL CONVERSION. NOTICE: THE USE OF FALSE OR FICTITIOUS IDENTIFICATION TO OBTAIN RENTAL PROPERTY, THE FAILURE TO RETURN RENTAL PROPERTY OR THE FAILURE TO PAY FOR ITS USE, IS A CRIME AND MAY RESULT IN CRIMINAL PROSECUTION.**
27. **FUEL SURCHARGE.** Equipment with gas/diesel engines must be returned full of fuel or You will be charged at the rate set forth by Us.
28. **ENFORCEMENT.** You agree to pay Us all attorneys' fees and other costs We may incur in enforcing or exercising Our rights under this Contract, whether or not suit is filed.
29. **SEVERABILITY.** If any provision of this Contract shall be deemed invalid or unenforceable by any court of competent jurisdiction, such provision shall be automatically modified to the minimum extent necessary to render the same valid and enforceable, giving due consideration to the purpose and economic substance of this Contract, or if no such modification shall be possible, deleted, and the remainder of this Contract will remain valid and enforceable.
30. **NO WAIVERS.** No exercise, nor any failure or delay by Us in the exercise of, any right or remedy available hereunder, at law or in equity will be deemed an election of remedies or a waiver of any such rights and/or remedies. Nor will Our receipt, acceptance and/or negotiation of, or any endorsement on, any check or draft received from You operate to waive or release, in whole or in part, any claim(s) arising hereunder or in connection herewith (except as to the portion(s) thereof actually received by Us in cash or other good funds).
31. **TIME.** Time is of the essence of this Contract.
32. **ALLOCATION OF RISK.** This Rental Contract allocates the risk of injury or damage to persons or property arising from the Equipment or the transportation, storage, or use thereof, between You and Us. This allocation is recognized by You as being fair and reasonable in light of the Rent and other amounts being charged hereunder, and is, in fact, reflected in the rental rate.
33. **AGENCY DISCLAIMER.** You acknowledge that We are neither the manufacturer nor the agent of the manufacturer of the Equipment.
34. **UNCONDITIONAL OBLIGATIONS.** You acknowledge that your obligations to pay all Rent and other amounts due hereunder and to perform all the terms hereof shall be absolute, independent and unconditional, and shall not be limited or terminated by any unanticipated fact(s) or circumstance(s), unless the obligation to pay or to perform the same shall be limited or terminated by the express provisions of this Rental Contract. You hereby waive, to the extent permitted by applicable law, any and all rights you may now or hereafter have, by law or otherwise, to terminate this Rental Contract and/or any of Your obligations hereunder.
35. **A LARGER FONT COPY OF THESE TERMS AND CONDITIONS IS AVAILABLE UPON REQUEST.**