

## TERMS AND CONDITIONS OF RENTAL

**1. Term and Rental Rate:** This agreement commences with the delivery of the equipment and continues thereafter until the equipment is returned to the Lessor's facility or otherwise terminated by Lessor. The applicable rental rate remains in effect regardless of the inability of the Lessee to use the equipment because of breakdown, weather conditions or any other cause. Lessor may substitute equipment under this agreement. The Lessee agrees to pay rentals for use of the equipment, at the applicable rate plus overtime charges for all hours in excess of 176 hours per month (defined as 28 days); 44 hours per week; 8 hours per day. Overtime will be charged based upon the monthly rental rate divided by 176 hours (44 for weekly and 8 for daily). In certain circumstances, if Lessee commits to a longer term rental period, the standard rental rate has been discounted ("long term rate"). If a long-term rate applies and the equipment is returned before the expected return date on this contract (minimum rental commitment period), the effective rental rate reverts from the long-term rate to the standard rate. All rental rates are exclusive of charges for sales, usage or property taxes, freight and assembly, charges for delivery and return of the equipment and excessive equipment cleaning, if necessary. Excessive equipment cleaning is that which requires more than two hours to complete.

**2. Lessee Acceptance of Equipment:** Lessor shall use reasonable care to see that the equipment is in proper working condition before shipment to Lessee. It is not to be actually operated or tested unless such operation or test is deemed necessary by Lessor or unless Lessee shall request such operation or test in writing, in which event the Lessee will be notified of the time and place of said operation and test, and shall be permitted to be present during said operation and test. If having requested it, Lessee fails to be present at the time of operation and test, Lessee agrees the equipment as turned out is in proper operating condition. The receipt and acceptance by the Lessee of the equipment will constitute acknowledgement that it has been accepted and found in good, safe and serviceable condition, and fit for use.

**3. Equipment Operation:** Lessee agrees to maintain the equipment in same condition as when delivered to it by Lessor, and pay all claims and damages arising from defects therein, or from use of handling of equipment, whether from injuries to the person or property, and pay for all damages to equipment, during life of this contract, and return said property in as good condition as when received, and in a cleaned condition which includes removal of all dirt and debris, to the storage yard of Lessor, and pay all freight demurrage, storage, switching, drayage, track age or other charges against said equipment from the time the same shall leave the storage yard of said Lessor up to and including the time of its return to said storage yard, or other place of return agreed upon. Lessee shall immediately report any damage or failure of Equipment to Lessor. Lessee shall not remove, alter, disfigure or cover up any numbering, lettering, or insignia displayed upon the Equipment and warrants and agrees that the Equipment will not be subject to careless and needless rough usage; and he shall at his own expense maintain Equipment and its appurtenances in good repair and operating condition. Lessee agrees not to compromise the integrity of any safety systems of the Equipment. Lessee shall not modify the equipment in any way. Equipment shall be used only within its rated capacity by safe, careful and competent personnel.

**4. Maintenance & Repairs:** (1) The Lessee is responsible for all normal daily and weekly maintenance on the equipment, including but not limited to, greasing on a daily basis at all required grease points and maintaining all fluids at the proper levels. Lessee hereby acknowledges receipt of the Operations and Maintenance Manual and Safety Manual for the equipment. (2) For rentals where the Lessee uses the equipment more than 500 hours, Lessee is responsible for payment of the 500 hour service interval performed by Lessor, which includes at a minimum fluid and filter changes as required by the manufacturer. (3) The Lessee is responsible for replacement of expendable items including but not limited to cables, hydraulic hoses, cutting edges, teeth, belts, and filters. (4) The expense of all non-warrantable repairs made during the rental period as a result of excessive wear and tear on the equipment, abuse or omission of appropriate maintenance shall be paid by Lessee upon occurrence. The Lessor reserves the right to inspect the Equipment at any time during the rental period. If upon such inspection, the Lessor determines that the Equipment is not properly being maintained, the Lessor may remove the Equipment from rental or perform the necessary maintenance. Lessee agrees to pay to the Lessor any and all costs or expense incurred as a result of the removal of Equipment from rental and/or the performance of necessary maintenance. All parts, additions and accessions shall become part of the Equipment and property of Lessor.

**5. Cancellation:** The Lessor may cancel this lease agreement for any reason upon 15 days advance notice to the Lessee. However, Lessor has the right to terminate this Lease Agreement immediately and remove the equipment from the Lessee or disable the equipment from future use by the Lessee upon failure by the Lessee to comply with the terms and provisions of this agreement, including failure to pay invoices due under this agreement, failure to perform maintenance or repairs as outlined in this agreement, damage to the equipment or any other breach.

**6. Tires and Undercarriage:** Lessee acknowledges that repair and replacement of tires or undercarriage is not included in the rental rate. Lessee agrees to pay for repair and/or replacement (with allowance for reasonable wear) of damaged tires or undercarriage regardless of the cause of damage. Reasonable wear and tear is excepted, however it is agreed a) in the case of tires that abrasions (gouges, tears, cuts, grooves, removal of rubber in pieces) and damage to castings is not reasonable wear and tear and b) in the case of undercarriage that broken or missing parts of shoes, pads, links, rollers, idlers or sprocket teeth is not reasonable wear and tear. In determining reasonable wear and tear, it is agreed that wear and tear occurs equally over 4000 hours of operation as recorded on manufacturer installed hour meter. Lessee agrees to pay additional rent for accelerated or excessive wear based on the prorated cost of replacement of excessively worn items(s).

**7. Physical Damage Insurance or Loss and Damage Waiver:** Loss and Damage Waiver fees will be charged unless Lessee furnishes proper evidence that Equipment is insured against physical damage by providing the Lessor with a certificate of insurance, acceptable by Lessor, naming Lessor as Loss Payee. Loss and Damage Waiver fee is 14% of standard rental rate. Loss and Damage Waiver and related fees are in effect until a certificate of insurance for physical damage is received by Lessor and amounts invoiced before receipt of the insurance certificate are not refundable. Loss and Damage Waiver is not available on all equipment and for certain equipment applications. If Loss and Damage Waiver applies, Lessor agrees to waive its right to recover from the Lessee the amount of loss or damage to the equipment (excluding supply items) exceeding 100% of an amount equal to the standard monthly rental rate for the affected equipment, except Lessor's rights are **not waived** if the loss or damage occurred under the following circumstances:

- Use or operation without the Lessor's permission or in violation of this agreement,
- Loss or damage to equipment caused by war, nuclear reaction, nuclear radiation or radioactive contamination,
- Loss or damage to tires, tubes and/or tools caused by normal work application, vandalism or Malicious mischief, unless such loss or damage is coincident with other waived loss or damage,
- Loss or damage caused by dishonesty or intentional act of Lessee or Lessee's employees; wrongful conversion by any person to whom the property is entrusted by Lessee; or disappearance, theft or conversion of the equipment NOT documented by Lessee's prompt (within 48 hours) filing with applicable public authorities of a formal theft report,
- Failure to perform or pay for normal periodic and basic service and lubrication,
- Boom damage from overloading a boom.

In the event of any loss or damage, Lessor will be subrogated to Lessee's rights to recover against

any person, firm or corporation. Lessee will execute and deliver instruments and papers and do whatever else is necessary to secure such rights. Lessee will cooperate fully with Lessor or its insurers in the prosecution of those rights and will not take any action to prejudice Lessor's rights.

**8. Warranty Limitations:** Lessor is not the manufacturer of the equipment or the agent of the manufacturer. Lessor makes no warranty against patent or latent defects in material or workmanship, or that equipment will meet the requirements of any laws, rules, specifications or contracts which provide for specific machinery or apparatus or special methods. No representation or warranty is made as to the year of manufacturer or capacity of any equipment. LESSOR DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE REMEDIES SET FORTH IN THIS CONTRACT ARE EXCLUSIVE. THE LIABILITY OF LESSOR ARISING OUT OF OR RELATED TO THIS CONTRACT OR THE EQUIPMENT, WHETHER SUCH LIABILITY IS ASSERTED IN TORT, UNDER ANY ALLEGED BREACH OF WARRANTY, BREACH OF CONTRACT OR OTHERWISE, SHALL NOT EXCEED THE RENTAL OF THE GOODS ON WHICH SUCH LIABILITY IS BASED. IN NO EVENT SHALL LESSOR BE LIABLE FOR LOST PROFITS OR SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES.

**9. Indemnities:** Lessee agrees at its sole cost and expense, to indemnify, defend, protect and save Lessor and keep it harmless from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, costs, expenses and disbursements of any nature, including attorney's fees, in any way relating to or arising out of this agreement or the selection, manufacture, purchase, acceptance, ownership, delivery, lease, possession, use, operation, condition, servicing, maintenance, repair, improvement, alteration, replacement, storage, return or other disposition of equipment including without limitation all tort and worker's compensation claims of any kind including claims for injury or damage to property or injury or death to any person. The indemnities arising under this paragraph shall survive payment of all other obligations under this agreement and termination of this agreement.

**10. Insurance:** Unless waived under the Physical Damage Insurance or Loss and Damage Waiver Provision, Lessee further agrees to protect the Lessor on this contract with full insurance coverage said insurance to cover damage occasioned by fire, theft, flood, explosion, accident, act of God, or any other cause, that may occur during the life of this lease. Lessee acknowledges that rent will continue to be charged and will not be abated until repairs are made and equipment can be put back into service. For the purpose of finding the valuation of said property in order to determine the loss, damage or injury thereto, it is agreed by the parties hereto that the value as hereinbefore stated shall be a true and just value forming a basis for such adjustment. In making such adjustment it is understood that no rentals theretofore paid or due shall apply to payment of such loss. In addition, Lessee agrees to protect Lessor with public liability insurance for coverage in an amount not less than \$1 million. All liability policies shall name Lessor as an additional insured, and all physical damage policies shall provide that payment thereon shall be made to Lessor and Lessee as their interests may appear. Each policy shall provide that Lessor's interest therein shall not be invalidated by any acts, omissions or neglect of anyone other than Lessor, and shall contain insurer's agreement to give Lessor at least thirty (30) days prior written notice before cancellation or any material change in the policy shall be effective as to Lessor. Lessor may act as attorney for Lessee in making, adjusting and settling claims under and canceling such insurance and endorsing Lessee's name on any drafts drawn by the insurers of the Equipment.

**11. Title:** Title to equipment and to all replacements thereof or substitution thereof is, and shall remain in Lessor, and equipment shall not become a part of any building, by being placed therein or by being annexed thereto. Where equipment is annexed to any property Lessee shall furnish Lessor with landlord's release, which shall permit Lessor to remove the equipment from said property at any time during the life of, or after expiration of, this contract.

**12. Assignment:** This agreement cannot be assigned without the written consent of Lessor. Equipment shall not be sub-let without written consent of Lessor nor shall said equipment be moved out of the state specified in this contract without written consent of Lessor.

**13. Breach or Insolvency:** Upon failure to pay rent or breach of this agreement, if Lessee becomes insolvent or takes advantage of any law for the relief of debtors or a petition in bankruptcy or similar relief is filed by or against Lessee under any present or future law, or any of the equipment is attached, or if Lessee or its owners take any action looking to its dissolution or liquidation, Lessor may terminate this agreement and take possession of and remove the equipment regardless of its location, without prejudice to any remedies or claims which Lessor might otherwise possess by law or pursuant to this lease agreement, for lease charges payable, late fees or service charges, damage or loss charges, and collection charges including court costs and attorney fees, and Lessor and its agents, shall not be liable for any claims for damage or trespass arising out of the removal of the equipment.

**14. Sales and Use Tax:** If sales tax was not collected on this rental, Lessee represents and agrees (a) it holds a currently valid registration for sales tax exemption certificate presented the Lessor, (b) the goods will be used in the exempt nature contemplated by certificate and, (c) should taxing authorities subsequently rule the rental is taxable, upon receiving notice, Lessee will promptly remit payment of the sales tax to Lessor or to the taxing authority if seller assigned such rights under this contract.

**15. No Oral Agreement or Modification:** This agreement contains the entire understanding of the parties with respect to its subject matter and supersedes all prior discussions, agreements and understandings, written or oral, between the parties with respect to the subject matter hereof. This agreement may be amended only by a written instrument duly executed by the parties, which, in the case of Lessor, shall require written approval by an officer at Lessor's home office. Any provision of this agreement may be waived only by a written instrument executed by the party to be charged with such waiver.

**16. Waiver:** The waiver by any party of a breach of any provision of this agreement will not operate or be construed as a waiver of any subsequent breach. No delay or failure by a party to exercise any right under this agreement, and not partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided in such waiver.

**17. Fuel:** Lessee agrees to return equipment with full fuel tank(s) or pay Lessor for the cost of refilling tanks.

**18. Diesel Exhaust Fluid (DEF):** Lessee agrees to return equipment with full DEF tank(s) or pay Lessor for the cost of refilling tanks.

**19. Governing Law:** This contract will be governed by and construed in accordance with the Internal laws of the Commonwealth of Kentucky (without giving effect to its laws regarding conflicts of laws).

**20. Equipment Monitoring:** Lessee acknowledges that equipment may contain a global positioning system device that records certain activities and functions of the equipment while on rent by the Lessee. Lessor retains all rights to the data collected by the global positioning system device and may use such information at its sole discretion. Lessee is prohibited from disabling this global positioning device in any way. If disabled by Lessee, this agreement is immediately terminated and the Lessee must return the equipment to Lessor.

**21. Environmental Fee:** Lessee acknowledges that it shall be charged a per item, per invoice environmental fee for the handling and disposal of waste oil and other fluids used in connection with the operation and / or cleaning of the equipment.

