

TERMS + CONDITIONS CONTINUED

1. **THE RENTAL PERIOD:** The rental period shall cover all time consumed in transporting the equipment including the date of legal delivery to a public carrier for transit to the Lessee, and upon return of the equipment including the date of legal delivery by such carrier to the Lessor, or if no public carrier is used, shall include the date upon which transit to the Lessee begins and date upon which transit from the Lessee ends at the Lessor's unloading point; however, that when the equipment moves from one Lessee to another the rental period of the first shall not overlap that of the second.

2. **CALCULATION OF RENTAL CHARGES:** (a) MONTHLY RENTAL RATES are for a minimum period of one month, computed from the date of commencement of the rental period up to but not including the same date in the next calendar month, and shall apply when the number of hours the equipment is operated in any one month does not exceed 176 hours. (b) WEEKLY RENTAL RATES are for a minimum period of one week from the day of commencement of the rental period up to but not including the same day in the following week and shall apply when the number of hours the equipment is operated in any one week does not exceed 40 hours. (c) DAILY RENTAL RATES are for a consecutive period of twenty-four hours or less in which the number of hours the equipment is operated shall not exceed 8 hours. (d) OVERTIME CHARGES, where equipment is operated in excess of the above stated hourly maximum such excess shall be charged at 1/176th of the monthly rate for each hour in excess of 176 worked in any 30-day consecutive period; 1/40th of the weekly rate for each hour in excess of 40 hours worked in any one weekly period; 1/8th of the daily rate for each hour worked in excess of 8 hours in any one day. (e) After the minimum monthly or weekly rental period has expired, the rental payable for a fraction of any exceeding period shall be the proportionate part of the applicable rental rate according to the number of calendar days in such fraction. (f) Rental rates shall not be subject to any deduction for any non-working time during rental period, or because the Lessee returns the equipment to the Lessor before the expiration of such period, nor shall it be liable for down time or special consequential damages of any nature whatsoever.

3. **PAYMENT:** Rentals payable under this Agreement shall be paid monthly when the rental is at a monthly rate, otherwise weekly, and in either case same shall be payable in advance at the address of the Lessor. The rental is payable before delivery of the equipment to the Lessee or his (its) agent or carrier. Lessee agrees to pay attorney's fees, collection charges, and any other expense incurred in collecting any charges under this Agreement or in re-taking the said rental property under this Agreement or in otherwise enforcing the terms of this Agreement.

4. **LOADING, UNLOADING, AND TRANSPORTATION:** The Lessor, at its own expense, shall load the equipment for transit to the Lessee and unload it upon return. The Lessee, at his (its) own expense, shall do all other loading, unloading, dismantling, and hauling, and shall pay all demurrage charges accruing at its own shipping and receiving points. The Lessee shall pay all transportation charges from and to the Lessor's shipping and receiving points. If shipping instructions are not furnished by the Lessee, the Lessor may ship the equipment in accordance with its own judgment.

5. **MAINTENANCE, OPERATION, AND REPAIRS:** The Lessee shall not remove, alter, disfigure, or cover up any numbering, lettering or insignia displayed upon the equipment, and shall ensure that the equipment is not subjected to careless or needlessly rough usage, and shall at the Lessee's own expense maintain and ultimately return to the Lessor the equipment and its appurtenances in good repair and operating condition and to notify the Lessor immediately of accidents, disabilities, failures or like information concerning the equipment. Without limiting the generality of the foregoing, the Lessee shall, at the Lessee's own expense, during the term of this lease pay the cost of: (a) all fuel, oil and lubricants required to operate the equipment. (b) all repairs, and replacement parts including labor charges, required to be made to the equipment in order to keep it in good repair and running order. Lessee agrees to return the listed rental equipment or property in the same condition as it was received and to pay for any damage caused by other than ordinary wear and tear.

6. **RUBBER-TIRED MACHINERY:** Tire wear and the cost of repairs of cuts and punctures is chargeable to the Lessee's account and shall be payable to the Lessor on demand. Tire wear shall be determined by the percentage of wear incurred during the rental period as fixed by independent appraisal to be obtained promptly by the Lessor following termination of the rental period.

7. **DAMAGE TO EQUIPMENT:** The Lessee agrees to indemnify the Lessor against all loss and damage to the equipment hereby leased, during the rental period, based on the value of such equipment stated on front of agreement. The Lessor shall give notice to the Lessee as soon as possible of any claim of the Lessor under this paragraph. If the property is lost, stolen, or damaged while rented under this Agreement the Lessee and his representative or principal, shall be responsible for new replacement cost together with the ordinary rental fees due until payment. Lessee agrees to return, on termination of this lease, the rented property to Lessor in same condition in which it was received, ordinary wear and tear expected. Lessee agrees to return the property in a clean condition and to pay any cleaning charges if the property is returned unclean.

8. **LIABILITY OF LESSEE:** The Lessee shall indemnify the Lessor against all loss, expenses, penalties, damages, condemnations, and law costs which the Lessor may suffer or may be required or condemned to pay for personal injuries (including death) and/or property damage suffered by any person by reason of the operation, handling, transportation or use of the equipment by or while in the lands of the Lessee's or the latter's employees, agents, or carriers. The Lessee hereby renounces all claims which he (it) may have against the Lessor for any loss or damage which he may suffer either direct or indirectly, by reason of the condition of the equipment or its sustainability for the work it may be required to perform. Where the party to whom the rental is charged is other than the Lessee, the Lessee represents that he is agent of such party and has the right to charge that this rental and that the Lessee nevertheless remains personally liable for such rental and is personally responsible under the terms and conditions of this contract.

9. **INSPECTION AND SAFETY:** Lessee acknowledges that prior to his taking the property, he has examined the property, has seen it in operation, that the property was then in good operating condition and that the Lessee represented to the Lessor that he was familiar with the proper and safe manner of using the said property or equipment. If the Lessee fails to have such an inspection made, the equipment shall be presumed for all purposes hereof to be in good condition and running order when delivered to the Lessee or his agent. The Lessor shall have the right at any time to enter upon the premises or place where the equipment is located and shall be given free access thereto and afforded all necessary facilities for the purpose of inspecting the equipment.

10. **INSURANCE:** To protect Lessor from any claims arising out of rental or operation of the equipment and any loss or damage to the equipment, Lessee shall obtain and maintain public liability and property damage insurance, including contractual liability coverage in the minimum amounts of \$500,000/\$1,000,000 and \$500,000 respectively, and all risk insurance covering the equipment, naming Lessor as an insured in an amount at least equal to its replacement value. Upon request of Lessor, Lessee shall furnish certificates of such insurance, which may not be cancelled except on written notice to Lessor.

11. **DISCLAIMER OF WARRANTIES:** LESSOR MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, SPECIFICALLY, LESSOR MAKES NO WARRANTY AS TO THE EQUIPMENT'S MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, CONDITION, QUALITY, OR COMPLIANCE WITH THE REQUIREMENTS OF ANY STANDARD PROMULGATED UNDER THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970. No person is authorized by Lessor to make any representation or warranty which extends beyond the description of the equipment on the face hereof.

12. **LIMITATION OF LESSEE'S REMEDY AND LESSOR'S LIABILITY:** IT IS EXPRESSLY AGREED THAT (A) LESSEE'S EXCLUSIVE REMEDY FOR LESSOR'S FAILURE TO DEVILIE ANY ITEM OF THE EQUIPMENT, AND LESSOR'S SOLE LIABILITY FOR LOSSES AND DAMAGES RESULTING THEREFROM, SHALL BE ACTUAL DAMAGES NOT TO EXCEED TEN PERCENT (10%) OF THE RENT FOR SUCH ITEM FOR THE MINIMUM RENTAL PERIOD STATED ON THE FACE HEREOF, OR FOR A MAXIMUM OF THREE (3) MONTHS WHICHEVER IS SHORTER, CALCULATED AT THE RATE STATED ON THE FACE HEREOF; (B) EXCEPT AS PROVIDED IN SUBDIVISION (A) OF THIS PARAGRAPH 12, LESSEE'S EXCLUSIVE REMEDY FOR, AND LESSOR'S SOLE LIABILITY FOR LOSSES AND DAMAGES WITH RESPECT TO ANY CLAIM ARISING IN CONNECTION WITH ANY ITEM OF THE EQUIPMENT (INCLUDING, WITHOUT LIMITATION, ANY CLAIM UNDER ANY WARRANTY MADE BY LESSOR, ANY CLAIM ALLEGING BREACH OF THIS LEASE, ANY CLAIM ALLEGING LESSOR'S OR AGENTS OR EMPLOYEES, NEGLIGENCE OR STRICT LIABILITY IN TORT AND ANY CLAIM ARISING UNDER THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970, ANY OTHER STATUTE, ANY ORDINANCE, OR ANY REGULATION) SHALL BE REFUND OF THE RENT PAID OR TO BE PAID BY LESSEE FOR SUCH ITEM HEREUNDER, NOT TO EXCEED ACTUAL DAMAGES INCURRED OR ANY AMOUNT EQUAL TO SIX (6) MONTHS RENTAL, WHICHEVER IS LESS, AND (C) IN NO EVENT SHALL LESSOR BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES.

13. **DEFAULT:** Should Lessee default in the payment of any sum when due hereunder or fail to perform any other term, covenant, or provision hereof, or if Lessee should become bankrupt or unable to discharge its obligations as they become due, or if any bankruptcy, reorganization, arrangement, or insolvency proceeding is instituted by or against Lessee, or if Lessee overloads the equipment or takes it beyond its capacity or fails to properly maintain or operate or return the equipment as provided in this Agreement, or if Lessor shall reasonably believe that Lessee is about to violate any term, covenant, or provision hereof or that the equipment is being abused or its safety jeopardized, then the entire unpaid balance of rent for the equipment shall become due and payable and Lessor may, without notice, enter any job, building, or location where the equipment may be found, take possession of and remove the same at Lessee's expense and pursue any other remedy available at law or in equity. Lessee shall reimburse Lessor promptly for all its expenses, including attorney's fees incurred in connection with Lessor's exercise of its rights under this paragraph 13 and any default by Lessee under this Lease.

14. **SUBLETTING AND ASSIGNMENT:** The Lessee shall not be entitled to sublet or assign any of his (its) rights under this Lease or in or to any of the equipment hereby leased without the written consent of the Lessor previously obtained, but the Lessor shall be entitled to assign his (its) rights hereunder or in and to any of the equipment hereby leased subject to the observance by the assignee of all the obligations of the Lessor hereunder.

15. **LEINS:** The Lessee shall not at any time suffer or permit any charge or lien, whether possessively or otherwise, to exist against the equipment, and shall keep the equipment free of all taxes (including Municipal taxes whether assessed in the name of the Lessor or Lessee) liens and encumbrances. If the Lessee fails after demand of the Lessor, to pay off any such lien charge or encumbrance, the Lessor may pay the same and recover the amount of any such payment, with interest at 7% per annum from the Lessee on demand.

16. **LOCATION OF EQUIPMENT:** The equipment shall not be removed from the State of New York without the written consent of Lessor.

17. **LOSS:** Lessee shall bear all risk of loss while the equipment is under its control or in transit. If the equipment or any part thereof is determined by Lessee to be lost, stolen, destroyed, or damaged beyond repair, with or without fault on the part of Lessee, Lessee shall pay to Lessor the true value of said equipment or part thereof.

18. **OWNERSHIP:** Title to the equipment and all additions thereto and replacements thereof shall not pass to Lessee or its purported assigns. The equipment is and shall remain personal property irrespective of its use or manner of attachment to real property, and Lessee shall not cause or permit any equipment to be attached to real property in such manner that it might be deemed part of the real property. This transaction is regarded by parties as a true Lease. Sale of leased equipment or failure to return leased equipment to Lessor may constitute a crime and subject the Lessee to prosecution. The Lessee shall give the Lessor immediate notices in case any of the equipment is levied upon or from any cause becomes liable to seizure. Lessee hereby authorizes Lessor, at its option, to sign and file Financing Statements in accord with the Uniform Commercial Code.

19. **USE:** Lessee shall use and maintain the equipment, or allow it to be used and maintained only at the job location stated on the face hereof and only by competent personnel, in a careful manner and in conformity with all laws, ordinances, and regulations relating thereto. Lessee shall pay any sales taxes applicable to the rental of the equipment and shall also pay all fees, assessments, charges and other taxes, federal, state and local which may be imposed upon the possession, operation, control, use, and maintenance of the equipment. Lessee shall keep the equipment free and clear of all security interests, levies, liens, charges, and other interests of third persons.

20. **EXCUSE:** Any failure or delay of performance of any obligation owed by Lessor hereunder shall be excused, and Lessor shall not be liable for any loss or damage resulting therefrom, if such failures or delay directly or indirectly results from or is contributed to by war; riot; embargo; major change in economic conditions; action, reimbursements, statute, ordinance or regulation of civil or military authority; strike, labor dispute; shortage of labor, material, fuel, energy or transportation facilities; delay in transportation; breakdown of machinery; tire; explosion; accident; natural disaster; or any other contingency whatsoever (whether of the same nature as those enumerated or otherwise) beyond Lessor's reasonable control.

21. **APPLICABLE LAW:** This lease shall be governed by and construed and interpreted to accordance with the laws of the State of New York and the parties agree that the venue of any dispute shall be Livingston County, New York.