

# EQUIPMENT LEASE AGREEMENT STANDARD TERMS AND CONDITIONS

The terms and conditions stated below, together with the agreement set forth on the reverse side of this sheet, constitute a contract between the parties therein named, which contract hereinafter referred to as "this Agreement".

- The Lessee acknowledges receipt from the Lessor of the equipment listed on this Agreement together with all parts and attachments belonging or relating thereto (the "Equipment"), and the Lessee confirms that the Equipment was inspected by all parties to this Agreement and found to be in satisfactory condition when received, with any and all damage to the Equipment, present as a result of its prior use, documented and approved by all parties. If the Lessee fails to elect to have such inspection and approval made, the Equipment shall be presumed for all purposes hereof to be in good condition and running order upon commencement of the Rental Period (as hereinafter defined).
  - Notwithstanding any specific term set out elsewhere in this Agreement, it is agreed that the Equipment shall be rented for a period which shall commence on and include the date of delivery of the Equipment from the Lessor's premises to the premises designated by the Lessee and which shall end on and include the date of actual delivery of the Equipment to the Lessor's premises, or at any other premises if instructions to do so are given by the Lessor (the "Rental Period"). Furthermore, it is specifically agreed that the Rental Period shall cover all time consumed in transporting the Equipment, whether during its delivery to the Lessee or during its return to the Lessor.
  - With respect to the calculation of the Rental Period:
    - "month" shall mean a period of twenty-eight (28) consecutive days;
    - "week" shall mean a period of three (3) consecutive days; and
    - "day" shall mean a period of eight (8) consecutive hours.The Lessor shall calculate the Rental Period by reference to the greater of either the number of hours accumulated by the Lessee on the Equipment's hour meter divided by eight (8) or the total number of calendar days of the Lessee's possession. If the Equipment is returned by the Lessee more than two (2) hours after the expiry of the Rental Period, the Equipment shall be deemed to have been rented by the Lessee for one (1) additional day for the purposes of calculating the total rental charges. The minimum rental charge shall be one (1) day.
  - The Lessee shall pay the rental charge for the entire Rental Period on the Equipment at the rate stipulated in this Agreement and in accordance with the following:
    - monthly and daily rental rates shall not be subject to any deductions on account of any non-working time in the month or day, as the case may be.
    - monthly and daily rental rates contemplate an operating day of eight (8) hours, and for each hour over such eight (8) hours that the equipment is operated, the rental rate shall be increased by five (5) percent of the daily rate throughout such period as the Equipment is so operated.
  - If requested by the Lessor, the Lessee's own expense, shall furnish a bond satisfactory to the Lessor, in an amount equal to the value of the Equipment, to insure the fulfillment of the Lessee's obligations under this Agreement.
  - In addition to the rental charges set out in this Agreement, the Lessee's own expense, during the Rental Period, pay the cost of the following:
    - all fuel and lubricants required to operate the Equipment;
    - all repairs required to be made to the Equipment in order to keep it in good repair and running order;
    - replacing broken parts as the result of Lessee's negligence.
  - d. any and all local, municipal, provincial and federal taxes, assessments and charges levied upon the Equipment during the Rental Period.
  - If maintenance is required on the Equipment above and beyond that required for regular upkeep and to repair the effects of normal wear and tear, and requires the servicing by a third-party maintenance supplier, the Equipment is to be maintained by a maintenance supplier that is approved in writing by the Lessor.
  - It is agreed that the Equipment will only be used by the Lessee at the address designated in this Agreement (the "Premises") for the duration of the Rental Period and solely for the intended purposes for which the Equipment was manufactured.
  - The Lessee agrees that the Equipment will not be removed from the premises without the written consent of the Lessor and further agrees that the Equipment will be used solely by employees of the Lessee who are properly trained and competent to operate the Equipment, unless otherwise designated in this Agreement.
  - Without limiting the generality of the foregoing, the Lessee specifically acknowledges its responsibility to ensure the use of full body safety harnesses on all aerial lift equipment, as required by any operator's manual and/or government legislation.
  - The Lessor, being neither the manufacturer, nor a supplier, nor a dealer in the Equipment, makes no warranties, express or implied, as to any matter whatsoever including, without limitation, the condition of the Equipment, its merchantability, its design, its capacity, its performance, its material, its workmanship, its fitness for any particular purpose including, but not limited to its fitness for the Lessee's stated or intended purposes or use or operation, or that it will meet the requirements of any laws, rules, specifications or contracts which provide for specific apparatus or special methods. The Lessor shall not be liable in any event to the Lessee for any loss, delay, or damage of any kind or character resulting from defects in, or the inefficiency of, the Equipment and the Lessee agrees that there are no such express or implied warranties by the Lessor and furthermore, that all implied and statutory representations and warranties are expressly excluded and denied.
  - The Lessee shall hold the Lessor harmless from any liability whatsoever resulting from the use or operation of the Equipment whatsoever caused, including any third party liability claims. The Lessee is responsible for any loss or damage to the Equipment whatsoever caused, including vandalism until such time as the Rental Period ends.
  - The Lessor reserves the right to the following:
    - enter upon the Premises and be given free access thereto and afforded all necessary facilities for the purpose of inspecting the Equipment; and
    - remove the Equipment from the Premises at any time and without liability when, in the Lessor's sole and absolute discretion, the Equipment is in danger of any kind and because of any condition.
  - The Lessee is responsible to ensure, during the Rental Period, that the use of the Equipment is within the parameters of use for which the Equipment was manufactured, and that the Lessee's employees follow safe operating procedures in accordance with any operator's manual provided by the Lessor with the Equipment and any and all applicable government laws and regulations. The Lessee is responsible to ensure that the use of the Equipment is in compliance with all applicable laws and in compliance with the conditions of coverage in applicable insurance policies and that it is not to be used in any manner which is illegal or which renders it uninsurable or renders any insurance coverage void.
  - The Lessor shall be held blameless for any personal injuries to the Lessee, the Lessee's employees, agents and representatives and any other persons for the duration of the Rental Period, which result from the violation of any of the terms of this Agreement.
  - The Lessee will immediately discontinue the use of the Equipment should the Equipment at any time during the Rental Period become unsafe or in a state of disrepair and the Lessee will immediately ensure either the safety of, or repair the Equipment, or otherwise immediately notify the Lessor of the Lessee's intention not to ensure the safety of the Equipment or repair the Equipment at the Lessee's expense, after which the Lessor, in its sole discretion, may:
    - replace the Equipment with other equipment.
    - orally terminate this Agreement without any other act being required and require the Lessee to return the Equipment as directed by the Lessor, or
    - enter on the Premises and repossess the Equipment and terminate this Agreement, without, in any way whatsoever, being liable to any party for any damages which may result from such entry and/or repossession.
  - The Lessee is not authorized to make any expenditure in connection with the Equipment on behalf of the Lessor, and the Lessee shall not be held out as a person authorized to make such expenditures on behalf of the Lessor and any such expenditure shall be made at the Lessee's expense. The Lessee shall indemnify and save harmless the Lessor for any unauthorized expenditures including legal fees.
  - The Lessee further agrees that upon the termination of this Agreement for any reason, the Lessee will immediately return or be held responsible for the return of the Equipment to the Lessor in the same condition that the Equipment was received by the Lessee, (ordinary wear and depreciation excepted), and agree to pay for any damage or repair resulting to the Equipment during the Rental Period. In the event the Lessor must resort to litigation to be reimbursed for damage or repair caused to the Equipment, the Lessee agrees to pay all legal fees and disbursements on a full indemnity basis and other expenses which become necessary to compensate the Lessor for the repair or replacement of the Equipment.
  - The Lessee shall indemnify and hold the Lessor harmless against all loss and damage to the Equipment which occurs during the Rental Period as well as against all losses, expenses, penalties, damages, condemnations and legal costs which the Lessor may suffer or may be required to pay for personal injuries including death and all property damaged suffered by any person by reason of the Equipment or the operation, handling, transportation or use of the Equipment by, or while being operated by the Lessee or the Lessee's Employees, agents, representatives or carriers. It is specifically agreed that the Lessee shall remain responsible for the Equipment until it has been returned to the Lessor. In order to satisfy the foregoing indemnities and obligations of the Lessee, the Lessee shall maintain, at its own expense, public liability and all-risk property insurance with sufficient coverage to adequately cover the foregoing indemnities and obligations and the full replacement cost of the Equipment (without deduction for depreciation or otherwise). The Lessee hereby assigns to the Lessor all such policies of insurance and the proceeds therefrom. For the purposes of this Agreement, "full replacement cost" shall include disassembly, replacement, inspection, loss of income and all other associated, incidental and related costs.
  - The Lessee agrees to pay, in advance, all rental charges as provided for in this Agreement, which amounts shall be subject to adjustments payable on completion of the Rental Period, and further agrees that all collection fees, including legal fees and disbursements on a full indemnity basis involved in the collection of outstanding rental charges as incurred by the Lessor, will be borne by the Lessee.
  - In the event of damage, loss or theft, of or to the Equipment, the Lessee shall continue to be responsible for rental charges until the earlier of (i) the time the Equipment is returned to the Lessor in the condition it was in when the Lessee originally obtained possession of the Equipment from the Lessor; and (ii) the time the Lessor receives the full replacement cost of the Equipment as provided for in paragraph 19 of this Agreement.
  - LOSS DAMAGE WAIVER. A Loss Damage Waiver shall be presented to the Lessee on the occasion of the Lessee entering into an Equipment Rental Agreement with the Lessor for the first time, which Loss Damage Waiver must either be accepted or declined by the Lessee. Once the Lessee accepts or declines the Loss Damage Waiver upon the first instance of entering into an Equipment Rental Agreement with the Lessor, the option selected by the Lessee shall apply to all subsequent occasions of the Lessee entering into an Equipment rental Agreement with the Lessor unless the Lessee notifies the Lessor in writing to the contrary. If the Lessee fails to actively accept or decline coverage of the Loss Damage Waiver by indicating its preference in writing, the Lessee shall be deemed to accept the Loss Damage Waiver. The cost to the Lessee of accepting the Loss Damage Waiver is set out therein. If the Lessee accepts the Loss Damage Waiver form or otherwise as provided by the Lessor, the Lessor will waive its entitlement to claim against the Lessee under paragraphs 18 and 20 of this Agreement for loss of or damage to the Equipment, however, the Lessee shall remain liable for all resulting loss or damage to the Equipment and all expenses of the Lessor pertaining thereto as a result of:
    - The Equipment being used for a purpose for which it was not designed;
    - Loss, damage or failure of any tires and tubes under any circumstances;
    - Mysterious disappearance or damage with is deemed to occur as a result of theft, vandalism, mischief, conversion or any other malicious act;
    - Breach of this Agreement;
    - Overloading, exceeding weight capacities, misuse, abuse, negligent operation, damage resulting from striking objects (overhead or otherwise) or from improper transport, or any intentional damage, whether by the Lessee, anyone with the Lessee's permission or anyone for whom the Lessee is responsible in law including without limitation its employees, representative and agents;
    - Lack of lubrication or other normal servicing of the Equipment as specified on the Equipment's "daily check label";
    - The use or operation of the Equipment in violation of any law, rule, legislation, statute, regulation, code or any other legal authority;
    - Damage to motors, other electrical appliances or devices resulting from artificial currents;
    - Failure to follow any instruction or operator's manual and/or any training provided to the Lessee by the Lessor with respect to the Equipment;
    - Costs incurred by the Lessor associated with any cleaning time of the Equipment exceeding two (2) hours;
    - Any propane tank loss or damage;
    - Use of the Equipment by an unqualified operator. The Lessee specifically acknowledges that it shall only allow properly trained operators to use the Equipment at all times;
    - The Lessee's failure to properly secure the Equipment by making access to the Equipment readily available to any unauthorized operator or otherwise not reasonably restricting access to the Equipment.
  - In the event of default of any of the terms and conditions set out herein or with respect to the payment by the Lessee of the rental charges related to this Agreement, or if the Lessee becomes insolvent or makes an assignment for the general benefit of its creditors or applies for or consents to the appointment of a receiver, receiver-manager, trustee, or liquidator, or upon the institution by or against the Lessee of any other proceedings under the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3 or the *Companies' Creditors Arrangements Act*, R.S.C. 1985 c. C-36, the Lessor shall have the right to any of the following remedies at the Lessor's sole and exclusive discretion:
    - To declare any amounts owing under this Agreement immediately due and payable as to the Equipment without notice or demand to the Lessee; or
    - enter on the Premises and repossess the Equipment without liability to any person or property whatsoever for such entry, repossession or termination of Agreement, and proceed to re-let the Equipment by way of sub-lease to other persons as agent of the Lessee in which case the Lessee herein agrees that it shall be obligated to pay the rental charges hereunder until such sub-lease is made or until the period of rental herein expires, whichever occurs sooner. In the event of such sub-lease of the Equipment the Lessee agrees to pay any deficiency in rental charges occasioned by the renting of the Equipment to another person at a lower rental charge than that provided for in this Agreement up to the termination of the Rental Period. The Lessee also agrees to pay the Lessor all costs incidental to any such repossession and sub-leasing; or
  - declare this Agreement to be at an end, in which case the right to possession shall immediately fall to the Lessor and the Lessee shall immediately return the Equipment to the Lessor at the Lessee's own expense and the Lessee shall immediately pay to the Lessor, as liquidated damages and not as a penalty, the balance of the rental charges until the Rental Period expires. The Lessee further agrees to pay the Lessor all costs incidental to the repossession; or
  - to pursue any other remedy available to the Lessor at law or in equity, without limitation.
- All remedies of the Lessor hereunder are cumulative and may, to the extent permitted by law, be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed to be an election of such remedy or to preclude the exercise of any other remedy. No failure on the part of the Lessor to exercise and no delay in exercising, any right or remedy hereunder precludes any other or further exercise thereof or the exercise of any other right or remedy.
- The Lessor, in its own discretion, may report the Equipment as stolen when held beyond five (5) days from the contemplated termination of the Rental Period unless notified in writing by the Lessee that the Lessee wishes to extend the Rental Period to a specified date, which extension must be approved by the Lessor in its sole and absolute discretion. The Lessor, in its own discretion, may report the Equipment as stolen at any time prior to the expiry of the Rental Period if, in the Lessor's sole and absolute discretion, there is indication that the Equipment has been subject to theft.
  - Unless paid at the time of entering this Agreement, payment by the Lessee of any rental charges or adjustments thereto is due upon receipt of invoice. Interest will be charged on overdue accounts at the rate of 26.8% per annum not in advance.
  - If the monthly statements or invoices of the Lessor are not paid by the Lessee in accordance with the terms set out on the subject statement or invoice, the Lessor, in its own discretion, may revert all charges to the Lessor's usual daily rental charge for the Equipment.
  - The Lessee is responsible for all regular daily routine maintenance and inspections as per the operator's manual.
  - The Lessee acknowledges its responsibility to:
    - ensure, where applicable, that safety belts are worn at all material times as required by the operator's manual of the Equipment;
    - ensure, on a daily basis, where applicable, that oil and other fluid levels of the Equipment are at acceptable levels;
    - ensure, where applicable, that all batteries are charged each and every night after operation of the Equipment throughout the duration of the Rental Period.
  - In the event the Lessee, its employees, agents, representatives or sub-tradesmen, fails or neglects to comply with the requirements set out in paragraph 27, which failure or neglect results in damage to the Equipment, the Lessee shall be entitled to recover full compensation, including loss of income, from the Lessee for any loss or damage which results therefrom.
  - If necessary, the Lessee specifically agrees to authorize and direct any of the Lessee's Payers (as defined in the *Ontario Construction Lien Act*, R.S.O. 1990, c. C-30) to pay to the Lessor any money that is due by a Payer to the Lessee under a contract in which the Equipment is employed to the extent of the entire balance due by the Lessee to Lessor. The Lessee specifically releases any Payer from any obligation it may have to the Lessee to the full extent of the payments made.
  - The Lessee hereby assigns all lien rights that the Lessee may have to the Lessor and this Agreement shall be deemed to be a power of attorney for all purposes necessary for the enforcement by the Lessor of the Lessee's lien rights.
  - If any provision of this Agreement is rendered unenforceable to any extent, the balance of this Agreement shall be severable and remain in full force and effect.
  - The Lessor may assign, at its sole discretion at any time, without notice or the consent of the Lessee, its right, title and interest in this Agreement, the Equipment and all monies due to or become due under this Agreement. The Lessee hereby acknowledges that such assignee does not assume any obligations or liabilities of the Lessor by reason of such assignment including, without limitation, any maintenance or other service obligations and the Lessee promises and agrees to settle all claims against the Lessor directly with the Lessor and the Lessee hereby waives, relinquishes and disclaims as to such assignee all counterclaims, rights of set off and defenses the Lessee may have against the Lessor in respect of any monies due under this Agreement. Furthermore, the Lessee hereby agrees that, upon receipt of notice from such assignee, it shall make all payments of any kind due and owing under this Agreement to the Lessor directly to such assignee.
  - The Lessee and Lessor acknowledge and agree that the terms and conditions contained in this agreement shall govern the rental of any and all equipment by the Lessee from the Lessor, and the term "Equipment" as used herein shall refer to all such equipment. The terms and conditions of this Agreement shall govern the rental of all Equipment and, except as otherwise expressly agreed by the Lessor and the Lessee in writing, in the event of a conflict between the terms and conditions, contained in this Agreement and any terms or conditions set out in any purchase order, acceptance or other document the Lessee and Lessor agree that the terms and conditions set out in this Agreement shall govern and at all times take precedence.
  - Title to the Equipment shall at all times be and remain vested in the Lessor and nothing contained in this Agreement shall be deemed to have the effect of conferring upon the Lessee any right or title whatsoever in or to the Equipment other than that provided for by virtue of this Agreement. The Lessee shall give the Lessor immediate notice in the case of the Equipment becoming levied upon or from any cause wherein the Equipment becomes liable to seizure.
  - The Equipment shall not be sublet by the Lessee, nor shall the Lessee assign or transfer any interest in this Agreement without the previous written consent of the Lessor.
  - This Agreement together with the Loss Damage Waiver, if executed, constitutes the entire Agreement between the Lessor and the Lessee and shall not be amended or altered except by a written Agreement signed by all parties hereto.
  - This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada as they apply.