



EQUIPMENT RENTAL TERMS AND CONDITIONS

These Equipment Rental Terms and Conditions ("Terms and Conditions") are for the rental of the equipment including all parts of and attachments and accessories to such equipment ("Equipment") and related services (if any), as more fully described in the quote, invoice, or other document to which these Terms and Conditions are attached or otherwise incorporated by reference (each, an "Order Form"). Both parties acknowledge that this agreement consists of these Terms and Conditions and the applicable Order Form, including any additional terms and conditions contained therein (collectively, "Agreement"). This Agreement is between the customer identified on the Order Form ("Customer") and Elevated Equipment Rentals, Inc. ("Elevated").

1. RENTAL PERIOD AND ACCOUNTS:

- a. Elevated hereby rents the Equipment to Customer for the period commencing when the Equipment leaves Elevated's premises and ending upon its return to Elevated's premises or, if the Equipment is to be delivered to Customer by Elevated, commencing when the Equipment is delivered to Customer, and ending when Elevated picks up the Equipment, subject to a charge for minimum rental period. Elevated may terminate the rental at any time by written notice to the Customer and retaking the Equipment. While in Customer's possession, no rental allowance will be made for Sundays, holidays, or any period the Equipment is subject to repair.
- b. Any disputed invoices must be brought to Elevated's attention within fifteen (15) days of receipt, or the invoices must be deemed correct and undisputed. At Elevated's discretion, any account with a delinquent balance may be placed on a hold basis, and deposits may be required, or the Equipment may be picked up without notice. Customer agrees that if Elevated refers this Agreement to an agency or attorney for enforcement, Customer will pay Elevated's reasonable agency and attorney fees and costs, including lien preparation costs, incurred for the enforcement hereof, whether a lawsuit is filed.
- c. Customer authorizes Elevated to make whatever credit inquiries it deems necessary in connection with this Agreement. Bank and trade reference(s) can accept this authorization to disclose to Elevated and their respective designees (and any assignee or potential assignee thereof) Customer information typically released to a prospective creditor, including the length of time the account has been active, average monthly balances, payment trends, and details of any lending relationship. Customer represents and warrants that Customer is not a "Consumer" as defined in the Federal Consumer Credit Protection Act, or any acts there under, and they waive any rights granted to them under those acts, their successors, or under other Federal or State Laws pertaining to "Consumer" rights. Customer further represents and warrants that all rentals, purchases made, or credit extended hereunder will be used solely for business and commercial purposes. The individual who is either a principal of the credit applicant or a sole proprietorship of the credit applicant, recognizing that his or her individual credit history may be a factor in the evaluation of the credit history of the applicant, hereby



consents to and authorizes the use of a consumer credit report on the applicant by Elevated, from time to time as may be needed, in the credit evaluation process.

- d. Terms: NET 30 upon issuance of from the date of Elevated's invoice. Service charges are assessed on past due amounts at the greater of 1.5% per month or the maximum rate permitted by law. Elevated may impose a surcharge of 2.0% for credit card payments, where permitted by law. This fee does not exceed those incurred by Elevated.
2. EXCESS USAGE CHARGE: Rental rates are for normal and reasonable use of Equipment not exceeding eight (8) hours per day, five (5) days per week (one-shift basis). Excess usage rates are prorated: two shifts are charged at 1-1/2 times the normal rate, and three shifts are charged at two times the normal rate.
3. RECEIPT AND USE OF EQUIPMENT: Customer represents that the Equipment is to be solely and exclusively used for business or commercial purposes. Customer will perform or cause to be performed and pay for all normal periodic and other basic service, adjustments and lubrication of the Equipment, including but not limited to: checking of the Equipment before each day before the Equipment's first use; checking and maintaining crankcase, transmission, cooling and fluid systems daily; and checking tire pressures and battery fluid and charge levels weekly. If the Equipment fails to operate properly or becomes in need of repair, Customer will immediately cease using same and will immediately notify Elevated. Customer is solely responsible for providing a secure and safe work environment for all parties, including Elevated and its employees, and for ensuring that the possession, storage, use and operation of the Equipment is carried out in compliance with applicable laws and industry standards, (including but not limited to those relating to worker safety and the environment). Customer is solely responsible for supervising the use and operation of the Equipment to ensure it is used in accordance with manufacturer instructions for proper operation and safety, for ensuring that the Equipment is proper for Customer's intended use and environment, and for ensuring users of the Equipment are qualified, trained, and familiar with the Equipment. For the avoidance of doubt, the Equipment is either owned or leased by Elevated. The parties intend that this Agreement constitutes a true lease under applicable law. Elevated or the third-party lessor (if applicable) has title to the Equipment at all times. Customer acquires no ownership, title, property, right, equity, or interest in the Equipment other than its leasehold interest solely as a lessee subject to this Agreement. Customer shall, at its own expense, protect and defend Elevated's title against all liens, claims and encumbrances asserted by or through Customer and its creditors. Equipment shall remain personal property and shall not become a fixture or accession to real property, regardless of any attachment to real property.
4. FAILURE OF EQUIPMENT: In the event of Equipment failure, Customer shall immediately notify Elevated and immediately cease using the Equipment. After Customer's notice of an Equipment failure, in Elevated's sole discretion, Elevated shall either request that Customer return to the Equipment to a designated location or Elevated shall arrange for the Equipment to be returned to Elevated. Customer shall not permit repair or alteration to the Equipment without Elevated's prior written consent.
5. REPAIR OR REPLACEMENT: Customer acknowledges that repair and replacement of the Equipment and tires are not included in the rental rate and agrees to pay for the repair (including labor) or the total replacement cost of any Equipment and tires returned to Elevated



in a damaged condition, regardless of the cause of damage, except for reasonable wear and tear.

6. **RETURN OF EQUIPMENT:** At the end of the rental term (as set forth in the Order Form) or upon Elevated's earlier termination of this Agreement, Customer shall return all the Equipment to Elevated's premises during Elevated's regular business hours, in the same condition and repair as when delivered to Customer, subject only to reasonable wear and tear. Customer shall be liable for all damages to or loss of the Equipment because it was not returned within Elevated's regular business hours. If Elevated has agreed to deliver the Equipment to Customer or to pick up the Equipment from Customer, Customer shall be responsible for all loss or damage to the Equipment or any third party from the time of delivery to Customer until picked up by Elevated. The Equipment is in the possession and responsibility of Customer until Elevated regains physical possession. Fuel charges will apply if the Equipment is not returned with a full tank.
7. **HAZARDOUS MATERIALS:** Customer represents and warrants that it shall return all Equipment, including all attachments, tools, and machinery rented from Elevated, free of all regulated substances including, but not limited to, hazardous substances, hazardous materials, hazardous wastes, toxic substances, or pesticides, as those terms are defined in applicable federal, state, and local environmental laws, regulations, rules, to include all necessary or required permits. Customer shall indemnify and hold Elevated harmless from and against all liabilities imposed on, incurred by, or served against Elevated in any way relating to Customer's breach of the above warranty.
8. **LOST OR DAMAGED EQUIPMENT:** Customer is responsible for all damage, excessive wear and tear, loss, or theft of Equipment up to the fair market value of the Equipment or cost of repair for the Equipment, including rental on the Equipment at the regular rental rate until repairs are completed. Reasonable wear and tear shall mean the normal deterioration caused by ordinary and reasonable use on a one-shift (eight hours per day, five days per week) basis. The following shall not be deemed reasonable wear and tear: damage from lack of lubrication or maintenance, such as water and air pressures; damage from collision, overturning, or improper operation, including over-loading or exceeding the rated capacity of the Equipment; damage like dents, bending, tearing, staining, and misalignment to the Equipment; and wear resulting from use in excess of a one-shift basis. Elevated should not be obligated to commence repair work until the Customer has paid.
9. **DISCLAIMER OF WARRANTIES AND WAIVER OF DAMAGES:** ELEVATED MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE EQUIPMENT'S MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. Customer's sole remedy for any failure of or defect in the Equipment shall be the termination of the rental charges at the time of failure, provided Elevated is notified immediately and the Equipment is returned to Elevated within 24 hours, or Elevated is requested to perform the return. ELEVATED SHALL NOT BE RESPONSIBLE FOR ANY LOSS, DAMAGE, OR INJURY TO THE CUSTOMER, CUSTOMER'S EMPLOYEES, CUSTOMER'S SUBCONTRACTORS, AND CUSTOMER'S PROPERTY, INCLUDING LOST PROFITS, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, IN ANY WAY CONNECTED WITH THE OPERATION OF, USE OF, DEFECT IN, OR FAILURE OF



EQUIPMENT. THE MAXIMUM LIABILITY OF ELEVATED, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR AFFILIATES UNDER THIS AGREEMENT (REGARDLESS OF WHETHER A CLAIM IS BASED UPON WARRANTY, CONTRACT, TORT, NEGLIGENCE OR OTHERWISE) SHALL NOT EXCEED THE AMOUNT PAID TO ELEVATED BY CUSTOMER UNDER THIS AGREEMENT.

10. BODILY INJURY/PROPERTY DAMAGE TO THIRD PARTIES: Elevated does not provide, extend, or afford any insurance coverage to the Customer or authorized operator(s) or passengers. If valid and collectible automobile liability protection or insurance on any basis is available to the Customer or any other person and such protection satisfies the financial responsibility laws, then Elevated will not afford liability protection. However, if Customer complies with this Agreement, and if Elevated is determined by law to provide liability protection, such liability protection shall be limited to the minimum financial responsibility limits of the state where the vehicle is operated.
11. INDEMNIFY AND HOLD HARMLESS: Customer shall defend, indemnify, and hold harmless (collectively "Indemnify") Elevated and its successors and assigns, and their shareholders, directors, officers, employees, agents, and representatives (collectively, the "Indemnified Parties") harmless against any actual or alleged loss, claims, liabilities, costs and expenses, including reasonable attorneys' and experts' fees (collectively "Claim"), arising out of, in connection with, or resulting from: (i) use or operation of the Equipment; (ii) negligence, gross negligence or willful misconduct of Customer, its contractors and/or their subcontractors or anyone for whom they are legally responsible, or (iii) the breach by Customer of any provision contained in this Agreement. Customer's obligation as set forth above shall apply even if an Indemnified Party is alleged or determined to be partially at fault for any such Claim, although Customer shall not be responsible to Indemnify any Indemnified Party for its sole fault. Customer's obligation to Indemnify any Indemnified Party shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Customer under worker's or workmen's compensation acts, and Customer will Indemnify any Indemnified Party for any indemnified claim arising out of injuries to the Customer's actual or statutory employees. Customer shall notify Elevated immediately if the Equipment is involved in, or a part of, an accident and shall furnish Elevated with a complete report of any accident involving Equipment, including names and addresses of all persons involved and all witnesses. Customer is responsible for all damage, injuries, or loss arising from any accident or act of any and every nature whatsoever relating to the possession or use of the rented Equipment, including, but not limited to, any damage caused by the failure of any device or material used in hitching the Equipment to a towing vehicle, regardless of who furnished and regardless of who hitched the Equipment. If any covenant is deemed unreasonable, arbitrary, unenforceable, or against public policy, such covenant will be considered divisible for the scope of Customer's indemnification obligations. Such lesser scope, as a court of competent jurisdiction may determine, will be effective, binding, and enforceable.
12. FAILURE TO DELIVER: CUSTOMER RELEASES AND DISCHARGES ELEVATED FROM ANY AND ALL LIABILITY OR DAMAGES (INCLUDING CONSEQUENTIAL AND SPECIAL DAMAGES) WHICH MIGHT BE CAUSED BY ELEVATED'S FAILURE



OR INABILITY TO DELIVER ANY EQUIPMENT BY ANY SPECIFIED DATE OR TIME INCLUDING LOADING AND UNLOADING OF EQUIPMENT.

13. DAMAGE WAIVER.

- a. This Damage Waiver IS NOT INSURANCE. Provided that the Customer accepts and pays the appropriate Damage Waiver fee and takes reasonable precautions to protect the Equipment, Customer can limit Customer's responsibility to Elevated for physical damage to or theft of the Equipment during the rental period. Damage Waiver does not cover liability losses, both General Liability and Auto Liability. It is the Customer's responsibility to maintain Commercial General Liability insurance covering all operations and contractual obligations and in accordance with this Agreement.
- b. Under this Damage Waiver, Customer's liability to Elevated is limited to \$500, per item.
- c. Customer agrees and acknowledges that this Damage Waiver is inapplicable to the following risks, which the Customer expressly assumes:
 - i. Loss or damage resulting from improper use, lack of a trained or qualified operator, abuse, negligence, intentional damage, or any other failure to operate the Equipment properly.
 - ii. Loss or damage from overloading or exceeding the Equipment's rated capacity.
 - iii. Loss due to disappearance or shortage disclosed on inventory.
 - iv. Loss or damage by conversion of Customer, their employees, or persons to whom the Equipment is entrusted.
 - v. Failure to file a police report within 48 hours.
 - vi. Tires and tire damage.
 - vii. Customer failure to secure and protect the Equipment while on rent (best efforts to secure and safeguard include fences, locked storage containers or buildings, security guards, tire boots, hitch locks, chains, padlocks, etc.)
 - viii. Use of the Equipment in violation of any of these terms of this Agreement.
- d. Customer will be charged the Damage Waiver fee upfront unless Customer provides evidence of insurance satisfactory to Elevated for physical damage to and loss of rented Equipment, in an amount sufficient to cover the fair market value of each item of rented Equipment, with the per-item limit specified, and naming Elevated as loss payee. Customer shall provide a certificate of insurance to Elevated, evidencing this insurance coverage and the insurance coverages set forth under INSURANCE, and specifying that insurance coverage will not be canceled without 30 days' prior written notice to Elevated. Finally, this Damage Waiver does not cover liability losses such as General and Auto Liability. Customer is responsible for obtaining and maintaining insurance covering all operations and contractual obligations as outlined under Section 14 below.

14. INSURANCE:

- a. General Liability: Customer shall maintain Commercial General Liability insurance covering all operations and contractual obligations (including the indemnity obligation outlined under INDEMNIFICATION AND HOLD HARMLESS) with minimum limits of \$1,000,000 per occurrence, \$2,000,000 general aggregate, and \$2,000,000 products



- and completed operations aggregate, and shall name Elevated as additional insured thereon with a waiver of subrogation.
- b. Customer agrees to obtain, maintain, and pay for such worker's compensation and employer's liability as required by law. Customer shall have a liability limit of at least \$1,000,000 Policy Limit Accident/\$1,000,000 Policy Limit Disease/\$1,000,000 each Employee Disease. The policy must provide a waiver of subrogation provision for Elevated and shall be primary insurance for any insurance carried by Elevated. Customer shall provide coverage for Elevated for any losses, claims, accidents, or occurrences arising from Customer's use of the Equipment, including for claims of negligence or other wrongdoing on behalf of Elevated. The parties to this Agreement agree that this is not a construction contract.
 - c. Customer shall maintain Commercial Automobile Liability Insurance with limits of at least \$1,000,000 per occurrence and shall include coverage for any auto and all owned, scheduled, hired, and non-owned vehicles, including trailers to cover liability and physical damage with coverage for the total replacement value of the vehicle being rented when renting a licensed, registered (over the road) vehicle. The Customer's insurance shall be primary and include a waiver of subrogation against Elevated. It shall list Elevated as a loss payee and additional insured.
 - d. Subcontractor: Any subcontractor hired by Customer must comply with these insurance requirements.
 - e. Insurance companies shall write all policies required herein with a rating of A.M. Bests of at least "A-" and a financial size category of at least VII.
 - f. Customer's policy shall also contain a cross liability/severability of interests provision assuring that the acts of one insured do not affect the applicability of coverage to another insured.
15. SUBLETTING AND LOCATION: No item of rented Equipment shall be sublet, assigned, re-rented, loaned, or removed from the location at which Customer represented it was intended to be used or removed from the State of Elevated's premises from where the Equipment was rented, except by written consent of Elevated. This Agreement shall inure to the benefit of and be binding upon the parties, their heirs, successors, and assigns.
16. EVENTS OF DEFAULT AND REMEDIES: Customer shall be in default of this Agreement if Customer fails to pay any amount when due hereunder, or if Customer breaches any of the other terms of this Agreement, or if Customer becomes insolvent or ceases to do business as a going concern, or if a petition in bankruptcy is filed by or against Customer, or if Customer is in default pursuant to the provisions of any other agreement by and between Customer and Elevated. Customer will further be deemed to be in default if the Equipment is obtained from Elevated through fraud or misrepresentation or is stored or used: (a) in violation of any law or ordinance including without limitation, any local, state or federal law or regulation; (b) in a reckless, negligent or abusive manner, or is damaged while being rented by Customer; (c) in violation of this Agreement, (d) in any fashion or manner for which the Equipment was not designed or beyond the manufacturer's rated capacity for the Equipment. In case of default by Customer, or if Elevated deems itself insecure, Elevated may, but is not required to, peaceably enter the premises where the Equipment is located and render it inoperative or remove same



with or without process of law and without any notice to Customer or liability. Customer hereby waives any right to any hearing or to receive any notice of legal process, as a pre-condition for Elevated recovering the Equipment. Customer agrees to permit such entry and action by Elevated. In such case Elevated may also terminate this Agreement without notice to Customer or prejudice to any remedies or claims which Elevated might otherwise have for any amount due hereunder, expense of retaking, court costs and attorneys' fees. Customer will remain liable for the Equipment or for any loss or injury to the Equipment, any property and/or persons, notwithstanding such termination. Elevated shall have the right to issue and circulate theft notices, cause warrants to be issued and take any other steps which Elevated may reasonably deem necessary to recover the Equipment, if the Equipment is not returned on the date specified on the Order Form or sooner as permitted by the terms of this Agreement. The remedies provided herein in favor of Elevated are not exclusive but shall be cumulative and in addition to all other remedies existing at law or in equity, any one or more of which may be exercised simultaneously or successively.

17. **COMPLIANCE WITH LAW AND SAFETY REGULATIONS:** As Elevated has no control over the use of the Equipment by Customer, Customer agrees at its sole expense to comply with all laws and regulations, including the Occupational Safety and Health Administration Act of 1970 (OSHA) and all other Federal, State and Local laws, regulations, and ordinances, which may affect the Equipment, or the operation thereof, while it is in the possession of Customer. CUSTOMER SHALL DEFEND, INDEMNIFY AND HOLD ELEVATED HARMLESS FROM ANY LIABILITY OR EXPENSE, INCLUDING ATTORNEYS' FEES, RESULTING FROM ANY ACTUAL OR ASSERTED VIOLATIONS OF SUCH LAWS, REGULATIONS AND ORDINANCES.
18. **OSHA REQUIREMENTS:** Customer agrees at its sole expense to comply with all laws and regulations, including OSHA regulations (29 CFR 1926), and all other federal, state, and local laws, regulations, and ordinances that may permanently affect the Equipment. Customer's sole responsibility is to ensure compliance with any employees, subcontractors, suppliers, and delivery entities that may enter the project site or use Equipment under the Customer's control. Elevated reserves the right to request and receive any OSHA-related training and recordkeeping document that the Customer (including all subcontractors, suppliers, and delivery entities) is responsible for maintaining. The Customer must immediately notify Elevated of any unsafe act and immediately take the necessary actions to resolve the situation. CUSTOMER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS ELEVATED, ITS OFFICERS, DIRECTORS, MEMBERS, MANAGERS, EMPLOYEES, SHAREHOLDERS, AGENTS, AND AFFILIATES FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES OF WHATSOEVER KIND AND NATURE, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RELATING TO ANY ACTUAL OR ASSERTED VIOLATIONS OF SUCH LAWS, REGULATIONS AND ORDINANCES.
19. **LEGAL FEES AND VENUE:** Customer shall be liable to Elevated for all costs, including reasonable attorneys' and expert's fees, incurred by Elevated as a result of any default by Customer or otherwise incurred by Elevated in enforcing this Agreement or successfully pursuing any legal action against Customer, whether at the trial court or appellate court level,



and including any action to collect upon a judgment against Customer. If any provision of this Agreement is held invalid, the remainder of this Agreement will not be invalidated or affected thereby. Customer agrees that this Agreement is to be construed under the laws of the State of Wisconsin and that if legal action is brought to enforce this Agreement, Milwaukee County, Wisconsin, shall be the jurisdiction and legal venue for said action. CUSTOMER WAIVES THE RIGHT TO A JURY TRIAL OF ANY OR ALL CLAIMS OR DISPUTES THAT MAY ARISE FROM THIS AGREEMENT.

20. **LIABILITY WAIVER:** If Elevated agrees to assist the Customer with the installation of any Equipment or provide training as part of this Agreement, Customer hereby waives and releases all claims for damages against Elevated arising out of or related to such activities. Customer expressly acknowledges that Elevated has no obligation to and is not responsible for investigating the worksite conditions, perform any soil or other tests to determine the suitability of the soil conditions or for any other reason, or to make any calculations, analysis, or recommendations regarding the proper Equipment, shoring supports, and specifications to be used.
21. **TAXES AND FEES:** Customer shall reimburse Elevated for any additional fees, charges, or taxes sought to be imposed against Elevated by any municipal or local subdivision relating to the rental or use of the Equipment by Customer as provided herein. Additional fees, such as estimated personal property tax and environmental reimbursement fees, may apply. These fees are subject to change at any time.
22. **MISCELLANEOUS:** This Agreement and the Order Form expresses the entire agreement between the parties with respect to the subject matter hereof. No modification or alteration of the terms hereof will be effective as against Elevated unless same is in writing and signed by a duly authorized officer of Elevated. Customer's use and/or delivery of the Equipment and/or Customer's signing of this Agreement shall be deemed execution of this Agreement and shall constitute Customer's acceptance of all of the terms and conditions contained in an applicable Order Form and herein, and the exclusion of any terms and conditions otherwise stated by Customer or contained in any of Customer's documents. The paragraph headings contained in this Agreement are for convenience only and will not be used to expand or limit the actual terms and conditions hereof. Customer and the person signing this Agreement represent that: they both have full authority to execute, deliver and perform this Agreement; and this Agreement is a legal, valid and binding obligation of Customer, enforceable in accordance with its terms. Customer agrees that this Agreement may be signed manually or by scanning and sending .pdf or other copies thereof via email or via any other electronic means and in one or more counterparts, each of which shall be (i) an original, and all of which taken together shall constitute one and the same agreement; (ii) a valid and binding agreement and fully admissible under state and federal rules of evidence; and (iii) enforceable under applicable law.