

## TERMS AND CONDITIONS

**1. AGREEMENT:** The parties acknowledge and agree that the terms and conditions contained in this agreement (sometimes referred to as the "Lease") shall govern the rental or sale, as the case may be, of any and all equipment by **CRS Contractors Rental Supply**, and the term "Equipment" as used herein shall refer to all such equipment. Where the other party is leasing Equipment, it shall be referred to as "Lessee" and **CRS Contractors Rental Supply** shall be referred to as "Lessor". Where the other party is purchasing Equipment from **CRS Contractors Rental Supply**, this agreement shall constitute a purchase order.

**2. THE RENTAL PERIOD:** The rental period with respect to each piece of Equipment shall commence on and include the day of actual delivery of the Equipment to the Lessee or the Lessee's agent, including any public carrier taking same for transit to the Lessee. The rental period shall end on and include the day of actual delivery of the Equipment to the Lessor, another Lessee of the Lessor or an agent of either, including any public carrier taking same for transit to the Lessor or such other Lessee.

**3. PAYMENT:** The Rentals due under this Lease shall be paid monthly, weekly or daily (as the case may be) in advance to the office of the Lessor at the address designated on the front page of this agreement. The rental for the rental period is payable before delivery of the Equipment to the Lessee or the latter's agent or carrier. Overdue rental payments shall bear interest at 2.0% per month calculated and compounded monthly for an effective annual interest rate of 24%.

**4. INSPECTION:** Before the Equipment is delivered to the Lessee, the Lessee may require an inspection thereof by a qualified person. If the Lessee does not inspect the Equipment before it is delivered, then the Lessee is conclusively deemed to have accepted that the Equipment is in good condition and running order, without broken or worn out parts, and in a clean and unmarred condition.

**5. LOADING, UNLOADING AND TRANSPORTATION:** The Lessor shall, at its own expense, load the Equipment for transit to the Lessee and unload it upon its return, and shall pay any demurrage charges accruing at its own shipping and receiving point. The Lessee shall, at its own expense, do all other loading, unloading, installing dismantling and hauling, and shall pay any demurrage accruing at its own shipping or receiving point. The Lessee shall pay all transportation charges from and to the Lessor's shipping and receiving points. The Lessor may ship the Equipment in accordance with its own judgment if shipping instructions are not furnished on the signing of the present agreement.

**6. MAINTENANCE, OPERATIONS AND REPAIRS:** The Lessee shall not remove, alter, disfigure or cover up any numbering, lettering or insignia displayed upon any Equipment, and shall ensure that no Equipment is 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, together with any tools and accessories pertaining thereto, the whole in good repair and running order.

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 and lubricants required to operate the Equipment;
- (b) all repairs required to be made to the Equipment in order to keep it in good and proper operating condition in accordance with the operator's manual; and
- (c) replacing broken or worn out parts.

In addition, the maintenance of tires and tubes on all Equipment so equipped is the responsibility of the Lessee. Repairs to and or replacement of tires and tubes will be charged to the Lessee, as will any service calls to the location of the Equipment if the Equipment is not brought into the Lessor's yard. No allowance will be made for any down time or inconvenience caused to the Lessee by failure of any tires, tubes, wheels and/or associated Equipment.

**7. DAMAGE TO EQUIPMENT:** The Lessee shall indemnify and hold harmless the Lessor against all loss and damage to the Equipment during the rental period and the appraisal for any such loss or damage shall be based on the list price of Equipment without deduction for depreciation. Subject to paragraph 13 below, the Lessee will provide the Lessor with a certificate of insurance covering the list price of the Equipment without deduction for depreciation that shall be kept in effect from the time the Equipment is shipped by the Lessor until it is returned to the Lessor or delivered to another Lessee of the Lessor.

**8. LIABILITY OF LESSEE:** The Lessee shall indemnify and hold harmless the Lessor against all loss, expenses, penalties, damages, condemnations and legal costs which the Lessor may suffer or may be required or ordered to pay for personal injuries (including death) and/or property damages suffered by any person by reason of the Equipment or the operation, handling, transportation or use thereof by or while in the hands of the Lessee or the latter's employees, agents or carriers. The Lessee shall remain responsible for the Equipment until it has been returned to the Lessor. The Lessee shall maintain at the Lessee's own expense, public liability and all risk property insurance in adequate amounts to fully cover this indemnity. The Lessee hereby renounces all claims which it may have against the Lessor for any loss or damage which it may suffer, either directly or indirectly, by reason of the condition of the Equipment or its suitability for the work it may be required to perform.

**9. TITLE:** Title to the Equipment shall at all times be and remain vested in the Lessor and nothing contained in this Lease shall be deemed to

have the effect or conferring upon the Lessee any right or title whatsoever in or to the Equipment, other than that of the Lessee. The Lessee shall not incur or permit to be created any lien or other encumbrance on or with respect to the Equipment. The Lessee shall give the Lessor immediate notice in case any of the Equipment is levied upon or from any cause becomes liable to seizure. The Lessor shall be entitled to register any documentation under the *Personal Property Security Act* of Ontario or other applicable legislation to protect its interest as owner of the Equipment. Lessee will execute and deliver whatever instruments and papers are required and do whatever else is necessary to secure such rights.

**10. TERMINATION OF AGREEMENT:** Should the Lessee fail to make any payment for more than ten (10) days after it becomes due, or become bankrupt, insolvent or have a receiver appointed, or fail to maintain and operate or to return the Equipment as provided in this Lease, or violate any other provision hereof the Lessor may, after three (3) days' notice in writing, terminate this agreement, re-take possession of the Equipment without becoming liable for trespass where the Equipment may be situated, and recover all rentals due, full damages for any injury to and all expenses incurred in obtaining the return of the Equipment. Should the Lessor fail to ship the Equipment in good and running order, the Lessee may, upon giving the Lessor notice, terminate the agreement/lease and recover any amount paid by him (it) to the Lessor hereunder. All outstanding obligations shall survive termination of this agreement.

**11. SUBLETTING, ASSIGNMENT OF LEASE:** None of the Equipment shall be sublet by the Lessee, nor shall it assign or transfer any interest in this Lease without prior written consent of the Lessor.

**12. SUBROGATION:** In the event of any loss or damage to the Equipment, Lessor will have the right of subrogation with respect to any right of the Lessee to recover against any person, firm or corporation. Lessee will execute and deliver whatever instruments and papers are required and do whatever else is necessary to secure such rights. Lessee will cooperate fully with Lessor and or its insurer(s) in the prosecution of those rights and will neither take or permit nor suffer any action to prejudice Lessor's rights with respect thereto.

**13. LOSS DAMAGE WAIVER:** Where the Lessee accepts the Loss Damage Waiver on the front of this Agreement and pays the additional fee specified thereon, the Lessor will waive its claim against the Lessee pursuant to this Agreement for loss of or damage to the Equipment (except as set out in paragraph 14 below) for any amount in excess of the following:

- A. For Theft: 10% of the list price of new Equipment; provided however that in no event, shall the Lessee pay a sum less than \$500.00.
- B. For Damage: 10% of the cost of the repairs to the Equipment; Provided however that in no event, shall the Lessee pay a sum less than \$500.00

In the event of theft, mischief or vandalism, the Lessee agrees and undertakes to promptly file notice of same with the applicable public authorities, with an immediate written copy to the Lessor.

**14. WAIVER EXCEPTION:** Notwithstanding the Lessee's acceptance of the Loss Damage Waiver, the Lessee will be liable for all resulting loss or damage to the Equipment and expense of the Lessor, to the extent it: (i) results from the gross negligence of the Lessee which includes, but is not limited to, the use or operation of the Equipment in a reckless or abusive manner, using the Equipment for purposes it was not designed for, or intentional damage to the Equipment by the Lessee or by Lessee's employees or agents, or (ii) occurs under any of the following circumstances:

- A. Loss, damage or failure of tires and tubes under any circumstances.
- B. All loss or damage associated with Equipment being overloaded, operated above rated capacity, roll over or is operating instructions are not followed.
- C. Use of the Equipment by an operator who is unqualified for the task or who is under the influence of alcohol or any drug or other substance, whether legal or not and whether prescribed by a physician or not, that affects the operator's abilities or skills. The Lessee is to use properly trained operators only.
- D. Failure of the Lessee to perform necessary Equipment maintenance, services or lubrication as outlined in paragraph 6 above.
- E. Lessee's failure to properly secure the Equipment by, among other things, leaving keys readily available to any unauthorized operator or allowing access to the Equipment while not attended.
- F. All damage to motors, generator, drills or other electrical appliances or devices caused by portable electric current unless the source is a generator supplied by the Lessor.

**15. WARRANTIES:** Lessor makes no warranties, either express or implied, as to any matter whatsoever, including, without limitation, the condition of the Equipment, its merchantability or fitness for a particular purpose, or that it is suited for the Lessee's intended use. Subject to paragraph 13 above, the aggregate liability of Lessor hereunder, if any, shall be limited to the amount paid to it by Lessee under this Lease.

**16. PREVENIENT ARRANGEMENT:** The Lessee acknowledges that the supply of Equipment by the Lessor from time to time for the use at or in relation to the same project or work site is pursuant to a prevenient arrangement and that the Lessor shall have lien rights pursuant to the *Construction Lien Act* of Ontario for all Equipment rented and materials supplied to or in relation to that project or work site.

**17. ENTIRE AGREEMENT:** The above-noted terms and the terms set out on the front of this document represent the entire agreement between the parties with respect to the Equipment. The Lessee consents to the collection of personal information by Lessor and the use,

retention, disclosure of such information by Lessor in accordance with applicable privacy legislation.

**18. LAW OF ONTARIO TO APPLY:** The parties agree that this agreement shall be construed in accordance with the laws of the Province of Ontario.

**19. INVALID PROVISION:** The parties agree that in the event one or more provisions of this agreement or any part(s) thereof are declared invalid by a court of competent jurisdiction, the remaining provisions shall remain valid and binding upon the parties in all respects.

**20. BINDING ON SUCCESSORS:** All of the terms and provisions of this Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns. This Agreement and the rights hereunder may not be assigned by either party without the written consent of the other party.