

# STANDARD EQUIPMENT RENTAL AGREEMENT TERMS AND CONDITIONS

**1. Term:** The rental term shall commence upon loading of the equipment on the conveyance and shall continue until the equipment is redelivered to Lessor. If a rental term is specified in the box for *Rental Term* on the front of this agreement, then the equipment must be redelivered to Lessor on or before the expiration of that rental term, unless Lessor has agreed in writing to an extension of that rental term.

**2. Rental Payments:** The rental rates identified on the face page of this agreement shall apply for the full rental term, subject to the following conditions:

(a) upon execution of this agreement, Lessee shall pay Lessor a minimum rental payment equal to the *Minimum Rental Period* x the *Total Monthly Rental*, with such payment agreed to be fully and irrevocably earned by Lessor upon execution of this agreement, regardless of when equipment is delivered and/or redelivered;

(b) the *Total Monthly Rental* for each succeeding month (following the minimum rental payment) shall be paid on or before the first day of each succeeding month, with Lessee to be reimbursed for rental amounts paid in advance which do not actually accrue due to redelivery of equipment prior to month end;

(c) all rental payments shall be made in U.S. currency, without deduction or offset, and regardless of whether invoiced or not; and,

(d) all sums due Lessor which have not been paid shall accrue interest at the rate of one and one-half percent (1.5%) per month from date due until paid to Lessor in full.

**3. Inspection and Warranties:** Lessee specifically acknowledges and accepts that the equipment being rented is USED and is rented strictly on an AS IS basis. Lessee shall have full opportunity to inspect the equipment (or have the equipment inspected by technician(s) of its choice) prior to delivery, and shall be solely responsible for determining the fitness and suitability of the equipment for its intended use. Any recommendation or advice from Lessor or its representatives with respect to the equipment, written or oral, is agreed to be informal and shall not create any responsibility or warranty other than as set forth herein.

IT IS AGREED THAT LESSOR SHALL NOT BE HELD TO ANY WARRANTY, EXPRESS OR IMPLIED, REGARDING THE CONDITION OF THE EQUIPMENT OR ITS FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR ANY WARRANTY THAT THE EQUIPMENT IS FREE FROM LATENT DEFECT.

**4. Delivery, Redelivery and Risk of Loss:** The equipment shall be deemed delivered to Lessee when loaded on the conveyance at the *Delivery Location* identified on the face page of this agreement. Upon delivery, all risk of loss of and/or damage to the equipment shall pass to Lessee and shall thereafter remain with Lessee until the equipment is redelivered to Lessor pursuant to these terms and conditions, regardless of how such loss and/or damage arises or occurs. The equipment shall be redelivered to Lessor, at Lessee's expense, at the *Delivery Location*. Redelivery shall not occur, and the rental term shall continue, until the equipment is redelivered to Lessor in the same condition as when delivered to Lessee, less ordinary wear and tear not correctible through routine maintenance. Should Lessee fail to redeliver the equipment or any part thereof as required herein, Lessee shall be obligated to immediately pay Lessor the sum(s) for such equipment set forth in the *Per Item Valuation* column on the face page of this agreement.

**5. Operation and Maintenance:** At all times during the rental term and until redelivery, Lessee shall provide trained operators for the equipment and shall assure that the equipment is operated properly and is not subjected to any careless, rough or improper use. Lessee shall be responsible for maintaining the equipment during the full rental term at its risk and expense and in conformity with factory recommendations as well as good industry practice. Lessee shall not alter or modify the equipment without Lessor's prior written consent.

**6. Taxes, Fees and Etc.:** Lessee shall pay all taxes, fees, licenses, charges and other assessments relating to the equipment and/or its use under this agreement, other than taxes upon the rental payments Lessor receives pursuant to this agreement.

**7. Transportation Services:** All transportation and related services arising during the rental term shall be deemed for Lessee's benefit, regardless of whether provided and/or arranged by Lessor, in which event it is agreed that Lessor is acting as Lessee's agent therefor. All risk of loss and damage arising during and/or related to such transportation and related services (including stowage, securing and transit) shall be deemed included within the risk of loss and damage transferred to Lessee upon delivery as set forth above.

**8. Ownership and Liens:** Title to and ownership of all equipment shall remain with Lessor at all times. Lessee shall not impair such title, represent to any person that it owns or has ownership rights relative to the equipment, and shall not attempt to mortgage, pledge or use the equipment as collateral under any circumstance. Lessee shall not remove, deface or conceal signs or markings which identify the equipment as being owned by Lessor, and Lessee shall maintain such signs and markings at its expense. Lessee shall not allow any levy, lien or encumbrance to be placed against the equipment, and shall immediately notify Lessor if any levy or seizure is threatened and/or occurs; Lessee shall, at its expense, either cause any such levy or seizure to be released or shall cooperate with Lessor to effect such release, at Lessor's option but at Lessee's expense including legal fees and costs.

**9. Bond:** Lessee shall, at its expense and during the full rental term, procure and maintain a contract performance bond upon a form satisfactory to Lessor assuring Lessee's full and faithful performance under this agreement, if required by Lessor.

**10. Insurance Requirements:** Lessee shall, at its expense including the expense of deductibles, procure and maintain the following insurances for the full rental term:

(a) broad form equipment floater or similar all risk direct property insurance upon all equipment being rented, with such insurance to include waterborne, transit and general average risks and to have limits to the full actual market value(s) thereof; and,

(b) broad form public liability insurance covering property damage and bodily injury, with such insurance to be specifically endorsed to include contractual liability coverage for this agreement and to have minimum limits of \$1,000,000.

Each of the foregoing insurances shall name Lessor as an additional insured and shall be endorsed to: be primary to any other insurance, including any insurance of Lessor; waive subrogation against Lessor; and provide Lessor with thirty (30) days written notice of cancellation or material change in policy conditions. The insurance identified in (a), above, shall name Lessor as a co-loss payee and sole loss payee in the event of a total or constructive total loss. In addition, Lessee shall maintain standard workers compensation and employers liability insurance, and, if the equipment is to be used on/about vessels, protection & indemnity and hull and machinery insurances on such vessels, with such insurances to be endorsed to waive subrogation against Lessor. Prior to delivery, Lessee shall provide Lessor with certificates of insurance or copies of policies, at Lessor's option, confirming its full compliance with the foregoing insurance requirements.

**11. Liability and Indemnity:** Lessee shall be solely responsible for, and agrees to indemnify and hold Lessor harmless from and against, including legal fees and costs, all loss, damage, liability, liens, encumbrances, claims, expenses, fines, penalties and/or suits of any type or nature whatsoever and howsoever caused relating to the equipment and/or its use or operation during the rental term or otherwise as a result of Lessee's obligations under this agreement, other than caused by the sole direct negligence of Lessor. In furtherance of the foregoing indemnification agreement, Lessee agrees to waive any immunity from suit and/or exclusivity of remedy afforded by any workers compensation or similar law.

**12. Consequential Damages:** Neither party shall be responsible for any indirect, consequential or special damages whatsoever, including, without limitation, extra expense, loss of profits, loss of use of property, delay or damages consequential upon loss of use, whether resulting from negligence, breach hereof or otherwise, and even if the possibility of such is or was foreseeable by Lessee, Lessor or any other person or entity.

**13. Default:** Lessee shall be in default under this agreement if any of the following occur:

- (a) Lessee's failure to pay rental or other amount when and as due under this agreement;
- (b) any equipment or part thereof is damaged and not promptly repaired/restored;
- (c) Lessee files for or has filed against it any type of bankruptcy, enters into a general assignment for the benefit of creditors and/or has a receiver appointed for it; and/or,
- (d) Lessee breaches any term or condition of this agreement.

Upon any such default, Lessee shall immediately redeliver the equipment to Lessor at the *Delivery Location*. In addition, upon any such default: all of Lessee's rights under this agreement shall terminate without expiration of any of its obligations and responsibilities; Lessor (and/or its agent or representative) shall be entitled to retake the equipment wherever it may be without legal process at Lessee's expense, including legal fees and costs; Lessee shall cooperate fully with any such retaking; and, Lessor shall be entitled to do any other act and/or make any other expenditure deemed necessary in its discretion to retake the equipment. Lessee agrees to promptly reimburse Lessor for all expenditures so incurred plus an administrative surcharge of ten percent (10%), which is agreed not be a penalty.

**14. Law, Venue and Jurisdiction:** Any suit relating to this agreement, the equipment and/or its use hereunder shall be filed in federal or state court located in Plaquemine Parish, Louisiana, with Lessee agreeing to the appropriateness of that forum and to submit to its personal and subject matter jurisdiction. The substantially prevailing party in any such action shall be entitled to recover its reasonable legal fees and costs. The general maritime law of the U.S. shall be applicable to this agreement and performance hereunder, or, if no general maritime rule of law applies, the law of Louisiana shall apply.

**15. Integration and Modification:** This document, including the face page and these terms and conditions, constitutes the entire agreement between the parties with respect to the equipment being rented and all other matters addressed herein, superseding all prior understandings and agreements, whether written or oral. This agreement shall be construed neutrally, and as the mutual assent of both parties rather than for or against either party. This agreement may be amended or modified only by a writing signed by both parties.

**16. Counterparts and Facsimile Execution:** This agreement may be executed in one or more identical counterparts, with each such counterpart deemed the same agreement. Signatures to this agreement may be exchanged by facsimile, with a facsimile copy of a signature hereto deemed equivalent to an original signature.