

## TERMS AND CONDITIONS FOR RENTALS/LEASES

### **DEFINITIONS:**

"Company": Rugged LLC, the provider of the Equipment.

"Customer": As identified on the Invoice, the lessee/renter/user of the Equipment.

"Equipment": The machinery or equipment described on the Invoice.

"Invoice": The written or electronic documentation provided to Customer from Company identifying: (a) Company, (b) Customer, (c) amounts due, (d) the Guaranteed Minimum Term, (e) the Equipment, (f) Equipment location, (g) any Loss Damage Waiver election, (h) any Purchase Option election, and (i) any designation of the Agreement as a "no charge agreement," "loaner agreement" or "demonstration agreement." Any additional terms or conditions or terms and conditions in conflict with this Agreement must be approved in writing by a vice president of Company. Any additional or conflicting terms and conditions not so approved in writing are rejected and shall not be part of the Agreement. The documentation may be titled "Rental Agreement," "Lease," "Invoice," or otherwise and may or may not be signed by Customer.

### **TERMS OF THIS AGREEMENT:**

Unless otherwise agreed in writing signed by a vice president of Company, these Terms and Conditions for Rentals/Leases and the Invoice (collectively, this "Agreement") govern the rental lease of Equipment from Company by any Customer (including the use of Equipment under no charge, loaner, or demonstration arrangement). Company hereby rejects the terms of any purchase order or similar document of Customer, unless the document is signed by a vice president of Company. The placing of an order, payment of an Invoice, or the receipt or acceptance of Equipment by Customer constitute acceptance of this Agreement.

Subject to the terms of this Agreement, Company leases/rents the Equipment to Customer, and Customer rents the Equipment from Company, on a continuous basis, for the period (the "Term") commencing with the delivery of the Equipment to Customer and terminating at the end of the later of: (a) the Guaranteed Minimum Term set forth on the Invoice; or (b) the return of the Equipment to Company as hereafter provided.

### **CHARGES:**

Unless identified on the Invoice as a "no charge agreement," "loaner agreement" or "demonstration agreement", Customer agrees to pay Company at Company's posted rental rates and/or schedules as in effect on the date the Term commences and as set forth on the Invoice. Rental rates shall be based on an 8-hour day, 50-hour week and 200 hour 4-week period. All Equipment used by the Customer for "double shift use" (i.e., greater than 8 hours per day) will be charged at 1 1/2 times the appropriate daily, weekly, or 4 week rental rate. Equipment utilized by the Customer for triple shift use (i.e., greater than 16 hours per day) will be charged at 2 times the appropriate daily, weekly, or 4-week rate. Company shall have the right to determine overtime use from time to time during the Term and/or following the return of the Equipment. If the Equipment is returned before the end of the Guaranteed Minimum Term, Customer agrees to pay the additional fee set forth on the Invoice. If any sales tax, use tax, property tax, or other tax, license or fee is imposed by any governmental authority upon the rental/lease or use of the Equipment, such amount shall be paid by Customer in addition to the rental rates.

### **TERMS OF PAYMENT: CREDIT CHECK:**

Customer agrees to pay, in advance in a lump sum, the entire rental charge for the Equipment for the Guaranteed Minimum Term upon delivery of the Equipment. Customer agrees to pay all charges for the purchase of supplies immediately upon receipt of the items purchased, and to pay for overtime use upon being invoiced therefor. All payments due under this Agreement which are not paid within 15 days after the due date shall bear a late or delinquency charge of 1.5% per month or fraction thereof, computed from the due date to the date of payment, compounded monthly. Payments, when made, shall apply first to accrued late or delinquency charges, and the remainder shall apply to the balance due hereunder. Customer acknowledges that it has authorized and hereby authorizes the Company to obtain a consumer credit report on Customer at any time relating to entering into this Agreement, during the term of this Agreement, and until all amounts due to the Company have been paid in full.

### **PURCHASE OPTION:**

If a "Purchase Option" is set forth on the Invoice, Customer shall have the option to purchase the Equipment for the amount set forth on the Invoice. Any such option, if granted, is not intended to, and shall not make this Agreement an agreement of sale, secured or otherwise.

Written notice of the exercise of any option must be delivered to Company prior to expiration of the Term of this Agreement. All amounts due under this Agreement or with respect to any other transaction between Company and Customer shall be paid before the option may be exercised. The option shall expire upon the happening of any of the following: (a) the occurrence of any Event of Default (as defined below), (b) the termination or expiration of this Agreement, or (c) the failure of Customer to pay the full purchase price of the Equipment within ten (10) days of Customer's notice of its intent to exercise the option. If the purchase option is exercised, all payments made during the rental/lease period shall apply first to the payment of any amounts due under this Agreement, including but not limited to any late or delinquency charges, taxes, transportation charges, maintenance and repair charges, insurance charges, and recording fees, and then to the option price. For purposes of this Agreement, the term "Index Rate" shall mean that rate of interest that is equal to the rate of interest per annum during any calendar quarter designated and publicly announced from time to time by JP Morgan Chase as its "Prime Rate" in effect at its principal office in Louisville, Kentucky, on the first day of such calendar quarter. All changes in such Index Rate shall become effective on the first day of the calendar quarter following the calendar quarter during which JP Morgan Chase changes its Prime Rate. All interest shall be computed on the actual number of days elapsed over an assumed year of 360 days. Except as may be specified otherwise on the Invoice, and if no interest rate is set forth on the Invoice, the interest rate charged on financed purchases shall be the Index Rate plus 400 basis points. Upon payment in full of all amounts due, Company shall transfer the Equipment to Customer. **AS-IS, WHERE-IS, WITHOUT RECOURSE, REPRESENTATION, OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED.** If the Invoice does not set forth a purchase option election and purchase price, Customer shall have no purchase option under this Agreement.

### **INSPECTION OF EQUIPMENT: TOWING DEVICES:**

Customer acknowledges and agrees that: (a) it has the responsibility to inspect and that it has inspected the Equipment and has determined that the Equipment is suitable for Customer's intended use; (b) it understands the proper use of the Equipment; and (c) it has been furnished and is familiar with all written instructions and manuals concerning the Equipment.

Customer acknowledges and agrees that it is Customer's responsibility to inspect any towing devices to be utilized in connection with the Equipment, including but not limited to, all hitches and safety chains, prior to leaving Company's premises. Customer further acknowledges and agrees to inspect the Equipment and any towing devices periodically during the Term and to maintain the Equipment and all towing devices in safe and proper operating condition. Company shall not be liable for any damage to Customer's vehicle used to tow or otherwise transport the Equipment.

### **FUEL:**

Customer acknowledges that Company has delivered the Equipment to Customer with fuel tanks filled to 100%. Customer agrees to return the Equipment at the expiration of the Term with the fuel tanks filled to 100% or to pay Company a refueling charge at Company's posted refueling

rate per gallon.

**LOCATION OF EQUIPMENT; TITLE AND IDENTIFICATION:**

Customer agrees to keep the Equipment at the location set forth on the Invoice and not to remove the Equipment to any other location without Company's prior written consent. Title to the Equipment shall at all times remain in Company. If Company so requests, Customer shall attach and maintain on the Equipment a conspicuous plate or marker indicating Company's ownership of the Equipment. Company shall have the right to inspect the Equipment, wherever same shall be located, from time to time.

**USE AND OPERATION OF EQUIPMENT; MAINTENANCE DURING TERM:**

Customer will cause the Equipment to be operated in accordance with the manufacturer's or supplier's instructions or manuals and any special instructions delivered to Customer by Company at the time the Equipment is rented/leased or thereafter by competent, duly qualified and trained personnel and in a safe and careful manner and in compliance with all applicable laws and regulations and the insurance policies required to be maintained hereunder. Customer shall be responsible for all operating expenses incurred in the operation of the Equipment and for obtaining, and maintaining in full force and effect, and shall obtain and maintain in full force and effect all licenses, permits and other governmental approvals required for the lawful operation of the Equipment. Customer shall operate the Equipment only for lawful purposes and in a lawful manner. Customer will, at its expense, maintain the Equipment in good repair, condition and working order. Customer will not alter or add to the Equipment without Company's prior written consent and, if Company consents to such additions and alterations, Customer will remove them at the Term if Company so instructs. In the absence of such instruction, all attachments, alterations or accessories shall become part of the Equipment and shall be the sole property of Company, at no cost to Company.

**DAMAGE TO EQUIPMENT; REPAIRS:**

Customer shall be responsible to Company for all damage to the Equipment during the Term, regardless of the cause of damage and agrees to pay for loss of or repairs of damage to the Equipment occurring during the Term of this Agreement, whether such repairs are performed by Company or by third parties as Company shall elect. Customer shall immediately notify Company in the event of any damage or accident to and/or loss, theft or disappearance of the Equipment or any part thereof. Accrued rental charges shall not be applied against the cost of repair of damages to the Equipment or against reimbursement for loss regarding the Equipment. Equipment damaged beyond reasonable repair, as determined by Company in its sole discretion, shall be paid for by Customer at the Fair Market Value for the Equipment when leased/rented. As used herein, "Fair Market Value" means the value of the Equipment as determined by an appraiser selected by Company. Customer acknowledges that repair and replacement of tires are not included in the rental rate and agrees to pay for the repair or replacement of any tires returned to Company in a damaged condition, reasonable wear and tear excepted, regardless of the cause of the damage.

**MALEFUNCTIONING EQUIPMENT:**

Customer agrees to test the Equipment prior to placing it in service, to notify Company immediately of any condition impairing the safe or effective operation or mechanical condition of the Equipment, and to refrain from using, or to discontinue using the Equipment until such condition is corrected.

**TIME OF EQUIPMENT RETURN; CONDITION OF RETURN:**

Customer agrees to return the Equipment upon the expiration of the Term of this Agreement, in a clean condition and in the same working condition as when leased/rented, reasonable wear and tear excepted. Customer agrees to return the Equipment during Company's regular business hours and acknowledges that the Term of this Agreement shall not end (unless sooner terminated by Company) until the written acceptance of the Equipment by an authorized Company employee at Company's place of business. Time is of the essence in the performance of Customer's duties under this Agreement. Any extension of this Agreement must be mutually agreed upon prior to the expiration of this Agreement. In the event the Equipment is not returned during Company's regular business hours, Customer agrees to pay for any damage to or loss of the Equipment occurring between the time of return and the beginning of Company's next business day. Customer also agrees to pay a reasonable cleaning charge for Equipment returned dirty.

**DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY:**

COMPANY MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WHATSOEVER, AND SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, NON-INTERFERENCE, FITNESS FOR ANY PARTICULAR PURPOSE AND/OR MERCHANTABILITY. CUSTOMER CONFIRMS THAT IT HAS MADE (OR WILL MAKE) THE SELECTION OF EACH ITEM OF EQUIPMENT ON THE BASIS OF ITS OWN JUDGEMENT AND EXPRESSLY DISCLAIMS RELIANCE UPON ANY STATEMENTS, REPRESENTATIONS OR WARRANTIES MADE BY COMPANY. COMPANY SHALL NOT BE LIABLE TO CUSTOMER FOR: (1) ANY MATTER RELATING TO THE ORDERING, MANUFACTURE, PURCHASE, DELIVERY, ASSEMBLY, INSTALLATION, TESTING, OPERATION OR SERVICING OF THE EQUIPMENT; (2) FOR ANY CLAIM, LOSS, DAMAGE OR EXPENSE OF ANY KIND CAUSED BY THE EQUIPMENT; (3) FOR ANY LOSS OR DAMAGE WHATSOEVER WHICH IS INCURRED AS A RESULT OF DELAY, OR FAILURE TO FURNISH EQUIPMENT REGARDLESS OF THE CAUSE; (4) FOR ANY DAMAGES BY REASON OF FAILURE OF THE EQUIPMENT TO OPERATE OR OF FAULTY OPERATION OF THE EQUIPMENT OR SYSTEM; OR (5) FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOSSES RELATING TO THIS AGREEMENT, INCLUDING ANY RESULTING FROM THE INSTALLATION, OPERATION OR USE OF THE EQUIPMENT OR ANY PRODUCTS OR MATERIALS FURNISHED BY COMPANY. Customer hereby agrees that it will comply with any conditions set forth in, or applicable to, any applicable manufacturer's warranty and will not take any action or provide any service upon the Equipment which would void or reduce the remedies available under such warranty.

**INDEMNITY AND HOLD HARMLESS AGREEMENT:**

CUSTOMER AGREES TO INDEMNIFY AND HOLD COMPANY HARMLESS FROM AND AGAINST ANY AND ALL COSTS, EXPENSES (INCLUDING ATTORNEYS FEES), DAMAGES, LIABILITIES AND CLAIMS ARISING FROM OR PERTAINING TO THE USE, POSSESSION OR OPERATION OF THE EQUIPMENT BY CUSTOMER, INCLUDING ANY EXPENSE, LIABILITY OR LOSS DIRECTLY OR INDIRECTLY RELATED TO OR ARISING OUT OF ANY INJURY TO ANY PERSON OR TANGIBLE OR INTANGIBLE PROPERTY, WHETHER ARISING FROM

**NEGLIGENCE OR UNDER ANY THEORY OF STRICT OR ABSOLUTE LIABILITY OR ANY OTHER CAUSE. THE AGREEMENTS AND INDEMNITIES CONTAINED IN THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.**

**LOSS DAMAGE WAIVER:**

For each item of Equipment for which Customer accepts and pays for the Company's Loss Damage Waiver, the following provisions shall apply:

Company agrees to waive its right to recover from Customer amounts for any loss or damage to such item of Equipment (excluding supply items) to the extent that such amounts exceed, per occurrence, an amount equal to the lesser of (a) Company's published 4-week rental rate for such item of Equipment as of the date of the Invoice, and (b)(i) in the case of Equipment with an insurable value of less than \$100,000, \$1,000; (ii) in the case of Equipment with an insurable value between \$100,000 and \$250,000, \$2,500; and (iii) in all other cases, \$5,000, provided, that Company does not agree to waive any rights it may have to recover from Customer amounts for any damage to or loss of the Equipment to the extent arising from or in any way relating to: (1) use of operation of equipment without Company's permission or in violation of this Agreement; (2) loss or damage to tires, tubes and/or tools caused by vandalism or malicious mischief, unless such loss or damage is coincident with other waived loss or damage; (3) loss or damage caused by the gross negligence, recklessness, willful misconduct or dishonesty of the Customer or Customer's employees, agents, or contractors; wrongful conversion by any persons to whom the Equipment is entrusted by Customer; or disappearance, theft or conversion of the Equipment NOT documented by Customer's filing with applicable public authorities of a formal, written, sworn statement reporting the theft or conversion within 48 hours after Customer knows or has reason to know of the disappearance, theft or conversion; (4) loss or damage to the Equipment caused by war, nuclear radiation, or radioactive contamination; (5) loss or damage to the Equipment caused by any chemical or gaseous contamination; (6) failure to perform and pay for all normal periodic service, adjustments and lubrication; or (7) boom damage from overloading boom.

If Customer accepts the foregoing Loss Damage Waiver, Customer must pay the corresponding fee set forth on the Invoice. Any provision hereof to the contrary notwithstanding, the Loss Damage Waiver shall not apply with respect to any loss or damage occurring at a time when any payment of the waiver fee remains unpaid more than 90 days after its invoice date. The Loss Damage Waiver is not available on supply items or highway vehicles.

**CUSTOMER'S POLICIES OF INSURANCE:**

Customer agrees to maintain in effect workers' compensation, employer's liability, and public liability insurance in coverages and amounts satisfactory to Company. Company makes no certification to Customer concerning the Equipment's compliance with consensus standards or other occupational or health safety standards applicable to employers or employees or to their use of the Equipment. Unless Customer has accepted and paid for Company's Loss Damage Waiver, Customer also shall, at Customer's cost, keep the Equipment insured against all risks and perils normally covered under "all risk" policies, including but not limited to loss or damage by theft, vandalism, malicious mischief, fire, windstorm and explosion, and with an extended coverage endorsement covering all such other risks and perils in an amount satisfactory to Company in which Company is named as an additional insured, as its interest may appear, and shall furnish proof of such coverage satisfactory to Company. If Customer fails to obtain such insurance, Company, at its option, may declare Customer in default. If Customer requests Company to do so in writing, Company may obtain insurance on the Equipment and the premiums paid shall be collectible from Customer as additional rent. Whether insurance is carried or not, Customer is fully responsible for the damage to or loss of the Equipment to the extent set forth in this Agreement. All insurance policies acquired by Customer pursuant to this section, or acquired by Company pursuant to this section, shall contain clauses whereby the insurer waives the benefit of all rights of subrogation which it might otherwise possess. If Customer has failed to obtain insurance coverage, or to obtain adequate insurance coverage (including inadequacy by reason of deductible clauses), in breach of its obligations under this section, Customer will be deemed to have waived any right to assert any claim or offset against Company as a result of damage to or loss of use of the Equipment which would have been a covered loss under the insurance required hereby.

**COLLECTION COSTS:**

Customer agrees to pay all reasonable attorney's fees, court costs, and other costs and expenses incurred by Company involved in the collection of rental charges or enforcement of Company's rights under this Agreement, whether or not suit is commenced.

**DEFAULT AND REMEDIES:**

If (i) Customer shall fail to pay any amount owing hereunder when due; (ii) Customer shall fail to perform or observe any other covenant, agreement, or condition hereunder, (iii) any representation or warranty made by Customer herein or in any document or certificate furnished by Customer in connection herewith shall prove to be incorrect at any time; or (iv) Customer shall become insolvent or make an assignment for the benefit of creditors or consent to the appointment of a trustee or receiver, or a trustee or receiver shall be appointed for Customer or for a substantial part of its property or for the Equipment, or reorganization, arrangement, insolvency, dissolution, or liquidation proceedings shall be instituted by or against Customer (each of the foregoing being herein called an "Event of Default"), then Company may declare this Agreement to be in default and may do one or more of the following with respect to any or all of the Equipment as Company in its sole discretion may elect, to the extent permitted by, and subject to compliance with any mandatory requirements of applicable law then in effect: demand that Customer, and Customer shall at its expense upon such demand, return the Equipment promptly to Company in the manner and condition required as if the Equipment were being returned at the expiration of the Term, or Company, at its option, may enter upon the premises where the Equipment is located and take possession of and remove the same by summary proceedings or otherwise, all without liability to Customer for damage to property or otherwise. Company may exercise any other right or remedy which may be available to it under applicable law or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof or to rescind this Agreement. In addition, Customer shall be liable for all unpaid rent and other amounts due hereunder before or during the exercise of any of the foregoing remedies and for all legal fees, taxes, governmental charges and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of Company's remedies with respect thereto.

**PROHIBITION ON ASSIGNMENT, SUBLETTING, AND ENCUMBRANCES:**

Customer may not sublet, loan or permit third parties to use the Equipment without Company's prior written consent.

Customer shall not grant, convey, pledge or permit any mortgages, liens, security interests, claims or other encumbrances in, to or against the Equipment. Should any such lien, mortgage, security interest, pledge or other encumbrance be asserted against the Equipment, Customer agrees to immediately notify Company in writing thereof, and take all necessary steps to protect the Equipment against and to release immediately such mortgage, lien, security interest, claim, or encumbrance at Customer's expense.

This Agreement may not be assigned or transferred by Customer without Company's prior written consent. Company may assign this Agreement.

**NO AGENCY: RENTAL/LEASE NOT A SALE:**

Customer acknowledges that it is not, and shall not be deemed to be, the agent or partner or joint venturer with, Company for any purpose whatsoever. Except as may be set forth on the Invoice, Customer further acknowledges and agrees that it has no right to purchase the

Equipment or to credit any part of the rentals paid hereunder against the purchase of the Equipment. Customer, however, authorizes Company to file precautionary UCC financing statements and similar filings and recordings with respect thereto.

**PRIVACY STATEMENT:**

Customer consents to the collection, use, retention and disclosure of information by Company and its parent, subsidiary and affiliated entities (collectively, "Company Entities") in accordance with Company's Privacy Statement (as such statement may be revised from time to time) and agrees that such information may be accessed by the Company Entities and their partners and manufacturers with a legitimate business reason to access it, as well as third parties who may process such information on their behalf.

**PRODUCT INFORMATION:**

If Caterpillar or other equipment that is purchased, owned or rented/leased by Customer is equipped with Product Link or other equipment monitoring technology, data concerning the equipment, its condition and its operation ("Telematics Information") is, being transmitted to Caterpillar Inc., its affiliates, the Company Entities, other Caterpillar dealers, and/or other equipment manufacturers to better serve Customer and to improve products and services.

Telematics Information being transmitted may include machine serial number, machine location, and other machine data including, but not limited to, fault codes, emissions data, fuel usage, service meter hours, software and hardware version numbers and installed attachments. The Telematics Information will be collected, used, retained and disclosed in accordance with Caterpillar's Privacy Statement for Telematics Devices (as such statement may be revised from time to time) ("Telematics Privacy Statement"). Customer consents to the collection, use, retention and disclosure of the Telematics Information in accordance with the Telematics Privacy Statement and agrees that the Telematics Information may be accessed by Caterpillar, its partners, its affiliates, its subsidiaries, the Company Entities, other dealers, and/or other equipment manufacturers with a legitimate business reason to access it, as well as third parties who may process the Telematics Information on their behalf. As set forth in the Telematics Privacy Statement, Caterpillar or another equipment manufacturer may use Telematics Information in combination with information about Customer. Customer further acknowledges and agrees that Telematics Information may be made available to subsequent owners of equipment. Notwithstanding anything herein to the contrary, unless Customer and a vice president of Company execute a separate, written equipment monitoring agreement that expressly sets forth monitoring services elected by Customer and the charges for such monitoring services, the transmission of Telematics Information shall not impose upon the Company Entities any obligation to monitor Customer's equipment and/or to notify Customer of any operational, performance or other issues associated with the same.

**MODIFICATION:**

This Agreement may not be modified or amended except upon posting of revised or amended Terms of Conditions for Rentals/Leases to Rugged LLCs website or by other writing signed by an authorized Company vice president. No waiver under this Agreement is effective unless signed by an authorized Company vice president.

**ATTORNEY'S FEES:**

If Company commences any action with respect to this Agreement, the Customer shall pay to Company all reasonable attorney's fees and all other legal expenses (including for expert and other witnesses) paid or incurred by Company for preparation, negotiation, filing, maintenance, defense, settlement, and appeal of litigation.

**SEVERABILITY:**

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provision shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**CHOICE OF LAW SUBMISSION TO JURISDICTION:**

The rights and liabilities of the parties under this Agreement shall be interpreted, enforced, and governed in all respects by the laws of the State of New Hampshire excluding choice of law principles. Customer hereby consents and subjects itself to the jurisdiction of every local, state, and federal court within Belknap County, New Hampshire, agrees that except as otherwise required by law, Customer shall never file or maintain any action or proceeding in connection with this Agreement in any court outside Belknap County, New Hampshire, waives personal service of any and all process in connection therewith, and consents to the service of such process upon Customer in the manner provided in this Agreement for giving notice.

**ENTIRE AGREEMENT:**

THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF EACH TRANSACTION EMBRACED REFERENCED. ALL AGREEMENTS, REPRESENTATIONS, PROMISES, INDUCEMENTS, STATEMENTS AND UNDERSTANDINGS, PRIOR TO AND CONTEMPORANEOUS WITH THIS AGREEMENT, WRITTEN AND ORAL, BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER OF EACH SUCH TRANSACTION, IF ANY, ARE AND EACH IS SUPERSEDED BY THIS AGREEMENT.

**REMEDIES:**

The rights and remedies of Company under this Agreement are cumulative.