

TERMS AND CONDITIONS OF RENTAL CONTRACT- EQUIPMENT RENTAL SERVICE, LLC

For good and valuable consideration, you and Equipment Rental Service, LLC a North Carolina limited liability company, d/b/a "ERS" (also referred to herein as "Lessor," "we," "us" and "our") agree as follows:

1. As used herein, "P.1" refers to the first page or "face" of this Contract; "Contract" refers to P.1 together with these Terms and Conditions, "Rented Item(s)" or "Item(s)" means the item(s) rented to you, as identified on P.1 (including any "Instructions" and/or safety devices provided per Section for "§" 6 below); "Site" means the address set forth on P.1 where the Item(s) is/are to be delivered and/or used; and "Customer," "Lessee," "you" and "your" mean the "Renter," "Customer," "Lessee" and/or "Guarantor" (as applicable) identified on P.1.

2. You agree to rent from ERS the Rented Item(s) for the period(s) specified on P.1 (the "Term"), and to pay us our stated rental rate(s) (the "Rent"), together with all other charges accruing hereunder, without proration, reduction or setoff, and remain liable for all injuries and damages arising from or associated with such Item(s), for the entire Term and until all Rented Item(s) is/are returned to and accepted by ERS in the return condition required under this Contract (including § 5). Unless otherwise specifically agreed by ERS, all rental rates are for normal use of the Rented Item(s) on a single-shift basis during the Term, not exceeding 8 hours per 24-hour period for which Rent is charged hereunder (each, a "Rental Day"), 40 hours per 7-Rental Day period, 160 hours per 28-Rental Day period (zero hours for any and all uncharged for periods), and otherwise in accordance with the terms of this Contract. Additional Rent at our highest incremental rate will be charged for late returns and overuse. No credit against or reduction of Rent will be given for weather delays, time in transit, act(s) of God, events of *force majeure*, or other period(s) of nonuse. We have estimated the Rent based on your estimate of the length of the Term (the "Estimated Rent"). Unless otherwise agreed by ERS in writing, you agree: (a) to pay us: (i) the Estimated Rent specified on P.1 in advance of the Term (the "Prepayment"); and (ii) all other amounts coming due hereunder upon demand; and (b) that: (i) we may deduct any amount you owe us from any Prepayment; (ii) no interest will accrue on any Prepayment; (iii) no Prepayment will be deemed a limit of your liability to us; and (iv) all Prepayments are **NON-REFUNDABLE**. Anything remaining with, in or on any Rented Item(s) upon return will, at our option, be deemed surrendered and abandoned.

3. Except with respect to Items we rent from one or more third parties (each, a "Third Party Owner" or "TPO") and then re-rent to you ("Re-Rented Item(s)"), ERS owns and will retain title to all Rented Items at all times. **You will have exclusive control over the Rented Item(s) during the Term; subject however,** to your obligation to fully and timely comply with this Contract at all times. You **SHALL NOT**: (a) permit the taking or existence of any lien, claim, security interest or encumbrance on any Rented Item(s); or (b) **loan, share, transfer, sublease, store, surrender or assign any Rented Item(s) or this Contract, without our prior written consent (in our sole discretion)**. ERS may, from time to time, substitute Rented Item(s) and/or sell or assign all or any part of its interests in one or more Rented Item(s) and/or this Contract, in which event, you will attorn to the assignee, who will not be responsible for any pre-existing obligations or liabilities of ERS.

4. If we agree to deliver and/or retrieve any Item(s), you agree to: (a) pay our regular charge(s) therefor, and for all waiting time; (b) be present at the Site at the agreed time(s); and (c) ensure our personnel have full access to the Site. We will not be responsible for delay(s) caused by any acts or omissions of/by you, your agents, employees or contractors, or any other parties, including providers of other equipment or services ("Other Providers") for which you agree to release and indemnify, defend, and hold harmless ERS, its agents, employees, and contractors. If you are not present upon delivery or retrieval of any Item(s), you agree to accept the statements of our representatives and/or delivery personnel regarding the same (including status, condition, quality, utility, defects, and quantities of or with respect to the Item(s) and the Site).

5. You agree to ensure the Site is reasonably safe, secure and fit for use of the Rented Item(s), to **protect, properly maintain, and care for each such Item at all times**, to keep each Item safely and securely stored and locked when not in use, and return each such Item to ERS on time at the end of the Term, complete, clean and free of contamination (including asbestos, beryllium, pathogens, and silica), and otherwise in good order, condition and repair, properly serviced and maintained, and if applicable, full of the appropriate fuel, fluids and lubricants. If you fail to do so, in addition to any other amounts specified on P.1, you will promptly pay to ERS: (a) Rent as provided in § 2 until all such Item(s) have been returned or replaced as required; and (b) all costs and expenses we may incur in connection with such failure. **You shall not**, nor shall you permit anyone else to: (i) use any Rented Item(s) while under the influence of any intoxicant(s) (including without limitation, **CANNABIS, CANNABINOIDS, AND ALCOHOL, WHETHER OR NOT LEGAL**) or to abuse, misuse, overuse, conceal, store with any third party, repair, modify or damage any Rented Item(s); (ii) violate any Instruction, insurance policy or warranty; (iii) expose any Rented Item(s) to any flammable, explosive, harmful or hazardous substance(s) or circumstance(s); (iv) disable, misuse or circumvent any safety equipment or device(s) in, on or with any Rented Item(s); or (v) take possession of or exercise control over any Rented Item(s), without our prior consent (in our sole and absolute discretion).

6. Upon the earlier of your receipt, or the delivery to the Site, of the Rented Item(s) unless you thereupon reject it/them, you represent, warrant, acknowledge and agree that: (a) each Item: (i) is complete and in good order, condition and repair; (ii) is appropriate for your purposes and in all ways acceptable to you; and (iii) was selected (not based on any recommendation by us), carefully examined, counted and tested by you or your agent(s); and (b) you: (i) have carefully reviewed and fully understand all laws, rules, regulations, training, instructions, user manuals, maintenance requirements, and other information, if any, including all **EPA, OSHA, MSHA, ASME, IBC, IFC, IEEE, UL, ASSP, DOT, FMCSA, IFTA, ANSI** and other standards applicable to the Item(s) (collectively, "Instructions"); (ii) will fully comply therewith (including **Tier 4, Silica Dust, Cleaning, Ventilation, and Electronic Logging Device requirements**); (iii) have been made aware of the need to use all applicable personal protective equipment and safety devices (including **RESPIRATORY and FALL PROTECTION**); (iv) will use each Item only for its **intended purpose**, in a reasonable and safe manner; (v) will timely give all applicable notice(s) to, and obtain all applicable licenses, authorizations, permits and approvals from, all affected parties, including governmental authorities, utilities, cable companies and the owner(s) of the Site, and ensure that all underground lines, cables and conduits are clearly and properly marked before using any Item(s) to disturb the ground surface (**call 811 or 800-632-4949 and go to www.NC811.org at least 3 full business days in advance**); (vi) will immediately cease using any Item that is damaged, breaks down, or proves defective (a "Malfunction"); and (vii) will ensure that all others comply with this Contract. You agree to notify ERS immediately if any of the foregoing shall be breached or proven incorrect or misleading.

7. In the event of a Malfunction (as defined in § 6), you will immediately notify ERS, and provided such Malfunction did not result from or in connection with: (a) any wrongful or negligent act or omission of/by you or anyone you permit to use or otherwise deal with any Rented Item; or (b) your breach of any provision of this Contract, ERS may, at its sole option: (i) repair the Malfunctioning Item; (b) provide you with a comparable item; or (c) solely with respect to the Malfunctioning Item, return the unused portion of the Rent and cancel this Contract. **The foregoing remedies are EXCLUSIVE**. ERS shall have no other obligation(s) regarding Malfunctions, all of which you hereby waive.

8. **NO WARRANTIES: ERS IS NOT THE MANUFACTURER OR DESIGNER of any of the Rented Item(s)**, all of which are provided "AS-IS". **NEITHER ERS, NOR ANY TPO, MAKE ANY WARRANTY(IES), EXPRESS OR IMPLIED (INCLUDING ANY AND ALL WARRANTY(IES) OF MERCHANTABILITY, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, FUNCTION, DESIGN, QUALITY, CAPACITY, FREEDOM FROM DEFECTS AND/OR CONTAMINATION, AND GOOD AND WORKMAN-LIKE PERFORMANCE**, as well as any warranty(ies) arising from course of dealing, course of performance and/or usage of trade) regarding any Item(s) or Service(s) provided by or at the direction of ERS. Neither ERS nor any TPO make any warranty against **INTERFERENCE OR INFRINGEMENT**, all of which warranties you hereby waive. **NO DESCRIPTIONS, SPECIFICATIONS OR ADVERTISEMENTS CONSTITUTE REPRESENTATIONS OR WARRANTIES BY ERS OR ANY TPO.**

9. **WARNINGS: THE RENTED ITEM(S) CAN BE DANGEROUS AND SHOULD BE SERVICED, MAINTAINED, REPAIRED AND USED WITH GREAT CARE, ONLY FOR ITS/THEIR INTENDED PURPOSE(S), AND ONLY BY PROPERLY QUALIFIED, INSTRUCTED, TRAINED, FAMILIARIZED, AND IF APPLICABLE, LICENSED, ADULT USERS, OPERATORS AND OCCUPANTS. YOU AGREE TO PROVIDE ALL APPLICABLE FAMILIARIZATION, TRAINING, INSTRUCTIONS AND WARNINGS TO ALL SUCH PARTIES, and ensure that each such Item is used, operated and occupied safely and only: (a) for its intended purpose(s); (b) within its rated capacity; (c) unless otherwise specifically agreed by ERS, at the Site; (d) BY PROPERLY TRAINED, FAMILIARIZED, QUALIFIED, CERTIFIED AND/OR LICENSED ADULTS; and (e) otherwise in full compliance with this Contract at all times. DO NOT USE LIGHT TOWERS INDOORS, NEAR POWER LINES, FIRE, OR**

GAS AND NEVER CLIMB ON LIGHT TOWERS WITHOUT PROPER FALL PROTECTION. INSPECT POWER CORDS PRIOR TO EACH USE AND OBSERVE ELECTRICITY AND BATTERY PRECAUTIONS (WHERE APPLICABLE). ENGINES MAY EMIT TOXIC GAS FUMES; ALWAYS REFUEL IN AN OPEN AND WELL-VENTILATED AREA.

10. **INDEMNITY: TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, YOU: (A) ASSUME ALL RISK OF PERSONAL AND BODILY INJURY, ILLNESS, LOSS, PROPERTY DAMAGE, AND CONTAMINATION OF, TO, AND/OR ARISING IN CONNECTION WITH, THE ITEM(S) AND/OR SERVICE(S) REFERENCED IN THIS CONTRACT, INCLUDING ALL LIABILITIES, CLAIMS, DAMAGES, LOSSES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES) ARISING FROM AND/OR IN CONNECTION WITH THE SELECTION, PROVISION, INSPECTION, DESIGN, MANUFACTURE, USE, LOADING, UNLOADING, TRANSPORTATION, DEMONSTRATION, INSTALLATION, STORAGE, SERVICING, CLEANING, MAINTENANCE, REPAIR, DELIVERY AND/OR RETRIEVAL OF SUCH ITEM(S) AND/OR SERVICE(S), WHETHER OR NOT YOUR FAULT (COLLECTIVELY, "RISKS"); (B) RELEASE AND DISCHARGE, AND AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS, EQUIPMENT RENTAL SERVICE, LLC, EACH TPO,** their respective parents, affiliates and subsidiaries, and their respective owners, shareholders, members, managers, officers, directors, agents, employees, insurers, subrogees, representatives, successors and assigns (each, an "Indemnitee"), for, from and against all such RISKS, as well as all other liabilities, claims, damages, losses, costs and expenses (including attorneys' fees) arising in connection with the Rented Item(s), this Contract, our negligence, and/or your breach of any one or more of the terms hereof; and except only as provided in § 7, **(C) WAIVE** all rights, remedies and defenses available under the Uniform Commercial Code, as well as all direct, indirect, incidental, consequential, general, special, exemplary and punitive damages, against each and every Indemnitee.

11. You agree to maintain all insurance we may require, including: (a) liability insurance with minimum limits of \$1,000,000 per occurrence; (b) property damage/inland marine insurance covering all Items for the full (new) replacement cost thereof; (c) workers' compensation insurance; and (d) for all trucks and trailers included with or in the Rented Item(s); (i) hired auto liability insurance with minimum limits of \$1,000,000; (ii) hired auto physical damage insurance for actual cash value; and (iii) replacement cost contents insurance for all contents thereof. Such policies shall, whenever possible: (A) name ERS as an additional insured and loss payee; (B) waive subrogation against us; (C) be primary and non-contributory; and (D) include such other provisions (including deductibles) as we may require. You irrevocably appoint Equipment Rental Service, LLC as your agent and attorney-in-fact for purposes of submitting and negotiating claims on all of the above referenced policies.

12. If and only if, we have offered, and you have paid for our **OPTIONAL LIMITED DAMAGE WAIVER ("LDW")** (set forth on P.1, if available) in advance of the Term, you will have no liability to us for 80% of the first \$10,000 of repair/replacement costs for physical damage to Item(s) covered by LDW ("Covered Item(s)"); provided however, that you will, remain fully liable for: (a) all loss of and damage to: (i) Item(s) not covered by LDW; (ii) Covered Item(s) lost or damaged during transportation and/or as a result of: (A) your breach of this Contract; (B) theft or other failure to timely return Covered Item(s) to us; (C) negligence, misuse and/or abuse of Rented Item(s) (including submerging, overturning and overloading); (iii) GPS and telematics systems, data, batteries, keys, glass, tires, tubes, tracks, fittings, belts, chains, knobs and hoses; (b) 20% of the first \$10,000 of repair/replacement costs for Covered Item(s); and (c) all repair and replacement costs exceeding \$10,000 in the aggregate across all Covered Item(s). You may decline LDW if you provide the property/physical damage/inland marine insurance referenced in § 11. **LDW IS NOT INSURANCE, NOR IS IT A WARRANTY.**

13. The terms of this Contract are severable. If any provision (t)hereof is deemed invalid or unenforceable by any court or arbitrator of competent jurisdiction, such provision will be deleted, and the remainder (t)hereof will remain valid and enforceable. This Contract, and any addenda we provide, each of which shall be deemed incorporated herein, represent(s) the entire agreement between you and ERS, superseding all other agreements and representations (including our website and advertising) and cannot otherwise be amended or extended except in a writing signed by us. You agree to pay all taxes (including without limitation, all sales, use, property, privilege, "Certain Machinery and Equipment," "Motor Vehicle Lease and Rental," "Rental Vehicle," "Alternate Highway Use," "Heavy Equipment" and other taxes), fines, fees, tolls, and other charges related to each Item. In the event any legal action is commenced in connection with this Contract, the prevailing party will be entitled to recover its costs and expenses associated therewith (including without limitation, attorneys' fees, and expenses) from the non-prevailing party. To the maximum extent permitted under applicable law, you grant to ERS a lien on all real and personal property: (a) placed in or on; and/or (b) improved with, any Rented Item(s). We may, without notice or liability to you, monitor and/or inspect, in person and/or electronically (including via Telematics/GPS systems) any Rented Item(s) at any time. You consent thereto and agree that all information thereby obtained will be ERS' property. If any performance required of us is delayed, impaired or rendered more costly as a result of any act or omission of/by you, any Other Provider(s) or any "Act of God," event of *force majeure* (including fire, flood, storm, earthquake, tsunami, slide, collapse, subsidence, war, terrorism, power surge or outage, pandemic, epidemic and governmental and regulatory actions), we will be excused from such performance.

14. You waive all statutes of limitations regarding our rights and remedies. All amounts due hereunder but not timely paid will bear interest at the lesser of: (i) 18% per annum; or (ii) the highest rate permitted under applicable law until paid. You authorize us to charge all amounts coming due hereunder to any debit and/or credit card(s) you provide (up to 150% of the new replacement cost of the Item(s)). You agree to pay us the maximum lawful charge for any check you write which is returned unpaid. Our maximum liability in connection with this Contract is limited to the amount(s) actually paid by you and received by us hereunder for the Item(s) identified on P.1. Neither our exercise, nor our failure or delay in the exercise, of any rights or remedies available in connection herewith will constitute an election of remedies or a waiver of any of our rights or remedies. Time is of the essence. There are no third-party beneficiaries hereto other than the applicable Indemnitees. These Terms and Conditions apply to all Item(s) identified on P.1, and to **all other Items** you obtain from us at any time (except only as we may otherwise agree in writing). You acknowledge that this Contract: (i) is a true operating lease, and not a financing; (ii) is fair and reasonable; and (iii) shall bind and be enforceable by you, Equipment Rental Service, LLC, the other Indemnitees, and their respective insurers, subrogees, successors and permitted assigns. Digital, electronic, photocopied, and facsimiled signatures on this Contract will be deemed originals.

15. Your duties hereunder are **unconditional**. If you or any guarantor shall: (a) fail to fully and timely honor, pay, perform or comply with this Contract and/or any of your obligations arising hereunder or in connection herewith; (b) provide any incorrect or misleading information to us; (c) become insolvent; or (d) die or cease conducting business, or if any Rented Item(s) shall be lost or, unless covered by LDW per § 12, damaged, you will be in **DEFAULT** under this Contract, whereupon, we may with or without legal process or notice (and without liability to you or any guarantor), to the maximum extent permitted under applicable law: (i) terminate your rental(s); (ii) seek relief from stay; (iii) recover, empty, lock, restrict and/or disable any Item(s) without being guilty of breach, trespass or wrongful interference, or liable for any injuries or property damage (for which you will indemnify, defend and hold harmless each Indemnitee); (iv) perform your obligations hereunder on your behalf, without being obligated to do so; (v) purchase replacement Item(s); (vi) recover from you our associated damages, losses, costs and expenses (including without limitation, Rent for the entire scheduled Term, overtime, loss of use, interest, attorneys' fees, repossession costs, and collection costs); and/or (vii) pursue any or all other rights and/or remedies available in connection (t)herewith, all of which are cumulative.

16. **Disputes arising in connection with this Contract and/or its subject matter, shall, at our option, be submitted to binding arbitration** in accordance with the Rules of the American Arbitration Association before a single arbitrator and in a location selected by us. Judgment of the arbitrator's award shall be final and binding and may be entered in any court of competent jurisdiction. This Contract shall be governed by and enforceable under the laws of North Carolina, and proper venue for all civil legal actions commenced in connection herewith not made subject to arbitration shall lie solely in the federal, state, and local courts located in or nearest to, Duplin County, NC (unless waived by ERS). You consent and submit thereto and waive all claims that such venue lies in an inconvenient forum. **YOU VOLUNTARILY WAIVE YOUR RIGHT TO TRIAL BY JURY.**

17. **WARNING:** Obtaining property of another by false pretenses and/or damaging or failing to return rented property may be deemed theft. Doing so may result in **CIVIL LIABILITY AND/OR CRIMINAL PROSECUTION**. See N.C.G.S. Ch.14, Articles 16, 19 and 24, *et seq.*, and their successor provision(s) for details.

LESSEE ACKNOWLEDGES THAT A LARGE-PRINT VERSION OF THESE TERMS AND CONDITIONS HAS BEEN MADE AVAILABLE TO LESSEE