

## TERMS AND CONDITIONS OF RENTAL CONTRACT – TCC EQUIPMENT

For good and valuable consideration, you and Texas Caliber Construction LLC, a Texas limited liability company, dba "TCC Equipment" (also referred to herein as "TCC," "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) provided (rented or if specifically set forth on P.1, sold) to you, as identified on P.1 (including any "Instructions" and/or safety devices provided per Section [or "§"] 5 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 TCC the Rented Item(s) for the period(s) specified on P.1 (the "Term"), to pay us our stated rental rate(s) (the "Rent"), together with all other charges accruing hereunder, without proration, reduction or setoff, and to remain liable for all loss, theft, injuries and damages of, to, or associated with such Item(s), until all Rented Item(s) is/are returned to and accepted by TCC in the return condition required under this Contract (including § 10). Unless otherwise specifically agreed by TCC, 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 in accordance with the terms of this Contract. Additional Rent at our highest incremental rate will be charged for late returns and overuse. You will not be entitled to any cancellation right or reduction of Rent or other amounts coming due hereunder to account for time in transit, Act(s) of God, event(s) of *force majeure* or any 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 TCC 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(s) 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 abandoned.

3. 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 indemnify, defend, and hold harmless TCC, 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).

4. TCC owns and will always retain title to all Rented Items. **You will have exclusive control over the Item(s) during the Term; subject to your obligation to always fully and timely comply with this Contract. You SHALL NOT:** (a) permit the taking or existence of any lien, claim, security interest or encumbrance on any Rented Item(s); (b) have any title or ownership interest in or with respect to any Rented Item(s); or (c) **loan, share, transfer, sublease, store, surrender or assign any Rented Item(s) or this Contract, without our prior written consent (in our sole and absolute discretion).** TCC may 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 atorn to the assignee, who will not be responsible for any pre-existing obligations or liabilities of TCC.

5. 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, fully charged and/or fueled (as applicable); (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 (as applicable) Tier 4, Silica Dust, Ventilation, training and familiarization, charging, fueling, cleaning, voltage, and site assessment 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 and go to [www.Texas811.org](http://www.Texas811.org) at least 2 full business days in advance); and (vi) will ensure that all others comply with this Contract. You agree to notify the authorities and TCC in the event of any theft or accident involving any Rented Item(s) and TCC if any of the above requirements is/are breached or incorrect.

6. **NO WARRANTIES.** TCC IS NOT THE MANUFACTURER OR DESIGNER OF ANY ITEM(S). ALL OF WHICH ARE PROVIDED "AS-IS." **TCC MAKES NO 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 GOOD AND WORKMANLIKE 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 TCC, nor does TCC make any warranty against INTERFERENCE OR INFRINGEMENT, all of which warranties you waive. NO DESCRIPTIONS, SPECIFICATIONS OR ADVERTISEMENTS CONSTITUTE REPRESENTATIONS OR WARRANTIES BY TCC. **THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF.**

7. You agree to immediately cease using any Item that is damaged, breaks down, or proves defective (a "Malfunction"), and you will immediately notify, and return the Malfunctioning Item(s) to, TCC. 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, TCC will, at its option: (i) repair the Malfunctioning Item; (ii) provide you with a comparable item; or (iii) solely with respect to the Malfunctioning Item, return the unused portion of the Rent and cancel this Contract. **The foregoing remedies are EXCLUSIVE.** TCC shall have no other obligation(s) regarding Malfunctions, all of which you waive, together with all incidental, consequential, special, exemplary, and punitive damages.

8. **WARNINGS:** THE RENTED ITEM(S) CAN BE DANGEROUS AND SHOULD BE, FUELED, CHARGED, SERVICED, MAINTAINED, REPAIRED AND USED WITH EXTREME CARE, ONLY FOR THEIR INTENDED PURPOSE(S), AND ONLY BY PROPERLY QUALIFIED, INSTRUCTED, TRAINED, FAMILIARIZED, AND 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 FUELED, CHARGED, USED, OPERATED AND OCCUPIED SAFELY AND ONLY: (A) FOR ITS INTENDED PURPOSE(S); (B) WITHIN ITS RATED CAPACITY; (C) UNLESS OTHERWISE SPECIFICALLY AGREED BY TCC, AT THE SITE; (D) BY PROPERLY TRAINED, FAMILIARIZED, QUALIFIED, CERTIFIED, LICENSED ADULTS; AND (E) OTHERWISE IN FULL COMPLIANCE WITH THIS CONTRACT. THE INSTRUCTIONS AND ALL APPLICABLE WARRANTIES AND INSURANCE POLICIES, AT ALL TIMES.

9. **INDEMNITY.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, YOU: (A) ASSUME ALL RISK OF PERSONAL AND BODILY INJURY, ELECTRIC SHOCK, ILLNESS, PRODUCTS LIABILITY, LOSS, THEFT, 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, FUELING, CHARGING, USE, LOADING, UNLOADING, TRANSPORTATION, DEMONSTRATION, INSTALLATION, CLEANING, STORAGE, SERVICING, 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, TCC,** its 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 from and/or in connection with the 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 Indemnitee.

10. You will ensure the Site is reasonably clean, safe, secure and fit for delivery and use of the Item(s), protect, properly maintain and care for each Item, keep it securely stored and locked when not in use, and return the Item on time at the end of the Term, complete (with all original batteries, cords, attachments and peripherals), clean, free of contamination (including asbestos, beryllium, silica and pathogens), and in good order, condition and repair, properly serviced and maintained, and if applicable, fully charged and/or 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 TCC: (a) Rent at our highest incremental rate(s) 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 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, harmful or hazardous substance(s) or circumstance(s); (iv) disable, misuse or circumvent any safety equipment or device(s) in, on or with any Item(s); or (v) take possession of or exercise control over any Rented Item(s), without our prior consent.

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; and (c) workers' compensation insurance. Such policies shall, whenever possible: (A) name TCC as an additional insured and loss payee; (B) waive subrogation against us; (C) be primary and non-contributory; and (D) include a severability of interests clause and such other provisions (including deductibles) as we may require. You irrevocably appoint TCC as your agent and attorney-in-fact for purposes of submitting, negotiating, and settling claims on all such policies.

12. **Statutory Damage Waiver Notice:** This contract offers an optional loss damage waiver for an additional charge to cover your responsibility for loss of or damage to the heavy equipment. You do not have to purchase this coverage. Before deciding whether to purchase this loss damage waiver, you may consider whether your insurance policies afford you coverage for loss of or damage to the heavy equipment rented and the amount of the deductible you would pay under your policies.

13. 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 \$5,000 of repair/replacement costs for physical damage to Item(s) covered by LDW ("Covered Item(s)"); provided 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) any breach of this Contract by you or your agents, employees, sublessees, transferees, borrowers, successors and/or assigns; (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, booms, belts, chains, knobs and hoses; (b) 20% of the first \$5,000 of repair/replacement costs for Covered Item(s); and (c) all repair and replacement costs exceeding \$5,000 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.** Your insurance, if any, will continue to apply and will remain primary. **LDW IS NOT INSURANCE, NOR IS IT A WARRANTY.**

14. 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). 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 pictures, videos and/or addenda we provide, each of which is incorporated herein, represent(s) the entire agreement between you and TCC, **superseding** all other agreements and representations (including our website and advertising) and cannot otherwise be amended or extended except in a writing signed by TCC. You agree to fully and timely pay all sales, use and other taxes (including without limitation, all Texas Emissions Reduction Plan and Dealer's Heavy Equipment Special Inventory, and Off-Road, Heavy-Duty Diesel taxes), as well as all tolls, fines, fees, duties, assessments, and other charges related to the Rented Item(s) and/or this Contract. If legal action is commenced in connection herewith, we will be entitled to recover our associated costs and expenses (including without limitation, attorneys' fees) from you if we prevail.

15. To the maximum extent permitted under applicable law, you grant to TCC 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) Rented Item(s) at any time. You consent hereto and agree that all information thereby obtained will be TCC's property. If any performance required of TCC shall be delayed, impaired or made 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, subsidence, collapse, riot, war, violence, threat, theft, terrorism, cyber-attack, supplier delay, strike, shutdown, power surge or outage, epidemic, pandemic, and governmental and regulatory actions) or other events, facts or circumstances beyond our reasonable control, we will be excused from such performance. 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 18% per annum or the highest rate permitted under applicable law. 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. 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, TCC, the other Indemnitees and their respective insurers, subrogees, successors and permitted assigns. Digital, electronic, photocopied, and facsimiled signatures and initials appearing on this Contract will be deemed originals.

16. Any Item(s) sold to you ("Sale Items"), as provided on P.1 are provided "AS-IS" and "WITH ALL FAULTS," and are subject to the terms of this Contract (modified to address sales); provided that our obligations under § 7 shall expire and terminate 3 days after the date of purchase. All item(s) not specifically identified as Sale Items on P.1 will be deemed to be "Rented Item(s)".

17. This is a "net" rental. 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, except to the extent covered by LDW per § 13, damaged, you will be in **DEFAULT** under this Contract, whereupon, TCC 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) cancel the Term and/or the subject Contract(s) and/or your rights to use and possess the Rented Item(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, including without limitation, any and all damage to crops, flora and/or fauna (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 and/or any guarantor 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 one or more other rights and/or remedies available in connection (t)herewith, all of which shall be cumulative.

18. This Contract shall be governed by and enforceable under the laws of Texas (unless waived by lessor). Disputes arising in connection with this Contract shall, at TCC's 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 TCC. Judgment on the arbitrator's award shall be final and binding and may be entered in any court of competent jurisdiction. Proper venue for all other civil legal actions commenced in connection herewith shall lie solely and exclusively in the federal, state, and local courts located in or nearest to Fannin County, TX. You consent and submit thereto and waive all claims that such venue lies in an inconvenient forum. **YOU HEREBY WAIVE: (A) YOUR RIGHT(S), IF ANY, TO PARTICIPATE IN ANY CLASS, COLLECTIVE OR OTHER JOINT ACTION AGAINST TCC; AND (B) YOUR RIGHT TO TRIAL BY JURY.**

19. **Warning:** Obtaining property available only for rent with the intent to avoid payment, and/or failing to timely return such property may be DEEMED THEFT, RESULTING IN CIVIL PENALTY(IES) AND/OR CRIMINAL PROSECUTION. See Texas Penal Code §31.04 et seq.

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

## TERMS AND CONDITIONS OF RENTAL CONTRACT (Enlarged Version)

For good and valuable consideration, you and Texas Caliber Construction LLC, a Texas limited liability company, dba "TCC Equipment" (also referred to herein as "TCC," "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) provided (rented or if specifically set forth on P.1, sold) to you, as identified on P.1 (including any "Instructions" and/or safety devices provided per Section [or "§"] 5 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 TCC the Rented Item(s) for the period(s) specified on P.1 (the "Term"), to pay us our stated rental rate(s) (the "Rent"), together with all other charges accruing hereunder, without proration, reduction or setoff, and to remain liable for all loss, theft, injuries and damages of, to, or associated with such Item(s), until all Rented Item(s) is/are returned to and accepted by TCC in the return condition required under this Contract (including § 10). Unless otherwise specifically agreed by TCC, 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 in accordance with the terms of this Contract. Additional Rent at our highest incremental rate will be charged for late returns and overuse. You will not be entitled to any cancellation right or reduction of Rent or other amounts coming due hereunder to account for time in transit, Act(s) of God, event(s) of *force majeure* or any 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 TCC 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(s) 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 abandoned.
3. 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 indemnify, defend, and hold harmless TCC, 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).
4. TCC owns and will always retain title to all Rented Items. **You will have exclusive control over the Item(s) during the Term; subject to** your obligation to always fully and timely comply with this Contract. You **SHALL NOT**: (a) permit the taking or existence of any lien, claim, security interest or encumbrance on any Rented Item(s); (b) have any title or ownership interest in or with respect to any Rented Item(s); or (c) **loan, share, transfer, sublease, store, surrender or assign any Rented Item(s) or this Contract, without our prior written consent (in our sole and absolute discretion)**. TCC may 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 TCC.
5. 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, fully charged and/or fueled (as applicable); (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 (as applicable) Tier 4, Silica Dust, Ventilation, training and familiarization, charging, fueling, cleaning, voltage, and site

assessment 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 and go to [www.Texas811.org](http://www.Texas811.org) at least 2 full business days in advance**); and (vi) will ensure that all others comply with this Contract. You agree to notify the authorities and TCC in the event of any theft or accident involving any Rented Item(s) and TCC if any of the above requirements is/are breached or incorrect.

**6. NO WARRANTIES.** TCC IS NOT THE MANUFACTURER OR DESIGNER OF ANY ITEM(S), ALL OF WHICH ARE PROVIDED "**AS-IS**". **TCC MAKES NO 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 GOOD AND WORKMANLIKE 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 TCC, nor does TCC make any warranty against **INTERFERENCE OR INFRINGEMENT**, all of which warranties you waive. **NO DESCRIPTIONS, SPECIFICATIONS OR ADVERTISEMENTS CONSTITUTE REPRESENTATIONS OR WARRANTIES BY TCC. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF.**

7. You agree to immediately cease using any Item that is damaged, breaks down, or proves defective (a "Malfunction"), and you will immediately notify, and return the Malfunctioning Item(s) to, TCC. 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, TCC will, at its option: (i) repair the Malfunctioning Item; (ii) provide you with a comparable item; or (iii) solely with respect to the Malfunctioning Item, return the unused portion of the Rent and cancel this Contract. **The foregoing remedies are EXCLUSIVE.** TCC shall have no other obligation(s) regarding Malfunctions, all of which you waive, together with all incidental, consequential, special, exemplary, and punitive damages.

**8. WARNINGS:** THE RENTED ITEM(S) CAN BE DANGEROUS AND SHOULD BE, FUELED, CHARGED, SERVICED, MAINTAINED, REPAIRED AND USED WITH EXTREME CARE, ONLY FOR THEIR INTENDED PURPOSE(S), AND ONLY BY PROPERLY QUALIFIED, INSTRUCTED, TRAINED, FAMILIARIZED, AND 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 FUELED, CHARGED, USED, OPERATED AND OCCUPIED SAFELY AND ONLY: (A) FOR ITS INTENDED PURPOSE(S); (B) WITHIN ITS RATED CAPACITY; (C) UNLESS OTHERWISE SPECIFICALLY AGREED BY TCC, **AT THE SITE**; (D) BY PROPERLY TRAINED, FAMILIARIZED, QUALIFIED, CERTIFIED, LICENSED ADULTS; AND (E) OTHERWISE IN FULL COMPLIANCE WITH THIS CONTRACT, THE INSTRUCTIONS AND ALL APPLICABLE WARRANTIES AND INSURANCE POLICIES, AT ALL TIMES.

**9. INDEMNITY.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, **YOU: (A) ASSUME ALL RISK** OF PERSONAL AND BODILY INJURY, ELECTRIC SHOCK, ILLNESS, PRODUCTS LIABILITY, LOSS, THEFT, 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, FUELING, CHARGING, USE, LOADING, UNLOADING, TRANSPORTATION, DEMONSTRATION, INSTALLATION, CLEANING, STORAGE, SERVICING, 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, TCC**, its 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 from and/or in connection with the 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 Indemnitee.

10. You will ensure the Site is reasonably clean, safe, secure and fit for delivery and use of the Item(s), protect, properly maintain and care for each Item, keep it securely stored and locked when not in use, and return the Item on time at the end of the Term, complete (with all original batteries, cords, attachments and peripherals), clean, free of contamination (including asbestos, beryllium, silica and pathogens), and in good order, condition and repair, properly serviced and maintained, and if applicable, fully charged and/or 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 TCC: (a) Rent at our highest incremental rate(s) 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 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, harmful or hazardous substance(s) or circumstance(s); (iv) disable, misuse or circumvent any safety equipment or device(s) in, on or with any Item(s); or (v) take possession of or exercise control over any Rented Item(s), without our prior consent.

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; and (c) workers' compensation insurance. Such policies shall, whenever possible: (A) name TCC as an additional insured and loss payee; (B) waive subrogation against us; (C) be primary and non-contributory; and (D) include a severability of interests clause and such other provisions (including deductibles) as we may require. You irrevocably appoint TCC as your agent and attorney-in-fact for purposes of submitting, negotiating, and settling claims on all such policies.

12. **Statutory Damage Waiver Notice**: This contract offers an optional loss damage waiver for an additional charge to cover your responsibility for loss of or damage to the heavy equipment. You do not have to purchase this coverage. Before deciding whether to purchase this loss damage waiver, you may consider whether your insurance policies afford you coverage for loss of or damage to the heavy equipment rented and the amount of the deductible you would pay under your policies.

13. 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 \$5,000 of repair/replacement costs for physical damage to Item(s) covered by LDW ("Covered Item(s)"); provided 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) any breach of this Contract by you or your agents, employees, sublessees, transferees, borrowers, successors and/or assigns; (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, booms, belts, chains, knobs and hoses; (b) 20% of the first \$5,000 of repair/replacement costs for Covered Item(s); and (c) all repair and replacement costs exceeding \$5,000 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. Your insurance, if any, will continue to apply and will remain primary. **LDW IS NOT INSURANCE, NOR IS IT A WARRANTY.**

14. 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). 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 pictures, videos and/or addenda we provide, each of which is incorporated herein, represent(s) the entire agreement between you and TCC, **superseding** all other agreements and representations (including our website and advertising) and cannot otherwise be amended or extended except in a writing signed by TCC. You agree to fully and timely pay all sales, use and other taxes (including without limitation, all Texas Emissions Reduction Plan and Dealer's Heavy Equipment Special Inventory, and Off-Road, Heavy-Duty Diesel taxes), as well as all tolls, fines, fees, duties, assessments, and other charges related to the Rented Item(s) and/or this Contract. If legal action is commenced in connection herewith, we will be entitled to recover our associated costs and expenses (including without limitation, attorneys' fees) from you if we prevail.

15. To the maximum extent permitted under applicable law, you grant to TCC 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) Rented Item(s) at any time. You consent thereto and agree that all information thereby obtained will be TCC's property. If any performance required of TCC shall be delayed, impaired or made 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, subsidence, collapse, riot, war, violence, threat, theft, terrorism, cyber-attack, supplier delay, strike, shutdown, power surge or outage, epidemic, pandemic, and governmental and regulatory actions) or other events, facts or circumstances beyond our reasonable control, we will be excused from such performance. 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 18% per annum or the highest rate permitted under applicable law. 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. 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, TCC, the other Indemnitees and their respective insurers, subrogees, successors and permitted assigns. Digital, electronic, photocopied, and facsimiled signatures and initials appearing on this Contract will be deemed originals.

16. Any item(s) sold to you ("Sale Items"), as provided on P.1 are provided "**AS-IS**" and "**WITH ALL FAULTS**," and are subject to the terms of this Contract (modified to address sales); provided that our obligations under § 7 shall expire and terminate 3 days after the date of purchase. All item(s) not specifically identified as Sale Items on P.1 will be deemed to be "Rented Item(s)".

17. This is a "net" rental. 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, except to the extent covered by LDW per § 13, damaged, you will be in **DEFAULT** under this Contract, whereupon, TCC 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) cancel the Term and/or the subject Contract(s) (and/or your rights to use and possess the Rented Item(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, including without limitation, any and all damage to crops, flora and/or fauna (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 and/or any guarantor 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 one or more other rights and/or remedies available in connection (t)herewith, all of which shall be cumulative.

18. This Contract shall be governed by and enforceable under the laws of Texas (unless waived by lessor). Disputes arising in connection with this Contract shall, at TCC's 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 TCC. Judgment on the arbitrator's award shall be final and binding and may be entered in any court of competent jurisdiction. Proper venue for all other civil legal actions commenced in connection herewith shall lie solely and exclusively in the federal, state, and local courts located in or nearest to Fannin County, TX. You consent and submit thereto and waive all claims that such venue lies in an inconvenient forum. **YOU HEREBY WAIVE: (A) YOUR RIGHT(S), IF ANY, TO PARTICIPATE IN ANY CLASS, COLLECTIVE OR OTHER JOINT ACTION AGAINST TCC; AND (B) YOUR RIGHT TO TRIAL BY JURY.**

19. **Warning:** Obtaining property available only for rent with the intent to avoid payment, and/or failing to timely return such property may be DEEMED THEFT, RESULTING IN CIVIL PENALTY(IES) AND/OR CRIMINAL PROSECUTION. See Texas Penal Code §31.04 et seq.