

# Rental Agreement

**(1) DEFINITIONS:** Sabre Rentals LTD (referred to herein as: "Sabre") or any of its corporate subsidiaries or affiliates identified or not on the front page from whom the Customer has rented the equipment. EQUIPMENT means any one or more of the items identified as such on the front page of this RENTAL AGREEMENT, and shall include any accessories, attachments or other similar items delivered to or picked up by the customer. CUSTOMER means the person or entity identified as such on the front page of the RENTAL AGREEMENT, including any representative, agent, officer or employee of the CUSTOMER.

**(2) RENTAL PERIOD:** Customer hereby rent from Sabre the Equipment for the Term as determined by the Time Out (defined as the period between the Date Out and the Date the equipment is returned to Sabre), and agree to pay Sabre the Rent for all Time Out (but in any event, not less than the "Minimum Rent," if any, specified on the front page except only as expressly set forth in the Contract. Sabre charge Rent for all Time Out, including Sundays, and Statutory holidays.

**(3) POSSESSION/TITLE:** Sabre own the Equipment, and title in and to all of it will remain Sabre's at all times. Customer are entitled only to use and possess the Equipment for the Rental Period; subject to the terms of this Contract. If Customer retain any of the Equipment beyond the agreed Term without Sabre's express written consent, Customer will be deemed to have materially breached this Contract. Further, the failure to return the Equipment without written consent to extension will be considered theft.

**(4) WARRANTY WAIVER:** THE EQUIPMENT IS PROVIDED "AS-IS" AND "WITH ALL FAULTS." SABRE MAKE NO WARRANTY, EXPRESS OR IMPLIED (INCLUDING WITHOUT LIMITATION, ANY AND ALL WARRANTIES OR SUITABILITY, MERCHANTABILITY, AND/OR FITNESS FOR ANY PARTICULAR PURPOSE), NOR DO SABRE MAKE ANY WARRANTY AGAINST INTERFERENCE, INFRINGEMENT, THAT THE EQUIPMENT IS FIT FOR CUSTOMER'S INTENDED USE, APPLICATION OR ENVIRONMENT, OR THAT IT IS FREE FROM DEFECTS (LATENT OR PATENT), NO WARRANTIES SHALL BE DEEMED TO EXIST WITH RESPECT TO THE EQUIPMENT, EXCEPT AS EXPRESSLY SET FORTH IN THIS CONTRACT. ACCORDINGLY, CUSTOMER HEREBY WAIVE ANY AND ALL IMPLIED WARRANTIES. SABRE WILL NOT BE RESPONSIBLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LIABILITIES, CLAIMS, INJURIES, LOSSES, COSTS OR DAMAGES ARISING FROM OR ASSOCIATED WITH THE USE OR ANY FAILURE OF, OR ANY UNKNOWN DEFECT IN OR WITH RESPECT TO, ANY OF THE EQUIPMENT. CUSTOMER'S SOLE REMEDY FOR ANY FAILURE OF OR DEFECT IN OR WITH RESPECT TO ANY OF THE EQUIPMENT IS TERMINATION OF THE ACCRUAL OF RENTAL CHARGES AT THE TIME OF FAILURE.

**(5) ASSUMPTION OF RISK:** Customer acknowledge that the possession, use, transportation and/or storage of the Equipment may give rise to the risk of personal injury and/or property damage. CUSTOMER VOLUNTARILY ASSUME ALL SUCH RISK AND RELEASE, DISCHARGE AND INDEMNIFY SABRE FROM ANY AND ALL LIENS, LIABILITIES AND CLAIMS ARISING IN CONNECTION WITH THE SAME, INCLUDING WITHOUT LIMITATION, ANY AND ALL CLAIMS ARISING FROM OR IN CONNECTION WITH SABRE'S NEGLIGENCE (OTHER THAN OUR INTENTIONAL MISCONDUCT).

**(6) RECEIPT/INSPECTION OF EQUIPMENT:** Customer acknowledges that Customer have received, inspected, examined and accepted the Equipment, and that, as delivered to Customer, it is safe and in good operating condition and repair and otherwise in all ways acceptable to Customer. Customer have selected the Equipment based on Customer's determination that it is appropriate for Customer's purposes, use, application and environment, and not based on any recommendation by Sabre.

**(7) LOADING AND UNLOADING:** Customer are responsible for loading and unloading of the Equipment. If Sabre's employees assist in loading or unloading the Equipment, CUSTOMER AGREE TO ASSUME THE RISK OF DAMAGE OR INJURY OCCASIONED THEREBY AND TO INDEMNIFY, DEFEND AND HOLD HARMLESS SABRE FROM AND AGAINST ANY LOSS, COST OR EXPENSE (INCLUDING ATTORNEY'S FEES AND EXPENSES) ARISING FROM OR RELATED TO THE SAME, WHETHER OR NOT CAUSED, IN WHOLE OR IN PART, BY OUR NEGLIGENCE OR THE NEGLIGENCE OF OUR EMPLOYEES, AGENTS OR ASSIGNS.

**(8) EQUIPMENT FAILURE:** In the event any of the Equipment fails to start, breaks, malfunctions, becomes unsafe or is in need of maintenance or repair, Customer agrees to immediately discontinue use, notify Sabre, and if directed to do so, return the Equipment to Sabre. Customer further agrees Customer will not repair or have anyone else repair the Equipment. Failure to timely notify Sabre will not result in any relief from being charged for all Time Out.

**(9) REPLACEMENT BY SABRE:** If the Equipment proves inoperable or defective, malfunctions, becomes unsafe or otherwise fails to function in accordance with the manufacturer's specifications, and is immediately returned to Sabre, Sabre will, at its option: (a) promptly repair the Equipment; (b) provide Customer with reasonably similar replacement Equipment, if available; (c) make similar Equipment available to Customer as soon as it becomes reasonably available to Sabre; or (d) cancel this Contract, and adjust the Rental Charge. Customer agrees that the foregoing will constitute Customer's exclusive remedy for Equipment malfunctions, and that Sabre will have no obligation other than as set forth in this Paragraph with respect to any Rented Item that fails to function properly. CUSTOMER WILL NOT BE ENTITLED TO COLLECT FROM SABRE, AND EXPRESSLY WAIVE ANY AND ALL CLAIMS AGAINST SABRE FOR ANY DAMAGE, LOSS OR EXPENSE INCURRED AS A RESULT OF THE FAILURE OR MALFUNCTION OF THE EQUIPMENT, INCLUDING WITHOUT LIMITATION, LOST TIME, LOST PROFITS, COST OF COVER (OBTAINING REPLACEMENT EQUIPMENT AND/OR PERFORMANCE FROM ANOTHER SOURCE), INCIDENTAL, CONSEQUENTIAL, SPECIAL AND/OR PUNITIVE DAMAGES.

**(10) USE OF EQUIPMENT:** The Equipment is authorized for use only by Customer and Customer's agents and employees (each of whom must be skilled, experienced, trained and authorized in its operation), at the location given as the "Address" or "Contract Info" on the Front page (the "Site"). The Equipment is authorized for use only for its ordinary purpose. Customer agrees not to, and to ensure that Customer's agents and employees do not: (a) use the Equipment or any portion thereof for any other purpose; (b) use it for any illegal purpose; (c) use it without first ensuring that it has been properly maintained and that all oil, pressure and fluid levels are within the limits specified by Sabre, the OEM and the applicable operation and/or maintenance manuals(s); (d) use it in any unsafe condition or manner; (e) permit its use by any person other than Customer or those of Customer's agent or employees who are fully trained and competent in its use; (g) attempt to repair it without Sabre's prior specific written approval; (h) abuse, misuse, overuse, commit waste of, or otherwise permit any damage to or destruction of the Equipment; or (i) surrender possession of it to any other person, except a licensed common carrier that Customer return to return it to Sabre with Sabre's prior written approval.

**(11) ASSIGNMENT AND SUBLETTING:** Sabre may, at Sabre's sole option, assign all or any portion of Sabre's rights and/or remedies under this Contract without Customer consent. CUSTOMER MAY NOT ASSIGN CUSTOMER'S RIGHTS OR REMEDIES UNDER THIS CONTRACT, NOR MAY CUSTOMER SUBLEASE OR LOAN ANY OF THE EQUIPMENT TO ANY THIRD PARTY WITHOUT SABRE'S PRIOR WRITTEN CONSENT.

**(12) CARE OF EQUIPMENT:** Customer must protect the Equipment against misuse, exposure to adverse conditions and any other abuse or neglect, ensure that it remains in good operating condition and is returned to Sabre as the end of the Term in the condition required in Clause (14) "Return of Equipment" Customer will provide a qualified operator for the Equipment, pay all costs of its operation, and provide all necessary fuel, lubricants, accessories and supplies. Customer is the insurer of the Equipment during the Term. As such, Customer bears all risk of loss, theft, damage or destruction to the Equipment, regardless of cause (Ordinary Wear and Tear excepted). If Customer fail to return the Equipment to Sabre in the condition required, Customer agrees to pay all costs associated with returning it to such condition (which may include, if Sabre reasonably deem it necessary, its full current replacement cost, including without limitation, all packing, shipping and handling charges). Rent will apply during the time it takes to repair or replace the Equipment.

**(13) RETURN OF EQUIPMENT:** Customer agrees to return the Equipment to Sabre during Sabre's normal business hours at or before the end of the Term. Nonetheless, SABRE MAY TERMINATE THIS RENTAL AT ANY TIME BY WRITTEN NOTICE TO CUSTOMER AND/OR BY RETAKING POSSESSION OR CONTROL OF THE EQUIPMENT. Rent will continue to accrue until Sabre receives the Equipment, and Customer's only right with respect to the Equipment is to use it during the Term in compliance with the Contract. Customer agrees to ensure that, upon return to Sabre, the Equipment will be clean, free of all regulated or hazardous substances (including without limitation, substances identified as "Hazardous Materials" under any federal, provincial or local laws, rules and/or regulations purporting to deal with toxic or hazardous substances), rental-ready, and otherwise in substantially the same order, condition and repair as at the Time Out "Ordinary Wear and Tear" (as defined in Clause (14)) excepted. Customer agrees to pay a reasonable charge for Equipment returned in any other condition.

**(14) ORDINARY WEAR AND TEAR:** "Ordinary Wear and Tear", meaning normal deterioration resulting from the proper and intended use of the Equipment in accordance with the terms of this Contract, will not be considered damage. Damage which is not "Ordinary Wear and Tear" (and for which Customer will be solely responsible) includes without limitation, theft, mysterious disappearance, damage due to overloading or exceeding rated capacities, nonstandard use, overturning, tire damage, and transportation or operation without required or recommended coolants, lubricants, hydraulic fluid, air pressure levels, supports, and/or safety equipment, improper use, misuse, abuse, neglect, accidents and intentional damage.

**(15) FUEL SURCHARGE:** Equipment with gas/diesel engines must be returned full of fuel or Customer will be charged at the rate set forth on the front of this Contract (or if none, at two (2) times the then-current market rate for the necessary fuel)

**(16) ENVIRONMENT SURCHARGE:** Sabre reserves the right to charge an environmental surcharge in respect of Equipment containing an internal combustion engine, hydraulic oils or similar components, to a maximum of \$75 to compensate Sabre for the costs of handling, managing and disposing of hazardous materials. This is not a government mandated fee.

**(17) LOSS DAMAGE WAIVER (LDW):** The following LDW "Conditions" must be satisfied for the reduction in damage liability described herein: (a) Customer Accepts the LDW (by not opting out and accepting fees prior to taking possession of the Equipment), (b) Customer pays 14% of the gross rental charges as the fee for the LDW (plus any applicable taxes), (c) Customer fully complies with all terms of the Rental Agreement, (d) Customer's account is current at the time of the loss, theft damage or destruction of the Equipment, (e) Customer cannot cancel LDW after taking possession of the Equipment. If the Customer accepts the Loss Damage Waiver (LDW) (Customer is deemed to accept unless it declines where indicated on the front of the Agreement) and pays the additional fee specified thereon, Sabre will waive its claim against the Lessee under Clause 13 hereof for loss of or damage to the Equipment and also for the rental charges which accrue during the period when damaged or destroyed Equipment is being repaired or replaced or lost Equipment is being replaced (except as set out in Clause 18 below) for any amount in excess of the following: a) For Theft: 10% of the current retail price of new Equipment, b) For Damage: 10% of the cost of the repairs to the Equipment. Let it be clear that LDW is NOT INSURANCE and does NOT protect Customer from liability to Sabre Rentals Ltd. or others arising out of possession, control or use of the Equipment, including injury or damage to persons or property. THE LDW IS A CONTRACTUAL MODIFICATION OF CUSTOMER'S LIABILITY

**(18) LOSS DAMAGE WAIVER EXCEPTIONS:** Notwithstanding the Customer's acceptance of the Loss Damage Waiver, the Customer will be liable for all resulting loss or damage to the Equipment and expense of Sabre, to the extent it: (i) results from the gross negligence of the Customer's permission, or (ii) occurs under any of the following circumstances: (a) loss, damage or failure of tires and tubes under any circumstances, as outlined in Clause 14, (b) all loss or damage associated with vandalism, malicious mischief, theft or conversion of the Equipment as outlined in Clause 14, not documented by Customer's prompt filing with the applicable public authorities, (with an immediate written copy to Sabre - within 48 hours of theft discovery), (c) all loss or damage associated with Equipment being overloaded, operated above rated capacity, roll over (overturn) or if operating instructions are not followed, as outlined in Clause 14, (d) use of the Equipment by unqualified operator. Customer is to use properly trained operators, as outlined in Clause 10(f), (e) failure of the Customer to perform necessary Equipment maintenance as outlined in Clause 10(c), (f) Customer's failure to properly secure the Equipment by, among other things, leaving keys readily available to any unauthorized operator or not reasonably restricting access to the Equipment.

**(19) INSURANCE:** Customer agrees to maintain (a) property damage and casualty insurance on all "all risks" basis for the full replacement cost of the Equipment (including with limitation, all risks of loss or damage covered by the standard extended coverage endorsement) with such deductibles, if any, as may be acceptable to Sabre in our sole discretion; and (b) commercial general liability insurance with minimum limits of \$3,000,000 per occurrence. Such insurance shall cover all operations and contractual obligations, as well as any and all damage or liability arising in connection with the handling, transportation, maintenance, operation, use or possession of the Equipment during the Term, and shall name Sabre as an additional insured and loss payee on a "closed clause" basis. All such insurance shall be primary, without any self-insured retention, and shall waive subrogation against Sabre. Customer agree to provide to Sabre copies of the proper endorsements for the above coverages specifying that they will not be cancelled during the Term. Any insurance Sabre carry will be deemed to be in excess of Customer insurance.

**(20) FAILURE TO TIMELY RETURN:** If Customer fails to timely return any item of Equipment or where this Contract provides, make it available for Sabre's retrieval, Customer agree to pay (a) an additional charge equal to the full rental amount(s), and (b) all costs and expenses (including without limitation, attorneys' fees) Sabre incur arising from or in connection with any: (i) collection and/or repossession activities Sabre elect to pursue; (ii) loss of or damage to any Equipment; and/or (iii) injuries or damages to persons or property, directly or indirectly resulting therefrom.

**(21) INTEREST ON UNPAID AMOUNT:** All amounts due and coming due under this Contract will bear interest at 24% per annum until paid in full.

**(22) DEFAULT/REMEDIES:** If Customer fails to comply with any provision of this in a timely manner, if Customer seek bankruptcy protection or if an involuntary proceeding in bankruptcy is commenced against Customer, the same will be deemed an immediate and material breach of, and an event of default under, this Contract, whereupon Sabre may, at Sabre's option, exercise any or all of the following remedies: (a) terminate the Customer's right to possess and use the Equipment, enter upon any premises where the Equipment may be located WITHOUT NOTICE and retake possession of, immobilize and/or render unusable the Equipment, WITH OR WITHOUT PROCESS OF LAW; (b) If Customer default deprives Sabre of the use of any item of Equipment, Sabre may purchase other replacement Equipment and recover the cost of the replacement Equipment, together with any associated costs (e.g., packing, transportation, storage, delivery and taxes) from the Customer; (c) Sabre may declare all Rent due and coming due under this Agreement, together with interest and late fees, if any, as well as attorneys' fees, immediately due and payable; (d) Sabre may seek immediate relief from any automatic stay in bankruptcy; and/or (e) Sabre may pursue any other remedy available to Sabre under this Agreement or under applicable law. Sabre's exercise of any one of these remedies will not constitute an election of remedies or a waiver of any other remedy Sabre may have, it being understood that all such rights and remedies shall be cumulative.

**(23) INTEGRATION:** This Contract represent the complete and final agreement between Customer and Sabre and cannot be modified by oral agreement. There are no oral or other representations, warranties or agreements not included in this Contract. Customer acknowledges that this Contract may be amended only in writing signed by both parties.

**(24) SIGNATURES:** This Contract may be signed in multiple counterparts, each of which will be deemed valid and enforceable, so long as they are identical (if not, the version signed by Sabre will control) for this purpose, facsimile and electronic signatures will be deemed the equivalents of originals.

**(25) ORDER OF PRECEDENCE:** The terms and conditions of the RENTAL AGREEMENT shall control over any conflicting pre-printed terms and conditions contained in the Customer's purchase order or similar document

**(26) OTHER PROVISIONS:** (a) Any failure of Sabre to insist upon strict performance by Customer of any terms and conditions of this Rental Agreement shall not be construed as a waiver of the Company's right to demand strict compliance. (b) Customer agrees to pay all reasonable costs of collection, courts, attorneys' fees and other expenses incurred by the Company in the collection of any charges due under this Rental Agreement or in connection with the enforcement of its terms.

**(27) CRIMINAL WARNING:** The use of false identification to obtain equipment or the failure to return the equipment by the end of the rental period may be considered a theft subject to criminal prosecution pursuant to applicable criminal or penal code provisions.

**(28) CREDIT CARD AUTHORIZATION:** Subject to such limitations as may be set forth in applicable law, Customer irrevocably and unconditionally authorize Sabre to immediately submit for payment on the credit card (if any). Customer have provided Sabre all estimated charges coming due under this Contract, and Customer agree to indemnify, defend and hold harmless Sabre with respect to the same. Customer shall provide details of a replacement credit card where the credit card provided expires during the Term, prior to the expiration of the credit card. The credit card used for payment may be retained for 12 months. The Customer accepts any and all charges as determined solely by Sabre.

## Signature:

## A LARGER FONT COPY OF THESE TERMS AND CONDITIONS IS AVAILABLE UPON REQUEST.