

TERMS AND CONDITIONS

1. MASTER AGREEMENT: The Lessee and Lessor acknowledge and agree that the terms and conditions contained in this agreement shall govern the rental of any and all equipment by the Lessee from the Lessor, and the term "Equipment" as used herein shall refer to all such equipment. Except as otherwise expressly agreed by the Lessor and Lessee in writing, in the event of a conflict between the terms and conditions contained in this agreement and any terms or conditions set out in any purchase order, acceptance or other document the Lessee and Lessor agree that the terms and conditions set out in this agreement shall govern.

2. THE RENTAL PERIOD: The rental period with respect to each piece of Equipment shall commence on and include the day of actual delivery of the Equipment to the Lessee or the Lessee's agent, including any public carrier taking same for transit to the Lessee. The rental period shall end on and include the day of actual delivery of the Equipment to the Lessor, another Lessee of the Lessor or an agent of either, including any public carrier taking same for transit to the Lessor or such other Lessee. At the end of the rental period the Lessor shall provide and the Lessee shall obtain an Off Rent number. The Lessee is responsible for the Equipment until it has been returned to the Lessor's yard. Rental Rates are based on an 8 hour shift. Double shifts (16 hours) are charged at 1.5 times the standard Rental Rate. Triple shifts (24 hours) are charged at 2 times the standard Rental Rate.

3. PAYMENT: The Rentals due under this Lease shall be paid monthly, weekly or daily (as the case may be) in advance to the office of the Lessor at the address designated on the reverse hereof. The rental for the rental period is payable before delivery of the Equipment to the Lessee or the latter's agent or carrier. Overdue rental payments shall bear interest at 2% per month calculated and compounded monthly for an effective annual interest rate of 24%.

4. INSPECTION: Before the Equipment is delivered to the Lessee, the Lessee may require an inspection thereof by proper authorities, and if the Equipment is not in satisfactory condition, the cost of inspection shall be paid by the Lessor. If the Lessee does not inspect the Equipment before it is delivered, then the Lessee is conclusively deemed to have accepted that the Equipment is in good condition and running order, without broken or worn out parts, and in clean and unmarred condition.

5. MAINTENANCE, OPERATIONS AND REPAIRS: The Lessee shall not remove, alter, disfigure or cover up any numbering, lettering or insignia displayed upon any Equipment, and shall ensure that no Equipment is subjected to careless or needlessly rough usage, and shall, at the Lessee's own expense, maintain and ultimately return to the Lessor the Equipment and its appurtenances, together with any tools and accessories pertaining thereto, the whole in good repair and running order. Without limiting the generality of the foregoing, the Lessee shall, at the Lessee's own expense, during the term of this Lease, pay the cost of:

- (a) all fuel and lubricants required to operate the Equipment;
- (b) all repairs required to be made to the Equipment in order to keep it in good and proper operating condition in accordance with the operator's manual; and

(c) replacing broken or worn out parts.

In addition, the maintenance of tires and tubes on all Equipment so equipped is the responsibility of the Lessee. Repairs to and or replacement of, tires and tubes will be charged to the Lessee, as will any service calls to the location of the Equipment if the Equipment is not brought into the Lessor's yard. No allowance will be made for any downtime or inconvenience caused to the Lessee by failure of any tires, tubes, wheels and/or associated Equipment.

6. DAMAGE TO EQUIPMENT: The Lessee shall indemnify and hold harmless the Lessor against all loss and damage to the Equipment during the rental period and the appraisal for any such loss or damage shall be based on the replacement cost of Equipment without deduction for depreciation. The Lessee will provide the Lessor with a certificate of insurance covering the replacement cost of the Equipment without deduction for depreciation that shall be kept in effect from the time the Equipment is shipped by the Lessor until it is returned to the Lessor or delivered to another Lessee of the Lessor.

7. LIABILITY OF LESSEE: The Lessee shall indemnify and hold harmless the Lessor against all loss, expenses, penalties, damages, condemnations and legal costs which the Lessor may suffer or may be required or condemned to pay for personal injuries (including death) and/or property damages suffered by any person by reason of the Equipment or the operation, handling, transportation or use thereof by or while in the hands of the Lessee or the latter's employees, agents or carriers. The Lessee shall remain responsible for the Equipment until it has been returned to the Lessor. The Lessee shall maintain at the Lessee's own expense, public liability and all risk property insurance in adequate amounts to fully cover this indemnity. The Lessee hereby renounces all claims which he (it) may have against the Lessor for any loss or damage which he (it) may suffer, either directly or indirectly, by reason of the condition of the Equipment or its suitability for the work it may be required to perform.

8. TITLE: Title to the Equipment shall at all times be and remain vested in the Lessor and nothing contained in this Lease shall be deemed to have the effect or conferring upon the Lessee any right or title whatsoever in or to the Equipment, other than that of lessee. The Lessee shall not incur or permit to exist any lien or other encumbrance on or with respect to the Equipment. The Lessee shall give the Lessor immediate notice in case any of the Equipment is levied upon or from any cause becomes liable to seizure.

9. TERMINATION OF LEASE: Should the Lessee fail to make any payment for more than thirty (30) days after it becomes due, or become bankrupt, insolvent or have a receiver appointed, or fail to maintain and operate or to return the Equipment as provided in this Lease, or violate any other provision hereof the Lessor may terminate this lease, re-take possession of the Equipment without becoming liable for trespass, and recover all rentals due, full damages for any injury to and all expenses incurred in obtaining the return of the Equipment. Should the Lessor fail to ship the Equipment in good and running order, the Lessee may, upon giving the Lessor notice, terminate the lease and recover any amount paid by him (it) to the Lessor hereunder. All outstanding obligations shall survive termination of the lease.

10. SUBLETTING AND LOCATION: None of the Equipment shall be sublet by the Lessee, nor shall he (it) assign or transfer any interest in this Lease without the previous written consent of the Lessor.

The Equipment shall be used only at the location shown on the face of this Lease.

11. SUBROGATION: In the event of any loss or damage to the Equipment, Lessor will have the right of subrogation with respect to any right of the Lessee to recover against any person, firm or corporation. Lessee will execute and deliver whatever instruments and papers are required and do whatever else is necessary to secure such rights. Lessee will cooperate fully with Lessor and or its insurer(s) in the prosecution of those rights and will neither take or permit nor suffer any action to prejudice Lessor's rights with respect thereto.

12. LOSS DAMAGE WAIVER: If the Lessee accepts the Loss Damage Waiver (Lessee is deemed to accept unless it declines where indicated on the front of this Agreement) and paying the additional fee specified thereon, the Lessor will waive its claim against the Lessee under paragraph 6 hereof for loss of or damage to the Equipment (except as set out in paragraph 13 below) for any amount in excess of the following:

A. For Theft: 10% of the retail purchase price of new Equipment.

B. For Damage: 10% of the cost of the repairs to the Equipment.

13. WAIVER EXCEPTIONS: Notwithstanding the Lessee's acceptance of the Loss Damage Waiver, the Lessee will be liable for all resulting loss or damage to the Equipment and expense of the Lessor, to the extent it: (i) results from the gross negligence of the Lessee which includes, but is not limited to, the use or operation of the Equipment in a reckless or abusive manner, or intentional damage to the Equipment by the Lessee or by Lessee's permission, or (ii) occurs under any of the following circumstances:

A. Loss, damage or failure of tires and tubes under any circumstances.

B. All loss or damage associated with vandalism, malicious mischief, theft or conversion of the Equipment, not documented by Lessee's prompt filing with the applicable public authorities, (with an immediate written copy to the Lessor).

C. All loss or damage associated with Equipment being overloaded, operated above rated capacity, roll over or if operating instructions are not followed.

D. Use of the Equipment by unqualified operator. Lessee is to use properly trained operators.

E. Failure of the Lessee to perform necessary Equipment maintenance as outlined in paragraph 5.

F. Lessee'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.

14. WARRANTIES: Lessor makes no warranties, either express or implied, as to any matter whatsoever, including, without limitation, the condition of the Equipment, its merchantability or fitness for a particular purpose, or that it is suited for the Lessee's intended use. The aggregate liability of Lessor hereunder, if any, shall be limited to the amount paid to it by Lessee under this Lease. This Lease represents the entire agreement between the parties with respect to the Equipment. In no event shall Lessor be liable for special, consequential, punitive, incidental or indirect damages arising from any reason whatsoever, whether or not loss is based on contract, warranty, negligence, indemnity or otherwise. The Lessee consents to the collection of personal information by Lessor and the use, retention, disclosure of such information by Lessor in accordance with the Lessor's Privacy Statement

as posted at www.toromont.com

15. PRODUCT LINK: In the event this machine is equipped with Product Link data concerning this machine, its condition, and its operation is being transmitted by Product Link to Caterpillar Inc., its affiliates (Caterpillar) and/or its dealers to better serve the customer and to improve upon Caterpillar products and services. The “telematics” information transmitted may include: machine serial number, machine location, and operational 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 and disclosed as set out in Caterpillar Inc.’s applicable Privacy Statement, in place from time to time. The Customer consents to allow this data to be accessed and used as set out in Caterpillar’s policy and agrees that the telematics data may be accessed by Caterpillar, its partners, affiliates, subsidiaries, dealers and agents, with a legitimate business reason to access it, as well as third parties who may process information on their behalf. Caterpillar may use telematics information in combination with personal information of a customer. The Customer further acknowledges and agrees that telematics information may be made available to subsequent owners of the equipment. Caterpillar will not sell or rent any personal information collected, nor disclose the same to subsequent owners without consent.