

TERMS AND CONDITIONS OF RENTAL CONTRACT

(1) As used herein, "Page 1" refers to the first page or "face" of this Contract; "Rented Item(s)" or "Item(s)" means the items rented to you, as identified on Page 1; "Customer," "Lessee," "you" and "your" mean the customer or "Lessee" identified on Page 1, and "Bingham," "Lessor," "we," "us" and "our" mean Bingham Equipment Company.

(2) Bingham agrees to rent to you, and you agree to rent from Bingham the Rented Item(s) for the period(s) specified on Page 1 (the "Term"), and to pay us our stated rental rate(s) (the "Rent"), together with any other charges accruing hereunder, without proration, reduction or setoff, until all Rented Item(s) is/are returned to and accepted by Bingham. Unless otherwise specifically agreed by Bingham, 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 day, 40 hours per week, and/or 160 hours per 4-week period, and otherwise in accordance with the terms hereof and the "Instructions" described in Section (6) below. The Rent will be increased for late returns, overuse and/or misuse. No allowance will be made for weekends, holidays, time in transit or any other period of nonuse. We have estimated the Rent based on your estimate of the length of the Term (the "Estimated Rent"). You agree: (a) to pay Bingham: (i) the Estimated Rent, together with any deposit specified on Page 1 prior to commencement of the Term (the "Prepayment"); and (ii) any additional amounts coming due hereunder upon demand; and (b) that: (i) Bingham may deduct any amount you owe us from any Prepayment; (ii) no interest will accrue on any Prepayment; and (iii) no Prepayment will be deemed a limit of your liability to Bingham. Anything remaining with, in or on any Rented Item(s) upon return will, at our option, be deemed surrendered and become the property of Bingham.

(3) If Bingham agrees to deliver and/or retrieve any Item(s) (the current charge for which is \$5.00 per loaded mile or a minimum of \$85.00), you agree to: (a) pay Bingham's stated charge(s) for delivery, retrieval and waiting time; (b) be present at the Site at the agreed time(s); and (c) ensure Bingham's delivery personnel have reasonable access to the Site. Bingham will not be responsible for any delay(s) caused by the acts or omissions of any other parties, including any providers of other equipment, products or services ("Other Providers") for which you hereby release and agree to indemnify, defend and hold harmless Bingham. If you are not present upon delivery and/or retrieval of any Item(s), you agree to accept the statements of Bingham's representatives regarding the same (including status, condition and quantities).

(4) You will ensure that each Rented Item is used safely and only: (a) for its intended purpose(s); (b) within its rated capacity; (c) unless otherwise specifically agreed by Bingham on a case-by-case basis, at the address set forth on Page 1 (the "Site"); (d) by properly qualified, certified and/or licensed (as applicable) operators; and (e) otherwise in full compliance with the "Instructions" as well as all applicable laws, rules and regulations, at all times. You will not, nor will you permit anyone else to: (i) abuse, misuse, overuse, remove, conceal, repair, modify, damage or destroy any Rented Item; (ii) violate any applicable policy of insurance or warranty; or (iii) take possession of or exercise control over any Rented Item without Bingham's prior consent, granted, conditioned or withheld in Bingham's sole discretion.

(5) You will protect each Rented Item at all times, keep it safely and securely stored and locked when not in use, and return it to Bingham on time, clean and otherwise in good order, condition and repair, properly serviced and maintained, and full of the appropriate fuel, fluid and lubricants. If you fail to do so, you will pay us: (a) any and all costs and expenses, both direct

and indirect, we may incur in connection with such failure; and (b) Rent for each succeeding full rental period until all Rented Item(s) have been returned or replaced as required.

(6) Upon your execution of this Contract (or upon later delivery of the Rented Item(s), unless you immediately reject it/them), you represent, warrant and agree that: (a) each Rented Item: (i) is in good repair and operating condition and is in all ways acceptable to you; (ii) is appropriate for your purposes; and (iii) was selected solely by you, not based on any recommendation by Bingham; and (b) you: (i) have received, read and understood the training, instructions, user manuals, maintenance requirements, and other information, if any (including all training required under applicable EPA, OSHA, NFPA and/or ANSI Standards, if any) regarding the proper and safe transportation, installation, fueling, use, maintenance and storage of such Item(s), (collectively, "Instructions"); (ii) will fully comply therewith (including without limitation, using the proper fuel, fluids and lubricants in all Rented Item(s) and complying with all EPA Tier 4 regulations); (iii) have been made aware of the need to use, and offered on reasonable terms, all recommended and required safety equipment (including personal fall protection equipment for all rented lifts); (iv) will use each Item only for its intended purpose, in a reasonable and safe manner; (v) will give any required notice(s) to governmental authorities; (vi) will timely obtain all necessary licenses, authorizations and approvals; (vii) will advise all local utilities and cable companies before using any Item(s) to dig or disturb the ground surface (call 811 at least 2 full business days in advance); (viii) will immediately cease using any Item that malfunctions or proves defective (each, a "Malfunction"); and (ix) will ensure that all others comply herewith.

(7) In the event of a Malfunction (as defined in Section (6) above), you will immediately notify Bingham, and we will (at our option): (a) repair the subject Rented Item; (b) provide you with a replacement or comparable item; or (c) return the unused portion of the Rent and cancel this Contract. The foregoing remedy is EXCLUSIVE. Bingham will have no obligation other than as set forth herein regarding Malfunctions, and you hereby waive any and all claims and damages, both direct and indirect, arising therefrom or associated therewith against Bingham.

(8) WARNING: LIFTS, VEHICLES, TRACTORS, BALERS, RAKES, BULLDOZERS, WINDROWERS, AND EQUIPMENT USED FOR EXCAVATING, LIFTING, LOADING, MOWING, HAMMERING, GRINDING, SPRAYING, DIGGING, DRILLING, CUTTING, BREAKING, BORING, AND/OR COMPACTING IS/ARE INHERENTLY DANGEROUS AND SHOULD BE USED, MOVED, MAINTAINED AND REPAIRED WITH GREAT CARE ONLY BY PROPERLY QUALIFIED, INSTRUCTED, AND IF APPLICABLE, LICENSED, INDIVIDUALS.

(9) You agree to maintain all insurance Bingham deems necessary, but in any event, (unless we otherwise agree) at least: (a) commercial general liability insurance with minimum limits of \$2,000,000 per occurrence; and (b) "all-risk" or inland marine insurance (or the equivalent), including coverage for property in transit, covering all loss of, and damage to, the Rented Item(s) for the full (new) replacement value thereof. All such policies shall: (i) name Bingham as an additional insured and loss payee; (ii) waive subrogation against Bingham; and (iii) be primary. You will: (A) provide us with copies of the proper endorsements for such coverages specifying that they will not be cancelled during the Term; and (B) notify us immediately in the event of any accident, loss, damage to or destruction of any Rented Item(s). If you fail to do so, you agree to purchase the Damage Waiver described below.

(10) If and only if Bingham has offered, and you have purchased and paid for, our **OPTIONAL Damage Waiver** set forth on Page 1 if offered (the current charge for which is 14% of the Rent), before the Term commences, then only with respect to Item(s) covered by Damage Waiver ("Covered Items"), your liability to Bingham for the cost to repair or replace such Covered Items

will be limited as set forth in our Damage Waiver Guide, a copy of which you acknowledge receiving and carefully reviewing. You may decline Damage Waiver if you fully comply with this Contract (including Section 9). **DAMAGE WAIVER IS NOT INSURANCE, NOR IS IT A WARRANTY.**

(11) Except with respect to Rented Items which Bingham rents from one or more third parties (each, an "Owner") and then re-rents to you ("re-rented items"), Bingham alone owns and will retain title to all Rented Items. Your only right with respect to the Rented Item(s) (including re-rented item(s)) is to use it/them in full compliance with this Contract during the Term. You will not permit the taking or existence of any lien, claim or encumbrance on any Rented Item.

(12) You may not transfer, sublease or assign any Rented Item or this Contract without the prior written consent of Bingham, and if applicable, the Owner. We may sell and/or assign all or any part of our interest in the Rented Item(s) or this Contract. You agree that UPON NOTICE FROM US, YOU SHALL ATTORN TO THE ASSIGNEE AND SHALL PAY DIRECTLY TO SUCH ASSIGNEE (UNLESS WE OTHERWISE DIRECT) WITHOUT REDUCTION OR SETOFF, ALL AMOUNTS THEREAFTER COMING DUE HEREUNDER. Upon such assignment the assignee: (a) shall have all rights and remedies of Bingham hereunder; and (b) shall not be chargeable with, or responsible for any obligations of Bingham which accrued prior to such assignment.

(13) WAIVER/INDEMNITY: BINGHAM IS NOT THE MANUFACTURER OR DESIGNER OF ANY RENTED ITEM(S). ALL SUCH ITEMS ARE PROVIDED "**AS-IS**". NEITHER BINGHAM NOR ANY OWNER, MAKES ANY WARRANTY, EXPRESS OR IMPLIED (INCLUDING ANY WARRANTY OF MERCHANTABILITY, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, FUNCTION, DESIGN, CAPACITY, FREEDOM FROM DEFECTS OR WORKMANLIKE PERFORMANCE) REGARDING ANY SUCH ITEM(S) OR ANY SERVICE(S) PROVIDED HEREUNDER OR IN CONNECTION HEREWITH, NOR DOES BINGHAM OR ANY OWNER MAKE ANY WARRANTY AGAINST INTERFERENCE OR INFRINGEMENT, ALL OF WHICH YOU WAIVE. NO DESCRIPTIONS OR ADVERTISEMENTS BY BINGHAM OR ANY OWNER CONSTITUTE REPRESENTATIONS OR WARRANTIES. **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YOU HEREBY: (A) ASSUME ALL RISK OF INJURY, LOSS, DAMAGE, DESTRUCTION AND ENVIRONMENTAL CONTAMINATION OF, TO, AND/OR ARISING IN CONNECTION WITH THE ITEM(S) REFERENCED HEREIN, INCLUDING WITHOUT LIMITATION, ANY AND ALL LIABILITIES, CLAIMS AND DAMAGES ARISING FROM OR IN CONNECTION WITH THE SELECTION, INSPECTION, DESIGN, MANUFACTURE, USE, LOADING, UNLOADING, TRANSPORTATION, DEMONSTRATION, STORAGE, MAINTENANCE, REPAIR AND/OR RETAKING OF ANY SUCH ITEM(S), WHETHER OR NOT YOUR FAULT; AND (B) RELEASE AND DISCHARGE BINGHAM AND ALL OWNER(S) FROM AND AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS BINGHAM AND SUCH OWNER(S),** AND THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, OWNERS, INSURERS, SUBROGEEES, REPRESENTATIVES, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL LIABILITIES, CLAIMS, DAMAGES, LOSSES, COSTS AND EXPENSES (INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES) ARISING FROM OR ASSOCIATED WITH ANY AND/OR ALL OF SUCH ITEM(S) AND/OR SERVICES. **You waive all rights and remedies available under the Uniform Commercial Code, as well as all incidental, consequential, special, and punitive damages, against Bingham and each Owner. Your duties are UNCONDITIONAL.**

(14) If you: (a) fail to fully and timely comply with any provision of this Contract; (b) provide any incorrect or misleading information to Bingham; (c) become insolvent; (d) make an assignment

for the benefit of creditors or suffer or acquiesce to the appointment of a trustee, receiver or liquidator; or (e) die or cease conducting business; you will be in default, whereupon, Bingham may, without notice or liability to you: (i) discontinue your rental of any or all Rented Item(s); (ii) seek relief from any automatic stay; (iii) recover, lock or disable any Rented Item(s) without being guilty of breach or trespass; (iv) perform your obligations hereunder on your behalf, without being obligated to do so; (v) purchase replacement (new or used, in our sole discretion) Item(s) as necessary; (vi) recover from you our associated direct, indirect, incidental and consequential damages, costs and expenses (including without limitation, reasonable attorneys' fees as provided below, Rent for the remainder of the Term and/or our anticipated profit); and/or (vii) pursue any and all other rights and remedies available hereunder, at law and/or in equity.

(15) This Contract and any Addenda provided by Bingham (including our Damage Waiver Guide), all of which are incorporated herein, represent the entire agreement between you and Bingham, superseding all other agreements and representations (including our website and advertising). The terms of this Contract are severable. If any provision hereof is deemed invalid or unenforceable by any court of competent jurisdiction, such provision will be modified to the minimum extent necessary to make it valid and enforceable, or if no such modification shall be possible, deleted, and the remainder of this Contract will remain valid and in full force and effect. Time is of the essence of this Contract. Bingham may, without notice or liability to you inspect any Rented Item(s) at any time. If any performance required of us is rendered impractical as a result of any act or omission of any Other Provider(s) or any "Act of God" (e.g., any event, fact or circumstance beyond Bingham's reasonable control), we will be excused from such performance. You waive the benefits of any and all statutes of limitations regarding our rights and remedies. All amounts due hereunder but not timely paid will bear interest at the highest rate permitted under applicable law until paid. You authorize us to submit all amounts coming due hereunder for payment on your debit or credit card and waive all claims to the contrary. You agree to pay us the maximum lawful charge for any check you write which is returned unpaid. This Contract: (a) is a true (operating) lease, and not a financing arrangement; and (b) cannot be further amended or extended except in a writing signed by both you and Bingham. **Our maximum liability in connection with this Contract is limited to the Rent actually received by Bingham from you hereunder.** This Contract allocates to you the risk of injury, loss of, or damage to, persons or property arising in connection with the Item(s), and that allocation is reflected in a reduced Rent. This Contract will be deemed to apply not only to all Item(s) identified on Page 1, but also to all other items you obtain from Bingham at any time (except only as otherwise agreed by Bingham). You will pay: (a) our reasonable attorneys' fees and other costs of enforcing this Contract, and (b) all taxes (including all sales and use taxes), surcharges, fines, fees, assessments and other charges related to each Item. Neither our exercise, nor our failure or delay in the exercise, of any rights or remedies will constitute an election of remedies or a waiver of any right or remedy we may have. This Contract shall be interpreted under the laws of, and proper venue for any and all legal proceedings commenced in connection herewith shall lie solely and exclusively in, the Federal and State Courts located in or nearest to, the State and County in which the Bingham office from which you rented or purchased the Item(s) is located. You hereby consent and submit to such jurisdiction and venue and waive all claims that such venue lies in an inconvenient forum. Electronic, photocopied or facsimiled signatures hereon will be deemed the equivalents of originals.

(16) Warning: Obtaining, controlling or converting the property of another wrongfully or by means of misrepresentation (including failure to timely return rented property) may be deemed theft, resulting in CRIMINAL PROSECUTION AND/OR CIVIL PENALTY(IES). See A.R.S. § 13-1802, et seq. for further details.