

YOU ARE RESPONSIBLE FOR READING AND UNDERSTANDING ALL OF THE PROVISIONS BELOW. (A LARGER FONT COPY OF THE PROVISIONS BELOW IS AVAILABLE UPON REQUEST.)

This Contract (this "Contract") is between the person/entity listed on the reverse side (Front) as the customer ("Customer") and American Rentals LLC or Seneca Supply, LLC both d/b/a "The Duke Company" that is indicated on the Front ("Lessor").

1. Nature of this Contract. This Contract evidences a rental transaction (and the purchase of related goods and services), which allows Customer to use all of the goods identified on the Front ("Equipment") as this Contract permits. Customer acknowledges that the Equipment is owned by (or leased by if applicable) Lessor and that no one other than Lessor may transfer or assign the Equipment or any rights or obligations under this Contract. Any attempted transfer other than by Lessor is void. Neither Customer nor any Authorized Operators are agents of Lessor. Except as provided in Section 4, no one may service, repair, alter or modify the Equipment. Customer will not permit any liens to attach to the Equipment and will defend, indemnify and hold Lessor harmless from all loss, liability and expense by reason thereof. Lessor retains the right to inspect the Equipment at all reasonable times. **THIS CONTRACT PROVIDES NO OPTION TO CUSTOMER WHATSOEVER TO PURCHASE THE EQUIPMENT.**

2. Who May Operate the Equipment. Only Customer and Customer's employees (in the course of any such employee's regular employment) ("Authorized Operators") may operate the Equipment. Customer and all Authorized Operators must: (i) be at least 21 years old (and 25 years old if the Equipment is a motor vehicle), (ii) be properly qualified to operate the Equipment, (iii) have a valid operator's license with respect to the Equipment where required by law, and (iv) be instructed on the safe operation of the Equipment.

3. Rental Charges. Customer will pay Lessor all rental, time, mileage, service, transportation, refueling service and other charges in accordance with this Contract, all direct and indirect sales, use, value-added, environmental taxes, levies or surcharges ("tax") imposed with respect to the Equipment and this Contract, and all expenses, including related legal expenses. The basic daily, weekly and the 4-week rental will entitle Customer to a maximum of one-shift use (i.e., a maximum of 8 hours per day, 40 hours per week, and 160 hours per 4 weeks). **Use in excess of one shift will be payable at the then current coverage rate for the Equipment, which is subject to change but shall be available for quote at Customer's reasonable request for the Equipment for any particular day, plus applicable taxes.** Lessor will have a lien as allowed by applicable law for charges incurred hereunder upon the premises and improvements upon which the Equipment is employed. Rentals are F.O.B. Lessor's branch ("Branch") designated on the Front. Customer is responsible for shipping charges from the Branch to Customer's work site and return and all loading, unloading, assembling and dismantling charges. All rates for rentals in excess of 4 weeks are subject to change on 30 days' notice in writing to Customer with respect to any portion of the rental period then remaining. Customer and any person to whom, with the consent of Lessor, Customer expressly directs the charges incurred under this Contract to be billed, are jointly and severally responsible for payment of all such charges. Customer represents having the authority to direct such charges to be billed to that person. If the Equipment includes motor vehicles, Customer's use of such Equipment shall only take place in U.S.A. (unless otherwise agreed in writing by Lessor) and is limited by any mile limitation set forth on the Front.

4. Customer's Responsibilities. Customer must return the Equipment to Lessor in the same good and clean condition it was in when Customer received it, ordinary wear excepted. The Equipment must be returned to Lessor whenever demanded by Lessor. Customer acknowledges that it must confirm return receipt of the Equipment by Lessor. Until such time as Lessor receives actual possession of the Equipment, Customer agrees to hold the Equipment in a safe and secure manner. The Equipment will be kept only at Customer's place of business or the jobsite at which the Equipment is used. Prior to moving equipment from the jobsite designated on the Front, Customer will notify Lessor in writing of the intended new jobsite. The Equipment will be used at all times only in accordance with the manufacturer's instructions and within its rated capacity. Customer will perform or cause to be performed and pay for all normal periodic and other basic service, adjustments and lubrication of the Equipment in accordance with manufacturer's instructions and specifications. **IF THE EQUIPMENT FAILS TO OPERATE PROPERLY OR NEEDS REPAIR, CUSTOMER WILL IMMEDIATELY CEASE USING IT AND WILL IMMEDIATELY NOTIFY LESSOR IF THE EQUIPMENT IS USED IN ANY MANNER THAT WOULD VIOLATE THIS CONTRACT, OR IS OBTAINED FROM LESSOR BY FRAUD OR MISREPRESENTATION, OR IS USED IN FURTHERANCE OF ANY ILLEGAL PURPOSE, ALL SUCH USE OF THE EQUIPMENT IS WITHOUT THE PERMISSION OF LESSOR.**

5. Risk of Loss. All loss of or damage to the Equipment while on rental or in Customer's care, custody or control, whether exclusive or not, and whether or not due to the fault of Customer, will be the sole responsibility of Customer and will be paid to Lessor promptly upon Customer's receipt of an invoice. Such responsibility is limited to the full value of the Equipment at the time it is lost or damaged, less its salvage value plus an administrative fee and related expenses of Lessor. **THE COST OF LABOR FOR ANY REPAIRS FOR SUCH DAMAGE WILL BE EITHER THE THEN PREVAILING HOURLY RATE FOR LABOR OF LESSOR, WHICH INCLUDES LOSS OF USE, POSTED AT THE LESSOR BRANCH WHERE THE EQUIPMENT IS TO BE REPAIRED, OR THE REPAIRER'S HOURLY RATE FOR LABOR CHARGED TO LESSOR FOR SUCH REPAIRS AS THE CASE MAY BE. PARTS WILL BE CHARGED AT THE COST OF LESSOR PLUS A RETAIL MARKUP.** Customer will also be responsible for the full rental rate as set forth in this Contract until the Equipment is repaired or replaced.

6. Events of Default. Customer is in default of this Contract if Customer: (a) fails to pay any amount when due, (b) breaches any other terms of this Contract, (c) becomes insolvent or ceases to do business as a going concern, (d) has a petition in bankruptcy filed by or against it, (e) is in default pursuant to the provisions of any other agreement by and between Customer and Lessor. Customer is in default if the Equipment is used: (i) to carry persons for hire, (ii) to carry persons other than Authorized Operators or helpers employed by Customer, all of whom will ride only within the cab of the Equipment, and then only if such carriage is lawful, (iii) to transport property for hire unless Customer obtains all necessary permits and licenses, (iv) in violation of any law or ordinance, (v) in any race, test or contest, (vi) in a reckless, negligent or abusive manner, or is

intentionally damaged by Customer or with Customer's permission, (vii) for the carrying or hauling of explosives or other hazardous material in violation of applicable laws, rules, regulations or orders, or (viii) in any fashion or manner for which the Equipment was not designed or beyond the manufacturer's rated capacity for the Equipment.

z. Remedies of Lessor. In case of Customer's default, or if Lessor deems itself insecure, Lessor may peaceably enter the property where the Equipment is located and render it inoperative or remove same with or without process of law and without any notice or liability to Customer. Customer hereby waives any right to any hearing or to receive any notice of legal process as a pre-condition for Lessor recovering the Equipment. Customer agrees to admit such entry and action by Lessor. In such case, Lessor may also terminate this Contract without notice to Customer or prejudice to any remedies or claims which Lessor might otherwise have. Customer will pay to Lessor a sum equal to the balance of the rent and other payments called for hereunder for the remainder of the rental term as liquidated damages. Customer will remain liable for the Equipment or for any loss or injury to the Equipment, notwithstanding such termination. Lessor shall have the right to take such steps which Lessor reasonably deems necessary to recover the Equipment, if the Equipment is not returned when demanded by Lessor. Lessor's remedies are not exclusive.

8. Limited Damage Waiver. Generally, Customer must prove that it meets the property insurance requirements of Section 10(b). If Customer does not prove that Customer meets the property insurance requirements of Section 10(b), however, Lessor, in its sole and absolute discretion, may still offer to rent the Equipment to Customer if Customer agrees to and pays charges for a "Limited Damage Waiver" ("LDW"). LDW is NOT INSURANCE. THE CUSTOMER MAY DECLINE CHARGES FOR LDW IF THE CUSTOMER PROVIDES PROOF THAT THE CUSTOMER MEETS THE REQUIREMENTS FOR PROPERTY INSURANCE DESCRIBED IN SECTION 10(b). ALTHOUGH LDW IS OPTIONAL, IF CUSTOMER REFUSES IT WHEN OFFERED BY LESSOR AND CUSTOMER DOES NOT PROVE THAT CUSTOMER MEETS THE PROPERTY INSURANCE REQUIREMENTS OF SECTION 10(b), LESSOR HAS THE FULL RIGHT, IN ITS SOLE AND ABSOLUTE DISCRETION, TO REFUSE TO RENT OR CONTINUE TO RENT THE EQUIPMENT TO CUSTOMER. In all cases, all other insurance requirements apply. REGARDLESS OF LDW ACCEPTANCE, LDW is valid only if (a) the Equipment is used in full compliance with this Contract and (b) Customer pays and continues to pay all LDW charges when due (with no grace period). If valid and accepted, LDW limits Customer's responsibility for damages to the Equipment to a maximum equal to the first 50% of the replacement cost of the Equipment UNLESS the Equipment is lost or stolen while in Customer's care or such damage is caused by Customer's negligence or any breach of this Contract. IF THE FOREGOING REQUIREMENTS ARE NOT MET, THEN LDW WILL NOT BE IN EFFECT.

9. Assumption of Risk and Indemnity. NOTWITHSTANDING SECTION 8, CUSTOMER IS LIABLE FOR ALL RESULTING LOSS OR DAMAGE AND EXPENSE OF LESSOR IF IT RESULTS FROM ANY INTENTIONAL ACT OR OMISSION OR THE NEGLIGENCE OF CUSTOMER. CUSTOMER ALSO ASSUMES ALL RISK OF LOSS OR DAMAGE AND WAIVES ALL CLAIMS AGAINST LESSOR BY REASON OF ANY PROPERTY LEFT, STORED, LOADED OR TRANSPORTED BY CUSTOMER OR ANY OTHER PERSON IN OR UPON THE EQUIPMENT, AND FURTHER AGREES TO INDEMNIFY AND HOLD HARMLESS LESSOR, ITS AFFILIATED COMPANIES, AND THEIR RESPECTIVE MEMBERS, MANAGERS, OFFICERS, DIRECTORS, AGENTS, REPRESENTATIVES AND EMPLOYEES (COLLECTIVELY, "INDEMNITEES"), FROM AND AGAINST ALL LOSS, LIABILITY, CLAIM, ACTION OR EXPENSE, ARISING OUT OF SUCH LOSS OR DAMAGE.

10. Customer's Insurance Obligations. (a) Customer, at its own expense and at all times during the term of this Contract, will maintain in force a Commercial General Liability insurance policy covering Customer's liability for bodily injury, including death, personal injury and/or property damages sustained by any person as a result of the maintenance, use, operation, possession, storage, erection, dismantling, servicing or transportation of the Equipment per occurrence of at least \$1,000,000 and at least a \$2,000,000 aggregate limit. Such policy shall name Lessor as "Additional Insured" on a primary and not excess or contributory basis. (b) Subject to Section 8, Customer, at its own expense and at all times during the term of this Contract, will maintain in force Property Insurance in an amount adequate to cover any damage to, or loss of, the Equipment. Such policy must (i) expressly cover non-owned equipment while in Customer's care, custody and control, (ii) name Lessor as "Loss Payee" and (iii) include a waiver of subrogation or rights of recovery in favor of Lessor. (c) Customer, at its own expense and at all times during the term of this Contract, will maintain Worker's Compensation Insurance in accordance with state statutory requirements. (d) Customer, at its own expense and at all times during the term of this Contract, will maintain Umbrella Insurance with an aggregate limit of at least \$3,000,000. (e) If renting a motor vehicle from Lessor, Customer, at its own expense and at all times during the term of this Contract, will maintain an Automobile Liability insurance policy with at least \$1,000,000 combined single limit coverage. Customer will furnish Lessor a certificate of insurance evidencing all of the foregoing insurance requirements and endorsed to provide that such insurance may not be cancelled or materially modified except on 30 days' prior written notice to Lessor. The terms and conditions of the insurance required must also be acceptable to Lessor. Customer agrees to abide by all of the terms and conditions of all of the foregoing insurance policies required to be maintained by Customer under this Section 10. The acceptance by Lessor of Customer's certificates of insurance will **not** be a waiver or modification of Customer's insurance, indemnity or any other obligation under this Contract. The foregoing insurance requirements do not limit in any way the ultimate liability of Customer hereunder.

11. Customer's Compliance with Laws. Customer will, at its expense, comply with all applicable laws, rules, regulations and orders affecting the Equipment and its uses, operation, erection, design and transportation and will defend, indemnify and hold

Indemnites harmless from all loss, liability or expense resulting from actual or alleged violations of any such laws, regulations or requirements.

12. Notice of Loss or Accident. In the event of an accident, loss of, theft of or damage to the Equipment, Customer agrees to notify Lessor immediately by phone, and thereafter in writing to Lessor and the public authorities (where required by applicable law or Lessor) all information Lessor deems relevant thereto. Customer will cause its agents and employees to give Lessor and the public authorities all relevant information and assistance in any matter resulting from said accident, loss, theft or damage.

13. Force Majeure. Any failure to perform by Lessor due to causes beyond its reasonable control is not a default by Lessor.

14. Late Payment Fee and Interest on Overdue Amounts. All payments due under this Contract will bear interest after the due date and until paid in full at the rate equal to the lesser of (i) 18% per year and (ii) the maximum rate allowable under applicable law, both before and after default, with interest on overdue interest at the same rate. The acceptance of any payment will not be interpreted as a waiver or compromise by Lessor of its right to require payment in full of the amount due, plus interest and costs. Customer also agrees to pay an administrative fee of \$125 for each overdue payment, and for each payment that is returned unpaid for any reason.

15. Refueling Service Charge. Customer agrees to return the Equipment with full fuel tank(s). If Customer fails to do so, Customer will pay to Lessor a sum equal to the then applicable refueling service charge of Lessor, posted at the Branch for the number of gallons required to refill the tank(s) at the time of return.

16. Privacy. By signing this Contract, Customer acknowledges that Lessor may collect personal information reasonable or necessary to complete the transaction referenced herein and that such information is provided voluntarily.

17. Legal Expenses. Customer will pay to Lessor all of Lessor's damages, costs and expenses, including the full amount of all legal fees, accountants and expert witness fees, disbursements, and costs of investigation whether legal proceedings are commenced or not, incurred by Lessor in enforcement of this Contract.

18. Merger/Modification/Severability. This Contract (including the Front) expresses the entire agreement between the parties with respect to the subject matter hereof. No change, modification or alteration of the terms hereof will be effective as against Lessor unless it is in writing and signed by a duly authorized officer of Lessor. Customer's execution of this instrument and/or acceptance of delivery of any part of the Equipment shall constitute Customer's acceptance of all of the terms and conditions contained herein, and the exclusion of any terms and conditions otherwise stated by Customer or contained in any of Customer's documents that conflict with or limit the terms contained herein. The laws of the State of New York, without giving effect to its conflicts of law principles, govern all matters arising out of or relating to this Contract and all of the transactions it contemplates, including, without limitation, its validity, interpretation, construction, performance and enforcement. Customer consents to the exclusive jurisdiction of the state and federal courts having jurisdiction over Monroe County, New York. If any provision is held invalid or unenforceable, the remainder of this Contract shall not be affected thereby and to this end the provisions of this Contract are declared to be severable.

19. Obligations to Lessor's Assignee. Customer acknowledges that Lessor's interest in the Equipment and its rights under this Contract may be assigned to a third party ("Assignee") to secure obligations of Lessor to Assignee. Upon receipt of written notice from Assignee, Customer agrees to make all payments due hereunder to the order of Assignee as directed in such written notice. Upon receipt of such notice Customer will recognize Assignee as the owner of all right, title, and interest in, to and under this Contract and the Equipment. Customer agrees that any service or warranty agreements or obligations executed, assigned, or issued with regard to the Equipment are unaffected by the assignment and that Customer will have no recourse against Assignee with respect thereto. Customer authorizes Assignee to file financing statements as Assignee may require.

20. Condition of Equipment. Customer acknowledges having examined the Equipment upon delivery. CUSTOMER'S ACCEPTANCE OR USE OF THE EQUIPMENT WITHOUT PROMPT NOTICE TO LESSOR THAT THE EQUIPMENT IS NOT IN GOOD MECHANICAL CONDITION CONSTITUTES CUSTOMER'S ACKNOWLEDGEMENT THAT THE EQUIPMENT IS IN GOOD MECHANICAL CONDITION AT THAT TIME. If, during Customer's possession of the Equipment, it is found by Customer not to be in good mechanical condition, as a result of conditions not the responsibility of Customer, nor caused by the fault or negligence of Customer or Customer's employees or agents, Customer will so notify Lessor, whereupon Lessor will then, at its option and without any other liability or responsibility by Lessor to Customer: (i) repair or suitably replace the Equipment within a reasonable time during the normal working hours of Lessor, with the commencement or running of the terms of the Contract to be tolled for the period the Equipment is "down", or (ii) remove the Equipment and terminate this Contract and refund payments of rental charges, if any, for the unexpired term of the Contract, less whatever is due Lessor for damage to or maintenance of Equipment which is the responsibility of Customer. Customer agrees to provide full access to the Equipment to representatives of Lessor so as to enable Lessor to meet its responsibilities hereunder.

21. LIMITED WARRANTY. THE FOREGOING PROVISIONS OF SECTION 20 ARE IN LIEU OF (I) ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND OF (II) ALL OBLIGATIONS OR LIABILITY ON THE PART OF LESSOR TO CUSTOMER FOR DAMAGES OF ANY KIND, ARISING OUT OF OR IN CONNECTION WITH THE RENTING, MAINTENANCE, USE OPERATION, STORAGE, ERECTION, DISMANTLING OR TRANSPORTATION OF THE EQUIPMENT.

22. ASSUMPTION OF RISK: DEATH OR INJURY. THE EQUIPMENT IS, BY VIRTUE OF ITS SIZE AND NATURE, POTENTIALLY DANGEROUS. OPERATION OF THE EQUIPMENT WILL EXPOSE CUSTOMER, AUTHORIZED OPERATORS AND THOSE IN PROXIMITY TO THE EQUIPMENT TO RISK ("PERSONS AT RISK"). THESE RISKS, INCLUDING, WITHOUT LIMITATION, SERIOUS

BODILY INJURY OR DEATH, CANNOT BE COMPLETELY IDENTIFIED, QUANTIFIED, MINIMIZED, PREVENTED OR ELIMINATED. CUSTOMER, ON BEHALF OF ITSELF AND ALL PERSONS AT RISK, ACCEPTS AND FULLY ASSUMES ANY AND ALL RISKS AND THE POSSIBILITY OF PERSONAL INJURY, DEATH, DISABILITY, PROPERTY DAMAGE OR LOSS RESULTING FROM OPERATION OF THE EQUIPMENT. CUSTOMER MUST REVIEW THE OPERATING MANUAL FOR THE EQUIPMENT BEFORE USE IN ALL CASES. IF CUSTOMER DOES NOT POSSESS OR RECEIVE THE OPERATING MANUAL FOR THE EQUIPMENT, THEN CUSTOMER MUST REQUEST ONE FROM LESSOR AND REVIEW IT BEFORE OPERATING THE EQUIPMENT.

23. RELEASE OF LIABILITY, WAIVER OF CLAIMS AND INDEMNITY. Customer agrees to release Indemnitees from, and Indemnitees disclaim, any and all liability for any loss, damage, injury or expense that Customer may suffer or incur as a result of this Contract or its use of the Equipment. Customer waives all claims that Customer has or may in the future have against Indemnitees arising out of or related to this Contract or use of the Equipment. Customer will defend, indemnify and hold harmless Indemnitees, from and against all loss, liability, claim, action or expense, including legal expenses, by reason of bodily injury, including death and property damage, sustained by any person as a result of the maintenance, use possession, operation, erection, dismantling, servicing or transportation of the Equipment, or Customer's failure to comply with the terms of this Contract.

24. Successors and Assigns. This Contract is binding upon and will inure to the benefit of the parties' successors and permitted assigns. Customer may not assign this Contract or any rights or obligations under it without Lessor's written consent. Any such assignment without Lessor's written consent is null and void and of no force or effect whatsoever.

25. Customer acknowledges and agrees that if Lessor is leasing the Equipment from a third party (the "Original Lessor"), (i) Customer's rights under this Contract to the Equipment are fully subordinated to the Original Lessor's rights to the Equipment, (ii) Customer will make rental payments directly to the Original Lessor upon demand, (iii) the Original Lessor will not be responsible for the performance of any obligations of Lessor under this Contract, (iv) Customer will not withhold any rental payments from the Original Lessor due to Lessor's non-performance, and (v) the Original Lessor has a superior claim to the Equipment.