

# TERMS AND PROVISIONS OF LEASE

1. The rental period shall begin on and include the date of delivery to or pick up by the Lessee and shall end on and include the date of return or pick-up by the Lessor in such manner as directed by the Lessor. All rentals are subject to the minimum rental period provided for in this contract. If equipment is kept longer than the specified minimum rental period, the rental will then be invoiced per Kircher Construction Inc. posted rental rates.
2. The Lessee agrees that the rates provided for in this contract are considered straight time rates based on eight (8) hours per day, five (5) eight (8) hour days per week or twenty (20) eight (8) hour days in any one twenty-eight (28) consecutive day period. Should the machinery be used longer than the above specified hours in any specific period, the extra hours shall be invoiced per Kircher Construction Inc. posted rental rates.
3. It is understood that the Lessor is not the manufacturer of the equipment herein leased, nor the agent of the manufacturer and that no warranty is made by Lessor against patent or latent defects in material, workmanship, or capacity nor that the equipment will meet the requirements of any law, rules, specifications or contracts which provide for specific machinery or apparatus or special methods, other than that of original manufacturer of the equipment and as set forth in the manufacturer's catalog and representations wherein the machinery and equipment is listed and described.
4. The Lessor shall use reasonable care to see that the equipment is in proper working condition before shipment to Lessee. Rental items should be tested before pick up or during delivery. If any equipment fails to perform properly the Lessee should stop using the machine immediately and notify the Lessor at once.
5. On non-tractor equipment the Lessee agrees to maintain the equipment in the same condition as when delivered to it by the Lessor, usual wear and tear excepted, and to pay all claims and damages arising from defects therein, or from the use of handling of the equipment whether personal injury or property damage, and to pay for all damages to the equipment, except the usual and ordinary wear and tear during the life of this contract, and to return the property to the Lessor in as good condition as when received by Lessee usual and ordinary wear and tear excepted and to pay all freight, storage, or other charges against the equipment from the time the same shall leave the storage yard of the Lessor up to and including the time of its return to the Lessor. On all tractor equipment, the conditions in paragraph 5 apply except that the Lessee agrees to fully maintain the machinery covered in this contract while in his possession and to return it in the same condition as received from the Lessor with no exception made for usual wear and tear. Maintain means check and fill fluids daily and lubricate/grease daily. Also, to clean machine daily and before return to Lessor. If equipment is not maintained or cleaned, the Lessee will be billed for services completed by Lessor.
6. The receipt and acceptance by the Lessee of the equipment shall constitute acknowledgement that the property has been accepted and found in good, safe and serviceable condition, and fit for use, unless the Lessee makes claim to the contrary to the Lessor by registered mail with return receipt demanded addressed to the Lessor's home office within 48 hours after receipt of the equipment. The complaint as made shall set forth in detail its complete nature and the condition of the property received.
7. Should any machinery, equipment, or appurtenances, delivered by third party carrier to Lessee in a damaged condition or with any of the machinery, equipment, parts or appurtenances missing, it shall be the duty of the Lessee to obtain from the third party carrier, a written acknowledgement of the damages or shortage. The failure on the part of the Lessee to obtain such a written acknowledgement upon its receipt and acceptance of the machinery, equipment, parts and appurtenances shall be deemed an acceptance by the Lessee that such machinery, equipment, parts and appurtenances in good sale and serviceable condition and fit for use. Any damage or loss which has occurred and is not covered by such a written acknowledgement shall be repaired or replaced of the expense of the Lessee. If the machinery, equipment, parts or appurtenances are damaged or lost in transportation and the Lessee furnishes to the Lessor a written acknowledgement and statement from the carrier setting forth the character of damage and loss, the Lessor agrees to use reasonable diligence in having same repaired and replaced within a reasonable period of time, but the equipment shall be deemed to have been delivered on date of acceptance thereof from carrier.
8. In the event of notice to the Lessor by the Lessee that the equipment is not in good, safe and serviceable condition and fit for use upon its arrival, the Lessor shall have the right to put the equipment in good, safe and serviceable condition and fit for use, within a reasonable time, or to cancel this Lease.
9. The Lessor shall not be liable in any event to the Lessee for any loss, delay or damage of any kind or character resulting from defects in, or inefficiency of equipment hereby leased or accidental breakage thereof.
10. In the event of accident to, or breakage of, any part of the equipment Lessee may have the same repaired by any competent person, firm or corporation (with approval from Lessor) at its own expense or, upon notice to the Lessor as to such breakage or accident, the Lessor may repair the machinery for the Lessee, using reasonable diligence to make the repairs or replacement in the shortest possible time, and the Lessee agrees to pay the Lessor its regular charges for any material or labor furnished in making the repairs upon demand. In the event any work is done outside of Lessor's regular place of business, including work necessary by wear and tear, by reason of which Lessor shall be required to pay overtime charges to its employees, or to anyone doing the work for Lessee, all such charges will be paid by the Lessee to the Lessor.
11. In the event the Lessee accepts the machinery and the equipment, as herein provided and thereafter the machinery proves defective or unfit for use, because of accident or otherwise, or, if for any other reason Lessee desires to discontinue the use of the machinery or equipment, the only remedy of Lessee shall be to return the machinery to Lessor and terminate this contract as herein elsewhere provided., In such a case the minimum amount payable hereunder by Lessee to Lessor shall be not less than minimum rental as herein provided and any transportation charges payable hereunder..
12. The Lessee agrees to pay any charges for work or inspection required by any labor union. The Lessor may, at its option, refuse to do any repair work on the equipment in time of strike, or any other cause beyond its control, or in violation of any rule affecting the equipment. The Lessor reserves the right to remove the equipment from the job at any time when, in its opinion, the equipment is in danger because of strikes or any other condition.
13. The Lessee agrees to comply with and conform to all municipal, state and federal laws relating to the operation of the machinery and to pay all costs and expenses of every character occasioned by or involving the use of operation of the machinery or equipment and to pay all legal assessments, taxes or public charges, either local, municipal, state or federal, which may be levied on the equipment while in the possession of the Lessee.
14. The Lessee agrees to pay the Lessor for all loss and damages occasioned by fire, theft, flood, accident, explosion, wreck, an act of God or any other causes that may occur during the life of this Lease, and from the date thereof, including movement and delivery and until such machinery has been returned into the possession of the Lessor and accepted by it. Lessor accepts returned equipment and takes it off rent upon Lessor's signature on rental form, but the Lessor has 3 working days to assess the equipment for repairs, fueling, or cleaning required, which will be billed to the Lessee.
15. The Lessee further agrees to indemnify and hold the Lessor harmless against all loss, damage, expense and or penalty arising from the action on account of any injury to person or party of whatsoever occasioned by the use, possession operation, handling or transportation of any of the equipment during the rental period and while the machinery and equipment is in the actual or deemed possession or under the custody and control of Lessee.
16. The Lessee further agrees to provide, at its sole cost and expense full insurance coverage, to cover damage or loss to the rented items which may be occasioned by fire, theft, flood, explosion, accident, act of God, or any other cause that may occur during the life of this lease. Such coverage shall be in an amount not less than the full replacement value of the rented items. Lessee shall also provide, at its sole cost and expense, public liability insurance protecting the Lessor against loss or losses from liability arising from bodily injury, death, or damage to the property of others caused by Lessee's use, operation or possession of the rented items during the life of this Lease. Lessee shall name Lessor as additional insured on such policies and shall provide the Lessor with a certificate evidencing the required coverage.
17. The title to the property herein leased and to all replacements thereof or substitution thereof is and shall remain in the Lessor, and the machinery and equipment shall not become a part of any building, by being placed therein or by being annexed thereto. In the event the equipment is annexed to any real property not owned by the Lessee, the Lessee shall furnish the Lessor with a landlord's release, which shall permit the Lessor to remove the equipment from the property at any time during the life of, or after the expiration of, this contract. The Lessor reserves the right, and the Lessee hereby grants permission to the Lessor to obtain such release.
18. The Lessee agrees, whenever requested by Lessor, to give Lessor the exact location of all of the equipment covered by this lease and further agrees to give Lessor immediate notice of any levy attempted upon the equipment, or if the equipment from any cause becomes subject to seizure, and to indemnify Lessor against all loss and damages caused by any such action. The Lessor shall have the privilege at all times of entering any job, building or location where the rented equipment is located for the purpose of inspection and reserves the privilege of removing the equipment immediately if it is being overloaded or taxed beyond its capacity or in any manner abused or neglected.
19. The equipment hereby leased shall not be sublet, nor shall the property be moved out of the state specified in this contract.
20. Should any of the provisions of this lease be violated by Lessee the rental for the entire period herein specified, shall become forthwith due and payable, and the Lessor, or its agents may, without notice, enter the premises occupied by Lessee without being a trespasser thereon and take possession of and remove the equipment with or without process of law. In the event any such becomes necessary the Lessee agrees to pay, in addition to other charges herein specified, all costs of removal of the machinery from the possession of the Lessee and all freight, demurrage, storage, labor or other charges on or against the property incurred during or by the removal, shipping and return to the possession of the Lessor.
21. The Lessee agrees to pay all rentals when they are due and for all services and materials furnished and all damages and sums due the Lessor under this contract as soon as the loss occurs or services are rendered or materials are furnished.
22. Lessee agrees that if any of the lease provisions are violated and Lessor demands the return of the equipment that this lease shall constitute authority to any persons responsible for the equipment to deliver all or any part of the equipment to the Lessor or its agents.
23. The Lessee's inspection, and acceptance of such equipment shall constitute a waiver of any and all claims of whatsoever character or nature for any damages arising from defects of any nature in the equipment
24. In the event the Lessor shall provide and furnish an operator or operators of any leased equipment, Lessee hereby agrees that such operator or operators shall become and be deemed an employee or employees of the Lessee, and the operator or operators shall be under the control, supervision and direction of the Lessee, and the Lessee further assumes all responsibility for the services and activities of such employee and employees with the same force and effect were they regular employees of the Lessee and shall, in any event save the Lessor harmless from any claim or claims of whatsoever nature involving such employment other than the payment of wages of such employee an employees to be assumed by the Lessor.
25. The Lessee agrees that in the event the Lessee shall deem it necessary and proper to utilize any equipment of whatsoever character other than or in addition to such equipment furnished by the Lessor in the operation of the leased equipment, the equipment shall be subject to inspection and the use thereof subject to the written consent of the Lessor.
26. Both Lessor and Lessee agree that no modification of this agreement shall be binding upon them or either of them, unless such modification shall be duly accepted in writing.
27. The Lessor's designated receiving point for the return of items rented hereunder is shown on the first page of the contract in the space herein following the printed words "Return to."
28. This Agreement is governed under the laws of the State of York and the parties hereby designate Livingston County, New York as the Venue for any legal actions commenced with respect hereto.

Terms and provisions of lease acknowledged by:

X: \_\_\_\_\_

