

Rental Agreement Terms and Conditions

For purposes of these Terms and Conditions, "Lessor" means Thompson Tractor Co., Inc., its owners, officers, directors, shareholders, and employees; and "Lessee" means the Customer that is leasing the equipment, including Customer's agents or employees.

1. Title to Equipment; location of use. This is a lease, and no sale is hereby made or intended. Title to and ownership of the Equipment shall always remain in Lessor and all accessions, repairs and replacement parts shall become property of Lessor when attached to the Equipment. Lessee agrees to place the Equipment in operation at the location described on this Lease and not to remove the Equipment from that location without Lessor's advance written permission. In the event this Lease is deemed to be a security agreement, Lessee hereby grants to Lessor a present security interest in the Equipment, all accessories, and accessions now or hereafter affixed thereto, and all proceeds of the foregoing, as security for the payment and performance of Lessee's obligations hereunder.
2. Lease term; no abatement of rent. The lease term shall commence on and include the date of delivery of the Equipment to Lessee and shall terminate on and include the date of redelivery to Lessor, subject to the minimum term of this Lease. Unless otherwise expressly provided herein, lease payments and other obligations of Lessee shall continue to always accrue regardless of working or weather conditions or Equipment down time.
3. Acceptance of Equipment by Lessee. Lessee agrees to inspect the Equipment before use and within 24 hours after receipt. Unless Lessee notifies Lessor of any claimed nonconformity or other objection before use and within such 24-hour period, the Equipment shall be deemed to be conforming and in good condition and repair and shall be deemed accepted by Lessee.
4. Indemnity of Lessor by Lessee. Lessee agrees to indemnify, protect and hold harmless Lessor from and against any and all loss, damage, expense (including attorneys' fees), penalty, claim, action or cause of action Lessor may suffer or incur or have made or filed against it on account of any death or injury to person or damage to property of any character whatsoever occasioned directly or indirectly by the operation, handling, or transportation of any of the Equipment during the lease term while the Equipment is in the actual or constructive possession, or under the custody and control, of Lessee. Lessee also agrees to indemnify Lessor against taxes and other charges assessed to Lessor on, or in relation to, any or all the Equipment leased hereunder or the ownership or use thereof, referable to the lease term. This agreement of indemnity shall survive termination or cancellation of this Lease.
5. Disclaimer of warranties and limitation of liability. **Lessee understands and agrees that Lessor is not the manufacturer of the Equipment leased hereunder. Lessor makes no warranty against patent or latent defects in material, workmanship or capacity of the Equipment and no warranty that the Equipment will satisfy the requirements of any law, rule, specification, or contract which provides for specific machinery or apparatus or specific methods of operation. Except for any express warranty set forth hereon in writing (if any), Lessor hereby disclaims, and Lessee hereby waives, all warranties express or implied, including warranties of merchantability and fitness for any particular purpose with respect to the Equipment. Lessor shall not be liable to Lessee for any loss, delay or damage of any kind or character resulting from defects in, or breakdowns or insufficiencies of, the Equipment leased hereunder. Lessor's liability, if any, to Lessee for any claim or cause of action under or related to this Lease shall be limited in any event to the amount of rent paid hereunder to Lessor by Lessee. No oral agreement, guaranty, promise, condition, representation, or warranty shall be binding on Lessor. All prior conversations, agreements or representations related hereto and/or to**

the Equipment are integrated in this Lease. Lessee acknowledges that, whether described as new, used, or demonstrator, the Equipment may have been used previously, incurred damage that was repaired or repainted, or may have been modified in accordance with a manufacturer's directive or program. Lessee agrees to such repairs, repainting, and/or modifications and waives any notice or disclosure thereof. Lessee hires the Equipment on an "AS IS" basis.

6. Assumption of Risk; risk of loss; insurance. Customer is fully aware and acknowledges there is a risk of injury or damage arising out of the use or the operation of Equipment. Upon delivery of Equipment to Customer, Customer shall bear the entire risk of loss, damage, theft, or destruction of the Equipment or any part thereof, from any and every cause whatsoever, which shall occur prior to the proper return of the Equipment, and no such loss, damage, theft, or destruction shall relieve Customer of its obligation to pay Rent or to comply with any other provision of this Agreement. The amount of damage for any loss of or injury to the Equipment shall be based upon the then actual reasonable value and without regard to Rent paid or accrued. Unless expressly waived by Lessor in writing, Customer will, at its own expense and at all times during the term of this Agreement maintain in force Commercial General Liability Insurance with a combined, single limit for bodily injury, including death, and property damage of \$1,000,000.00 on a primary and not excess or contributory basis and Auto Liability Insurance with a combined single limit per occurrence of no less than \$1,000,000, for Customer's liability for damages sustained by any person, including, but not limited to, agents or employees of Customer, as a result of the maintenance, use, operation, possession, storage, erection, dismantling, servicing or transportation of Equipment. In addition, unless Customer chooses to accept the Rental Equipment Protection, then Customer will, at its own expense and at all times during the term of this Agreement, maintain in force Property Insurance in an amount adequate to cover any damages to, or loss of, the Equipment. Customer's policy must expressly cover non-owned equipment while in Customer's care, custody, or control. REP, as defined below, is not available for and does not cover Equipment that is operated underground in connection with any mining operations or Equipment that is licensed for use on public roads.

7. Rental Equipment Protection. If the Equipment is used in compliance with the Rental Agreement, if Customer accepts the "Rental Equipment Protection" option ("REP"), which is NOT INSURANCE, at the beginning of the rental period by initialing the REP "Accepts" box on the face of the Rental Agreement, and if Customer pays the additional charges for the REP when due, then Lessor agrees to waive, to the extent specified herein, Customer's responsibility to Lessor for loss of or damage to the Equipment exceeding the applicable deductible, as follows:

<u>Equipment Value</u>	<u>Deductible (per item)</u>
<\$250,000	\$2,500
>\$250,000	2% of value of equipment, up to \$10,000

Lessor reserves the right to deny REP to Customer. Except as provided herein, a Customer that does not initial either the "ACCEPTS" or "DECLINES" REP box will be deemed to have accepted REP. NOTWITHSTANDING THE FOREGOING, CUSTOMER WILL BE LIABLE FOR ALL LOSS OR DAMAGE TO THE EQUIPMENT AND EXPENSE OF LESSOR RESULTING (A) FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CUSTOMER, WHICH INCLUDES, BUT IS NOT LIMITED TO, THE USE OR OPERATION OF THE EQUIPMENT IN A CARELESS OR ABUSIVE MANNER, OR INTENTIONAL DAMAGE TO THE EQUIPMENT BY CUSTOMER OR WITH CUSTOMER'S KNOWLEDGE, OR (B) UNDER ANY OF THE FOLLOWING CIRCUMSTANCES ("Non-Covered Events"): (1) Use in violation of the applicable manufacturer instruction manual, including overloading or exceeding the rated capacity of the Equipment; (2) Damage to motors or other electrical devices caused by surges in electrical current or use of the wrong voltage; (3) Failure of Customer to

perform, or the improper performance of, basic maintenance of Equipment required under the Agreement: (4) Tire or tube damage; (5) Use of Equipment in violation of any term of the Agreement; (6) Using improper fuel such as straight gas in diesel motors, diesel fuel in gas motors, fuel in hydraulic oil, etc.; (7) Conversion or hiding of Equipment by Customer or its employees or agents, or infidelity of Customer's employees or other persons to whom the Equipment is entrusted; (8) Vandalism, sabotage, criminal or intentional acts, or abuse by Customer or its employees or agents; (9) Customer's failure to discontinue use of Equipment after the rental period ends or keep the Equipment in a secure area; (10) Use by any person other than an employee of Customer possessing all necessary qualifications and permits; (11) War or acts of war (declared or undeclared), riots, terrorism, nuclear explosion, or radiation; (12) Overspray of concrete, paint or other material. If charges for the REP are not paid by Customer as specified in the Agreement, then at Lessor's option and discretion, (a) Lessor may terminate the Agreement without prejudice to any of its other remedies; and (b) pending exercise of Lessor's option, or if Lessor's option is not exercised, the REP will not be in effect regardless of any initialing of the "Accepts" Box and Customer will remain fully responsible for any loss and damage to the Equipment. In the event of any loss or damage to the Equipment, Lessor will, at its option, subrogate with respect to any rights of Customer to recover against any person or entity. REP shall not apply to rentals of on the vehicles licensed for use on public roads such as dump trucks, water trucks and boom trucks, each of which shall be subject at all times to Customer's insurance, consistent with Lessor's Insurance Requirements, including that such coverages shall be primary and not excess or contributory.

8. Expenses of ownership; operation, maintenance, and repair. Except for applicable manufacturer's warranty repairs, if any, or unless otherwise specified in writing, all expenses of operating, using, maintaining, storing, transporting, and assembling the Equipment, and all taxes and other charges levied or assessed on, or in relation to, any or all of the Equipment leased hereunder or the ownership or use thereof, incurred during the lease term shall be borne by Lessee in addition to the rent charges. The "Ad Valorem Tax Charge," if any, shown in the "Rates & Charges" section of the Agreement is an estimate of the applicable ad valorem tax. If the actual tax is more than this charge, Lessee will not be obligated to pay the difference; if the actual tax is less, Lessee will not be entitled to a refund of the excess. Lessee agrees to properly care for the Equipment in its use, maintenance, and storage, to operate the Equipment within its rated capacity, and to cause the Equipment to be operated only by properly trained employees of Lessee and in accordance with all applicable laws. Lessee agrees to notify Lessor immediately of any accidents, failures or like information concerning the Equipment. Lessee agrees to pay all expenses of repair and damages resulting from improper use or abuse of the Equipment upon receipt of invoices from Lessor, as well as any lost rental revenue from Lessor's inability to lease the equipment. Lessee shall take care of all normal servicing and maintenance of the Equipment including supplying fuel, oil and water, LP gas and cylinders; checking general condition daily, including oil level, fluid level, air pressure, cooling system, water in batteries, and recharging batteries; and to immediately discontinue use and notify Lessor when equipment is found to need repair or maintenance or is not functioning properly. Lessee acknowledges that Lessor has no responsibility to inspect the Equipment while it is in Lessee's possession.

For Lift Truck, Power Rentals, and Heavy Rentals:

Lessor will perform the manufacturer's recommended periodic maintenance on the Equipment and will make repairs needed to keep the Equipment in proper working order. **Maintenance or repairs due to Lessee's failure to perform its obligations, or caused by abuse or improper use of the Equipment, is not covered.** Lessor is not responsible for downtime or loss of use. Lessee agrees to advise Lessor of the service hours on each item of Equipment, to schedule maintenance appointments, and to make the Equipment available for maintenance during Lessor's normal business hours.

9. Lessor's right to inspect. Lessor shall, at all times during normal business hours, have the right, but not the duty, to enter upon the premises where the Equipment is located for the purpose of inspecting the Equipment or observing its use. Lessee shall give Lessor immediate notice of any attachments or other judicial process affecting any item of the Equipment and shall, whenever requested by Lessor, advise Lessor of the exact location of the Equipment.

10. Operators; compliance with laws. Lessee agrees to permit the Equipment to be operated only by properly trained operators and to comply with and conform to all municipal, state, and federal laws relating to operation of the Equipment. No operators of the Equipment are furnished by Lessor directly or indirectly.

11. Default. Lessee will be in default under this Lease (a) if Lessee shall fail to pay any rent or other charges under this Lease exactly when due, or (b) if Lessee shall fail to perform any term or condition of this Lease, or (c) if proceedings under any chapter of the Federal Bankruptcy Code or the laws of any state relating to insolvency shall be instituted by or against Lessee, or (d) if a receiver shall be appointed for Lessee or any of its property, or (e) if the Equipment or any part thereof shall be attached, seized, or levied upon by any creditor of Lessee or any government or governmental unit, or (f) if Lessee shall make an assignment for the benefit of creditors or admit in writing its inability to pay its debts as they mature.

12. Lessor's remedies for Lessee's default. Time is of the essence. If Lessee is in default, then in any such event Lessor may, at its option (1) proceed by appropriate court action(s) either at law or in equity to enforce performance by Lessee of the applicable covenants and terms of this Lease or recover damages for the breach thereof or recover possession of the Equipment, and in addition shall recover (in either event) any expenses (including reasonable attorneys' fees) incurred by Lessor in connection with Lessee's default hereunder; or (2) without terminating this Lease, enter upon any premises where the Equipment is located and take possession of the Equipment and maintain and operate the same or sublease the same for the remainder of the term of this Lease and cause Lessee to (and Lessee agrees that it will) promptly on each rent payment due date pay to Lessor (a) an amount equal to the amount by which the rent provided for herein exceeds the net revenue received by Lessor from the operation or subleasing of the Equipment after deducting all expenses, commissions, fees, charges and taxes arising out of or incurred in connection with such operation or subleasing, and (b) in addition, any damages and expenses (including reasonable attorneys' fees) incurred by Lessor in connection with Lessee's default hereunder; or (3) by written notice to Lessee, terminate this Lease (but Lessee shall remain liable as hereinafter provided) and cause Lessee to (and Lessee agrees that it will upon demand by Lessor) promptly return all of the Equipment to Lessor, or Lessor may enter any of the premises where the Equipment is located and take immediate possession thereof (all without liability to Lessee for damages to property or otherwise) and cause Lessee to (and Lessee agrees that it will upon demand by Lessor) forthwith pay to Lessor all amounts due or accrued hereunder to the date of such termination or entry and also (i) as final liquidated damages for the loss of the bargain and not as a penalty, an amount equal to the present value of the unpaid rental payments which otherwise would have been paid hereunder for the remainder of the term less any rental payments that Lessor is able to receive for the remainder of such term through reasonable efforts to re-rent the Equipment, and (ii) in addition, any damages or expenses (including reasonable attorneys' fees) incurred by Lessor in connection with Lessee's default hereunder; or (4) exercise any remedy of a lessor under the Uniform Commercial Code or other applicable law. No remedy referred to in this section is exclusive or in lieu of any other remedy, but each shall be cumulative and in addition to any other remedy referred to herein or available to Lessor at law or in equity.

13. Assignment. Without the prior written consent of Lessor, Lessee shall not assign, transfer, or pledge this Lease, the Equipment, or any part thereof, or any interest therein, or sublet or lend the Equipment or any part thereof. If Lessor assigns the rents reserved herein or any of Lessor's other rights hereunder, Lessee

agrees not to assert against any assignee any claim or defense Lessee may have against Lessor. Lessee, upon receiving notice of such assignment, shall abide thereby and shall make payments as therein directed. Following such assignment, the term "Lessor" shall be deemed to include and refer to Lessor's assignee.

14. Waivers; remedies cumulative; section headings. No delay or omission to exercise any right, power or remedy by Lessor upon any breach or default by Lessee under this Lease shall impair any such right, power or remedy or be construed as a waiver of any such breach or default, or of any similar breach or default thereafter occurring. All waivers under this Lease must be in writing signed by Lessor. All remedies afforded to Lessor by law shall be cumulative and not alternative. The section headings in this Lease are for convenience only and do not add to or take from the provisions of the Lease.

15. Notices. Any notices under this Lease shall be sufficiently given when deposited in the United States mail, postage prepaid, and addressed to the party involved at the party's address set forth above on this Lease or at such other address as such party may have provided to the other for such purpose.

16. Other acts and assurances. Lessee shall at its expense from time to time do and perform any act, record any instrument, and execute, acknowledge, and deliver all further documents as may be necessary or desirable to protect and preserve Lessor's ownership of the Equipment or as may be reasonably requested by Lessor, and Lessee shall pay or reimburse Lessor for the cost of same. Lessee hereby irrevocably authorizes Lessor as attorney-in-fact, with full power of substitution, to do and perform any or all the foregoing in Lessee's name and stead if Lessee fails or refuses to do so after demand from Lessor. Lessee hereby authorizes Lessor to file financing statements showing Lessee as the debtor, and listing the Equipment and other property described in this Lease as the collateral, in any public office, without Lessee's signature.

17. Entire agreement; severability. The Rental Agreement and these Terms and Conditions ("Lease" or "Agreement") constitute the entire understanding of the parties hereto and shall not be altered or amended except in writing signed by the parties hereto or their successors or assigns, or as otherwise provided in section 23 below. Any terms that are proposed by Lessee relating to the subject matter of this Lease are hereby objected to and are not part of this Lease. Any use of Lessee's purchase order number or like reference is for the Lessee's identification only and shall not be construed as incorporating any terms or conditions that Lessee might propose. Any acceptance by Lessee constitutes an acceptance of each and every term of this Lease. The provisions of this Lease are severable, and the invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability of the remaining provisions, except that if a court or arbitrator should determine that the provision in section 22 below, that there will be no class arbitration and/or no joinder of claims of others in the arbitration is unenforceable, and that determination is upheld on any appeal, the entire agreement to arbitrate Claims will be unenforceable and the dispute will be resolved by a court.

18. Effectiveness of Lease. This Lease will be effective upon execution or acceptance by Lessee which may be evidenced by Lessor's delivering the Equipment to Lessee or at Lessee's direction or special ordering the Equipment for Lessee.

19. Continuing lease. In the event the Equipment remains in the possession of Lessee after expiration of the rental period, all provisions of this Lease continue in effect.

20. Lessee's duties upon termination. Upon expiration of the term of this Lease, or upon termination of this Lease, Lessee shall return the Equipment to Lessor at the location from which it was originally shipped

or such other location as Lessor may designate, in the same condition as it was received, excepting only normal wear and tear under average working conditions with proper maintenance and operation. Lessee agrees to refuel fully the Equipment upon expiration of the Lease and upon return of the Equipment. In the event Lessee fails to refuel fully the Equipment, Lessee shall pay Lessor for refueling at \$8.95 /gallon. Lessee further agrees to pay for cleanup charges described on the face of this Lease, if applicable.

21. Purchase option. If the purchase option applies at the beginning of the Lease term as indicated on the Rental Agreement, then Lessee shall have the option to purchase the Equipment upon (a) Lessee's written notice to Lessor during the term of the Lease that Lessee elects to exercise the purchase option and (b) Lessee's tender to Lessor in cash of all sums then due but unpaid under this Lease plus the purchase price determined as follows: all scheduled payments of rent under this Lease will be applied first to taxes, insurance, recording and filing fees, late charges and other charges and expenses, then to interest at Lessor's lease conversion interest rate as in effect from time to time during the term of this Lease, and then to the purchase price of the Equipment. Any repairs and preventative maintenance done to the Equipment by Lessor during the Lease term which were not paid or reimbursed by Lessee will be added to the purchase price of the Equipment as of the date the repair or maintenance work was performed. Interest at the lease conversion rate will be calculated based on a 365-day year and the actual number of days elapsed. Lessor's lease conversion interest rate may change from time to time. Each rate will be applied for the period of time it was in effect. The current rate and schedule of rates in effect since the date of this Lease are available from Lessor upon request.

22. Arbitration and waiver of jury trial. Lessee and Lessor acknowledge that the transaction between them involves "commerce" as that term is used in the Federal Arbitration Act ("FAA"), 9 U.S.C. Section 1 *et seq.* Except as provided below, Lessee and Lessor agree that all disputes, controversies or claims (all "Claims") of any kind and character whatsoever arising out of or related to this Lease, the Equipment, the transactions evidenced or contemplated by this Lease, any prior negotiations or dealings between Lessee and Lessor, or any maintenance or service performed by Lessor on the Equipment or on any other related or unrelated property before, on, or after the date of this Lease, or any relationship that results from any of the foregoing, or any dispute regarding the validity of this arbitration agreement, whether based in tort, contract, warranty, or statutory or strict liability, shall be submitted to **binding arbitration** under the FAA in Birmingham, Alabama in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Judgment on the arbitrator's award may be entered by any court of competent jurisdiction. The arbitrator shall be well versed in equipment leasing and shall, at the election of either party, have been licensed to practice law at least 10 years. This agreement does not affect the right of either party to exercise any right of offset or self-help repossession, or to seek a court order for possession of the Equipment or an injunction or other purely equitable remedy other than a stay of arbitration. The parties agree that the commencement of litigation by either of them seeking any form of relief whatever shall not operate as a waiver or estoppel of the right to arbitrate any counterclaim or other similar claim, and that upon the giving of a notice of arbitration by any party hereto, the litigation of the counterclaim shall be stayed, and the counterclaim shall be submitted to binding arbitration hereunder. The arbitrator shall have no power to arbitrate claims on behalf of a class or to join claims of other persons in the arbitration. The arbitrator shall follow the law. The parties hereby **waive the right to trial by jury** of all Claims whether the Claim is submitted to arbitration or is decided by a court. Lessee acknowledges that Lessor's main office is in Jefferson County, Alabama. Lessee **submits** to the nonexclusive jurisdiction of the courts located in Jefferson County, Alabama and **waives** any claim of *forum non conveniens*.

23. NOTICE OF THOMPSON TRACTOR CO., INC. CUSTOMER DATA AND TELEMATICS DATA PRIVACY STATEMENTS.

Customer Data Thompson Tractor Co., Inc. collects and Lessee consents to the collection of information about specific machines or products (*e.g.*, configuration or consumption of parts and services by serial number) or groups of machines or products and customer information that allows for identifying and contacting a customer such as name, address, phone number and email address.

Telematics Data In the event this machine is equipped with telematics devices such as Product Link TM or the Vital Information Management System (VIMS TM) or Trackunit, data concerning this machine, its condition, and its operation is being collected and transmitted to Caterpillar Inc., its affiliates, and/or Thompson Tractor Co., Inc.

Thompson Tractor Co., Inc. recognizes and respects customer privacy. The Thompson Tractor Co., Inc. Customer Data Privacy Statement, and the Telematics Data Privacy Statement (the “Privacy Statements”) describe the categories of information collected, the purposes of the processing of the information, and how the information is shared. The Privacy Statements are available online at www.thompsontactor.com.

24. These Terms and Conditions may be amended or supplemented from time to time. In such event, upon notice provided and unless objected to within five (5) business days, Lessee agrees to be bound by any and all such changes.