

1. **Definitions.** The following terms have the meanings appearing beside each:

- a. "Agreement" means the Face Pages, this rental agreement, and these Terms and Conditions.
- b. "Cashman," "we," "us" and "our" mean Cashman Equipment Company.
- c. "Customer," "you" and "your" mean the "Customer" identified on the Face Pages.
- d. "Equipment" means the equipment described on the Face Pages, including all parts thereof and accessories thereto.
- e. "Face Pages" means the first or "face" pages of this Agreement.
- f. "Hazardous Substances" means all regulated or hazardous substances (including without limitation, substances identified as "Hazardous Materials" under the Resource Conservation and Recovery Act, the Toxic Substances Control Act and/or any other federal, state or local laws, rules and/or regulations purporting to deal with toxic or hazardous substances).
- g. "OEM" means the Equipment's original manufacturer.
- h. "Ordinary Wear" means normal deterioration resulting from the ordinary and reasonable use of the Equipment on a single-shift basis (8 hours per day, 5 days per week).
- i. "Rent" means the amount charged for the rental of the Equipment in accordance with the rates specified on the Face Pages, plus all other fees and charges accruing hereunder.
- j. "Rental Period" means the time period commencing at Time Out and ending upon the delivery of the Equipment to and acceptance thereof by our representatives.
- k. "Site" means, as applicable, either (i) the location given as the "Ship To" address on the Face Pages, if not a Cashman rental location, or (ii) any location where the Equipment will be located during the Rental Period.
- l. "Term" means the term of this Agreement, as specified on the Face Pages.
- m. "Terms and Conditions" means these terms and conditions as amended from time to time.
- n. "Time Out" means the date and time when the Equipment leaves our premises.

Other capitalized terms used but not defined herein will have the meanings assigned thereto on the Face Pages.

2. **Rental Rate.** In addition to the amounts coming due under any other provision of this Agreement, you agree to pay us Rent without reduction or setoff and continuing without interruption until the later of (i) the conclusion of the Rental Period and (ii) the conclusion of the "Minimum Term," if any, specified on the Face Pages (including during repairs to Equipment that is returned in a damaged or excessively worn condition as described in Section 15. Except as expressly set forth herein, we charge Rent for all time for which the Equipment is outstanding, including Saturdays, Sundays and holidays. We may adjust the rental rate at any time by notifying you in writing, which you agree may be in the form of an invoice.

3. **Payment Terms.** For Customers with an open credit account with Cashman, all amounts due under this Agreement are payable within thirty (30) days of receipt of invoice. Failure to notify us in writing of any dispute regarding an invoice within sixty (60) days of receipt thereof waives your right to dispute such invoice. For Customers who do not have an open credit account with Cashman, payment is due upon delivery of Equipment. Your obligation to pay amounts invoiced shall be absolute and unconditional and shall not be subject to any delay, reduction, set-off, defense or counter-claim. Cashman may, in its sole discretion, at any time: (a) revoke credit; (b) modify terms and conditions of credit; (c) require payment in advance; and/or (d) withhold Equipment, until receipt of payment. If Customer fails to pay for Equipment as and when due, Customer shall pay a late charge at the lesser of (i) 1.5% per month (18% per annum) and (ii) the highest rate permitted under applicable law until paid in full. Customer agrees to pay Cashman all reasonable attorneys' fees and collection costs incurred by Cashman. In addition to any other right of set-off or recoupment Cashman has under applicable law, Customer agrees that, with respect to any amounts due from Customer or Customer's affiliates to Cashman or Cashman's affiliates, Cashman and its affiliates may set-off such amount against any amounts owing to Customer or Customer's affiliates.

4. **Excess Usage.** Daily, weekly and monthly rental rates are established on maximum usage of 8 hours per day, 40 hours per week and 160 hours per four week period. Excess usage will be charged at the applicable rate plus 70% of such rate.

5. **Taxes, Licenses and Fees.** You will also be responsible for, and agree to fully and timely pay, all taxes, fees and other governmental assessments, including without limitation, sales and use taxes, applicable to the rental of the Equipment.

6. **Credit Card Authorization.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOU IRREVOCABLY AND UNCONDITIONALLY AUTHORIZE CASHMAN TO CHARGE ALL AMOUNTS DUE UNDER THIS AGREEMENT TO ANY CREDIT CARD YOU PROVIDE TO US, AND YOU AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS CASHMAN WITH RESPECT TO THE SAME.

7. **Security Deposit.** You agree that we may deduct any amount you owe us from any deposit you have provided to us. The amount of such deposit is not a limit of your liability or responsibility hereunder. You will not be entitled to interest on any deposit.

8. **Possession/Title.** We own the Equipment, and title in and to all of the Equipment will remain ours at all times. You are entitled only to use and possess the Equipment for the Term, subject to any extension approved by us in writing, pursuant to the terms of this Agreement. If you retain any of the Equipment beyond the agreed Term without purchase or our express written consent, you will be deemed to have materially breached this Agreement. You will not take, grant or permit the taking of (and you hereby waive any and all) liens or other similar claims on any portion of the Equipment, and you will take such actions as may be necessary, at your sole cost and expense, to ensure that any and all such liens are released as soon as possible. At all times, Customer shall advise Cashman of the exact location and condition of the Equipment. Cashman may enter any job, building or place to inspect the Equipment.

9. **Delivery and Retrieval.** You will take delivery of the Equipment at a Cashman location and return it to a Cashman location at the end of the Term, subject to any extension approved by us in writing. Upon your request, and for an additional charge to be agreed, we will deliver and/or retrieve the Equipment to/from the location specified on the Face Pages. You agree to provide our personnel with reasonable access to the Site at all times and agree to refrain from interfering with our delivery and/or retrieval of the Equipment. If lawful entry to the Site is impossible at the time agreed upon

for delivery or retrieval, you agree to pay the full amount of the delivery / retrieval charge for such attempt, plus any additional Rent incurred.

10. **Loading and Unloading.** You are responsible for the loading and unloading of the Equipment. IF OUR EMPLOYEES ASSIST IN LOADING OR UNLOADING THE EQUIPMENT, YOU ASSUME THE RISK OF ANY RESULTING DAMAGE OR INJURY AND SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS CASHMAN FROM AND AGAINST ANY LOSS, COST OR EXPENSE (INCLUDING ATTORNEYS' FEES AND EXPENSES) ARISING FROM OR RELATED TO THE SAME, WHETHER OR NOT CAUSED, IN WHOLE OR IN PART, BY OUR NEGLIGENCE OR THE NEGLIGENCE OF OUR EMPLOYEES, AGENTS OR ASSIGNS.

11. **Receipt/Inspection of Equipment.** You acknowledge that you have received, inspected, examined and accepted the Equipment and that it is safe, in good operating condition and repair and otherwise in all ways acceptable to you. You have selected the Equipment based on your determination that it is appropriate for your purposes, use, application and environment, and not based on any recommendation by us.

12. **Safety Instructions.** You acknowledge that you have received, carefully reviewed and are satisfied with the training, instructions, operating and user manuals and other information (including all training required under applicable OSHA and/or ANSI Standards, if any) regarding the proper and safe transportation, use, maintenance, repair and storage of the Equipment ("Instructions") which may have been provided by the OEM and/or our employees. You will fully comply with, and will cause your employees and agents to read and fully comply with, all such Instructions. If you discover differences between any Instructions provided by us and those provided by the OEM, you agree to follow the OEM's Instructions. You will use the Equipment only for the purpose for which it was manufactured, in a reasonable and safe manner. USE OF THE EQUIPMENT FOR ANY PURPOSE OR IN ANY MANNER OTHER THAN AS SPECIFIED ABOVE, OR CONTINUED USE OF EQUIPMENT THAT IS DEFECTIVE, DAMAGED OR MALFUNCTIONING, MAY RESULT IN INJURY TO PERSONS OR PROPERTY, OR DEATH. You agree to immediately discontinue use of the Equipment if it is found to be defective, in need of repair or maintenance or otherwise not properly functioning.

13. **Use of Equipment.** The Equipment is authorized for use only for its ordinary purpose at the Site. You agree not to, and will ensure that your employees do not: (i) use the Equipment or any portion thereof for any other purpose; (ii) use it for any illegal purpose; (iii) remove it from the Site unless authorized in writing by us; (iv) use it without first ensuring that it has been properly maintained and that all oil, pressure and fluid levels are within the limits specified by us, the OEM and the applicable operating and/or maintenance manuals; (v) use it in any unsafe condition or manner; (vi) permit its use by any person other than yourself or those of your employees who are skilled, experienced, trained and authorized in its operation; (vii) attempt to repair it without our prior specific written approval; (viii) abuse, misuse, overuse, commit waste of or otherwise permit any damage to or destruction of the Equipment; or (ix) surrender possession of it to any other person except a licensed common carrier that you retain to return it to us with our prior written approval.

14. **Care of Equipment.** You must (i) protect the Equipment against misuse, exposure to adverse conditions and any other abuse or neglect, (ii) ensure that it remains in good operating condition and (iii) is returned to us at the end of the Term, subject to any extension approved by us in writing, in the condition required in Section 20. You will provide a qualified operator for the Equipment, pay all costs of its operation and provide all necessary fuel, lubricants, accessories and supplies. Cashman will perform the required preventative maintenance during the Rental Period as prescribed in the OEM operation and maintenance manual. Upon request, Customer will make the Equipment available for Cashman to perform such preventative maintenance during Cashman's regular business hours. Customer is not authorized to incur any expense for the account of Cashman.

15. **Loss or Damage.** You are the insurer of the Equipment during the Rental Period. You bear all risk of loss, theft, damage or destruction to the Equipment, regardless of cause (Ordinary Wear excepted). If the Equipment is lost, stolen, damaged or destroyed during the Rental Period, whether or not the same is your fault, you will notify us immediately and pay us (i) the retail value of the parts and labor necessary to repair the Equipment if damaged, or (ii) the actual replacement value of a replacement unit if lost, stolen, destroyed or damaged beyond our reasonable ability to repair it; and in either case, all packing, shipping, handling, storage and other associated costs. Rent previously paid will not be applied against the above-referenced charges and Rent will continue to accrue during all repair and replacement periods. Customer shall furnish Cashman with a complete written report of any accident involving the Equipment, including, but not limited to names and addresses of all witnesses and persons involved.

16. **Ordinary Wear.** Ordinary Wear will not be considered damage. Damage which is not Ordinary Wear (and for which you will be solely responsible) includes, without limitation, theft, mysterious disappearance, damage due to overloading or exceeding rated capacities, tire damage, non-standard use, exposure to corrosive or harsh environments, overturning (partial or complete), improper use, misuse, abuse, neglect, accidents, intentional damage and transportation or operation without required or recommended coolants, lubricants, hydraulic fluid, air pressure levels, supports and/or safety equipment.

17. **Tickets, Fines and Penalties.** You agree to promptly pay all fines, penalties, citations, parking tickets, traffic tickets, tolls, court costs, attorneys' fees and other charges assessed in connection with your use, parking, storage, transportation and/or possession of the Equipment.

18. **Equipment Failure.** In the event that any of the Equipment fails to start, breaks, becomes unsafe or is in need of maintenance or repair, you agree to immediately discontinue use, notify us and, if directed to do so, return the Equipment to us. You further agree not to repair or have anyone else repair any Equipment. Failure to timely notify us will result in your being charged for all time for which the Equipment is outstanding.

19. **Equipment Failure Remedy.** If you notify us timely in accordance with Section 18 and immediately return the Equipment to us, we will promptly, at our option: (i) repair the Equipment; (ii) provide you with reasonably similar replacement equipment, as available; or (iii) cancel this Agreement and adjust the Rent. You agree that the foregoing will constitute your exclusive remedy for Equipment failures and malfunctions, and that we will have no obligation other than as set forth in this Section with respect to any Equipment that fails to function properly.

A LARGER FONT COPY OF THESE TERMS AND CONDITIONS IS AVAILABLE UPON REQUEST.

20. **Return of Equipment.** You agree to return the Equipment to us during our normal business hours at or before the end of the agreed Term, subject to any extension approved by us in writing, or, if earlier, at our request upon three (3) days' notice. Customer shall be liable for all damages to or loss of the Equipment occurring because it was not returned within Cashman's regular business hours. You agree to ensure that, upon return to us, the Equipment is clean, free of all Hazardous Substances, rental-ready, and otherwise in substantially the same order, condition and repair as at Time Out, Ordinary Wear excepted.

21. **Failure to Timely Return.** If you fail to timely return any item of Equipment or make it available for our retrieval, you agree to pay any additional Rent incurred and all costs and expenses (including without limitation, attorneys' fees) we incur arising from or in connection with any (i) collection and/or repossession activities we elect to pursue; (ii) loss of or damage to any Equipment; and/or (iii) injuries or damages to persons or property, directly or indirectly resulting therefrom.

22. **Retaking of Equipment.** If any Equipment is not returned to us upon your default, the expiration or termination of the Term, or if in our view, it shall become necessary for us to retake the Equipment to protect it from loss or damage, we shall be entitled, at our option, to immediately and WITHOUT NOTICE, retake possession and control of, immobilize and/or render inoperable, any or all such Equipment without interference from you and WITHOUT PROCESS OF LAW. In the event we elect to do so, you agree (i) to provide us with immediate access to each premises where the Equipment or any portion thereof may be located; (ii) to gather and make the Equipment available for retrieval by us; (iii) to render such other assistance as we may deem necessary, and (iv) that neither we nor our agents will be liable for property damage, trespass, forcible entry, unlawful detainer or other similar transgression. You hereby irrevocably appoint us as your attorney-in-fact, which appointment is coupled with an interest, for the purpose of taking such actions and executing such documents as we may deem appropriate, in order to effect the foregoing remedies (or any of them). TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOU (FOR YOURSELF AND FOR YOUR HEIRS, ADMINISTRATORS, REPRESENTATIVES, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS) HEREBY WAIVE, AND AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS CASHMAN, ITS AFFILIATES AND THEIR RESPECTIVE OWNERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DEFICIENCIES, JUDGMENTS, SETTLEMENTS, INTEREST, AWARDS, FINES, CAUSES OF ACTION, DAMAGES, LIABILITIES, COSTS, PENALTIES, TAXES, ASSESSMENTS, CHARGES, PUNITIVE DAMAGES AND EXPENSES (INCLUDING ATTORNEYS' FEES, FREIGHT, STORAGE, LABOR, PACKING AND SHIPPING) ARISING FROM OR ASSOCIATED WITH SUCH RETAKING.

23. **Rental Equipment Protection.** The Rental Equipment Protection ("REP") Program is OPTIONAL and MAY BE DECLINED. If you decline REP, or if you fail to pay the REP Fee, you will be responsible for all damage, repair(s) and replacement(s) of/to the Equipment at the full replacement value. REP covers construction, forestry, power, agriculture, material handling, and other non-excluded equipment. REP excludes vehicles licensed for the road while in transit and underground mining. REP is a waiver of claims to Cashman for perils covered by REP to the Equipment. It is not "insurance" for you, but can serve to supplement or replace physical damage insurance for you on the Equipment. REP covers up to \$500,000.00 per occurrence. If you purchase REP you will have no liability to Cashman for physical damage to the Equipment up to the covered amount, except that you will remain liable to Cashman in all events for damage or loss caused in whole or in part by: (a) your breach of any provision of Agreement; (b) criminal/fraudulent acts; (c) loss of use – REP does not cover loss of use while the Equipment is being repaired; (d) mechanical/electrical breakdown; (e) missing property; (f) Ordinary Wear; (g) weight of load; (h) damage to tires, unless caused by a covered peril. In the event of a claim, Customer is responsible for the deductible: (a) \$1,000.00 for equipment valued up to \$25,000.00; or (b) \$2,500.00 for equipment valued greater than \$25,000.00. Should Customer fail to provide a certificate of insurance with the coverages and endorsements set forth in the Rental Insurance Requirements available at www.cashmanequipment.com/terms; Customer shall pay Cashman fifteen percent (15%) of the Agreement value to cover the Equipment with REP. REP covers the following perils including, but not limited to: (a) accidental damages; (b) collisions; (c) overturns/rollovers; (d) falling objects; (e) fire; (f) theft; (g) vandalism; (h) flood (submersion and acts of nature); (i) earthquake; (j) hail; (k) wind; (l) tornado; (m) other non-excluded perils. Cashman will not subrogate for perils covered by REP.

24. **Refueling.** We offer the following refueling options:

- a. **Fuel Service Option.** If you accept the "Fuel Service Option" at Time Out, you will (i) be charged for all fuel in the fuel tank(s) at Time Out, as shown on the Face Pages; (ii) not be required to pay us any other fuel service charge; and (iii) not receive any credit for any fuel remaining in the fuel tank(s) at the end of the Rental Period. Your cost to refuel the Equipment yourself prior to returning it to us may be lower than the Fuel Service Option.
- b. **Customer Refueling Option.** If you do not accept the "Fuel Service Option" at Time Out, you agree to return the fuel level of the Equipment to its level at Time Out. If you return Equipment with less fuel than was in it when you received it, you agree to pay us a fuel service charge at the then applicable per-gallon rate. To calculate this amount, we multiply such per-gallon rate by the number of gallons needed to refill the fuel tank to its level at Time Out, as determined by reading the fuel gauge and rounding to the nearest 1/8th of a tank.

25. **Assumption of Risk.** You acknowledge that the possession, use, transportation and/or storage of the Equipment may give rise to the risk of personal injury and/or property damage. YOU VOLUNTARILY ASSUME ALL SUCH RISK AND RELEASE AND DISCHARGE US AND THE EQUIPMENT FROM ANY AND ALL LIENS, LIABILITIES AND CLAIMS ARISING IN CONNECTION WITH THE SAME, INCLUDING WITHOUT LIMITATION, ANY AND ALL CLAIMS ARISING FROM OR IN CONNECTION WITH OUR NEGLIGENCE (OTHER THAN OUR INTENTIONAL MISCONDUCT).

26. **Limitation of Liability.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR OTHERWISE TO THE CONTRARY, WE ARE NOT LIABLE TO YOU OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH

DAMAGES WERE FORESEEABLE AND WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL OUR AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF AGREEMENT, WARRANTY, STRICT LIABILITY TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE LESSER OF (i) THE TOTAL RENT PAID HEREUNDER WITHIN THE MOST RECENT SIX (6) MONTHS OR (ii) \$25,000.

27. **Warranty Waiver.** THE EQUIPMENT IS PROVIDED "AS IS, WHERE IS" AND "WITH ALL FAULTS." WE ARE NEITHER THE OEM NOR THE AGENT OF THE OEM. ALTHOUGH WE MAY ADMINISTER WARRANTIES ISSUED BY THE OEM, YOU ACKNOWLEDGE AND AGREE THAT (i) ANY EXPRESS WARRANTIES BY THE OEM FOR THE EQUIPMENT ARE NOT OUR RESPONSIBILITY; (ii) THE OEM'S WARRANTY MAY CONTAIN LIMITATIONS; AND (iii) YOU MAY INCUR CERTAIN REPAIR, TRANSPORTATION OR OTHER CHARGES WHICH ARE NOT COVERED BY THE OEM'S WARRANTY. WE MAKE NO WARRANTY WITH RESPECT TO THE EQUIPMENT, EXPRESS OR IMPLIED (INCLUDING, WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF CONDITION, COMPLIANCE WITH SPECIFICATIONS OR REGULATIONS, QUALITY, DURABILITY, SUITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE), NOR DO WE MAKE ANY WARRANTY AGAINST INTERFERENCE, INFRINGEMENT, THAT THE EQUIPMENT IS FIT FOR YOUR INTENDED USE, APPLICATION OR ENVIRONMENT, OR THAT IT IS FREE FROM DEFECTS (LATENT OR PATENT). NO WARRANTIES SHALL BE DEEMED TO EXIST WITH RESPECT TO THE EQUIPMENT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT. ACCORDINGLY, YOU HEREBY WAIVE ANY AND ALL IMPLIED WARRANTIES. WE WILL NOT BE RESPONSIBLE TO YOU OR TO ANY THIRD PARTY FOR ANY LIABILITIES, CLAIMS, INJURIES, LOSSES, COSTS OR DAMAGES ARISING FROM OR ASSOCIATED WITH THE USE OR ANY FAILURE OF, OR ANY UNKNOWN DEFECT IN OR WITH RESPECT TO, ANY OF THE EQUIPMENT. Any warranty by Cashman shall be null and void and have no legal effect if you fail to pay any amounts due for the Equipment at issue.

28. **Indemnity.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOU HEREBY AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS CASHMAN, ITS AFFILIATES AND THEIR RESPECTIVE OWNERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY AND ALL THREATENED OR ACTUAL CLAIMS, LOSSES, DEFICIENCIES, JUDGMENTS, SETTLEMENTS, INTEREST, AWARDS, FINES, CAUSES OF ACTION, DAMAGES, LIABILITIES, COSTS, PENALTIES, TAXES, ASSESSMENTS, CHARGES, PUNITIVE DAMAGES AND EXPENSES (INCLUDING ATTORNEYS' FEES AND EXPERT WITNESS FEES) OF ANY NATURE WHATSOEVER ARISING OUT OF OR RELATED TO (i) THE OPERATION, POSSESSION, USE, FAILURE OR MAINTENANCE OF THE EQUIPMENT WHILE ON RENT TO YOU. (ii) PERSONAL INJURY, DEATH OR PROPERTY DAMAGE OR LOSS OF ANY NATURE WHATSOEVER ARISING OUT OF OR RELATED TO THE EQUIPMENT WHILE ON RENT TO YOU; (iii) ANY BREACH BY YOU OF THIS AGREEMENT OR ANY APPLICABLE LAW OR (iii) ANY ACT OR OMISSION OF YOU OR YOUR EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS, AFFILIATES OR INVITEES.

29. **Insurance.** You agree to maintain such insurance, with such insurers, in such amounts, for such duration and with such endorsements and certificates as set forth in Cashman's Insurance Requirements available at www.cashmanequipment.com/terms. Such insurance shall cover all operations and contractual obligations, as well as any and all damage or liability arising in connection with the handling, transportation, maintenance, operation, use or possession of the Equipment during the Rental Period. Any insurance we carry will be deemed to be in excess of your insurance. If you do not provide evidence of such insurance, the charge associated with the REP will automatically be included in the Rent.

30. **Customer Warranties.** In addition to the other warranties contained herein, you warrant that (i) if an entity, you are duly organized and validly existing in good standing; (ii) you are duly authorized to execute, deliver and perform your obligations under this Agreement; (iii) when executed and delivered by each Party, this Agreement will constitute your legal, valid and binding obligation, enforceable against you in accordance with its terms; (iv) you are not insolvent and are paying all of your debts as they become due; (v) the Equipment shall at all times be used (a) solely for your business and not for personal, family or household use, and (b) in accordance with the use and/or instructional materials for the purpose for which it was intended; (vi) any payments made pursuant to this Agreement are intended by you to be a substantially contemporaneous exchange for new value given to you; and (vii) each payment made of a debt incurred by you under this Agreement is or was in the ordinary course of your business or financial affairs.

31. **Security.** To the extent permitted under applicable law, in order to secure payment and performance of your obligations arising under this Agreement, you hereby grant to us (i) a continuing security interest in (a) any and all personal property owned by you and located at the Site, and (b) all personal property placed in the Equipment, and (ii) a mechanic's lien on the Site and all improvements constructed therein or thereon. You further appoint Cashman as your irrevocable attorney-in-fact to file, at your cost, any financing statement (and any amendments, renewals and related instruments) (i) to perfect such security interest, and/or (ii) to release, terminate and void Cashman's security interest. You shall execute any such statements or other documentation necessary to perfect such security interest. This Agreement shall operate as a security agreement for the purposes above, vesting in us all rights available under the Uniform Commercial Code as adopted in the State of Nevada ("UCC").

32. **Compliance with Law.** You agree to comply fully, at your sole cost, with all applicable federal, state and local laws, rules and regulations applicable to you and/or the possession, storage, use and transportation of the Equipment.

33. **Events of Default.** The following are defaults by you: (i) failure to pay any amount due by you to us; (ii) ceasing to do business, becoming insolvent, taking advantage of any law for the relief of debtors, filing bankruptcy or making an assignment for the benefit of creditors; (iii) failure to perform any obligations to us hereunder or otherwise; (iv) any representation or warranty by you is false or misleading; (v) your failure to return the Equipment at the end of the Rental Period or upon demand; (vi) abuses, neglects or attempts to remove, sell, transfer, encumber, part with possession of or

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sublease the Equipment or any item thereof; or (vii) if we deem ourselves insecure with respect to your performance.

34. Remedies. Upon any default by you, we may exercise any one or more of the following remedies without notice of default: (i) terminate this Agreement; (ii) seek immediate relief from any automatic stay, seek specific performance or injunction or recover damages; (iii) stop delivery of the Equipment or any other equipment ordered by you; (iv) declare all amounts due and coming due by you, together with interest and late fees, immediately due and payable; (v) surrender any insurance policies and receive the unearned premiums; (vi) without terminating this Agreement, take possession of the Equipment or any other equipment sold, rented or leased to you, including entering the premises where such equipment is located WITH OR WITHOUT PROCESS OF LAW, and sell, relet or otherwise dispose of such equipment as a secured party under the UCC and deduct all expenses, costs, attorneys' fees, and other charges incurred by us; (vii) recover any deficiency from you; (viii) perform, or cause performance of, your obligations at your cost and/or (ix) if such default deprives us of the use of any item of Equipment, purchasing replacement equipment and recovering the cost of such equipment (together with any associated costs) from you. In no event shall we be required to sell or relet the Equipment or rebate or pay back any gain or profit as a result of leasing the Equipment.

35. Applicable Law/Venue. This Agreement (and all matters arising out of or relating to this Agreement) will be governed in all respects by the laws of the State of Nevada without regard to any choice or conflict of law provisions. Each Party hereby irrevocably submits to the exclusive jurisdiction of the courts situated in Clark County in the State of Nevada and waives all claims that such courts lie in an inconvenient forum.

36. Waiver of Jury Trial. EACH PARTY KNOWINGLY, VOLUNTARILY, IRREVOCABLY AND UNCONDITIONALLY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED ON OR ARISING OUT OF THIS AGREEMENT OR THE SUBJECT MATTER HEREOF (INCLUDING, WITHOUT LIMITATION, CONTRACT, TORT, BREACH OF DUTY, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS), AND WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY (i) UNDERSTANDS THAT THIS IS A WAIVER OF IMPORTANT LEGAL RIGHTS AND (ii) ACKNOWLEDGES HAVING HAD A REASONABLE OPPORTUNITY TO DISCUSS THIS WAIVER AND ITS EFFECTS WITH LEGAL COUNSEL.

37. Dispute Resolutions. Any dispute or controversy arising under or in connection with this Agreement shall first be resolved by informal discussion between senior management of the Parties. If informal discussion fails to produce a resolution, the Parties must then attend non-binding mediation in the County of Clark, Nevada with a mutually agreeable mediator. If mediation fails to produce a resolution, or if the Parties cannot agree on a mediator, any dispute or controversy arising out of or relating to this Agreement shall be settled by binding arbitration conducted by a single arbitrator. Either Party may initiate arbitration, which shall be conducted in the County of Clark, Nevada in accordance with the commercial arbitration rules of the Judicial Arbitration and Mediation Services, Inc. ("JAMS"). Each Party shall share equally the cost of the arbitration and shall bear its own attorneys' fees, unless the arbitrator awards such fees and costs to a Party. The arbitrator shall not have the power to award any punitive damages.

38. Enforcement. Subject to Section 37, you agree to pay all costs we may incur in enforcing or exercising our rights under this Agreement, whether or not suit is filed.

39. Data Sharing. Data concerning equipment purchased, rented or leased from Cashman, including data as to the condition and operation of such equipment, may be collected and transmitted to Caterpillar Inc., its affiliates and/or its dealers, including Cashman. BY EXECUTING THIS AGREEMENT, CUSTOMER ACKNOWLEDGES RECEIPT AND REVIEW OF THE CASHMAN DATA GOVERNANCE STATEMENT AND CATERPILLAR DATA GOVERNANCE STATEMENT INCORPORATED HEREIN BY REFERENCE AND AVAILABLE AT www.CashmanEquipment.com/terms.

40. Severability. If any provision of this Agreement shall be deemed invalid, illegal or unenforceable by any court of competent jurisdiction, such provision shall be automatically modified to the minimum extent necessary to render the same valid and enforceable, giving due consideration to the purpose and economic substance of this Agreement, or if no such modification shall be possible, deleted, and the remainder of this Agreement will remain valid and enforceable.

41. No Waivers. No exercise, nor any failure or delay by us in the exercise of, any right or remedy available hereunder, at law or in equity will be deemed an election of remedies or a waiver of any such rights and/or remedies. Remedies hereunder shall not be exclusive, but shall be cumulative and in addition to all other remedies existing at law or in equity. Our receipt, acceptance and/or negotiation of, or any endorsement on, any check or draft received from you will not operate to waive or release, in whole or in part, any claim arising hereunder or in connection herewith (except as to the portion thereof actually received by us in cash or other good funds).

42. Time. Time is of the essence of this Agreement.

43. Unconditional Obligations. You acknowledge that your obligations to pay all Rent and other amounts due hereunder and to perform all the terms hereof shall be absolute, independent and unconditional, and shall not be limited or terminated by any unanticipated fact or circumstance, unless the obligation to pay or to perform the same shall be limited or terminated by the express provisions of this Agreement. You hereby waive, to the extent permitted by applicable law, any and all rights you may now or hereafter have, by law or otherwise, to terminate this Agreement and/or any of your obligations hereunder.

44. Assignment and Subletting. We may, at our sole option, assign all or any portion of our rights and obligations under this Agreement without notice or consent. However, in the event any assignee agrees to assume the obligations of Cashman, you agree that Cashman shall be released from all further liability hereunder. YOU MAY NOT ASSIGN YOUR RIGHTS UNDER THIS AGREEMENT, NOR MAY YOU SUBLEASE OR LOAN ANY OF THE EQUIPMENT TO ANY THIRD PARTY WITHOUT OUR PRIOR WRITTEN CONSENT. ANY SUCH ATTEMPTED ASSIGNMENT OR SUBLEASE BY YOU WILL, AT OUR OPTION, BE DEEMED VOID AB INITIO.

45. Signatures. This Agreement may be signed in counterparts, each of which will be deemed valid and enforceable, so long as they are identical (if not, the version signed by Cashman will control). This Agreement shall not be binding upon us until signed by one of our authorized representatives

(prior to which, if first signed by you, it will be deemed a proposal by you to us, which we may accept or reject, at our sole option). For this purpose, facsimile and electronic signatures will be deemed the equivalents of originals.

46. Headings. Headings herein are for reference only and do not affect the interpretation of this Agreement.

47. Survival. Provisions of this Agreement that by their nature should apply beyond their terms will survive and remain in force after any termination or expiration of this Agreement including, but not limited to, Sections 25 (Assumption of Risk), 26 (Limitation of Liability), 27 (Warranty Waiver), 28 (Indemnity), 29 (Insurance), 32 (Compliance with Law), 35 (Applicable Law/Venue), 36 (Waiver of Jury Trial), 37 (Dispute Resolution), 38 (Enforcement) and 47 (Survival).

48. Future Rentals. You acknowledge that the terms of this Agreement will be deemed to apply not only to the Equipment and other items (if any) identified on the Face Pages, but also to all additional equipment and other items you may rent from us (except as to the Rent of such items, as applicable, which will be charged at our published rates as of the date of each such rental), whether on the date of this Agreement or at any time in the future (except only as to any equipment and/or other items the rental of which is governed by a separate written agreement). The placing of a rental order with Cashman, the issuance of a purchase order for rental of Equipment from Cashman, or the receipt, acknowledgement or acceptance of Equipment for rental by Customer constitutes Customer's acceptance of this Agreement exactly as written. Cashman reserves the right, in its sole discretion, to modify or replace any of these Terms and Conditions at any time, and such modifications or replacements shall apply to all rentals of Equipment from Cashman after the date of such modification, amendment or replacement. It is Customer's responsibility to check these Terms and Conditions each time that Customer is renting Equipment from Cashman.

49. Entire Agreement. This Agreement, including all related exhibits, schedules, attachments and appendices, constitutes the sole and entire agreement of the Parties with respect to the Equipment and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect thereto. This Agreement may be amended only in a writing signed by both you and us. No purchase order in connection with the Equipment shall be binding on Cashman unless accepted in writing. Any such purchase order shall create a separate contract consisting of the terms of this Agreement and any additional terms proposed by such purchase order; if the terms of such purchase order conflict with the terms of this Agreement, the terms of this Agreement shall control.

A LARGER FONT COPY OF THESE TERMS AND CONDITIONS IS AVAILABLE UPON REQUEST.