

BIRCH EQUIPMENT RENTAL & SALES CONTRACT TERMS AND CONDITIONS

No operators are furnished, directly or indirectly, with our equipment or vehicles. In consideration of renting/leasing of the vehicles and/or equipment (herein "the equipment") described on the front of this contract it is agreed as follows:

- 1. DEPOSIT.** Customer acknowledges that one of the purposes and intent of the deposit is to secure and guarantee complete performance of customer's obligations under the contract.
- 2. WARNING.** The use of false or fictitious identification to obtain the equipment or the failure to return the equipment upon the expiration of this contract may be considered a theft resulting in criminal prosecution. Your attention is directed to Washington State Law R.C.W. 9A.45.060 and or 9A.56.030-050, expiration date shall mean "return date."
- 3. POSSESSION/TITLE.** Customers' right to possession of the equipment terminates on the return date indicated on the front of this contract. Retention of Possession after this date constitutes a material breach of this agreement. This is of the essence of this agreement. Any extension of this agreement must be agreed upon in writing. Title to the equipment is and shall remain Birch Equipment's. Birch Equipment may retake said items without further notice or legal process and use whatever force is reasonably necessary to do so. Customer hereby agrees to indemnify, defend and hold Birch Equipment harmless from any and all claims and costs arising from such retaking. If equipment is levied upon, customer shall notify Birch Equipment immediately.
- 4. RECEIPT/INSPECTION OF EQUIPMENT.** Customer hires the equipment on an "as is" basis. Customer acknowledges that they have personally inspected the equipment prior to its leaving Birch Equipment (regardless of point of delivery) and finds it suitable for their needs. Customer acknowledges receipt of all items listed in this agreement are in good working order and repair and that they understand its proper operation and use without further instructions regarding operation and use from Birch Equipment. Customer acknowledges that they have had an opportunity to inspect all hitches, bolts, safety chains, hauling tongues and other devices and materials used to connect the equipment in a secure and operative condition.
- 5. SOLVENCY.** Customer represents to Birch Equipment that they are not insolvent and should they become insolvent, that they will return all equipment to Birch Equipment immediately and pay balance in full.
- 6. RENTAL PERIOD/RATE/PAYMENT.** Rental charges begin immediately upon delivery of the equipment to the location directed by the customer or upon equipment leaving Birch Equipment yard, whichever happens first. Rental charges end upon return of the equipment to Birch Equipment in an acceptable condition. If the equipment is returned prior to the end of the minimum rental period, the rental due shall be for the entire minimum rental period. Birch Equipment may terminate rental at any time and retake the equipment without further notice in case of violation by customer of any terms or conditions of this agreement. Customer agrees to pay any collection costs and attorneys fees incurred in collection of this account or any dispute arising under this agreement.

Rental billings shall be calculated as follows:

DEFINITION

- 1 day = up to 8 hours in a 24 hour period
- 1 week = up to 40 hours in a 7 day period
- 1 month = up to 160 hours in a 28 day period

Any hours used, as recorded on the meter, in excess of those listed for any time period will result in additional charges at overtime hourly rates. Additional shifts will result in additional charges and must be authorized prior to rental.

Procedure:

- (a) Rental period less than 1 week. Customer shall be charged the daily rate unless the weekly rate is less. If less, then they will be charged the weekly rate.
- (b) Rental period more than 1 week but less than 1 month. Customer shall be charged the weekly rate unless the monthly rate is less. If less, they will be charged the monthly rate.

7. ORDINARY WEAR AND TEAR. "Ordinary wear and tear" shall mean only the normal deterioration of the equipment caused by ordinary, reasonable and proper use of the equipment

on a one-shift basis. Damage, which is not "ordinary wear and tear," includes, but is not limited to, damage resulting from lack of fuel, lubrication or contaminated fuel, failure to maintain proper oil, water, hydraulic or air pressure levels, damage due to overturning, overloading or exceeding rated capacities, improper use, abuse, lack of cleaning and tire damages. Customer shall be responsible for all loss and damage not caused by ordinary wear and tear.

8. COMPLIANCE WITH LAWS / USE OF EQUIPMENT. Customer agrees not to use or allow anyone to use the equipment for any illegal purpose or in any illegal manner. Customer acknowledges that Birch Equipment has no physical control over the use of the equipment. Customer agrees at their sole cost and expense to comply with all municipal, county, state and Federal laws, ordinances and regulations (including O.S.H.A. and W.I.S.H.A.) which may apply to the use of the equipment during the rental period. Customer further agrees to pay all licenses, fees, permits or taxes arising from their use of the equipment, including any subsequently determined to be due as a result of an audit. Customer shall not allow any person who is not qualified to operate the equipment. Customer shall not allow any person to use or operate the equipment when it is in need of repair or when it is in an unsafe condition or situation. Customer agrees not to modify, misuse, harm or abuse the equipment, nor permit any repairs to the equipment without Birch Equipment's written permission, or allow a lien to be placed upon equipment. Customer agrees to check filters, oil, fluid levels, air pressure, clean and visually inspect the equipment at least daily and to discontinue use and immediately notify Birch Equipment when equipment is found to need repair or maintenance. Customer acknowledges that Birch Equipment has no responsibility to inspect the equipment while it is in customer's possession. If equipment becomes unsafe or requires repair, customer shall discontinue using it and notify Birch Equipment immediately.

9. RETURN OF EQUIPMENT. Customer agrees to return the equipment to Birch Equipment during regular business hours upon "return date" in as good condition as when received, ordinary wear and tear excepted.

10. DISCLAIMER OF WARRANTIES. Birch Equipment makes no warranty of the merchantability or fitness for any particular use or purpose either express or implied. There is no warranty or representation that the equipment is fit for customer's particular intended use, or that it is free of latent defects. Birch Equipment shall not be responsible to customer or any third party for any loss, damage or injury caused by, resulting from, or in any way attributable to the operation of, use of, or any failure of the equipment. Birch Equipment shall not be responsible for any defect or failure unknown to Birch Equipment. Customer's sole remedy for any failure of or defect in the equipment shall be termination of the rental charges at the time of failure, provided that customer notifies Birch Equipment immediately of such failure and returns the equipment to Birch Equipment within twenty-four (24) hours of such failure.

11. DAMAGE AND THEFT RESPONSIBILITY. The Damage and Theft Responsibility

Statement on the front of this agreement means the Customer agrees to reimburse Birch Equipment for all costs to repair or replace equipment damaged or stolen. Specifically but not limited to the following:

- (a) Any item of equipment or part thereof which is not returned for whatever reason, including theft;
 - (b) Loss or damage resulting from overloading or exceeding rated capacity of the equipment;
 - (c) Loss or damage to motors or other electrical appliances or devices caused by artificial current;
 - (d) Damage to tires, tubes and wheels caused by blowout, bruises, cuts, and other causes inherent in the use of the equipment;
 - (e) Loss due to mysterious disappearance, wrongful conversion by a person entrusted with the equipment or a shortage disclosed on inventory;
 - (f) Loss or damage caused by infidelity of customer, its employees, or persons to whom the equipment is entrusted;
 - (g) Loss or damage resulting from misuse, abuse, failure to maintain cleanliness, proper oil, fuel, hydraulic, coolant or pressure levels, lack of lubrication or other normal servicing of equipment;
 - (h) All damage resulting from overturning;
 - (i) All damage or loss resulting from use of the equipment in violation of any provision of this agreement, violation of any law, ordinance or regulation or operation in an improper or negligent manner;
 - (j) Overhead damage;
 - (k) Damage from dirtying of equipment by paint, mud, plaster, concrete, resin or any other material. Customer is responsible for cleaning and reimbursement as required. If customer has insurance covering such loss or damage, customer shall exercise all rights available to them under said insurance, take all action necessary to process such claim and customer further agrees to assign said claim and any and all proceeds from such insurance shall be payable to Birch Equipment. Customer may provide Birch Equipment with complete information concerning insurance coverage carried on request.
 - (l) Loss or damage due to any accident or occurrence, whatsoever;
 - (m) Rental charges will continue at 75% of published rates until any resultant damages have been repaired and unit is restored to rentable condition.
- 12. PURCHASE ORDERS.** The use of customer's purchase order number on this contract is for customer's convenience and identification only.
- 13. SUBLETTING / LOCATION OF EQUIPMENT.** Customer agrees not to sublet, loan or assign the equipment. Customer must state where equipment is to be used if asked. Customer shall not move the equipment from the address at which customer represented it was to be used.
- 14. DEFAULT.** Should customer in any way fail to observe or comply with any provision of this contract, Birch Equipment may, at their sole option, exercise any and all of the following remedies:
- (a) Termination of this contract.
 - (b) Retake the equipment.
 - (c) Declare any outstanding rent and charges due and payable and initiate legal process to recover the monies.
 - (d) Pursue any of the remedies available to Birch Equipment (exercise of any remedy available to Birch Equipment shall not constitute an election of remedies or a waiver of any additional remedies to which Birch Equipment may be entitled).
- 15. RETAKING OF EQUIPMENT.** If for any reason it becomes necessary for Birch Equipment to retake the equipment, Birch Equipment may retake the equipment without further notice or further legal process.
- 16. ACCIDENTS, REPORTING AND INDEMNIFICATION.** In the event of any accident resulting in property damage or bodily injury arising from the use of the equipment while it is in Customer's possession, Customer hereby expressly agrees to assume responsibility for themselves, their own employees, agents and assigns negligence and agrees to indemnify, defend and hold Birch Equipment harmless from any claim or action arising therefrom, including any costs and attorneys fees incurred in connection therewith. Customer agrees to notify Birch Equipment immediately in case of any accident and to obtain the names, addresses, phone numbers and other pertinent information from all parties involved and all witnesses.
- 17. NOTICE OF NON-WAIVER / SEVERABILITY.** Any failure of Birch Equipment to insist upon strict performance by customer, shall not be interpreted as a waiver of Birch Equipment's right to demand strict compliance with all other provisions of this agreement. The provisions of this agreement shall be severable so that the unenforceability, invalidity or waiver of any provision shall not effect any other provision.
- 18. LOADING AND UNLOADING GOODS.** Lessee is responsible for loading and unloading the goods. If Lessor's employees assist in loading or unloading the goods, Lessee agrees to assume the risk of, and hold the Lessor harmless for, any property damage or personal injuries, including damage or injuries attributable to the negligence of the Lessor or his employees.
- 19. COLLECTION.** In the event that Birch Equipment must resort to litigation to collect any money due on this contract, or to recover damage costs to personal leased property, customer agrees to pay Birch Equipment's attorney fees, court costs, and other costs of collection. Lessee agrees that venue for any legal action shall be placed in Whatcom County, WA.