

BIRCH EQUIPMENT RENTAL & SALES (Birch) CONTRACT TERMS AND CONDITIONS

No operators are furnished, directly or indirectly, with our equipment or vehicles. Customer expressly acknowledges that Customer and Birch are the only parties to this Agreement, notwithstanding that a reservation for the Equipment may have been arranged by a third party or that a third party may pay for all or part of the rental bill. 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. 9.45.060 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 with Birch. Birch 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 harmless from any and all claims and costs arising from such retaking. If equipment is levied upon, customer shall notify Birch immediately. This rental agreement is subject and subordinate to any party providing financing for the equipment.

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 (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. 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 that they are not insolvent and should they become insolvent, that they will return all equipment to Birch 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 yard, whichever happens first. Rental charges end upon return of the equipment to Birch in an acceptable condition. Customer is responsible for care and safekeeping of equipment from the time of delivery until retrieval by Birch. 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. Rental charges do not include the cost of refueling, any applicable taxes, the cost of the Delivery and Pickup Charges, the cost of the Environmental Surcharge or other miscellaneous charges. Birch charges an environmental surcharge for certain rentals. This is not a government mandated charge. The environmental surcharge is not designed for any particular use and is used at Birch's discretion. Customer acknowledges that items on the front side of this contract are subject to the environmental surcharge and customer agrees to pay that charge.

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 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 a unsafe condition or situation. Customer agrees not to modify, misuse, harm or abuse the equipment, nor permit any repairs to the equipment without Birch 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 when equipment is found to need repair or maintenance. Customer acknowledges that Birch has no responsibility to inspect the equipment while it is in customers' possession. If equipment becomes unsafe or requires repair, customer shall discontinue using it and notify Birch immediately.

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

10. DISCLAIMER OF WARRANTIES. Birch 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 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 shall not be responsible for any defect or failure unknown to Birch. 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 immediately of such failure and returns the equipment to Birch within twenty-four (24) hours of such failure.

11. DAMAGE AND THEFT RESPONSIBILITY. Unless otherwise stated herein the Damage and Theft Responsibility Statement on the front of this agreement means the Customer agrees to reimburse Birch

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. Customer may provide Birch 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. CUSTOMER INSURANCE COVERAGE. Customer agrees to maintain and carry, at Customer's sole cost, the following: 1. **General Liability** insurance (minimum requirements are \$1M each occurrence, \$2M Aggregate); and 2. **Leased/Rented Equipment** insurance for the full replacement cost of the Equipment (min. \$50K), including coverage for all risks of loss or damage to the Equipment. Birch does not provide insurance to customers. Customer shall obtain insurance policies that provide, or are endorsed to provide, that all insurance required hereunder is primary and non-contributory to any other insurance maintained by Birch. Birch shall be named as an additional insured for liability insurance and, if applicable, additional loss payee for the leased/rented equipment insurance. Any deductibles or self-insured retentions shall be the sole responsibility of the Customer. All insurance required by this Rental Agreement shall include a waiver of rights of recovery against Birch or its insurers by the Customer and its insurers, as well as a waiver of subrogation against Birch or its insurers. Customer shall provide Birch at least 30 days notice in writing prior to any cancellation of the required insurance.

13. RENTAL PROTECTION PLAN: The Rental Protection Plan (RPP) is NOT INSURANCE but a fee that modifies certain terms of this rental agreement. Birch may charge customers an RPP fee (15% of gross rental charges) in the event that the customer, does not have **Leased/Rented Equipment** insurance coverage as described in Section 12, and insure for liability for loss due to destruction, repairs, or accidental damage to Birch's rented equipment. In the event that the RPP is charged, and paid by the customer as set forth herein, the customer liability for Birch's rented equipment loss, repairs, damage or destruction shall be limited for each piece of equipment (excluding damage to tires) as follows: a. 10% of the MSLP for loss to Equipment up to a maximum of \$1,000 per piece of Equipment. b. 10% of the repair charges for incidental or accidental damages to Equipment up to a maximum of \$1,000 per piece of Equipment. c. Nothing for the rental charges which would otherwise accrue during the period when damage or destroyed Equipment is being repaired or replaced by Birch, or lost Equipment is being replaced. Customer's limitation of liability for lost, damaged or destruction or repair of Equipment is conditioned on compliance of the following: Birch's election to charge the customer the RPP ii. customer

accepts the RPP in advance of the rental. iii. customer pays the 15% of the gross rental charge as the fee for the RPP plus applicable taxes. iv. Customer fully complies with all terms of the contract. v. Customer's account is current at the time of the loss, theft, damage or destruction of the equipment and all customer accounts with Birch have been fully paid and satisfied, or are current. Even in the event that the RPP is paid by the customer, the Customer's limitation on liability to Birch for the loss, theft, damage or destruction does not apply if any of the following exclusions exist. Exclusions shall mean: loss, theft, damage or destruction of the equipment: 1. due to intentional misuse; 2. overloading 3. loss not reported by customer to Birch at time of incident 4. loss not reported to police within 48 hours of discovery and substantiated by a written police report (promptly delivered to Birch); 5. due to flood, wind, storm, earthquake or other acts of God; 6. RPP DOES NOT COVER DAMAGE TO TIRES AND TUBES. 7. accessories or equipment for which Customer is not charged the RPP. In the event that Birch, at their sole discretion, deems the exclusions exist, the liability of the customer is not limited, although the RPP has been paid by the Customer. AN RPP IS REFLECTED ON THE CONTRACT AS PART OF THE CUSTOMER'S ESTIMATED CHARGES, UNLESS CUSTOMER HAS MADE OTHER CONTRACTUAL ARRANGEMENTS SATISFACTORY TO BIRCH, OR HAS INSURANCE COVERAGE AS SET FORTH IN SECTION 12 HEREIN. The RPP fee is not intended for any particular purpose or placed in an escrow account. RPP fees are used at Birch's discretion. Notwithstanding anything to the contrary in this contract, if Equipment previously lost is later recovered, Birch retains ownership and title to the Equipment regardless of any payments made by the Customer or Customer's insurance company with respect to such Equipment. All prior payments made by Customer including RPP payments are non-refundable and are owned by Birch. Customer agrees to promptly return any equipment that is recovered. Birch shall be subrogated to Customer's right to recover against any person or entity relating to any loss, theft, damage or destruction to the Equipment. Customer agrees to cooperate with assigning Birch all claims and proceeds arising from such loss, theft, damage or destruction and execute delivery to Birch whatever documents are required and take all other necessary steps to secure in Birch such rights at customer's expense.

14. 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. Customer consents to collection and monitoring of electronic information generated by or in connection with the use or location of Birch owned equipment and all data is owned by Birch.

15. DEFAULT. Should customer in any way fail to observe or comply with any provision of this contract, Birch 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 (exercise of any remedy available to Birch shall not constitute an election of remedies or a waiver of any additional remedies to which Birch may be entitled).

16. RETAKING OF EQUIPMENT. If for any reason it becomes necessary for Birch to retake the equipment, Birch may retake the equipment without further notice or further legal process.

17. 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 Customers' 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 harmless from any claim or action arising therefrom, including any costs and attorney's fees incurred in connection therewith. Customer agrees to notify Birch 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.

18. NOTICE OF NON-WAIVER / SEVERABILITY. Any failure of Birch to insist upon strict performance by customer, shall not be interpreted as a waiver of Birch'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 affect any other provision.

19. LOADING AND UNLOADING GOODS. Customer is responsible for loading and unloading the goods. If Birch employees assist in loading or unloading the goods, Customer agrees to assume the risk of, and hold Birch harmless for, any property damage or personal injuries, including damage or injuries attributable to the negligence of the Birch or their employees.

20. PRE PAY CUSTOMERS. Pre Pay customers must pay the anticipated amount due prior to the contract start date. Payment for charges beyond the anticipated rental duration must be paid at the beginning of each bill cycle. Failure to do so may result in retaking of the equipment. For rental or repair contracts when original payments are made by cash or check a credit card is required and will be noted for any incidentals or extensions to the rental or repair contract. By providing us with your credit card number, you are authorizing Birch to charge your credit card for the total amount due on this rental contract.

21. INVOICING. Any disputed invoices must be brought to the attention of Birch in writing to PO Box 30918, Bellingham, WA 98228, within 10 days of receipt of invoice or the invoices/contracts are deemed correct and undisputable. The use of customer's purchase order number on this contract is for customer's convenience and identification only.

22. COLLECTION. In the event that Birch 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's attorney fees, court costs, and other costs of collection. Customer agrees that venue for any legal action shall be placed in Whatcom County, WA. These terms and conditions serve as the Birch's objection to and rejection of any terms and conditions included in Customer's forms that are different from or additional to these Terms and Conditions.

(Rev. 8-2019)