

Industrial Truck & Crane, Inc.

RENTAL AGREEMENT / TERMS AND CONDITIONS (PA)

1. INDEMNIFICATION – Lessee agrees to indemnify and save Lessor, its employees and agents harmless from all claims for death or injury to persons, including Lessor's employees, of all loss, damage or injury to property, including the equipment, arising in any manner out of Lessee's operation. Lessee's duty to indemnify hereunder shall include all costs or expenses arising out of all claims specified herein, including all court and/or arbitration costs, filing fees, attorneys' fees and costs of settlement. Lessee shall be required to indemnify Lessor for Lessor's own negligence or fault, whether the negligence or fault of the Lessor is direct, indirect or derivative in nature. Further, Lessee shall be required to indemnify Lessor for any and all of Lessor's own negligence or fault including gross negligence of the Lessor or Lessor's employees, agents or any other person. However, the indemnification above shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for the Lessee under workers' compensation acts, disability benefits acts, or other employee benefits acts. The Lessee's obligations hereunder shall further not be limited by the amount of its liability insurance and the purchase of such insurance for Lessor shall not operate to waive any of the above obligations.

This provision is separate and distinct from any other provision or paragraph in this contract, including any provision or paragraph concerning partial indemnification and procurement of insurance.

If this paragraph is declared invalid, then all other paragraphs of this contract shall stand.

2. INSURANCE -- The Lessee agrees to purchase the following insurance coverages and to furnish to Lessor certificates of such insurance within ten days from the date of Lessee's execution of this agreement and before taking delivery of the equipment. These certificates should certify that the Lessee is protected on the work with:

- A. Worker's compensation and employer's liability insurance, with limits at least the statutory minimum or \$1,000,000, whichever is greater;
- B. Primary non-contributory commercial general liability insurance on an occurrence basis, including bodily injury and property damage coverage with minimum limits of \$1,000,000 per occurrence and \$2,000,000, in the aggregate;
- C. Excess/umbrella non- contributory insurance in the amount of \$5,000,000; Lessee's policy must be endorsed so that it is primary to all of Lessor's insurance policies.
- D. Inland marine/all risk physical damage insurance to cover the full insurance value of the equipment, including any boom or jib, for its loss or damage from any and all causes, including but not limited to, overloading, misuse, fire, theft, flood, explosion, overturn, accident, and acts of God occurring during the rental term. The valuation of the equipment is listed under the heading of "Details of Equipment", and the parties agree that this is the actual value of the equipment for the purposes of fixing the equipment's insurable value;
- E. All policies are to be written by insurance companies acceptable to the Lessor;
- F. The Lessor is to be included as an additional insured on all liability insurance policies, including umbrella/excess (ISO Form CG 20 10 10 01 and ISO CG 20 37 10 01 must be used); Lessee shall name Lessor as loss payee on all insurance policies. Also, the Lessor is to be named as an additional insured on all liability insurance certificates. Lessee shall provide all such liability insurance certificates to Lessor;
- G. All policies shall be endorsed to require the insurer to give thirty (30) days advanced notice to Lessor prior to cancellation.

In the event of loss, proceeds of property damage insurance on the equipment shall be made payable to Lessor. Lessee's agreements to indemnify and hold harmless from any liability, damage and loss are in addition to, and not an alternative to, these insurance provisions and the purchase of any of the above coverages shall not operate to waive any of the above indemnity provisions.

To the extent that the Lessee may perform under this lease without obtaining the above coverages, such an occurrence shall not operate, in any way, as a waiver of the Lessor's right to maintain any breach of contract action against Lessee.

3. OPERATION OF EQUIPMENT --Lessee agrees to employ only competent, experienced and reliable personnel to operate maintain and assemble/disassemble the equipment. If Lessor exercises the above mentioned option and makes available to Lessee a pool of personnel from which the Lessee selects personnel to operate or assist in the operation of the leased equipment Lessee agrees to indemnify Lessor against and save it harmless from all liability for wages, taxes, insurance contributions, other such payments, benefits under any worker's compensation or similar law and employer's liability charges or other similar expense respecting Lessee's employment of such personnel. Lessee agrees that the equipment and all personnel operating such equipment, including Lessor's employees, are under Lessee's exclusive jurisdiction, supervision and control.

Lessee agrees to provide or otherwise select competent and experienced personnel to direct the operation of the equipment, in accordance with OSHA 29 CFR 1926.1428 signal person qualifications and Lessee further agrees that the standard of care and responsibilities will be in accordance with all American National Standards Institute (ANSI) and that ASME B30.5-2007 (and as amended) shall be used when operating the equipment, specifically Chapter 5-3 Operation, as well as the OSHA 29 CFR Subpart CC Cranes and Derricks in Construction sections 1926.1400 – 1926.1442.

Lessee further agrees to use said equipment in accordance with the manufacturer's instructions and agrees not to exceed the manufacturer's rated load capacities for such or similar equipment. Lessee expressly agrees that counter-weight in excess of the manufacturer's specification shall not be used.

4. RIGHT TO CONTROL -- It is expressly agreed by and between the parties hereto that the equipment and all persons operating the equipment are under the exclusive jurisdiction, supervision and control of Lessee under this lease. It shall be the duty of Lessee to give specific instructions and directions to all persons operating, maintaining, and assembling/disassembling the leased equipment. Lessee specifically agrees that the Lessor has absolutely no control over any person operating or assisting in operating the leased equipment. Lessor may, at its option, provide a pool of personnel from which the Lessee may select or reject personnel for its own use in the operation of, or assisting in the operation of, the leased equipment.

Lessee agrees that if Lessee allows any person from this pool of personnel, or any other person, to operate or assist in operation of the leased equipment, that these persons have been selected and approved by the Lessee and are under the Lessee's exclusive direction and control and are the Lessee's agents, servants and employees, and the Lessee waives the right to make any claim to the contrary. If the Lessee selects a person to operate or assist in the operation of the leased equipment from the pool of personnel which the Lessor may provide at its option, the lease payments made by the Lessee shall include that person's wages, even though that person's wages may be disbursed by the Lessor. This lease is upon the agreement of the parties that the Lessor has no right to replace or substitute personnel except at the direction of and with the approval of Lessee and that the Lessee shall have the right to control, including the right of termination, and shall be deemed to have exercised that right as to all details or operation of the leased equipment and personnel the Lessee selects to operate the equipment.

5. WAIVER OF SUBROGATION/LIEN -- Lessee hereby agrees to waive any and all right of subrogation and any and all lien rights which may accrue to it or its insurers. This shall include, but not be limited to, rights of subrogation and lien rights arising from workers compensation/employer's liability policies or other employee benefit programs or acts, commercial general liability policies, or any other loss incurred by the Lessee, or any other party, as a result of bodily injury or property damage. The Lessee understands that this waiver shall bind its insurers of all levels, and agrees to put these insurers on notice of this waiver and to have any necessary endorsements added to the insurance policies applicable to this lease. The Lessee further agrees that to the extent any insurer fails to recognize and honor this waiver and attempts to subrogate against the Lessor or enforce any lien rights against the Lessor, the Lessee shall be liable to the Lessor for all such sums as the Lessor may be required to pay or otherwise suffer loss of as a result of such subrogation or enforcement of lien rights.

6. GROUND CONDITIONS -- The Lessee hereby agrees that it will assume all responsibility for the ground or soil conditions in the area where the crane is to be stored, parked or operated. The Lessee shall perform or have performed all necessary inspections or testing to determine the nature of the ground or soil and its ability to support the crane while in operation or otherwise. If the ground or soil condition is such that it cannot support the crane, the Lessee shall take all necessary measures to ensure that these conditions are remedied prior to the crane being placed on that ground or soil. These measures include, but are not limited to, the provision of proper shoring or cribbing or other measures.

7. POWER LINES --Lessee assumes all responsibility to protect the equipment and persons in or around the equipment from the danger of power lines. Lessee shall not expose the equipment or any persons in or around such equipment to the danger of energized power lines. All power lines in the work area shall be identified prior to the work beginning. All power lines are to be de-energized prior to the equipment being operated in or around such power lines. Lessee shall contact the local electric utility or other such authorized entity to arrange to have the power lines de-energized prior to beginning work. Even if power lines are de-energized, Lessee shall keep the equipment clear of such power lines at the distance required by OSHA, ANSI and any other safety regulations or standards. If it is not possible to de-energize power lines, then the Lessee shall be responsible for the insulating of any power lines, the grounding of all equipment and will be required to use rigging or other equipment designed to prevent electrocution. Further, the Lessee shall keep the equipment clear of such energized power lines at the distance required by OSHA, ANSI any other safety regulations or standards.

8. RIGGING—Lessee is required to provide any and all rigging to be used with the equipment. If chokers, slings, straps, chains, hooks, spreaders, fittings, rope or wire, etcetera; are loaned to the Lessee by the Lessor for the Lessee's convenience, and solely at the Lessee's responsibility. Lessee assumes responsibility for any defects in any rigging, whether the property of Lessee or otherwise. Lessee assumes the responsibility for damage to any load on hook due to a failure of the rigging. **Lessee assumes the responsibility for the method of rigging and agrees that all persons involved in the rigging process are qualified according to OSHA's definition 1926.1401 under Lessee's direct supervision and control.**

9. ACCIDENT INVESTIGATION -- As part of Lessee's obligations hereunder, Lessee shall bear the cost of any investigation initiated by the Lessor, Lessor's insurance carriers or Lessor's third party adjusters (designated below as Lessor "representatives") into any accident of any kind, when such accident occurs during the term of this lease, and involving directly or indirectly the leased equipment, whether or not such accident involves personal injury or death or damage to the leased equipment or other property or any or all of the above. The decision to initiate any such investigation and the scope of any such investigation shall be at the sole discretion of the Lessor or the Lessor's representatives. The cost of any such investigation to be paid by the Lessee, shall include but not be limited to, attorneys' fees for site inspections, contract and document review and interview with witnesses of any kind, including cost of travel, fees of private investigators for site inspections, obtaining and reproducing contracts and documents and interviews of witnesses or any kind, including costs of travel costs of obtaining and reproducing related contracts and documents, adjustors fees,

cost for photography, expert fees, including costs of site inspections and destructive and/or non-destructive testing, as needed, and costs of dismantling, storing and maintaining property, equipment or other items as evidence. These costs shall be invoiced to the Lessee along with rental fees and other costs incurred under this agreement and shall be payable according to the terms of this agreement.

10. NO RELIANCE ON LOAD MEASURING DEVICE -- If any crane has been fitted with a load measuring device, the Lessee hereby acknowledges and agrees that the Lessor has made no warranties or representations whatsoever with respect to the ability of the said load measuring device to accurately or consistently measure the weight of loads being lifted by such crane. The Lessee further acknowledges and agrees that it is the responsibility of the Lessee to independently determine the weight of every load to be lifted by any crane comprising all or portion of the equipment so as to ensure that any such load measuring device shall be used as an operator-aid only. As well, the Lessee acknowledges and agrees that if he relies in any way whatsoever on any load measuring device that he does so completely at his own risk.

11. THE RENTAL PERIOD -- The Rental Period shall commence on the date set forth above and shall include the date upon which the Equipment is picked up by the Lessee or the Lessee's agent (including any public carrier). Notwithstanding anything to the contrary contained herein, the Rental Period and the term of this Lease shall end upon and include the earlier of the following dates:

- a. The date of the actual delivery of the Equipment by the Lessee to the Lessor at such location as may be designated in writing by the Lessor; or
- b. The date immediately preceding the one year anniversary of the commencement date of the Rental Period (the "Anniversary Date").

If, for any reason, the Lessee retains possession of the Equipment beyond the Anniversary Date, such continued possession on the part of the Lessee shall be deemed to be without the consent of the Lessor, and the Lessee shall pay to the Lessor, by way of liquidated damages, an amount equal to the Rental payable in respect of the Equipment pursuant to paragraph 12 "Calculation of Rental Charges" hereof for the period during which the Lessee retains possession of the Equipment beyond the Anniversary Date and, notwithstanding that the Lessor may, in its discretion, provide cartage for the return of the Equipment, the Lessee shall be deemed to be in possession of the Equipment without the Lessor's consent until the Equipment has been returned to its point or origin or such other location as may be designated in writing by the Lessor.

12. CALCULATION OF RENTAL CHARGES -- The Lessee shall pay Rental for the entire Rental Period on each article listed under Details of Equipment at the rate herein stipulated and on the following basis:

- a. The Rental Rate expressed in the "Details of Equipment" is the rental for a month period, running from the day of commencement up to but not including the same day in the fourth week following.
- b. The Rental Rate stipulated under Details of Equipment shall apply only when the Equipment is operated for no more than 176 hours in a month. In the event that the Equipment is operated in excess of 176 hours in a month, the Lessee agrees to pay for any such excess operation in accordance with the following formula:

$$\text{Hours of operation in excess of 176 hours per month} \div 176 \text{ hours} \times \text{Rental rate}$$

The Lessee further covenants and agrees to open for inspection by the Lessor, any and all payroll records and hour meters for the purpose of verifying the actual hours worked.

- c. After expiration of the minimum rental period, the rental payment for any succeeding period shall be the proportionate part of the monthly rate according to the number of calendar days in such period based on a 28 (twenty-eight) day month.
- d. Rentals shall not be subject to any set-off or deduction for any reason whatsoever and, without limiting the generality of the foregoing, by reason of non-working time howsoever caused during the Rental Period or any extension thereof, nor shall the Lessee be relieved from his responsibility to pay rent for the entire Rental Period by reason of the fact that the Equipment is returned prior to the expiration of the minimum rental period.
- e. Rental at the Rental Rate shall be paid by the Lessee to the Lessor until the Equipment is returned to the Lessor in good operating condition, reasonable wear and tear expected. If repairs are found to be required by the Lessor, the Lessee shall continue to pay Rental at the Rental Rate until the Equipment is returned to good operating condition as determined by the Lessor.
- f. The Lessor shall pay any and all applicable taxes related in any way whatsoever to rent payable by the Lessee to the Lessor under this lease, including sales tax and SMM tax of 2% of rental rate.

13. PAYMENT -- The rentals due under this Lease shall be paid monthly in advance at the office of the Lessor. All overdue payments shall bear interest at the rate of 2% per month (26.8% per annum) without prejudice to the Lessor's right as hereinafter stipulated to terminate this Lease for non-payment Rental.

14. TRANSPORTATION -- Lessee agrees to pay all transportation costs, including but not limited to, loading and unloading costs, and agrees to be responsible for any damage or loss to the equipment while it is in transit. Lessee shall furnish timely instructions for shipment, and absent such instructions, Lessor may ship to railhead or such other shipping point which Lessor reasonably believes to be the most convenient and/or closest to the place of use specified herein. Lessor shall furnish shipping instructions for the return of the equipment upon Lessee's written request. The Lessor shall furnish insurance as required by paragraph 2 while equipment is transported to and from Lessor to Lessee.

15. REPAIRS AND OPERATION COSTS -- Lessee agrees to inspect the equipment upon taking delivery. Lessee's failure to notify Lessor in writing of any deficiencies in the equipment within 24 hours after taking delivery, or such other period of time as may be mutually agreed upon in writing, is Lessee's acknowledgment that the equipment was, when delivered, in good, safe and serviceable condition and fit for its intended use. Lessee shall maintain the equipment in good, safe operating condition and shall bear all costs of whatever nature incurred in doing so. Without first obtaining Lessor's written consent, Lessee shall not incur any liability or expend any money for Lessor's account. The title to all parts, materials and supplies furnished to the equipment become the property of the holder of the title to the equipment.

All accessories or attachments not listed herein or necessarily included as part of the equipment shall be furnished by Lessee at its own expense.

16. DAMAGE TO EQUIPMENT -- All risks of loss or damage to the Equipment, accidental or otherwise shall be borne by Lessee. The appraisal of any such loss or damage shall be based upon the replacement value of new equipment as stated under the heading "Details of Equipment". In making such adjustment it is understood that no rentals, paid or due, shall apply to the payment of such loss. The rental period shall continue while all repairs to the equipment are completed. Lessee shall and does hereby indemnify and hold Lessor harmless from any liability of any kind arising out of possession, maintenance, use, operation, assemble/disassemble, and/or failure of the leased Equipment, whether defective or not. If the equipment is damaged or made inoperable in any way other than as a result of normal operating wear, the Lessee shall notify Lessor in writing within 48 hours of its occurrence, specifying the extent and nature of the damage. Repairs to structural or load carrying portions of the equipment, including but not limited to boom sections, are not to be undertaken without first obtaining Lessor's written consent.

17. TITLE -- Lessor retains title to the equipment. Lessee agrees to keep the equipment free from all liens or other encumbrances. Lessee agrees to notify Lessor immediately if any lien or any attachment or other claim is filed against the equipment. Lessee agrees to protect Lessor's interest in the equipment at all times during the term.

18. INTERPRETATION/DURATION OF CONTRACT -- This agreement shall be interpreted and enforced according to the laws of the State of Pennsylvania. This agreement shall be interpreted fairly and reasonably and neither more strongly for nor against either party. This contract shall be in effect for the duration of one year unless expressly terminated in writing by Lessor. All notices required may be served personally or sent by certified mail, return receipt requested, with postage prepaid, to the address of the other party herein unless a different address is designated hereafter in writing. Should any provision of this lease be invalidated in whole or in part by any competent authority, such provision shall continue in effect only to the extent permitted; however, the remaining provisions shall remain in full force and effect.

19. NO WARRANTIES -- The equipment is leased as is; Lessor makes no representations or warranty of any kind that the equipment is or shall be fit or suitable for any specific purpose or purposes of Lessee. This document is a complete and exclusive statement of all the terms of this lease and includes all the representations of the parties. Lessor makes no other express or implied warranties respecting the equipment nor shall this contract be varied, supplemented, qualified, or interpreted by any prior course of dealing between the parties or by any usage of trade. It is understood by the parties that Lessor is not the manufacturer of the equipment nor the manufacturer's agent for any purpose. Lessee warrants that it is duly authorized do business in the jurisdiction where the equipment is to be used and that the person signing this agreement has the authority to bind Lessee.

20. FORM OF AGREEMENT/ATTORNEYS FEES AND COSTS -- This agreement, when duly executed by the parties, is the complete agreement of the parties. Lessee represents that it has not relied upon any previous representations by anyone as an inducement to enter into this lease. Lessor may withhold delivery of the equipment until this agreement has been properly executed by all parties; however, acceptance of delivery of the equipment and its use by Lessee shall constitute its acceptance of this general condition.

Any attempt by Lessee to assign, sublet or otherwise transfer this lease or any interest herein in the absence of Lessor's written consent, shall be void. Lessee shall not, in the absence of Lessor's prior written consent, remove the equipment from its place of designated use, nor shall Lessee relinquish possession, custody or control of the equipment to anyone other than those designated by Lessor in writing. If Lessor assigns this lease, such assignment shall be free of all claims or offsets in favor of Lessee. Upon assignment, the term "Lessor" shall include and refer to Lessor's assignee.

If Lessor institutes any proceeding to enforce this lease or any provision thereof, it shall be entitled to recover all court costs, including but not limited to, reasonable attorney's fees regardless of whether or not such action is prosecuted to final judgment.

Paragraph headings are not a part of this lease and shall have no effect upon its construction or interpretation.

21. TIME OF ESSENCE – WAIVER -- Time is of the essence of this lease and all of its provisions. Lessor's failure to require strict performance by Lessee of any of the lease provisions, or Lessor's acceptance of late or partial performance hereunder, shall not constitute a waiver of any prior defaults of Lessee, nor of Lessor's rights thereafter to demand strict compliance therewith, or with any other provision hereof. The parties agree that Lessor's rights under this lease are cumulative and shall be in addition to all other remedies in its favor existing at law or in equity. Successors and assigns -- this lease shall be binding upon and shall inure to the benefit of the parties and their respective heirs, successors, administrators, executors, trustees and assigns.

22. RETURN OF EQUIPMENT -- Lessee agrees to return the equipment to Lessor at the point of origin unencumbered and in the same condition as when received by Lessee, excepting reasonable wear and tear resulting from normal proper use. The cost of any repair necessary to restore the equipment to said condition shall be paid by Lessee. Any time beyond the minimum term required to make such repairs shall extend the term to include such reasonable additional repair time as is necessary under the circumstances.

Lessor may require Lessee to ship the equipment to a point other than the point of origin; however, Lessee shall not be required to pay any additional costs incurred thereby unless such is mutually agreed upon.

23. USE OF EQUIPMENT -- In the absence of Lessor's written permission to do otherwise, Lessee shall use the equipment only in the conduct of its business and at the places of anticipated use as specified above. At no time shall the equipment be subjected to improper, careless or needlessly rough use or to any usage in violation of any statute, ordinance, rule regulation or order of any governmental or other entity having jurisdiction over the place of use. Lessee agrees: (a) to use the equipment in accordance with the manufacturer's instructions and within the rated load capacity for such or similar equipment; (b) that counterweight in excess of the manufacturer's specifications shall not be used; (c) that the equipment shall be protected from all hazard.

Lessee agrees not to alter or modify the equipment nor to remove or otherwise alter any numbering, lettering or insignia placed upon the equipment without first obtaining Lessor's written consent. Lessee shall maintain accurate lubrication records, repair records for the equipment and records of actual hours and dates of operation in the form prescribed by Lessor, which the parties expressly agree shall be incorporated herein by this reference. Lessee shall keep Lessor informed of the location and condition of the equipment at all times and Lessor shall be given access to the equipment at all reasonable times for the purpose of inspection.

24. TAXES -- Lessor agrees to pay all property taxes or other similar charges incurred by reason of the equipment being located at Lessor's yard or other permanent situs under Lessor's control if established prior to execution of this lease ("permanent situs"). Lessee agrees to pay as additional rental hereunder, or shall reimburse Lessor if Lessor is required to pay any other taxes, penalties and fines or other charges of any governmental entity other than that having jurisdiction over the permanent situs, or which may be assessed or levied against the equipment during the lease term by reason of execution of this agreement, the transaction represented hereby, or arising from the ownership, operation or possession of the equipment.

Unless otherwise provided herein, if there are several Lessors of the equipment during any one taxation period in a jurisdiction other than that of the permanent situs, Lessee need only pay its pro rata share. Such share shall be computed, among other things, with reference to the minimum term, all extensions of the term and with reference to the period for which the charge is made and the length of time the equipment is in the jurisdiction. Lessor may, at its sole option, bear the pro rata cost of any such payments. The parties agree to make all necessary adjustments at the termination of this lease.

25. DEFAULT -- REPOSSESSION -- Lessor may enter any premises where the equipment is located without notice and may repossess all or any part of it if (a) Lessee fails to make prompt payments when due; and/or (b) if Lessee breaches any other provision of this lease; and/or (c) if Lessee becomes insolvent, or makes an assignment for the benefit of creditors, or becomes subject to any proceeding in the nature of bankruptcy; and/or (d) if Lessor shall deem it necessary to protect its rights in the equipment against loss or damage; and/or (e) upon termination of this lease for any reason. The rights specified by this paragraph are in addition to all other rights of Lessor. If Lessor repossesses the equipment, Lessee expressly waives all further rights to possession and all claims for damages howsoever arising from repossession.

26. AMENDMENTS -- Neither party shall be bound by any agreement, warranty or representation, express or implied, unless contained herein or a duly executed amendment thereto. No representative, agent or employee of Lessor has the authority to amend, modify or waive any of these terms and conditions. No modification or amendment hereof shall be binding on Lessor unless it is in writing and signed by Lessor.

27. STORAGE OF EQUIPMENT -- Lessor shall not be liable for any loss or injury to Lessee's property stored in Lessor's yard, and it is further understood and agreed to that Lessee's property/equipment stored is not insured by Lessor against loss or injury, however caused. Lessee is responsible for maintaining insurance coverage on a first party basis to cover the goods/equipment/machinery stored with Lessor.

28. AUTHORIZED SIGNATURE - In the event this agreement has been executed by an individual on behalf of a corporation or other business entity, the person whose signature is affixed hereto and the company for which the individual has signed this agreement represent to Lessor that the individual signing has full authority to execute this agreement on behalf of said corporation or other business entity.

CUSTOMER'S ACKNOWLEDGMENT

WE HEREBY ACCEPT ALL TERMS AND CONDITIONS STATED HEREIN:

COMPANY NAME: _____ P.O.# _____

AUTHORIZED BY: _____ DATE: _____
(PLEASE SIGN & PRINT NAME AND RETURN ONE COPY WITH YOUR PURCHASE ORDER, IF APPLICABLE)

INDUSTRIAL TRUCK & CRANE, INC.
877-ITC-CRANE

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