

## RENTAL TERMS AND CONDITIONS

1. **AGREEMENT & ACCEPTANCE BY LESSOR:** These Rental Terms and Conditions govern all rentals between Lessor and Lessee "Agreement". Lessee by signing the Agreement, placing an order with Lessor, issuing a purchase order, or receiving, acknowledging or accepting Equipment agrees to be bound by and comply with all terms and conditions set forth herein as written. We reserve the right to modify these terms and conditions at our sole discretion at any time. Any changes will apply to rentals made after the modification date. Lessee agrees and acknowledges that it is Lessee's responsibility to review the terms each time it rents Equipment from Lessor. Lessee's purchase order terms or any other terms/documents provided to Lessor will not be considered binding and are hereby rejected unless signed by an authorized representative of Lessor.
2. **PAYMENT & RENTAL RATE/TERM:** Rental rates quoted herein are for a maximum eight (8) hour day, forty (40) hour - 5 day week and 160 hour - 28 day month. Overtime will be charged for each additional hour on a prorated basis unless indicated otherwise. Lessees with active credit accounts must pay all invoices within 10 days of the invoice date (Net 10). Lessees without an active credit account are required to pay in advance for all rental services. Rental period begins at time machine is delivered/picked-up and ends when machine is returned to Lessor's yard. No credit or allowance for weather or down time. Lessor's standard rates are based on dirt moving applications, Equipment used in different applications may be subject to higher rates. Standard rental rates will apply to any attachments not returned with the machines until such attachments are returned.
3. **RENT TO RENT:** It is understood that this is a rent to rent rental lease agreement. Lessor does not necessarily offer a purchase option with this rental/lease agreement and therefore may replace this machine with a like machine at any time.
4. **TITLE TO THE EQUIPMENT:** The rented Equipment shall at all times remain and be the sole and exclusive property of Lessor, and Lessee shall have no right of property therein other than the right to use the Equipment upon the terms and conditions contained in this rental/lease agreement. Lessor may elect to file a Financing Statement (UCC-I) for informational purposes.
5. **IDENTIFICATION OF EQUIPMENT:** Lessee will not change or remove any insignia, lettering or other identification which is now or hereafter placed on the Equipment indicating Lessor's ownership thereof, and at any time during the term of this rental/lease agreement, upon request of Lessor, Lessee will affix to Equipment in a prominent place, labels, plates, or other identification supplied by Lessor stating that the Equipment is owned by Lessor.
6. **LOCATION OF EQUIPMENT:** During the term of this rental/lease agreement and until redelivery to Lessor, all Equipment shall be located at the address to which the Equipment is to be shipped as set forth on the reverse side hereof, and shall not be removed from such location without prior written notification to & consent of Lessor.
7. **INSPECTION BY LESSEE:** Lessee shall inspect the Equipment within twenty-four (24) hours after its arrival at the address set forth on the Agreement. Unless within said twenty-four (24) hours (excluding weekends and holidays) Lessee gives written notice to Lessor specifying any defect in, or other proper objection to the Equipment, Lessee agrees that it shall be conclusively presumed as between Lessor and Lessee that Lessee has fully inspected the Equipment, that the Equipment is in full compliance with the terms of this Agreement, and in good condition and repair, and that Lessee is satisfied with, and has accepted the Equipment. If Lessor so requests, Lessee shall furnish Lessor with a written statement of the foregoing.
8. **INSPECTION BY LESSOR:** Lessor and its representatives may inspect the Equipment at any time, except that no inspection shall be made (without Lessee's consent) under circumstances requiring interruption of Equipment use. Lessee shall have the privilege of having a joint inspection made of the Equipment before returning it to Lessor, to determine the need, if any, for repairs and reconditioning. If a joint inspection is not demanded Lessor shall be the sole judge of the need for repairs and reconditioning, the cost of which is to be paid by Lessee as hereinafter provided.
9. **INSURANCE:** Lessee shall keep Equipment insured against all risks of loss or damage from every cause whatsoever for not less than the full replacement value thereof and shall carry General Liability Insurance, both personal injury and property damage, Auto Liability and Excess Liability covering Equipment. All said insurance shall be in form and amount and with companies satisfactory to Lessor. All insurance for loss or damage shall provide that losses, if any, shall be payable to Lessor. Lessee shall pay the premium for the insurance and deliver to Lessor the policies or duplicates thereof, or other evidence satisfactory to Lessor of such insurance coverage. Each insurer shall agree, by endorsement, upon the policy or policies issued by it or by independent instrument furnished to Lessor, that it will give Lessor ten (10) days' prior written notice of the effective date of any alteration or cancellation of such policy. The proceeds of such insurance payable as a result of loss of or damage to Equipment shall be applied, at the option of Lessor, (a) toward the replacement, restoration, or repair of Equipment which may be lost, stolen, destroyed, or damaged, or (b) toward payment of the obligations of Lessee hereunder. Any surplus then remaining shall be refunded to Lessee. Lessee hereby irrevocably appoints Lessor as Lessee's attorney-in-fact to make claim for, receive payment of, and execute and endorse all documents, checks, or drafts received in payment for the loss or damage under any said insurance policy. In case of the failure of Lessee to procure or maintain said insurance, Lessor shall have the right but shall not be obligated to affect such insurance or compliance on behalf of Lessee. In that event, all monies spent by and expenses of Lessor in effecting such insurance or compliance shall be deemed to be additional rent and shall be paid by Lessee to Lessor with the next monthly payment of rent.
10. **LOSS AND DAMAGE:** a) Lessee hereby assumes and shall bear the entire risk of direct and consequential loss and damage to Equipment from any and every cause whatsoever. No loss or damage to the Equipment or any part thereof shall release or impair any obligation of Lessee under this Agreement, which shall continue in full force and effect. Lessee agrees that Lessor shall not incur any liability to Lessee for any loss of business, loss of profits, expenses, or any other damages resulting to the Lessee by reason of any delay in delivery or any delay caused by any non-performance, defective performance, or breakdown of rented Equipment. In the event of loss or damage to any item of Equipment, Lessee at the option of Lessor shall at Lessee's expense: (1) place the same in good repair, condition and working order, or (2) replace the same with like Equipment of the same make and of the same or a later model and in good repair, condition and working order. (b) If Equipment is determined by Lessor to be lost, stolen, destroyed, or damaged beyond repair, Lessee shall immediately pay Lessor in cash an amount equal to the aggregate amount of unpaid total rent for the balance of the term of this rental/lease agreement, together with the full replacement value of the Equipment at the end of the current term (exclusive of any renewals) as determined by the Lessor. Interest at the rate stipulated in paragraph 14 on the amount due shall accrue from the time of loss until paid. Upon such payment, this rental/lease agreement shall terminate with respect to the Equipment so paid for and Lessee thereupon shall become entitled to that Equipment as-is-where-is without warranty, express or implied.
11. **LOSS DAMAGE WAIVER:**  
RENTAL EQUIPMENT PROTECTION (REP): We offer Optional REP on select items of equipment which may be declined upon providing a compliant certificate of insurance within 48hrs of pickup or delivery. Lessee agrees to pay Foley 18% of the equipment rental charges for REP. Lessee agrees to pay REP until a compliant certificate of insurance is received and approved. REP IS NOT INSURANCE; it is a waiver of certain claims of the Lessor for loss of or damage to the Lessor's equipment. If you have purchased our REP, you will have no liability to Lessor for physical damage to the applicable Rented Item(s), except that you will remain liable to the Lessor in all events for: (a) damage or loss caused in whole or in part by: (i) your breach of any provision of this Agreement; (ii) failure to return Rented Item(s); (iii) wear/tear; (iv) malicious mischief or illegal acts; (v) use of any Rented Item in violation of any policy of insurance, manufacturer guidelines and/or specifications; and (vi) damage to tires. Lessee will remain liable for incidental damages, liability damages and loss of use. Lessee will remain liable for all damages if Lessee fails to pay REP fees and the appropriate deductible. REP coverage is \$500,000 per occurrence. In the event of a claim Lessee is responsible for a deductible in the amount of \$1,000 for equipment valued up to \$25,000 or \$2,500 for equipment valued over \$25,000. Value of equipment will be determined by Foley in its sole and absolute discretion. Lessee must notify Foley of any loss or damage with 24 hours of discovery or 24 hours from when loss reasonably should have been discovered. Exclusions: REP DOES NOT COVER equipment licensed for road use, mining equipment, or equipment used over water. The following are also excluded from REP: *Civil Authority, Contamination/Deterioration, Criminal, Fraudulent, Dishonest, Illegal Activity, False Pre-tense, Incidental Damages, In Transit Damages (including loading and unloading), Loss of Use (including while equipment is being repaired), Mechanical/Electrical Failures, Missing Property / Mysterious Disappearance, Nuclear Hazard, Operation or Maintenance Contrary to Manufacturer Specifications, Pollutants, Temperature/Humidity, War and Military Action, Wear and Tear, Weight of Load.* **Exception:** Use Over Water (barge, etc.) is covered under REP with a coverage limit of \$250,000 per occurrence and a deductible of \$10,000, subject to all other terms and conditions.
12. **INDEMNITY:** Lessee shall indemnify Lessor against and hold Lessor harmless from any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including attorney's fees, claimed by any person including organizations, associations or otherwise, arising out of, or relating to the Equipment, including without limitation, the design, manufacture, selection, purchase, delivery, possession, use, operation, and/or condition thereof, latent and/or other defects (whether or not discoverable by Lessee).
13. **USE, ALTERATIONS AND ADDITIONS:** Lessee shall use Equipment solely in the conduct of its business and in a careful and proper manner and may only use in accordance with manufacturer's intended use. Lessee shall not part with possession of or enter into any sub-rental/lease agreement with respect of Equipment or assign this rental/lease agreement or its interest without the prior written consent of Lessor. The equipment shall be used only by operators in the direct employ of the Lessee or by the Lessee himself if an individual. The Equipment shall be operated and handled by competent employees only, and Lessee shall pay wages of operators and all other expenses of operations. Lessee will use and operate said Equipment and cause it to be used and operated only in such manner, under such working conditions, and for such purposes

as are consistent with the capacity and design of the Equipment and for performing operations for which it was designed. Lessee shall be liable for all repairs caused by the abuse or negligence of its employees and agents including but not limited to improper application, operator neglect or overheating. Lessee shall not make any alterations to Equipment without the prior consent of Lessor. All Equipment, accessories, parts and replacements which are added to or become attached to Equipment shall immediately become the property of Lessor and shall be deemed incorporated in Equipment and subject to the terms of this rental/lease agreement.

14. **DEFAULT AND REMEDIES:** If Lessee shall default in making any payment when due or if Lessee fails to comply with any other provision of this rental/lease agreement and such default shall continue for five (5) days after written notice to Lessee by Lessor, or if Lessee becomes insolvent or makes an assignment for the benefit of creditors, or if any proceeding in bankruptcy, receivership, or insolvency shall be commenced by or against Lessee or its property, or if Lessee shall have made or intends to make a bulk transfer of Equipment or inventory, or if the Lessee's financial condition shall adversely change, or if the Lessee shall undergo any change so that in the Lessor's sole opinion Lessor's risk is materially increased, or if Lessee has breached any other rental/lease agreement between Lessor and Lessee, then Lessor may at its option, with or without terminating this rental/lease agreement, repossess the Equipment with or without demand or notice to the Lessee, and without court proceeding, and Lessee waives any and all claims against Lessor with respect to such retaking. Upon Lessee's default, the total payments contracted for hereunder shall immediately become due and payable together with all costs and expenses set forth in Paragraphs 14 & 15. In addition to the foregoing, Lessor may pursue any other remedy available to it at law or in equity.

15. **LATE CHARGES AND INTEREST:** If Lessee fails to make any payment required by this rental/lease agreement when due, Lessee shall pay to Lessor interest on such delinquent payment from the due date until paid. The interest rate shall be at the maximum lawful contract rate allowable in the jurisdiction where the Lessee's principal place of business is located, but will not exceed Eighteen percent (18%) per annum.

16. **EXPENSES:** Lessee shall pay Lessor all costs and expenses including reasonable attorney's fees, fees of collection agencies, and such other expenses such as telephone and telegraph charges incurred by Lessor to enforce any of the terms or conditions of this rental/lease agreement.

17. **MAINTENANCE, UPKEEP, AND REPAIRS:** If Lessee has elected to purchase maintenance service from Lessor in connection with Equipment covered by this rental/lease agreement, then Lessor shall provide for maintenance in accordance with Lessor's standard maintenance contract. That maintenance contract is incorporated herein by reference as though fully set forth herein. A copy of said maintenance rental/lease agreement has been provided to the Lessee and Lessee acknowledges its receipt. In the event that a maintenance contract with the Lessor is not contracted, Lessee, at its expense, shall keep the Equipment well lubricated, properly adjusted, and otherwise in good and efficient working order. Lessee shall use in said maintenance only repair parts manufactured or furnished by the manufacturer of the Equipment, or repair parts of equal quality. Lessee will return the Equipment at the termination of the rental/lease agreement, in as good condition as it was at the commencement of the rental/lease agreement, except for the effects of normal wear and tear. However, wear and tear on hammer points and blow bars will incur an additional charge at Lessor's discretion. Lessee agrees to be liable for any excess wear and tear if the Equipment is returned in an excessively worn condition. If the Equipment shall not, in the opinion of Lessor, be properly lubricated, adjusted, and filter replacement schedules maintained, and otherwise in good and efficient working order and condition at any time, Lessor, without prejudice to any of its rights or remedies, may give written notice to Lessee to put such Equipment in good and efficient working order and condition and to replace all broken or missing parts, and in case the Lessee does not within ten (10) days from the date of said notice comply with the written notice, Lessor may put such Equipment in good and efficient working order and condition, or cause that it be done, and the Lessee shall pay to Lessor all costs for repairing said Equipment together with full rent for the period needed to accomplish such results.

18. **ACCIDENTS:** Without demand Lessee shall notify Lessor immediately (and in any event, within twenty-four (24) hours thereafter) of each accident involving any Equipment covered by this rental/lease agreement. The Lessee shall include such information as is known such as the time, place, and nature of the accident or damage, the names and addresses of parties invoiced, persons injured, witnesses and owners of property damaged. Lessee shall promptly advise Lessor of all correspondence, papers, notices, or documents whatsoever, received by Lessee in connection with any claim or demand involving or relating to any Equipment or its operation and, together with Lessee's employees, aid in the investigation and defense of all such claims and demands, and in the recovery of damages from third parties liable therefor.

19. **SAEETY ATTACHMENTS:** Lessee agrees and hereby acknowledges that it is the Lessee's responsibility to meet all OSHA regulations and requirements.

20. **ENTIRE AGREEMENT:** These Rental Terms and Conditions (in effect at time of rental), Safety Attachment Checklist, Caterpillar Warranty Forms, Credit Application, insurance requirements form, and Sales Tax Exemption, if applicable, contain the entire rental/lease agreement between the parties and may not be changed, modified, terminated, or discharged except in writing between the parties.

21. **ASSIGNMENT BY LESSOR:** This rental/lease agreement or any rent or other sums due or to become due under this rental/lease agreement may be assigned by Lessor without notice, and in such event Lessor's assignee shall have all the rights, powers, privileges, and remedies of Lessor. Lessee's obligations under this rental/lease agreement shall not be subject to any defense, offset, or counterclaim available to Lessee against the original Lessor.

22. **APPLICABLE LAW:** This rental/lease agreement shall be governed by laws of the State of New Jersey and shall be binding upon Lessor and Lessee and their respective legal representatives.

23. **COMPLIANCE WITH LAWS; HAZARDOUS MATERIALS:** Each party agrees to comply with all applicable federal, state, and local laws and regulations. Lessee represents and warrants that it will notify Lessor in advance to using Equipment at a site where hazardous or regulated materials are present. Lessee represents and warrants that it will return Equipment to Lessor free and clear from any and all hazardous or regulated materials.

24. **Environmental Fee:** Lessee shall pay an Environmental Fee of \$25 per rental invoice, subject to change. This fee is not a government-imposed tax or surcharge; it is a contractual charge to help cover Lessor's costs of complying with applicable federal and state environmental regulations and supporting sustainability programs. The use of this fee is at Lessor's discretion. The Environmental Fee applies to each rental period, extension, and related services (including delivery, pickup, and maintenance), unless prohibited by law. **Exception: For power system equipment, any Environmental Fee shall be 1.5% of the rental charges, not to exceed \$200.**

25. **LESSORS LIABILITY:** Lessor shall not be liable for any actual, direct, indirect, special, or consequential damages due to, caused by, or resulting from (a) any defect and/or malfunction of the Equipment or its installation or maintenance, or (b) any delays in the installation, delivery, or operation of such Equipment.