

## TERMS & CONDITIONS

**1. TERM.** The term of this agreement (the "Agreement") shall commence on the date that the written agreement, proposal or quote is executed by both Customer and Pinnacle Cranes, a division of Carolina Tractor & Equipment Company ("PC"), and shall terminate on the date the Equipment is returned to the PC branch from which the Equipment was rented ("PC Branch") and all amounts owing under the Agreement to PC are paid in full, unless earlier terminated by PC as provided in this Agreement.

**2. RENTAL CHARGES.** Customer will pay PC on demand for all rental, time, mileage, service, transportation, refueling service charge, and other charges and sums provided in this Agreement, all sales and use taxes or tax reimbursement imposed with respect to the Equipment and this Agreement, and all expenses, including reasonable attorney's fees and collection fees. The period for which rent is due shall begin when the Equipment leaves PC premises and shall terminate when return of the equipment is acknowledged by PC. Acceptance of any Equipment by PC shall not relieve Customer of any of its obligations under this Agreement. All rental of Equipment for more than 3 days but not more than one week shall incur the full weekly rental charge. All rentals of Equipment for more than three weeks but not more than four weeks shall incur the full four week rental charge. The basic daily, weekly, and the 4-week rental will entitle Customer to a maximum of one-shift use (i.e. a maximum of 8 hours per day; 40 hours per week; 160 hours per 4-weeks). Use in excess of one shift will be payable at the hourly rate of 1/8th of the daily charge (for daily rental), 1/40th the weekly charge (for a weekly rental) and 1/160th of the 4 week charge (for a 4-week rental); plus applicable taxes. All charges are subject to final audit by PC. PC shall have a lien as allowed by law for charges incurred hereunder upon the premises and improvements upon which the Equipment is employed. Rentals are F.O.B. the PC Branch unless otherwise agreed. Shipping charges from such branch to the Customer's destination and return and all loading, unloading, assembling and dismantling will be paid by Customer. All rates for rentals in excess of 4 weeks are subject to change on 30 days' notice in writing to the Customer with respect to any portion of the rental period then remaining. Customer and any person to whom, with PC's consent, Customer expressly directs the charges incurred under this Agreement to be billed, are jointly and severally responsible for payment of all such charges.

**3. CREDIT TERMS.** PC may in its sole discretion extend credit terms to the Customer, pursuant to which Customer shall, upon the earlier of (i) return of the equipment (whether by Customer or PC by repossession as provided in this Agreement) or when the Equipment is due to be returned or (ii) receipt of an invoice therefore, pay PC all charges provided in Paragraph 2 upon such return or in accordance with such invoice, as applicable. PC may at any time, or for any reason or no reason, revoke any credit terms extended to Customer, in which event Customer shall pay PC as provided in Paragraph 2. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, PC MAY AT ANYTIME DEMAND IMMEDIATE PAYMENT OF ALL CHARGES THEN ACCRUED AND CUSTOMER SHALL PAY SUCH CHARGES ON DEMAND.

**4. REFUELING SERVICE CHARGE.** PC agrees to provide the Equipment to Customer with full fuel tank(s). Customer agrees to return the Equipment with full fuel tank(s). If Customer returns Equipment with fuel tank(s) less than full, Customer will pay to PC an amount based on the per gallon fuel charge on the front of this Agreement in order to fill the fuel tank(s) to full.

**5. OTHER CHARGES; INTEREST; COLLECTION.** Customer may be charged a reasonable fee for any check used for payment hereunder that is returned unpaid, any cleaning required to restore any returned Equipment to its condition when it left PC's premises and each unreturned key to the Equipment. Interest shall accrue daily at an amount equal to 1-1/2% per month on any overdue unpaid balance and be added to the unpaid balance. All payments to PC on Customer's account shall be applied first to all accrued interest, second to all past due amounts in order of their maturity, and finally to all other amounts due to PC. Customer hereby agrees to pay PC its reasonable attorneys' fees plus all other costs and expenses incurred by PC in exercising its rights under this Agreement.

**6. LIMITATION OF LIABILITY; DISCLAIMER OF WARRANTY.** Customer hereby acknowledges that it has inspected the Equipment, found it in good working order and accepted delivery of it as is. PC SHALL NOT BE LIABLE TO CUSTOMER FOR, AND CUSTOMER HEREBY WAIVES AND AGREES NOT TO ASSERT, ANY CLAIMS FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES AND ANY CLAIMS, DEMANDS, OR LIABILITIES FOR PROPERTY DAMAGE OR PERSONAL INJURY, INCLUDING WITHOUT LIMITATION CLAIMS, DEMANDS OR LIABILITIES ARISING OUT OF OR RELATING TO PC'S NEGLIGENCE. If for any reason at any time PC is unable to provide the Equipment to Customer, PC, at its option, may terminate this Agreement entirely or as to the Equipment which PC is unable to supply and PC shall have no further obligation to Customer with respect thereto. TO THE EXTENT PERMITTED BY APPLICABLE LAW, PC MAKES NO, AND HEREBY DISCLAIMS ANY, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED: (A) AS TO THE DESIGN, QUALITY OR CONDITION OF THE EQUIPMENT; (B) AS TO THE MATERIAL OR WORKMANSHIP IN THE EQUIPMENT; OR (C) AS TO MERCHANTABILITY OR FITNESS OF THE EQUIPMENT FOR ANY PARTICULAR PURPOSE.

**7. INDEMNIFICATION.** Customer shall indemnify and hold PC and its affiliated companies and its and their officers, agents, and employees, harmless from and against all claims, demands, costs, attorneys' fees, liabilities, and obligations arising out of or relating to Customer's use, operation, custody, or control (or lack thereof) of the Equipment, including, but not limited to all personal injury and property damage and loss claims of any employee or agent of Customer or any other person or entity. Customer shall give PC written notice of all damage to or loss or destruction of Equipment and all personal injury and property damage claims arising out of or relating to use, possession, or control of the Equipment during the term of this Agreement promptly (and in any event within 24 hours) after Customer has notice of the same.

**8. RISK OF LOSS.** All loss of or damage to the Equipment from any cause whatsoever during the terms of this Agreement, whether or not in Customer's care, custody, or control, and whether or not due to the fault of Customer, including, but not limited to, fire, flood, theft, collision and rollover, vandalism, and Acts of God, will be the sole responsibility of Customer and will be paid to PC promptly upon Customer's receipt of an invoice therefore. Such responsibility is limited to the full value of the Equipment at the time it was lost or damaged, less its salvage value, plus an administrative fee and PC related expenses, such as loss of use, appraisal fees or recovery costs. THE COST OF LABOR FOR SUCH REPAIRS WILL BE EITHER THE THEN PREVAILING PC HOURLY RATE FOR LABOR OR THE REPAIRER'S HOURLY RATE FOR LABOR CHARGED TO PC FOR SUCH REPAIRS AS THE CASE MAY BE. PARTS WILL BE CHARGED AT PC COST. PC reserves all rights to seek all remedies available, including, but not limited to, filing suit for any damage or loss to the Equipment.

**9. CUSTOMER INSURANCE OBLIGATIONS.** (a) Public Liability and Property Damage Liability Insurance (Third Party). Customer will, at its own expense and at all times during the term of this Agreement maintain in force Commercial General Liability Insurance and Auto Liability coverage with combined, single limit for bodily injury, including death, and property damages of \$4,000,000, on a primary and not excess of contributory basis, for Customer's liability for damages or injuries sustained by any person, including, but not limited to, agents or employees of Customer, as a result of maintenance, use, operation, possession, storage, erection, dismantling, servicing, or transportation of equipment, and including boom collapse and rigging liability. Customer's Commercial General Liability and Auto Liability coverage Customer will name PC as an additional insured. Customer will, at all times during the term of this Agreement, carry Workers' Compensation with a Waiver of Subrogation in favor of PC. Customer will, on demand, furnish PC a Certificate of Insurance evidencing such insurance, endorsed to provide that such insurance may not be canceled or materially modified except on 30 days of prior written notice to PC and the PC Branch. Customer agrees to abide by all terms and condition of said insurance. Customer, its agents and employees will cooperate fully with PC and Customer's insurer in any investigation, prosecution, or defense of any claim or suit arising there from and will do nothing to impair or invalidate the applicable Insurance coverage. PC's acceptance of Customer's Certificate of Insurance will not be deemed a waiver, limitation or modification of Customer's insurance will not be deemed a waiver, limitation or modification of Customer's insurance, indemnity or other obligations under this Agreement or Customer's liability hereunder. (b) Property Insurance for PC Equipment. Customer will, at its own expense and at all times during the term of this Agreement, maintain in force Property or Auto Physical Damage Insurance in an amount adequate to cover any damages to, or loss of, the Equipment. Customer's policy must expressly cover non-owned equipment while in Customer's care, custody or control, including coverage for boom collapse and rigging liability. Customer will, on demand, furnish PC a Certificate of Insurance evidencing such insurance and endorsed to provide that such insurance may not be canceled or materially modified except on 30 days prior written notice to PC and PC Branch. The amount, terms, and condition of the insurance required by this sub-paragraph must be acceptable to PC. Customer agrees to abide by all of the terms and conditions of such insurance. Customer's Property and Auto Physical Damage Insurance will name PC as loss payee on rented equipment.

**10. CUSTOMER RESPONSIBILITY.** Customer must return the Equipment to PC in the same good and clean condition it was in when Customer received it, ordinary wear excepted. The Equipment must be returned to PC at the PC Branch from which it was rented during normal business hours by the Due Date specified on the front of this Agreement, or sooner if demanded by PC for any reason or no reason. Customer acknowledges that it must confirm return receipt of the Equipment by PC at the expiration or earlier termination of Agreement. Until such time as PC receives actual possession of the Equipment Customer agrees to hold said Equipment in a safe and secure manner. The Equipment will be used solely in the ordinary course of customer's business. No alterations, substitutions, or additions of attachments, boom inserts, jibs, or buckets shall be made to the equipment by the Customer without written consent of PC. The Equipment will be used only in compliance with (i) manufacturer's instructions within its rated capacity and (ii) all applicable federal, state, and local laws and regulations. Customer will furnish at its own expense, all assembly, operating and maintenance personnel employed for leased equipment, and shall employ none who are incompetent to perform their duties in a careful and diligent manner. Customer will perform or cause to be performed and pay for all normal periodic and other maintenance service, adjustments and lubrication of the Equipment, including, but not limited to: providing all fuel, oil and other consumables as needed; checking of the Equipment before each shift; checking and maintaining crankcase, transmission, cooling and fluid systems daily; and checking tire pressures and battery fluid and charge levels weekly. Customer shall be solely responsible for maintenance or replacement of any tires on the Equipment. If the Equipment (including any engine hour meter or similar device on the Equipment) fails to operate properly or becomes in need of repair or reattachment, Customer will immediately cease using the same and will immediately notify PC. Customer will record and supply to PC at expiration or earlier termination of the Agreement, fuel receipts and driver trip records containing mileage breakdown by state. Failure to comply with the foregoing fuel and mileage requirements will entitle PC to \$.05 per unrecorded mile as additional rent hereunder, which Customer agrees to pay at expiration or earlier termination of this Agreement. IF THE EQUIPMENT IS USED IN ANY MANNER THAT WOULD CONSTITUTE A BREACH OF THIS PARAGRAPH, OR IN VIOLATION OF THIS AGREEMENT, OR IT IS OBTAINED FROM PC BY FRAUD OR MISREPRESENTATION, OR IS USED IN FURTHERANCE OF ANY ILLEGAL PURPOSE, ALL SUCH USE OF THE EQUIPMENT IS WITHOUT PC'S PERMISSION. CUSTOMER WILL BE LIABLE FOR ALL LOSSES OR DAMAGE TO THE EQUIPMENT AND EXPENSE OF PC RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF CUSTOMER, WHICH INCLUDES BUT IS NOT LIMITED TO, THE USE OR OPERATION OF THE EQUIPMENT IN A RECKLESS OR ABUSIVE MANNER OR INTENTIONAL DAMAGE TO THE EQUIPMENT BY CUSTOMER OR WITH THE CUSTOMER'S PERMISSION; OR UNDER ANY OF THE FOLLOWING CIRCUMSTANCES: (A) striking overhead objects with Equipment (B) all loss and damage associated with vandalism or conversion; (C) a loss or damage to equipment resulting from any exposure to radioactive, contaminated or other hazardous materials, (D) boom damage from overloading of a boom or from a collision when a boom is in motion; (E) all loss or damage associated with the Equipment's rollover; (F) use of or operation of the Equipment by a person other than an employee of Customer possessing all necessary permits and not otherwise prohibited by law from such operation; (G) use or operation of the Equipment in violation of law or ordinance; (H) the failure of Customer to perform, or the improper performance of, the maintenance required under this Agreement; (I) any failure of Customer to comply with any notice requirements of this Agreement; (J) Customer's failure to secure the Equipment by leaving the keys readily available to any unauthorized operator or by not reasonably restricting access to the Equipment. In the event any loss or damage to the Equipment PC will subrogate with respect to any rights of Customer to recover against any person or entity Customer will deliver whatever instruments are required and to do whatever else is necessary to secure such rights. Customer will cooperate fully with PC and its insurers in prosecution of those rights and will neither take nor permit nor suffer any action to prejudice PC's rights with respect thereto.

**11. LOCATION OF EQUIPMENT; RIGHT TO INSPECT.** Unless otherwise agreed to by PC, Customer shall keep the Equipment only at the location(s) identified on the front of this agreement or the Release/Receiving Form, and in no event shall the Equipment be moved to another location without prior written consent from PC. Customer shall allow PC to inspect the Equipment at all reasonable times wherever the Equipment may be located.

**12. TITLE.** Title to the Equipment shall at all times remain in PC. The Equipment shall at all times remain personal property of PC, notwithstanding that the Equipment or any part thereof may become in any manner attached to, embedded in or permanently resting on any real property or building. Customer shall not cause or allow the Equipment to become attached to, embedded in, or permanently resting on any real property or building. PC shall have the right at any time to affix such labels, as it desires on the Equipment to identify it as the owner or lessor. Concurrent with the execution of this Agreement and at any time thereafter at the request of PC, Customer shall execute and deliver to PC all financing statements, assignments and all other agreements, instruments and documents that PC may request, in forms satisfactory to PC, and shall take any and all other steps requested by PC, in order to maintain PC's right, title, and interest in the Equipment.

**13. ASSIGNMENT; ENCUMBRANCES.** Customer shall not transfer, pledge or assign this Agreement, the Equipment or any interest in either. Customer shall keep the Equipment and the Agreement free and clear of all liens, claims and encumbrances. PC shall have the right to assign or encumber the Agreement, the Equipment or any interest in either without the consent of and without notice to Customer.

**14. TAXES.** Customer shall promptly pay when due all license fees, registration fees, excise taxes, use taxes, sales taxes, property taxes and other government assessments, charges, and taxes relating to its use, possession or control of the Equipment, EXCEPT any taxes on or measured by PC income.

**15. DEFAULT BY CUSTOMER.** The occurrence of any of the following by Customer shall constitute an event of default by Customer under this Agreement and all other agreements between Customer and PC: (a) Customer's failure to pay rent or any other sum of money as and when due under this Agreement or any other agreement with PC; and (b) Customer's breach of any of its obligations or its representations in this Agreement or any other Agreement with PC which, if capable of being cured, is not cured within 5 days after PC gives Customer written notice of that breach. Upon the occurrence of an event of default by Customer under this Agreement and in addition to any other rights and remedies that PC may have, PC shall have the right, at its option, to take one or more of the following actions:

(A) terminate the Agreement immediately without notice to or demand on Customer; (B) require Customer to disassemble the Equipment and deliver it to the PC Branch at Customer's expense; (C) retake possession of the Equipment without notice to or demand on Customer wherever the Equipment shall be located without any court order or other process of law (Customer hereby waives all claims, demands, and liabilities that may arise from any such repossession); (D) collect from Customer all sums due for the full term of this Agreement without prejudice to its right to terminate this Agreement; and (E) pursue any other right or remedy at law.

**16. REMEDIES CUMULATIVE; NONWAIVER.** No remedy under this Agreement or otherwise conferred upon or reserved to PC shall be considered exclusive of any other remedy, but the same shall be distinct, separate and cumulative and shall be in addition to every other remedy or right given under this Agreement or now or hereafter existing at law or in equity. Every power and remedy given by this Agreement to PC may be exercised severally, concurrently or in any combination from time to time as often as occasion may arise or as PC may deem expedient. No delay or omission of PC to exercise any right or power arising from any default on part of the Customer shall impair any such right of power or shall be construed to be a waiver of any such default.

**17. NOTICES.** Any notice permitted or required under this Agreement shall be deemed given if in writing and delivered personally or deposited in the United States mail, certified, return receipt, first class postage prepaid to the respective addresses of PC and Customer specified in this Agreement or such other addresses as the receiving party gives the other party written notice.

**18. MISCELLANEOUS.** This Agreement, including the Release/Receiving Form, contain the entire agreement of parties relating to subject matter hereof and supersedes all previous and contemporaneous agreements and understandings, whether written or oral, relating to that same subject matter. This Agreement may be modified only by an agreement in writing, signed by both parties. If any provision of this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable. This Agreement shall be binding upon, and shall inure to the benefit of the parties and their respective successors and permitted assigns. This Agreement and any controversy relating hereto shall be governed by and construed in accordance with the laws of the State of North Carolina. At the sole option of PC, any action or proceeding relating to this Agreement or its enforcement shall be commenced and heard in (or transferred to if necessary) the appropriate state and federal courts for Mecklenburg County, North Carolina. Customer hereby consents and submits to the jurisdiction and venue of those courts.

**19. CONTRACT DOCUMENTS.** The Agreement between the parties hereto includes the Rental Agreement, proposal or quote submitted by PC and accepted by the Customer, these Terms and Conditions, the Equipment Movement Record, and the delivery & release forms prepared by PC and delivered to the Customer (the "Contract Documents"). Any terms and conditions set forth in Customer documents which are inconsistent with the Contract Documents are not accepted by PC unless specifically acknowledged and accepted in writing. PC's Terms & Conditions are published on its website ([www.pinnaclecranes.com](http://www.pinnaclecranes.com)) and may be updated or amended from time to time. The Terms & Conditions in effect at the time of each delivery shall be those on the website at the time of such delivery.

**20. SIGNATURES AND ELECTRONIC DELIVERY.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of this Agreement and all Contract Documents may be executed and delivered by facsimile or other electronic signature by any of the parties to any other party and the receiving party may rely on the receipt of such document executed and delivered by facsimile or other electronic means as if the original had been received. Signature pages may be executed via "wet" signature or electronic mark and executed signature pages may be delivered using pdf or similar file type transmitted via electronic mail, cloud based server, e-signature technology or other similar electronic means.