

## TERMS AND PROVISIONS OF LEASE

1. On local rentals, the rental period shall begin on and include the date of shipment or delivery to the lessee and shall end on and include the date of return to the lessor's warehouse or receiving point. On out-of-town shipments, the rental period shall begin on and include the date of bill of lading of shipment to the lessee and shall end on and include the date of return to the lessor's siding or receiving point. Both local and out-of-town rentals are subject to the minimum rental period provided for in this contract. If equipment is kept longer than the specified minimum rental period, the rental will then be invoiced on a pro-rate basis.

2. The lessee agrees that the rates provided for in this contract are considered straight time rates based on eight (8) hours per day, five (5) eight (8) hour days per week, or twenty-two (22) eight (8) hour days in any one thirty (30) consecutive day period. Should the machinery be used longer than the above specified hours in any specific period, the overtime rate shall be based as follows:

1/8th of the daily rate for each hour worked in excess of eight (8) hours in any one day;

1/40th of the weekly rate for each hour worked in excess of forty (40) hours in any one weekly period;

1/176th of the monthly rate for each hour in excess of one hundred seventy-six (176) hours worked in any thirty (30) consecutive day period.

3. It is understood that the lessor is not the manufacturer of the equipment herein leased, nor the agent of said manufacturer and that no warranty against patent or latent defects in material, workmanship, or capacity is given, nor that said equipment will meet the requirements of any law, rules, specifications or contracts which provide for specific machinery or apparatus or special methods, other than that of original manufacturer of said equipment and as set forth in said manufacturer's catalog and representations wherein said machinery and equipment is listed and described.

4. The lessor shall use reasonable care to see that the equipment is in proper working condition before shipment to lessee. It is not to be actually operated or tested unless such operation or test is deemed necessary by lessor or unless lessee shall request such operation or test in writing, in which event the lessee will be notified of the time and place of said operation and test and shall be permitted to be present thereof. If having requested it, lessee fails to be present at the time of operation and test, lessee agrees that said equipment as turned out is in proper operating condition.

5. On non-tractor equipment the lessee agrees to maintain said equipment in the same condition as when delivered to it by the lessor, usual wear and tear excepted, and to pay all claims and damages arising from defects therein, or from the use of handling of said equipment, whether from injuries to the person or property, and to pay for all damages to the equipment, except the usual and ordinary wear and tear, during the life of this contract, and to return said property in as good condition as when received to the storage yard of the lessor, or receiving point designated by the lessor, usual and ordinary wear and tear excepted and to pay all freight, demurrage, storage, switching, drayage, truckage or other charges against said equipment from the time the same shall leave the storage yard of said lessor up to and including the time of its return to said storage yard or other place of return agreed upon. On all tractor equipment, the conditions in paragraph 5 apply except that the lessee agrees to fully maintain the machinery covered in this contract while in his possession and to return it in the same condition as received from the lessor with no exception made for usual wear and tear.

6. The receipt and acceptance by the lessee of said equipment shall constitute acknowledgement that said property has been accepted and found in good, safe and serviceable condition, and fit for use, unless the lessee makes claim to the contrary to the lessor by registered mail with return receipt demanded, addressed to the lessor's home office within three days after receipt of said equipment. The complaint as made shall set forth in detail its complete nature and the condition of the property received.

7. Should any of the machinery, equipment, or appurtenances, be received and accepted by the lessee from any drayman, railroad company or any other carrier transporting same in a damaged condition or with any of the machinery, equipment, parts or appurtenances missing, it shall be the duty of the lessee to obtain from said drayman, railroad company or other carrier, a written acknowledgement of the damages or shortages. The failure on the part of the lessee to obtain such statement or acknowledgement upon its receipt and acceptance of said machinery, equipment, parts and appurtenances shall be treated as an acceptance of said machinery, equipment, parts and appurtenances in good, safe, serviceable condition and fit for use. Any damage or loss which has occurred and is not covered by a written acknowledgement or statement as aforesaid, or which occurs after acceptance of said property, shall be repaired and replaced at the expense of the lessee. If the machinery, equipment, parts or appurtenances are damaged or lost in transportation and the lessee furnishes to the lessor a written

detailed acknowledgement and statement from the carrier setting forth the character of damage and loss, the lessor agrees to use reasonable diligence in having same repaired and loss replaced within a reasonable time, but the equipment shall be deemed to have been delivered on date of acceptance thereof from carrier.

8. In the event of notice to the lessor by the lessee that the equipment is not in good, safe and serviceable condition and fit for use upon its arrival, the lessor shall have the right to put said equipment in good, safe and serviceable condition and fit for use, within a reasonable time, or to cancel this lease.

9. The lessor shall not be liable in any event to the lessee for any loss, delay or damage of any kind or character resulting from defects in, or inefficiency of equipment hereby leased or accidental breakage thereof.

10. In the event of accident to, or breakage of, any part of the equipment lessee may have the same repaired by any competent person, firm or corporation at its own expense or, upon notice to the lessor as to such breakage or accident, the lessor may repair said machinery for the lessee, using reasonable diligence to make said repairs or replacement in the shortest possible time, and the lessee agrees to pay the lessor its regular charges for any material or labor furnished in making said repairs upon demand. In the event any work is done outside of lessor's regular hours, including work necessary by wear and tear, by reason of which lessor shall be required to pay overtime charges to its employees, or to anyone doing the work for lessee, all such charges will be paid by the lessee to the lessor.

11. In the event the lessee accepts the machinery and equipment, as herein provided and thereafter the said machinery proves defective or unfit for use, because of accident or otherwise, or, if for any other reason lessee desires to discontinue the use of said machinery or equipment, the only remedy of lessee shall be to return the machinery to lessor and terminate this contract as herein elsewhere provided for, which in no event shall be less than the transportation charges on said machinery and equipment and minimum rental herein provided for.

12. The lessee agrees to pay any charges for work or inspection required by any labor union. The lessor may, at its option, refuse to do any repair work on the equipment in time of strike, or any other cause beyond its control, or in violation of any rule affecting the equipment. The lessor reserves the right to remove the equipment from the job at any time when, in its opinion, the equipment is in danger because of strikes or any other condition.

13. The lessee agrees to comply with and conform to all municipal, state and federal laws relating to the operation of said machinery and to pay all costs and expenses of every character occasioned by or involving the use or operation of the machinery or equipment and to pay all legal assessments, taxes or public charges, either local, municipal, state or federal, which may be levied on said equipment while in the possession of the lessee. Nothing in this paragraph is to be construed as meaning that the lessee is to pay the personal property tax levied against the machinery rented when said machinery is delivered within the home state of the lessor, as in this case the lessor is to pay his own personal property tax. In the event the equipment is rented outside of the home state of the lessor, any and all taxes assessed against the machinery, including personal property tax, are to be paid by the lessee, the words "home state" to mean any state in which the lessor has a home office or warehousing branch.

14. The lessee agrees to pay the lessor for all loss and damages occasioned by fire, theft, flood, accident, explosion, wreck, an act of God or any other causes that may occur during the life of this lease, and from the date thereof, including movement and delivery and until such machinery has been returned into the possession of the lessor and accepted by it.

15. The lessee further agrees to indemnify the lessor against all loss, damage, expense and penalty arising from any action or account of any injury to person or property of any character whatsoever occasioned by the operation, handling or transportation of any of the equipment during the rental period, and while said machinery and equipment is in the possession or under the custody and control of lessee, finding the valuation of said property in order to determine the loss, damage or injury thereto, it is agreed by the parties hereto that the value as hereinafter stated shall be a true and just value forming a basis for such adjustment. In making such adjustment it is understood that no rentals heretofore paid or due shall apply to the payment of such loss.

16. The lessee further agrees to protect the lessor on this contract with full insurance coverage, said insurance to cover damage occasioned by fire, theft, flood, explosion, accident, act of God, or any other cause, that may occur during the life of this lease and to protect the lessor for public liability insurance for coverage to the limits of the State laws in which the equipment leased is being used.

17. The title to the property herein leased and to all replacements thereof or substitution thereof is and shall remain in the lessor, and said machinery and equipment shall not become a part of any building, by being placed therein or by being annexed thereto. Where the equipment is annexed to any property, the lessee shall furnish the lessor with a landlord's release, which shall permit the lessor to remove the equipment from said property at any time during the life of, or after the expiration of, this contract. Should the lessee be lax in obtaining said landlord's release, the lessor reserves the right, and the lessee hereby grants permission to the lessor to obtain such release.

18. The lessee agrees, whenever requested by lessor, to give lessor the exact location of all of the equipment covered by this lease and further agrees to give lessor immediate notice of any levy attempted upon said equipment, or if said equipment from any cause becomes liable to seizure, and to indemnify lessor against all loss and damages caused by any such action. The lessor shall have the privilege at all times of entering any job, building or location where the above property is being used for the purpose of inspection and reserves the privilege of removing said equipment on twenty-four hours notice if it is being overloaded or taxed beyond its capacity or in any manner abused or neglected.

19. The equipment hereby leased shall not be sublet without the written consent of the lessor nor shall said property be moved out of the state specified in this contract without the written consent of the lessor.

20. Should any of the provisions of this lease be violated by lessee the rental for the entire period herein specified, shall become forthwith due and payable, and the lessor, or its agents may, without notice, enter the premises occupied by lessee without being a trespasser thereon and take possession of and remove said equipment with or without process of law. In the event any action as hereinbefore set forth becomes necessary the lessee agrees to pay, in addition to other charges herein specified, all costs of removal of said machinery from the possession of the lessee and all freight, demurrage, storage, labor or other charges on or against said property incurred during or by the removal, shipping and return to the possession of the lessor at his designated receiving point, or equivalent point designated by the lessor.

21. The lessee agrees to pay all rentals when they are due and for all services and materials furnished and all damages and sums due the lessor under this contract as soon as the loss occurs or services are rendered or materials are furnished. The taking of notes, or renewals thereof, covering rentals herein specified shall not in any manner whatsoever change or invalidate the term and conditions of this contract.

22. Lessee agrees that if any of the lease provisions are violated and lessor demands the return of the equipment that this lease shall constitute authority to the watchman or other persons responsible for the equipment to deliver all or any part of the equipment to the lessor or its agents.

23. The lessee's inspection, a requisite to any rentals of equipment provided for herein, and the following acceptance of such equipment shall constitute a waiver of any and all claims of whatsoever character or nature for any damages allegedly caused by any defects therein, or in the lack of protective or other desirable or requisite accessories.

24. The lessee, in the event the lessor shall provide and furnish an operator or operators of any leased equipment, hereby agrees that such operator or operators shall become and be deemed an employee or employees of said lessee, and such operator or operators shall be under the control, supervision and direction of said lessee, and said lessee further assumes all responsibility for the services and activities of such employee and employees with the same force and effect were they regular employees of the lessee and shall, in any event save the lessor harmless from any claim or claims of whatsoever nature involving such employment other than the payment of wages of such employee or employees to be assumed by the lessor.

25. The lessee agrees that in the event said lessee shall deem it necessary and proper to utilize any equipment of whatsoever character other than such equipment furnished by the lessor in the operation of the leased equipment, said equipment shall be subject to inspection and the use thereof subject to the written consent of the lessor.

26. Both lessor and lessee agree that no modification of this agreement shall be binding upon them or either of them, unless such modification shall be in writing and duly accepted in writing.

27. The lessor's designated receiving point referred to in this contract is shown on the first page of the contract in the space therein following the printed words "Return to."



THE L. C. WHITFORD EQUIPMENT CO., INC.  
 164 N. Main Street • P.O. Box 663 • Wellsville, NY 14895  
 Phone: (585) 593-2741 • Fax: (585) 593-3207



Invoice to \_\_\_\_\_  
 Street Address \_\_\_\_\_ City and State \_\_\_\_\_  
 Phone Number \_\_\_\_\_

The L. C. Whitford Equipment Co., Inc., Village of Wellsville, New York, County of Allegany, State of New York, hereinafter called the lessor, hereby proposes to and does lease to \_\_\_\_\_

City of \_\_\_\_\_ County of \_\_\_\_\_ State of \_\_\_\_\_

hereinafter called the lessee, the equipment described in the subdivision of this contract designated as "Equipment Leased" according to the terms and provisions as stated on the reverse side of this page to-wit:

The lessee agrees to pay for use of the following equipment, rental as follows:

\$ \_\_\_\_\_ per hour, \$ \_\_\_\_\_ per day, \$ \_\_\_\_\_ per week, \$ \_\_\_\_\_ per month, (with) (without) operator(s), (with) (without) fuel.

The lessee obligates themselves for transportation of the operator.

All rentals hereinbefore provided shall be payable at the office of the lessor in the Village of Wellsville, County of Allegany, State of New York.

The rental rates set forth in this contract do not include either sales or use tax. Where state laws provide for either sales or use tax, the rental rates set forth in this contract are subject to this tax if and when incurred. This tax provided for in paragraph 13 of this contract. Lessee to insure equipment as provided for in paragraph 16 of this contract.

**EQUIPMENT LEASED**

# \_\_\_\_\_ DESCRIPTION \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

HRS OUT: \_\_\_\_\_ HRS IN: \_\_\_\_\_

FUEL OUT: \_\_\_\_\_ FUEL IN: \_\_\_\_\_

F. O. B. \_\_\_\_\_ Total Value \$ \_\_\_\_\_

for use in construction operations on \_\_\_\_\_

at or near \_\_\_\_\_ In the State of \_\_\_\_\_

Customer Pick-Up / Ship to \_\_\_\_\_ Date \_\_\_\_\_

Return to \_\_\_\_\_ Date \_\_\_\_\_ Via \_\_\_\_\_

THE LESSOR UNDERSTANDS AND AGREES TO BE BOUND BY THE FOREGOING AND THE TERMS AND PROVISIONS CONTAINED ON THE REVERSE SIDE OF THIS PAGE.

(Sign) \_\_\_\_\_  
 Lessee

THE L. C. WHITFORD EQUIPMENT CO., INC.  
 By \_\_\_\_\_

By (Print) \_\_\_\_\_  
 Date Signed by Lessee \_\_\_\_\_

Date Signed by Lessor \_\_\_\_\_  
 Approved by \_\_\_\_\_  
 Authorized to Approve for Lessor

Witness: \_\_\_\_\_

Date Approved by Lessor \_\_\_\_\_



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(Sign) \_\_\_\_\_  
 Lessee

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 By \_\_\_\_\_

By (Print) \_\_\_\_\_  
 Date Signed by Lessee \_\_\_\_\_

Date Signed by Lessor \_\_\_\_\_  
 Approved by \_\_\_\_\_  
 Authorized to Approve for Lessor

Witness: \_\_\_\_\_

Date Approved by Lessor \_\_\_\_\_