

*THIS AGREEMENT IS A SUPPLEMENT TO THE INVOICE.. THIS IS A WEB-BASED SERVICE, AND AS SUCH, YOUR "RENTAL AGREEMENT" CONSISTS OF THE SELECTIONS YOU MADE ON [WWW.RKCRENTALSNH.COM](http://WWW.RKCRENTALSNH.COM) AND WERE ULTIMATELY INCLUDED IN YOUR FINAL INVOICE." YOUR AGREEMENT MAY ONLY BE MODIFIED IN WRITING. ACCEPTANCE OF THE BELOW TERMS AND CONDITIONS IS AN EXPRESS CONDITION TO RENTING EQUIPMENT FROM RKC.*

## **EQUIPMENT RENTAL TERMS AND CONDITIONS**

- 1. DEFINITIONS:** The following are defined terms and shall carry with them, throughout this agreement, their respective definitions:
  - a. "RKC" means RKC HOLDING INCORPORATED d/b/a RKC Rentals or any of its corporate subsidiaries or affiliates identified or not on the preceding webpages from whom the Customer has rented the equipment.
  - b. "Equipment" means any one or more of the items identified and selected on the preceding webpages/final invoice, and shall include any accessories, attachments or other similar items delivered to the customer.
  - c. "Customer" means the person or entity, including any representative, agent, officer or employee of the Customer who has authorized the equipment rental and agrees to these Terms and Conditions.
  - d. "Invoice" means the invoice produced from the selections on the webpages – should there be a conflict between selections made and the Invoice, the Invoice shall control.
  - e. "Rent" means the total charge on the Invoice.
  - f. Rental Period means the period between the Date Out and the Date the equipment is returned to RKC.
- 2. RENTAL PERIOD:** Customer hereby rents from RKC the Equipment for the Rental Period and agrees to pay RKC the Rent for all Time Out, but in any event, not less than the "Minimum Rent," if any, specified on the preceding webpages and invoice. RKC charges Rent for all Time Out, including Sundays, and Statutory holidays. It is hereby agreed that all rental rates assume no more than eight (8) hours of usage per day. Should Customer run the Equipment for more than an combined average of eight (8) hours per day throughout the Rental Period, Customer shall pay an additional \$50.00 per hour logged.
- 3. POSSESSION/TITLE:** RKC owns the Equipment, and title in and to all of it will remain RKC's at all times. Customer is entitled only to use and possess the Equipment for the Rental Period, subject to the terms of this Contract. If Customer retain any of the Equipment beyond the agreed Rental Period without RKC's express written consent, Customer will be deemed to have materially breached this Contract. Further, the failure to make the Equipment available for pickup at the end of the Rental Period, without written consent to extension will be considered theft.
- 4. WARRANTY WAIVER:** THE EQUIPMENT IS PROVIDED "AS-IS" AND "WITH ALL FAULTS." RKC MAKES NO WARRANTY, EXPRESS OR IMPLIED (INCLUDING WITHOUT LIMITATION, ANY AND ALL WARRANTIES OR SUITABILITY, MERCHANTABILITY, AND/OR FITNESS FOR ANY PARTICULAR PURPOSE) , NOR DOES RKC MAKE ANY WARRANTY AGAINST INTERFERENCE, INFRINGEMENT, THAT THE EQUIPMENT IS FIT FOR CUSTOMER'S INTENDED USE, APPLICATION OR ENVIRONMENT, OR THAT IT IS FREE FROM DEFECTS (LATENT OR PATENT). NO WARRANTIES SHALL BE DEEMED TO EXIST WITH RESPECT TO THE EQUIPMENT, EXCEPT AS EXPRESSLY SET FORTH IN THIS CONTRACT. ACCORDINGLY, CUSTOMER HEREBY WAIVE ANY AND ALL IMPLIED WARRANTIES. RKC WILL NOT BE RESPONSIBLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LIABILITIES, CLAIMS, INJURIES, LOSSES, COSTS OR DAMAGES ARISING FROM OR ASSOCIATED WITH THE USE OR ANY FAILURE OF, OR ANY UNKNOWN DEFECT IN OR WITH RESPECT TO, ANY OF THE EQUIPMENT. CUSTOMER'S SOLE REMEDY FOR ANY FAILURE OF OR DEFECT IN OR WITH RESPECT TO ANY OF THE EQUIPMENT IS TERMINATION OF THE ACCRUAL OF RENTAL CHARGES AT THE TIME OF FAILURE.
- 5. ASSUMPTION OF RISK:** Customer acknowledges that the possession, use, transportation and/or storage of the Equipment may give rise to the risk of personal injury and/or property damage. CUSTOMER VOLUNTARILY ASSUMES ALL SUCH RISK AND RELEASES, DISCHARGES AND INDEMNIFIES RKC FROM ANY AND ALL LIENS, LIABILITIES AND CLAIMS ARISING IN CONNECTION WITH THE SAME, INCLUDING WITHOUT LIMITATION, ANY AND ALL CLAIMS ARISING FROM OR IN CONNECTION WITH RKC'S NEGLIGENCE (OTHER THAN INTENTIONAL MISCONDUCT).
- 6. RECEIPT/INSPECTION OF EQUIPMENT:** Customer acknowledges that Customer has received, inspected, examined and accepted the Equipment, and that, as delivered to Customer, it is safe and in good operating condition and repair and otherwise in all ways acceptable to Customer. Customer have selected the Equipment based on Customer's determination that it is appropriate for Customer's purposes, use, application and environment, and not based on any recommendation by RKC.
- 7. DELIVERY, LOADING & UNLOADING:** RKC shall be responsible for the loading and unloading of Equipment. Delivery fees are outlined on the webpage, however, for clarity, delivery fees are as follows: \$50.00 per delivery if within ten (10) road miles of 263 Laconia Road, Tilton, New Hampshire. If the delivery location is further than ten (10) road miles, then Customer shall pay \$50.00 PLUS \$5.00 *per mile*, rounded to the nearest mile. Customer shall be responsible for identifying the "drop off" location when checking out. RKC shall not be responsible for any damage to the drop-off location identified by Customer. Should Customer identify the drop off location as a paved area, Customer hereby holds RKC harmless for

any damage to pavement, ledge pack, or landscaping. If RKC's employees or agents assist in loading or unloading the Equipment, CUSTOMER AGREES TO ASSUME THE RISK OF DAMAGE OR INJURY OCCASIONED THEREBY AND TO INDEMNIFY, DEFEND AND HOLD HARMLESS RKC FROM AND AGAINST ANY LOSS, COST OR EXPENSE (INCLUDING ATTORNEY'S FEES AND EXPENSES) ARISING FROM OR RELATED TO THE SAME, WHETHER OR NOT CAUSED, IN WHOLE OR IN PART, BY OUR NEGLIGENCE OR THE NEGLIGENCE OF OUR EMPLOYEES, AGENTS OR ASSIGNS.

- 8. EQUIPMENT FAILURE:** In the event any of the Equipment fails to start, breaks, malfunctions, become unsafe or is in need of maintenance or repair, Customer agrees to immediately discontinue use, notify RKC. Customer further agrees Customer will not repair or have anyone else repair the Equipment. Failure to timely notify RKC will not result in any relief from being charged for all Time Out.
- 9. REPLACEMENT BY RKC:** If the Equipment proves inoperable or defective, malfunctions, becomes unsafe or otherwise fails to function in accordance with the manufacturer's specifications, and is made available to RKC for pick up, RKC will, at its option: (a) promptly repair the Equipment; (b) provide Customer with reasonably similar replacement Equipment, if available; (c) make similar Equipment available to Customer as soon as it becomes reasonably available to RKC; or (d) cancel this Contract; and adjust the Rental Charge. Customer agrees that the foregoing will constitute Customer's exclusive remedy for Equipment malfunctions, and that RKC will have no obligation other than as set forth in this Paragraph with respect to any Equipment that fails to function properly. CUSTOMER SHALL NOT BE ENTITLED TO COLLECT FROM RKC, AND EXPRESSLY WAIVES ANY AND ALL CLAIMS AGAINST RKC FOR ANY DAMAGE, LOSS OR EXPENSE INCURRED AS A RESULT OF THE FAILURE OR MALFUNCTION OF THE EQUIPMENT, INCLUDING WITHOUT LIMITATION, LOST TIME, LOST PROFITS, COST OF COVER (OBTAINING REPLACEMENT EQUIPMENT AND/OR PERFORMANCE FROM ANOTHER SOURCE), INCIDENTAL, CONSEQUENTIAL, SPECIAL AND/OR PUNITIVE DAMAGES. PER SECTION 10 BELOW, SHOULD THIS PROVISION BE TRIGGERED BY CUSTOMER'S MISUSE OF THE EQUIPMENT, CUSTOMER SHALL BE RESPONSIBLE FOR THE COST OF REPAIRS, AND TIME SPENT AT A RATE OF \$200 PER HOUR, TO REMEDY DAMAGE CAUSED BY MISUSE.
- 10. USE OF EQUIPMENT:** The Equipment is authorized for use only by Customer and Customer's agents and employees (each of whom must be skilled, experienced, trained and authorized in its operation), at the location given as the "Drop off location" on the preceding webpages and Invoice. The Equipment is authorized for use only for its ordinary purpose. Customer agrees to not, and to ensure that Customer's agents and employees do not: (a) use the Equipment or any portion thereof for any other purpose; (b) use it for any illegal purpose; (c) use it without first ensuring that it has been properly maintained and that all oil, pressure and fluid levels are within the limits specified by RKC, the OEM and the applicable operation and/or maintenance manuals(s); (e) use it in any unsafe condition or manner; (f) permit its use by any person other than Customer or those of Customer's agent or employees who are fully trained and competent in its use; (g) attempt to repair it without RKC's prior specific written approval; (h) abuse, misuse, overuse, commit waste of, or otherwise permit any damage to or destruction of the Equipment; or (i) surrender possession of it to any other person, except a licensed common carrier that Customer retain to return it to RKC with RKC's prior written approval. Should Customer abuse, misuse, overuse, commit waste of, or otherwise permit any damage to or destruction of Equipment, and said damage is not covered by or customer did not opt into the Rental Damage Waiver in Section 18 below, Customer shall be solely responsible for the cost of damage/repairs at a rate of \$200 per hour plus actual cost. This shall apply to any site visit required RKC to bring the equipment back to working order. For example, should the tracks of the Equipment fall off due to misuse, Customer shall be charged \$200 per hour for a representative of RKC to travel to the site and re-align the tracks.
- 11. ASSIGNMENT AND SUBLETTING:** RKC may, at RKC's sole option, assign all or any portion of RKC's rights and/or remedies under this Contract without Customer consent. CUSTOMER MAY NOT ASSIGN CUSTOMER'S RIGHTS OR REMEDIES UNDER THIS CONTRACT, NOR MAY CUSTOMER SUBLEASE OR LOAN ANY OF THE EQUIPMENT TO ANY THIRD PARTY WITHOUT RKC'S PRIOR WRITTEN CONSENT.
- 12. CARE OF EQUIPMENT:** Customer must protect the Equipment against misuse, exposure to adverse conditions and any other abuse or neglect, ensure that it remains in good operating condition and is returned to RKC as the end of the Rental Period in the condition required in Clause (14) "Return of Equipment" Customer will provide a qualified operator for the Equipment, pay all costs of its operation, and provide all necessary fuel, lubricants, accessories and supplies. Should Customer's rental exceed fifteen (15) days, RKC reserves the right to inspect the Equipment at any time. Customer is the insurer of the Equipment during the Rental Period. As such, Customer bears all risk of loss, theft, damage or destruction to the Equipment, regardless of cause (Ordinary Wear and Tear excepted). If Customer fail to return the Equipment to RKC in the condition required, Customer agrees to pay all costs associated with returning it to such condition (which may include, if RKC reasonably deem it necessary, its full current replacement cost, including without limitation, all packing, shipping and handling charges). Rent will apply during the time it takes to repair or replace the Equipment.
- 13. RETURN OF EQUIPMENT:** Customer shall never transport the Equipment and shall only utilize the equipment at the drop off location (as defined in the Invoice by Customer). Customer agrees to place the Equipment in the same or similar location as delivered by RKC for pickup by RKC upon expiration of the Rental Period as stated in the Invoice. Nonetheless, RKC MAY TERMINATE THIS RENTAL FOR CAUSE AT ANY TIME BY WRITTEN NOTICE TO CUSTOMER AND/OR BY RETAKING POSSESSION OR CONTROL OF THE EQUIPMENT. Should the Customer not make the Equipment available for retrieval, Rent will continue to accrue until RKC retrieves the Equipment, and the Customer's only right with respect to the Equipment is to use it during the Rental Period in compliance with the Contract. Customer agrees to ensure that, upon return to RKC, the Equipment will be clean, free of all regulated or hazardous substances (including without limitation, substances Identified as "Hazardous

Materials" under any federal, provincial or local laws, rules and/or regulations purporting to deal with toxic or hazardous substances), rental-ready, and otherwise in substantially the same order, condition and repair as at the Time Out "Ordinary Wear and Tear" (as defined In Clause (14)) excepted. Customer agrees to pay a reasonable charge for Equipment returned in any other condition. Customer may opt-into a cleaning service at the time of check out which alleviates Customer's burden to clean the Equipment upon return.

- 14. ORDINARY WEAR AND TEAR:** "Ordinary Wear and Tear", meaning normal deterioration resulting from the proper and intended use of the Equipment in accordance with the terms of this Contract, will not be considered damage. Damage which is not "Ordinary Wear and Tear" (and for which Customer will be solely responsible) includes without limitation, theft, mysterious disappearance, damage due to overloading or exceeding rated capacities, nonstandard use, overturning, tire damage, and transportation or operation without required or recommended coolants, lubricants, hydraulic fluid, air pressure levels, supports, and/or safety equipment, improper use, misuse, abuse, neglect, accidents and intentional damage.
- 15. FUEL SURCHARGE:** Equipment with gas/diesel engines must be returned full of fuel or Customer will be charged at a rate of \$8.00 per gallon for RKC to bring the Equipment to "full."
- 16. ENVIRONMENT SURCHARGE:** RKC reserves the right to charge an environmental surcharge in respect of Equipment containing an internal combustion engine, hydraulic oils or similar components, to a maximum of \$150 to compensate RKC for the costs of handling, managing and disposing of hazardous materials. This is not a government mandated fee.
- 17. INSURANCE.** Customer shall maintain and pay for Inland Marine/Equipment Floater/Leased or Rental Equipment Insurance that provides coverage against all risks of direct physical loss, theft or damage of or to the Equipment (including flood, earthquake and weight of load), for not less than the full replacement value of the Equipment, coinsurance waived. If Customer fails to provide RKC with a certificate of insurance for such coverage within ten (10) days of this Agreement, Customer shall be automatically enrolled in and responsible to pay for the RDW defined below. Customer shall also maintain and pay for Commercial General Liability Insurance against personal injury (including death) and property damage with limits equal to at least \$1,000,000 per occurrence and \$2,000,000 general aggregate (including per job/per location general aggregate). For all insurance that Customer obtain (1) the insurance company shall have an AM Best rating of A- or better and be approved to do business in the state where the Equipment may be located, (2) RKC shall be named as an additional insured and loss payee, (3) a waiver of subrogation shall apply in favor of RKC, (4) the policy limits shall apply on a primary and non-contributory basis, (5) any maximum limit per item and applicable deductible shall be noted on the certificate(s) of insurance, (6) the policy's cancellation clause shall require that RKC receive at least 30 days written notice of any cancellation or modification (15 days for non-payment of premium), and (7) Customer shall provide RKC with an original policy or certificate evidencing such insurance. Customer does hereby appoint RKC as Customer's attorney-in-fact with power and authority to do all things required under any such policy, including but not limited to making claims, receiving payments and executing and endorsing all documents, checks or drafts.
- 18. RENTAL DAMAGE WAIVER. THIS IS NOT INSURANCE.** In lieu of providing insurance for damage or loss to the Equipment, Customer may participate in RKC's Rental Damage Waiver ("RDW"). The RDW is a waiver of claims by the RKC for perils covered by the RDW to the Equipment and is not "insurance" for the Lessee. **COVERAGE:** Up to [\$500,000.00] per item. If Customer participates in the RDW, Customer will have no liability, except for paying the deductible, to the RKC for physical damage to the applicable Equipment up to the covered amount, *except that Customer will remain liable to the RKC in all events for:* (a) damage or loss caused in whole or in part by: (i) Customer's breach of any provision of this Agreement; (ii) failure to return Equipment; (iii) violation of manufacturers' specifications; (iv) use of any Equipment in violation of any policy of insurance; (v) civil authority/war/terrorism; (vi) contamination including mold, mildew, rust, rot and other contaminants, except due to a covered peril; (vii) deterioration/wear and tear; (viii) pollutants or environmental hazards; (ix) nuclear hazard; (x) temperature/humidity; (xi) criminal/fraudulent/dishonest/illegal acts; (xii) intentional misuse, reckless conduct, exceeding rated load; and (xiii) mechanical breakdown; (b) damage to tires, tracks, unless caused by a covered peril; and (c) mysterious disappearance. Note that loss of use is never covered. **DEDUCTIBLE:** In the event of a claim, Customer will be responsible for the deductible in the amount of [\$2,500.00] per occurrence. **COST:** If Customer elects to participate in the RDW, Customer agrees to pay RKC 15% of the rental contract value to cover rented equipment. **COVERED PERILS:** All risk coverage including, but not limited to, (a) accidental damages; (b) collisions; (c) overturns/rollovers, (d) falling objects; (e) fire; (f) theft; (g) vandalism; (h) flood; (i) earthquake; (j) hail; (k) wind; (l) tornado; (m) other non-excluded perils. **SUBROGATION:** RKC will not subrogate for perils covered under the RDW.
- 19. FAILURE TO TIMELY RETURN:** If Customer fails to make the Equipment available for retrieval by RKC on the return day and time, and any time thereafter, Customer agrees to pay (a) an additional charge equal to the full rental amount(s), and (b) all costs and expenses (including without limitation, attorneys' fees) RKC incur arising from or in connection with any: (i) collection and/or repossession activities RKC elect to pursue; (ii) loss of or damage to any Equipment; and/or (iii) injuries or damages to persons or property, directly or indirectly resulting therefrom.
- 20. INTEREST ON UNPAID AMOUNT:** All amounts due and coming due under this Contract will bear interest at Twenty-Four (24%) per annum until paid in full.
- 21. DEFAULT/REMEDIES:** If Customer fails to comply with any provision of this in a timely manner, if Customer seek bankruptcy protection or if an involuntary proceeding in bankruptcy is commenced against Customer, the same will be deemed an immediate and material breach of, and an event of default under, this Contract, whereupon RKC may, at RKC's option, exercise any or all of the following remedies: (a) terminate the Customer's right to possess and use the Equipment, enter upon any premises where the Equipment may be located WITHOUT NOTICE and retake possession of,

immobilize and/or render unusable the Equipment, WITH OR WITHOUT PROCESS OF LAW; (b) If Customer default deprives RKC of the use of any item of Equipment, RKC may purchase other replacement Equipment and recover the cost of the replacement Equipment, together with any associated costs (e.g., packing, transportation, storage, delivery and taxes) from the Customer; (c) RKC may declare all Rent due and coming due under this Agreement, together with interest and late fees, if any, as well as attorneys' fees, immediately due and payable; (d) RKC may seek immediate relief from any automatic stay in bankruptcy; and/or (e) RKC may pursue any other remedy available to RKC under this Agreement or under applicable law. RKC's exercise of any one of these remedies will not constitute an election of remedies or a waiver of any other remedy RKC may have, it being understood that all such rights and remedies shall be cumulative.

22. **ENTIRE AGREEMENT:** This Contract represents the complete and final terms and conditions between Customer and RKC and cannot be modified by oral agreement. There are no oral or other representations, warranties or agreements not included in this Contract. Customer acknowledges that this Contract may be amended only in writing signed by both parties. The Invoice is a separate agreement, but incorporated herein by reference.
23. **SIGNATURES:** This Contract may be signed in multiple counterparts, each of which will be deemed valid and enforceable, so long as they are identical (if not, the version signed by RKC will control). For this purpose, facsimile, electronic signatures, click-through agreements, etc. will be deemed the equivalents of originals. **"Checking out" your cart on [www.rkcrentalsnh.com](http://www.rkcrentalsnh.com) shall be considered acceptance of the invoice.**
24. **ORDER OF PRECEDENCE:** These terms and conditions, and the Invoice shall control over any conflicting pre-printed terms and conditions contained in the Customer's purchase order or similar document.
25. **NON-WAIVER AND COSTS OF ENFORCEMENT:** (a) Any failure of RKC to insist upon strict performance by Customer of any terms and conditions of this agreement or Invoice shall not be construed as a waiver of the Company's right to demand strict compliance. (b) Customer agrees to pay all reasonable costs of collection, courts, attorneys' fees and other expenses incurred by the Company in the collection of any charges due under the Invoice or in connection with the enforcement of its terms.
26. **CRIMINAL WARNING:** The use of false identification to obtain equipment or the failure to return the equipment by the end of the rental period may be considered a theft subject to criminal prosecution pursuant to applicable criminal or penal code provisions.
27. **LOJACK DISCLAIMER:** PLEASE BE ADVISED THAT EACH PIECE OF EQUIPMENT IS EQUIPED WITH LOJACK TECHNOLOGY WHICH ALLOWS RKC TO TRACK AND REMOTELY MANAGE THE EQUIPMENT. SHOULD RKC RECEIVE A MISUSE NOTIFICATION, THEY, IN THEIR SOLE DISCRETION MAY DISABLE THE EQUIPMENT UNTIL THEY ARE ABLE TO INSPECT IT. THESE DEVICES NOT USE VIDEO OR AUDIO SURVEILLANCE.
28. **CREDIT CARD AUTHORIZATION:** Subject to such limitations as may be set forth in applicable law, Customer irrevocably and unconditionally authorize RKC to immediately submit for payment on the credit card (if any). Customer have provided RKC all estimated charges coming due under this Contract, and Customer agrees to indemnify, defend and hold harmless RKC with respect to the same. Customer shall provide details of a replacement credit card where the credit card provided expires during the Rental Period, prior to the expiration of the credit card. The credit card used for payment may be retained for 12 months. The Customer accepts any and all charges as determined solely by RKC. **A \$500.00 hold shall be placed on all credit cards by Quipli, RKC's rental software provider, for incidentals. Should there be no additional charges incurred by Customer upon return of Equipment, the hold shall be lifted. Customer further acknowledges that the cost of any fees incurred by RKC resulting from the use of a credit card will be included in Customer's final cost.**