

WARNER RENTALS LTD

GENERAL CONDITIONS

- 1 **The Rental Period:** The rental period shall cover all time consumed in transporting the equipment (as noted in the description) including the date of delivery to a public carrier for transit to the lessee, and upon the return of the equipment including the date of delivery by such carrier to the lessor, or if no public carrier is used, shall include the date upon which transit to the lessee begins and the date upon which transit from the lessee ends at the lessor's unloading point; providing, however that when the equipment moves from one lessee to another the rental period for the first shall not overlap that of the second.
- 2 **Calculation of Rental Charges**
- A: Four Weeks rental rate are for a minimum period of four weeks, computed from the date of commencement of the rental periods up to but not including the same weekday four weeks following, and shall apply when the number of hours the equipment is operated in any four-week period does not exceed 160 (one hundred and sixty) hours. B: Weekly rental rate are for a minimum period of one week, from the day of commencement of the rental period up to but not including the same day in the following week and shall apply when the number of hours the equipment is operated in any one week does not exceed 40 (forty) hours.
- C: Daily rental rates are for a consecutive period of 24 hours or less in which the number of hours the equipment is operated does not exceed 8 (eight) hours
- D: Overtime Charges. Where equipment is operated in excess of the above stated hourly maxima, such excess shall be charged at 1/160 of the four-weekly rate for each hour in excess of the 160 hours worked in any 28 consecutive day period: 1/40th of the weekly rate for each hour in excess of 40 hours worked in any one weekly period: 1/8th of the daily rate of each hour worked in excess of the 8 hours worked in any one day. However, the maximum charge for the second shift of 8 hours will not exceed 58% of the quoted applicable charge in (a), (b), or (c) above; and the maximum charge for a second and third shift will not exceed 100% of the quoted applicable charge in (a), (b), or (c) above.
- E: After the minimum four weeks or weekly rental period has expired, the rental payable for a fraction of any succeeding period shall be proportionate part of the applicable rental rate according to the number of calendar days in such a fraction.
- I: Rental rates shall not be subject to any deduction for any non-working time during the rental period, not because the lessee returns the equipment to the lessor before the expiration of such period.
- 3 **Payments:** Rental payable under this agreement shall be paid every four weeks when the rental is a four weeks rate otherwise weekly, and in either case shall be payable in advance at the address of the lessor. The rental is payable before delivery of the equipment to the lessee's agent or carrier. Overdue payments shall bear interest at a rate of 24% per annum, but the acceptance of this interest shall not be a waiver of the lessor's rights to terminate this agreement as hereinafter stipulated.
- 4 **Loading, Unloading and Transportation:** The lessor, at its expense shall load the equipment for transit to the lessee and shall unload it upon return, and shall pay all demurrage charges accruing at its own shipping and receiving point. The lessee, at its own expense shall do all the loading, unloading, installing, dismantling and hauling and shall pay all demurrage charges accruing at its own shipping and receiving points. The lessee shall pay all transportation charges from and to the lessor's shipping and receiving point. If shipping instructions are not furnished by the lessee, the lessor may ship the equipment in accordance with its own judgment.
- 5 **Maintenance, Operation and Repairs:** The lessee shall not remove, alter, disfigure or cover up any numbering, lettering or insignia displayed upon the equipment, and shall ensure that all the equipment is not subjected to careless or needlessly rough usage, and shall at the lessee's own expense maintain and ultimately return to the lessor the equipment and its appurtenances in good repair and operating condition. Without limiting the generality of the foregoing, the lessee shall, at the lessee's own expense, during the term of the lease pay the costs of:
- A: All fuel, oil and lubricants required to operate the equipment
- B: All repairs and replacement parts including labour charges required to be made to the equipment in order to keep it in good running order
- 6 **Rubber-Tired Equipment:** Tire wear and the cost of repairs of cuts and punctures is to the lessee's account and shall be payable to the lessor on demand. Tire wear shall be determined by percentage of wear incurred during the rental period as fixed by independent appraisal to be obtained promptly by the lessor following the termination of the rental period.
- 7 **Damage to Equipment:** The lessee agrees to indemnify the lessor against all loss and damage to the equipment hereby leased, during the rental period, based on the value of such equipment (which may be stated in the equipment description). The Lessor shall give notice to the lessee as soon as possible of any claim of the lessor under this paragraph.
- 8 **Liability Of the Lessee:** The lessee shall indemnify the lessor against all loss, expenses, penalties, damages, condemnations, and legal costs which the Lessor may suffer or may be required or condemned to pay for personal injuries (including death) and/or property damage suffered by any person by reason of the operation, handling, transportation or the use of the equipment by or while in the control of the lessee or the lessee's employees, agents or carriers. The Lessee hereby renounces all claims which it may have against the Lessor for any loss or damage which it may suffer either directly or indirectly, by reason of the condition of the equipment or its suitability for work it may be required to perform. The Lessee agrees to, at its sole expense; comply with all municipal, Provincial and Federal Laws, ordinances and regulations which may affect the operation of the equipment which is in the Lessee's possession and use.
- 9 **Inspection:** Before the equipment is loaded for transit to the lessee, the lessee may require an inspection thereof made by a competent authority and if the equipment is proven not to be substantially in the condition required by this lease, the cost of the inspection shall be paid by the lessor, if the lessee fails to have such an inspection made, the equipment shall be presumed for all purposes hereof to be in good condition and running order when delivered to the lessee or his agent. The Lessor shall have the right at any time to enter upon the premises or place where the equipment is located and shall be given free access and afforded all necessary facilities for the purpose of inspecting the equipment.
- 10 **Title:** Title to the equipment shall at all times remain in the lessor and nothing contained in the lease shall be deemed to have the effect of conferring upon the Lessee any right or title whatsoever in or to the equipment, other than that of a lease. The Lessee shall give the Lessor immediate notice in case of any equipment seized or levied upon, or from any cause become liable to seizure.
- 11 **Termination of Agreement:** Should the Lessee fail to make any payments when it becomes due, becomes bankrupt or insolvent, overload the equipment, tax the equipment beyond its rated capacity, fail to maintain and operate or return the equipment as provided by this agreement, or violate the provision hereof, the Lessor may at its option terminate this agreement without any notice to the Lessee and retake possession of the equipment without become liable for trespass. And the Lessor may further recover all rentals due and full damages for any injury to, and all expenses incurred in retaking possession of the equipment.
- 12 **Insurance:** The Lessee shall at its own expense maintain liability, theft, fire, and any other insurance required to indemnify the Lessor against any loss to or of the equipment to the extent of its value. The insurance shall be kept in effect from the time the equipment is shipped by the Lessor until it is returned to the Lessor or delivered to another Lessee
- 13 **Bond:** If required be the Lessor, the Lessee at its own expense, shall furnish a bond in form satisfactory to the Lessor in the amount of the value of the equipment as may be shown in the description of the equipment to ensure fulfillment of this agreement.
- 14 **Sub-Letting and Assignment:** The lessee shall not be entitled to sub-let or assign any of its rights under this lease or in to any of the equipment hereby leased without the written consent of the Lessor previously obtained, but the Lessor shall be entitled to assign its right hereunder or in and to the equipment hereby leased subject to the observance by the assignee of all obligations of the Lessor hereunder.
- 15 **Arbitration:** Should any dispute arise between the parties on any matter arising out of this agreement it shall be referred to a single arbitrator. If the parties fail to agree on the selection of the arbitrator, each party shall forthwith appoint its own arbitrator. Should the first two arbitrators fail to agree on the third arbitrator, the latter shall be appointed by a judge of the supreme court of British Columbia on application of either party.
- 16 **Notice:** Any notice to be given by one party hereto to the other shall be in writing and mailed by prepared registered post to the other party at the address shown in this agreement and such notice shall be deemed to have been received by the addressee on the day next following that on which the notice has been mailed
- 17 **Liens:** The Lessee shall not at any time suffer or permit any charge or lien, whether possessively or otherwise, to exist against the equipment, and shall keep the equipment free of all taxes (including municipal taxes whether assessed in the name of the Lessor or Lessee) liens and encumbrances. If the Lessee fails after demand of the Lessor, to pay off any such lien charge or encumbrance, the Lessor may pay the same and recover the amount of such payment, with interest at 24% per annum from the Lessee on demand.
- 18 **Loss Damage Waiver:** If the Lessee accepts the Loss Damage Waiver (Lessee is deemed to accept unless it declines where indicated on the front of the Agreement) and paying the additional fee specified thereon, the Lessor will waive its claim against the Lessee under paragraph 7 hereof for loss of or damage to the equipment to the Equipment (except as set out in paragraph 19 below) for any amount in excess of the following:
- A: For Theft: 10% of the retail purchase price of new Equipment (up to a maximum of \$3000. Any amount less than \$1000 will be of no additional cost to the customer).
- B: For Damage: 10% of the cost of the repairs to the Equipment.
- 19 **Waiver Exceptions:** Notwithstanding the Lessee's acceptance of the Loss Damage Waiver, the Lessee will be liable for all resulting loss or damage to the Equipment and expense of the Lessor, to the extent it: (i) results from the gross negligence of the Lessee's permission, or (ii) occurs under any of the following circumstances:
- A: Loss, damage or failure of tires and tubes under any circumstances.
- B: All loss or damage associated with vandalism, malicious mischief, theft or conversion of the Equipment, not documented by Lessee's prompt filing with the applicable public authorities, (with an immediate written copy of the Lessor).
- C: All loss or damage associated with Equipment being overloaded, operated above rated capacity, roll over or if operating instructions are not followed.
- D: Use of the Equipment by unqualified operator. Lessee is to use properly trained operators.
- E: Failure of the Lessee to perform necessary Equipment maintenance as outlined in paragraph 5.
- F: Lessee's failure to properly secure the Equipment by, among other things, leaving keys readily available to any unauthorized operator or not reasonably restricting access to the Equipment.
- 20 **General:** The Lessor and Lessee agree that this is the complete agreement between the parties and there are no collateral agreements or representations not in writing. The parties further agree that the agreement shall be read and construed in the personal, masculine or feminine rather than the body corporate, whichever shall be appropriate.