

## RICHARD KEMNER'S TRUCK RENTAL

### TERMS AND CONDITIONS

RDK TRUCK SALES & SERVICE, INC. A Florida corporation doing business as RICHARD KEMNER'S TRUCK RENTAL, (Lessor), hereby rents to Lessee and Lessee hereby accepts from Lessor, the Equipment described on Page One ("Equipment") subject to all terms, conditions and provisions of this Agreement as set forth on Pages One and Two.

**1. RETURN OF EQUIPMENT** - Equipment is and shall remain the property of Lessor, and is in good repair and mechanical condition. Except as otherwise provided herein. Lessee shall return Equipment in the same condition as received, ordinary wear and tear excepted to the place from which rented on the date specified or sooner if demanded by Lessor. Lessee agrees that Lessor may apply any security deposit posted by Lessee towards Lessee's obligation under this Paragraph 1.

**2. CHARGES** - Lessee shall be liable for and shall promptly pay when due at the Lessor's office designated herein, all rental and other charges set forth herein, including but not limited to time, mileage, service, minimum 50% grade wear on tire, delivery, pick-up and other charges (including cost of fuel supplied by Lessor) in accordance with this Agreement or, if not stated herein, in effect at the location at which the rental is made; and, shall pay and/or reimburse Lessor for amounts equal to any sales tax, use tax, personal property tax, licenses, registration or fees levied or based upon the rentals of the Equipment or the use of the operation thereof. Rental payment is due at the beginning of each rental term. The daily, weekly and monthly rental shall entitle Lessee to a maximum of one-shift use (8 hours per day, 40 hours per week, 176 hours per month). Double-shift use will incur a charge of one-and-a-half (1 1/2) times the rental rate and triple-shift use will incur a charge of two (2) times the rental rate. Lessor shall have a lien as allowed by law for charges incurred hereunder upon premises and improvements upon which Equipment is employed. Rentals are F.O.B. the location at which this transaction was made. Shipping charges from such location to destination and return and all loading, unloading, assembling and dismantling shall be paid by Lessee.

**3. USE OF EQUIPMENT** - Equipment shall be used solely in Lessee's business and kept only at its place of business or job site (except that Equipment may be moved in the normal course of Lessee's business), and shall not be removed without prior written consent of Lessor. Lessee shall notify Lessor, prior to moving equipment from its place of business or the job site identified on Page One, of the location and project to which the equipment is relocated and the date(s) each piece of equipment is removed or placed on any job site. Lessee shall promptly respond to all requests by Lessor concerning the location of all equipment and any information requested by Lessor concerning the job site (including, but not limited to, the identity of the property owner, general contractor, surety, if any, and legal description of premises). Lessee agrees that Lessor may inspect the equipment at reasonable times whether at Lessee's place of business or a job site. Equipment shall be used only within its rated capacity by safe, careful, competent and qualified personnel. Lessee shall notify Lessor immediately of any accident or occurrence, disablement or failure involving Equipment, and promptly furnish Lessor in writing all information required in connection therewith. Equipment shall not be used, operated, or driven: (A) to carry persons other than the driver or helpers; (B) to transport property for hire, unless all permits and licenses have been obtained by Lessee which are the sole responsibility of Lessee; (C) in violation of any law or ordinance; (D) by any person in violation of law as to age; (E) in any speed contests; and (F) by any person other than (1) Lessee; or (2) any of the following persons provided that such person is a qualified licensed driver and provided Lessee's permission is first obtained: (a) a member of Lessee's family, (b) Lessee's employer or (c) any employee of Lessee in the ordinary course of such employee's regular employment. If Equipment is used in violation of this Paragraph, or is obtained from Lessor by fraud or misrepresentation, or is used in furtherance of any illegal purpose, all use of Equipment is and shall be deemed used without Lessor's permission.

**4. SERVICE** - Lessee shall perform and pay for all normal, periodic and other basic service, adjustments and lubrication of Equipment, including but not limited to; checking of Equipment before each shift; and supplying fuel, oil and water; and checking cooling system (engine only); and, checking tire pressures and battery fluid and charge levels at least weekly. If Equipment fails to operate properly or needs repair, Lessee shall immediately cease using and notify Lessor forthwith, Lessee shall not make any alterations, additions or improvements to the Equipment without the prior written consent of Lessor.

**5. INSURANCE** - Lessee shall at Lessee's expense, during the term hereof, maintain in force a policy of public liability and property damage insurance with bodily injury and death liability limits of at least \$1,000,000 for each person in each accident and property damage liability limits of at least \$1,000,000 on a primary and not excess or contributory basis against its liability for damages sustained by any person or persons including but not limited to employees of Lessee, as a result of the maintenance, use, operation, storage, erection, dismantling, servicing or transportation of Equipment. Lessee shall at Lessee's expense, during the term hereof, maintain in force a policy covering any and all physical damage to the Equipment in the amount referenced on the reverse side of this Agreement. Lessee shall, on demand, furnish Lessor a certificate of insurance with respect to each policy required by this Paragraph 5, which certificates shall provide that they may not be canceled or materially modified except on thirty (30) days prior written notice to Lessor. Further, Lessee shall ensure that the certificates of insurance referenced herein shall name the Lessor as the loss payee and as an additional named insured on such certificates of insurance. Lessee agrees to abide by the provisions of said policies and to make a written report to Lessor and the insurer within 48 hours of Lessee's knowledge of any accident or occurrence involving Equipment. Lessee's agents and employees shall cooperate fully with Lessor and Lessee's insurer in the investigation, prosecution and/or defense of any claim or suit and shall do nothing to impair or invalidate any applicable insurance coverage. Lessee's insurance shall also insure except as may be otherwise provided herein, against all risks of direct physical loss or damage to the Equipment, while in transit or otherwise within the United States of America and Canada, and shall also include general average and salvage charges on Equipment while waterborne. In the event that Lessee receives any insurance proceeds with respect to any insurance policy required by this Paragraph 5, Lessee shall pay or apply such proceeds as directed by Lessor, Lessee shall also maintain worker's compensation insurance to extent required by law. Lessee agrees that credit for downtime is at Lessor's discretion only.

**6. INDEMNITY** - Lessee shall defend, indemnify and hold harmless Lessor, its subsidiaries and affiliated companies, their officers, agents and employees against all loss, liability and expense, including reasonable attorney's fees, incurred by any such individual or entity by reason of bodily injury including death, and property damage, sustained by any person or persons, including but not limited to the officers, agents and employees of Lessee, as a result of the maintenance, use, operation, storage, erections, mantling, dismantling, servicing, transportation, defect in or failure of Equipment, whether such bodily injury, death or property damage is due or claimed to be due in whole or in part, to any neglect, default, defect, fault, failure, act or omission by or on behalf of Lessor, its officers, agents and employees or any other person, including but not limited to any claims of strict liability in tort, breach of warranty and/or negligence. Further, Lessee shall defend, indemnify and hold harmless Lessor, its subsidiaries and affiliated companies, their officers, agents, and employees against all loss, liability and equipment costs, including reasonable attorney's fees, incurred by any such individual or entity by reason of any damage sustained by any person or persons, including but not limited to the officers, agents, and employees of Lessee, as a result of any pollution liability claims or environmental impairment claim made as a result of the Lessee generating, storing, disposing of any hazardous substances, hazardous material, toxic substances, or any additional substances or materials commonly described as hazardous substances. The provisions of this Paragraph 6 shall continue in full force and effect notwithstanding the expiration of termination of this Agreement for any reason.

**7. COMPLIANCE WITH LAW** - Lessee shall, at its expense, comply with all state, federal and local laws and regulations affecting Equipment and its use, erection, design and transportation, including licensing and building code requirements and shall defend, indemnify and hold Lessor, its subsidiaries and related and affiliated companies, their officers, agents and employees harmless from all loss, liability and expense, including reasonable attorney's fees, harmless from all loss, liability and expense resulting from actual or asserted violations of any such laws.

**8. VENUE AND CHOICE OF LAW; WAIVER OF JURY TRIAL** This Agreement shall be governed by and construed and enforced in accordance with, the laws of the State of Florida, excluding laws of Florida relating to the resolution of conflict of laws of different jurisdictions. The forum selected for any proceeding or suit related to this Agreement shall be in the Circuit Court of the Thirteenth Judicial Circuit, in and for Hillsborough County, Florida, and the parties consent to this Court's personal jurisdiction over them or if the State Court does not have subject matter jurisdiction, then in the District Court of the United States for the Middle District of Florida, Tampa Division, to which the parties also consent to personal jurisdiction. Each party hereby waives any defense whether asserted by motion or pleading, that Hillsborough County, Florida, is an improper or inconvenient venue. This is intended to be a mandatory and not a permissive forum selection provision. LESSEE HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT LESSEE MAY HAVE TO A TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION, COUNTERCLAIM OR CROSSCLAIM, WHETHER IN CONTRACT OR IN TORT, IN ANY WAY RELATED TO THE EQUIPMENT.

**9. RENTAL** - This Agreement is an agreement of rental only and Lessee shall not be deemed an agent or employee of Lessor for any purpose. Lessee shall not suffer any liens or encumbrances to attach to Equipment and shall defend, indemnify and hold Lessor harmless from all loss, liability and expense by reason thereof, including reasonable attorney's fees incurred by Lessor. Lessee shall not sub-let Equipment or assign this Agreement. The use of Equipment by others than Lessee or its employees shall be at Lessee's sole risk and subject to this Agreement. Lessor shall not be liable for any loss of or damage to any property left, stored, moved by or transported by Lessee or any other person in or upon Equipment either before or after the return thereof to Lessor whether or not caused by Lessor, and Lessee agrees to hold Lessor harmless from any such loss or damage including Lessor's reasonable attorney's fees. Lessee hereby assumes all risk of such loss or damage and waives all claims against Lessor by reason thereof and agrees to indemnify and hold harmless Lessor, its subsidiaries and affiliated companies, and all of its agents, officers and employees from and against all loss, liability, claim, action, or expense including reasonable attorney's fees arising out of such loss or damage.

**10. LIABILITY** - The liability of Lessor for delay or failure to pick up Equipment or for failure of Equipment to perform shall not exceed the rental charges herein provided for. Lessee shall be responsible for making arrangements for return of Equipment. This Agreement does not terminate until Equipment is received on Lessor's yard and all obligations under this agreement have been satisfied except as may otherwise be provided herein.

**11. DEFAULT** - All delinquent installments of rent shall bear interest at one-and-a-half percent (1 1/2%) per month if not prohibited by law or at the highest lawful rate. In the event of default or breach of this Agreement by Lessee, or if Lessor for any reason deems itself insecure, Lessor may enter premises where Equipment is located and render inoperative or remove Equipment with or without process of law and without notice or liability to Lessee, and may terminate this Agreement without prejudice to any remedies or claims which Lessor might otherwise have for arrears of rent, expense of retaking, court costs and reasonable attorney's fee, and in addition, a sum equal to the balance of the rent and other payments called for hereunder for the remainder of the original or extended term of this Agreement as the case may be as liquidated damages and not as a penalty. Lessee shall remain liable for the full value of the Equipment or for any loss or damage to the Equipment, notwithstanding any termination of this Agreement. Upon the occurrence of any event of default, Lessee agrees to pay all costs and expenses which may be incurred by Lessor, including a reasonable attorney's fee, to enforce any right provided herein or collect any sums due, including any appeal or bankruptcy proceeding.

**12. DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY** - Equipment described herein as new is leased subject to such warranties as are made in writing by the manufacturer thereof. Lessor will cooperate with Lessee in obtaining adjustment from manufacturer for breach of any such manufacturer's warranty; any expense to be for Lessee's account. In the event it is found that there are defective parts within such period as the appropriate manufacturer's agreement to replace defective parts is applicable, Lessor will furnish at Lessor's repair facilities during regular working hours, such labor as is required for replacement or repair of defective parts covered by manufacturer's warranty. Cost of necessary transportation to and/or from Lessor's repair facility shall be borne solely and exclusively by Lessee. EXCEPT FOR THIS AGREED OBLIGATION TO FURNISH LABOR TO MAKE REPLACEMENT OR REPAIR OF DEFECTIVE PARTS COVERED BY MANUFACTURER'S WARRANTY WITHIN THE MANUFACTURER'S WARRANTY PERIOD, LESSOR SHALL NOT BE LIABLE FOR DEFECTS IN OR FOR ANY DAMAGES OR LOSS TO THE EQUIPMENT LEASED NOR CAUSED BY THE EQUIPMENT LEASE, AND UNDER NO CIRCUMSTANCES SHALL LESSOR OR MANUFACTURER BE LIABLE AND HEREBY SPECIFICALLY DISCLAIMS RESPONSIBILITY FOR ANY INDIRECT SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES TO THE LESSEE OR TO ANY THIRD PARTY. THE FOREGOING UNDERTAKING WITH RESPECT TO NEW EQUIPMENT IS IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; FURTHER LESSOR MAKES NO WARRANTIES WHATSOEVER WITH RESPECT TO USED EQUIPMENT AND LESSEE TAKES AND RENTS ANY USED EQUIPMENT "AS IS" AND WITH ALL FAULTS OR DEFECTS UNLESS A MODIFICATION IS ENDORSED HEREIN OR CONTAINED IN A SEPARATE WRITING SIGNED BY AN OFFICER OF LESSOR.

**13. TITLES, HEADINGS AND CAPTIONS** - All titles, headings and captions used in this Agreement have been intended for administrative convenience only and do not constitute matters to be construed in interpreting this Agreement.

**14. ENTIRE AGREEMENT** - This Agreement expresses the entire agreement between the Lessor and Lessee. No change, modification or alteration of the terms, conditions and provisions herein will be effective against Lessor unless the same are in writing and signed by a duly authorized officer of Lessor. Lessee's execution of this agreement and/or acceptance of delivery of any part of equipment to be furnished hereunder shall constitute Lessee's acceptance of the terms, conditions and provisions of this agreement and the exclusion of any terms, conditions and provisions otherwise stated by Lessee or contained in Lessee's purchase documents which conflict with or limit the terms, conditions and provisions contained herein. The paragraph headings contained in this Agreement are for convenience only and shall not be used to expand or limit the express terms, conditions and provisions herein.

**15. NO WAIVER** - Lessor shall not be deemed to have waived any of its rights or remedies hereunder unless such waiver is specific and in writing. No delay or omission by Lessor in exercising any of its rights or remedies hereunder shall constitute a waiver thereof, or shall constitute any further waiver thereafter. All rights and remedies of a party are cumulative and concurrent and the exercise of one right or remedy shall not be deemed to be a waiver or release of any other right or remedy.

### RICHARD KEMNER'S TRUCK RENTAL LOSS AND DAMAGE PROVISIONS

**1. LESSOR'S GENERAL RESPONSIBILITY** - Under the Richard Kemner's Truck Rental Agreement ("Agreement") the Lessee renting the Equipment is responsible to Richard Kemner's Truck Rental for any loss or damage to the Equipment and/or its return in the same condition in which received, except for ordinary wear and tear. Such responsibility is limited to the full value of the Equipment at the time it is lost or damaged, less its salvage value, plus an administrative fee and Richard Kemner's Truck Rental's related expenses, including loss of use, appraisal fees, recovery costs and reasonable attorney's fee. In the event the Equipment is damaged in a manner for which the Lessee is responsible, such Equipment may be repaired by Lessor or a repairer of Lessor's then prevailing hourly rate for labor posted at the Lessor's branch where the Equipment is to be repaired, or the repairer's hourly rate for the labor charged to repairer for such repairs, as the case may be. Parts will be charged at Lessor's list price. Lessee is also responsible for the expenses relating to such loss or damage to the Equipment as specified in the Agreement.

**2. SUBROGATION** - In the event of any loss or damage to the Equipment, Lessor will subrogate with respect to any right of the Lessee to recover against any person, firm or corporation. Lessee will execute and deliver whatever instruments and papers are required and do whatever else is necessary to secure such rights. Lessee will cooperate fully with Lessor and/or its insurers in the prosecution of those rights and will neither take nor permit nor suffer any action to prejudice Lessor's right with respect thereto.