

## FABICK RENTS TERMS AND CONDITIONS

The words "we," "us" and "our" refer to the JFTCO, Inc. ("Fabick Rents").  
The words "you" and "your" mean the customer named on the Agreement.

- 1. RENTAL AGREEMENT.** Subject to the terms of this Agreement you agree to rent from us the equipment described in the Agreement, including attachments and accessories (the "Equipment"). This Agreement represents the entire agreement between you and us concerning the subject matter of this Agreement and any other terms provided by you are hereby expressly rejected. Your possession or use of the Equipment constitutes your acceptance of the terms of this Agreement. This Agreement does not convey any right or option to purchase the Equipment.
- 2. EQUIPMENT USE AND LOCATION.** You acknowledge receipt of the Equipment's operation and maintenance manual (the "Manual") and agree that you will cause the Equipment to be operated at all times in accordance with the Manual and all applicable laws by qualified operators who have been properly trained and understand the safe and proper operation and intended use of the Equipment. You shall not make any changes to the Equipment, modifications or alterations to the Equipment other than as required to comply with your maintenance obligations hereunder and you shall keep the Equipment only at the Equipment Address identified in the Agreement.
- 3. ACCEPTANCE AND INSPECTION.** Your receipt and possession of the Equipment constitutes your acknowledgment that you have inspected the Equipment and accept the Equipment in good condition, working order and repair unless you notify us to the contrary in writing within two (2) days of your receipt of the Equipment.
- 4. CARE AND MAINTENANCE.** You shall, at your expense: (a) maintain the Equipment in good repair; (b) store the Equipment safely; (c) make all normal and necessary adjustments and lubrication in accordance with the Manual; and (d) contact us when the Equipment needs other service or repairs. You will be responsible for the cost of maintenance and repairs. You will be responsible for undue wear, or damage to the Equipment from accident, abuse, failure to follow the Manual, or negligence. YOU ACKNOWLEDGE THAT THE USE OF CERTAIN ATTACHMENTS, AND OR OPERATING IN CERTAIN APPLICATIONS OR CONDITIONS MAY REQUIRE CONSTANT MAINTENANCE TO MINIMIZE DEBRIS BUILD UP ON OR IN THE MACHINE. YOU AGREE THAT YOU WILL CLEAN AND MAINTAIN THE MACHINE AND ATTACHMENTS AS NECESSARY TO ENSURE THE PROPER OPERATION OF SUCH, AND TO AVOID ANY POTENTIAL PROBLEMS RELATED TO MATERIAL BUILD UP. All replacement parts, service and repairs on the Equipment must be obtained from us, except as otherwise approved by us in writing. We may inspect the Equipment at any time or place and may require you to make such repairs as we feel are necessary to keep the Equipment in the condition required. Should the Equipment become unsafe, malfunction or require repair, you will notify us within 24 hours and immediately cease using the Equipment until such condition is remedied. You shall return the Equipment to our location in the same condition you received it, other than normal wear and tear. If the Equipment is returned in unacceptable condition, you agree to pay to us upon demand all charges for cleaning, servicing, repairs and replacements necessary to restore the Equipment to the original condition, and the rental shall continue until such obligations are completed.
- 5. TITLE; RISK OF LOSS.** (a) The Equipment shall be our sole and exclusive property. Neither you nor any third party shall acquire any interest in the Equipment, except your right to use the Equipment under this Agreement. You shall keep the Equipment free of any security interests, liens, encumbrances and claims at all times. (b) To the fullest extent permitted by law, you will be responsible for risk of loss, theft, damage or destruction to the Equipment from any and every cause while the Equipment is within your possession or control. If the Equipment is lost, stolen, destroyed or rendered unfit for service, you are responsible for the payment to us of the full value of the Equipment and the rental term shall be extended, and you shall be responsible for rental payments on the Equipment, until such time as we have received such payment.
- 6. INDEMNIFICATION.** YOU AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS US AND OUR OFFICERS, EMPLOYEES, DIRECTORS AND AGENTS AGAINST ANY AND ALL CLAIMS, ACTIONS, SUITS, PROCEEDINGS, COSTS (INCLUDING, WITHOUT LIMITATION ATTORNEYS'S FEES AND COURT COSTS), EXPENSES, DAMAGES, LIABILITIES AND CLAIMS FOR PROPERTY DAMAGE OR PERSONAL INJURY, INCLUDING DEATH, (COLLECTIVELY REFERRED TO AS "LIABILITIES") ARISING OUT OF OR RELATED TO YOUR USE, POSSESSION, HANDLING OR TRANSPORTATION OF THE EQUIPMENT OR THE BREACH BY YOU OF YOUR OBLIGATIONS UNDER THIS AGREEMENT EXCEPT TO THE EXTENT THAT SUCH LIABILITIES ARISE SOLELY OUT OF OUR NEGLIGENT ACTS OR OMISSIONS.
- 7. DISCLAIMER OF WARRANTY/LIMITATION OF LIABILITY.** You acknowledge that we are not the manufacturer of the Equipment and accordingly we make no warranty or representation, either express or implied, regarding the design, manufacture, quality or otherwise except as expressly stated herein and WE SPECIFICALLY DISCLAIM ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Prior to using the Equipment you shall determine the suitability of the Equipment for your intended use and you shall assume all risk and liability whatsoever in connection therewith. In no event shall we be liable to you for any damages in excess of amounts actually paid by you to us under this Agreement or for any special, indirect, consequential, exemplary or incidental damages. Your sole remedy for any failure or defect in the Equipment shall be, upon prompt written notice to us made within 24 hours of the failure of the Equipment, at our option, (a) repair or replace the Equipment,

or (b) terminate this Agreement. If we are not able to provide you with the remedy set forth in subpart (a) of the preceding sentence we will not charge you the rental rate after the time of failure, provided the Equipment is returned to us within 24 hours.

**8. INSURANCE. (A) Liability:** During the term of this Agreement you shall maintain in force a comprehensive general liability insurance policy with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, including products, completed operations and contractual liability, and a commercial auto liability insurance policy with limits of \$1,000,000 per occurrence for any and all rentals where you choose to transport the Equipment using your own vehicle/trailer, whether owned or leased by you. Such coverage shall name us as additional insured and shall be endorsed to provide coverage on a direct and primary, non-contributory basis over other collectable insurance. You shall provide us with a certificate of insurance confirming the required coverage and stating that such insurance may not be canceled or materially modified without thirty (30) days prior written notice to us.

**(B) Property:** Insurance for the equipment during the Rental Term is the responsibility of the Customer. If Customer does not provide proof of insurance Customer will be enrolled in Fabick Rents' **Rental Equipment Protection Program ("REP")** and assessed fifteen per cent (15%) of the equipment rental charge, including attachments, to cover the equipment and attachments. REP covers construction, forestry, power, agriculture, material handling, and other non-excluded equipment. REP provides coverage of up to \$500,000 per occurrence except for certain excluded events which include, without limitation, (a) Customer's breach of any provision of this Contract; (b) Criminal/Fraudulent Acts (c) Loss of use - REP does not cover loss of use while the equipment is being repaired; (d) Mechanical breakdown (e) Missing property (f) Wear and Tear; (g) Weight of Load; (h) damage to tires, unless caused by a covered peril; (i) Transit; (j) Pollutants. In the event of a claim, under REP Customer will be responsible for a deductible of \$1,000 for Equipment valued up to \$25,000 or \$2,500 for equipment valued greater than \$25,000. Additional information regarding the REP program is available from your Fabick Rents representative.

**9. Events of Default and Remedies.** You shall be in default under this Agreement if any of the following events occur: (a) you fail to timely perform any of your obligations under this Agreement; (b) you cease doing business or terminate operations or you become insolvent, assign your assets for the benefit of creditors or enter (voluntarily or involuntarily) bankruptcy proceedings; or (c) we, in our sole judgment and discretion, deem ourselves or the Equipment to be insecure. In the event of a default we shall have the option to exercise any one or more of the following: (i) terminate this Agreement and your rights to the use of the Equipment shall cease; (ii) require you to return the Equipment to our location in the same condition you received it; (iii) peaceably enter the premises where the Equipment is located, take possession of and remove the Equipment, all without liability to us, our employees, agents or contractors for such entry (YOU HEREBY WAIVE, TO THE EXTENT PERMITTED BY LAW, ANY AND ALL RIGHTS TO NOTICE AND/OR HEARING PRIOR TO THE REPOSSESSION OR REPLEVIN OF THE EQUIPMENT BY US); (iv) proceed by court action to enforce your performance of this Agreement or pursue any other remedy we may have at law, in equity or under any applicable statute, and recover such other damages as may be incurred by

us; (v) recover from you any unpaid rentals due and payable plus interest thereon as set forth in Section 12 below and all costs and expenses (including, without limitation attorney's fees, court and collection costs) incurred by us in enforcing the terms of this Agreement. Each right and remedy provided is cumulative and not exclusive of any other right or remedy including, without limitation, any right or remedy available to us at law, by statute or in equity.

**10. Rental Period; Taxes.** (a) A day's rental period for the Equipment shall be a maximum eight (8) hours and fractional days are treated as full days for the purpose of calculating the rental fee. A week's rental period comprises a maximum forty (40) hours in seven consecutive days. A month's rental period comprises four (4) consecutive weeks at a total maximum usage of 160 hours. Any use or operation of Equipment in excess of either 8 hours in one day, 40 hours in one week, or 160 hours in any period of four consecutive weeks is considered overtime use. For overtime use you agree to pay "Overtime Rent" which is an hourly prorated rate per the rental agreement period. The minimum rent shall be payable in all events for the entire term and until the Equipment is returned to us without regard to the time during which the Equipment may have been used or operated. (b) You agree to pay all taxes, fees and costs arising out of the use, possession, operation or maintenance of the Equipment.

**11. Late Payments; Waiver.** The acceptance of any payment after the same is due or our failure in any one or more instance to pursue any remedy hereunder upon default by you of any obligation shall not constitute a waiver of any term or conditions of this lease and shall not prevent us from exercising any remedy. Late payments shall bear interest at 18% per annum but in no event more than the highest interest rate allowed by law, from the date due until paid.

**12. Transportation.** Transportation of Equipment is not included in the rental rates. We may have Equipment delivered by a common carrier. We will prepay and bill you the net charges plus a prepaid handling fee. All freight and switching charges, demurrage, transportation charges, and loading and unloading charges are to be paid by you.

**13. General Provisions.** All notices shall be written and delivered by first class mail, postage prepaid, to the other party at its address listed on this Agreement or to such other address as may be specified to the other party in writing. This Agreement shall be governed by and construed in accordance with the laws of the State of our principal place of business, without regard to its conflict of laws provision. You unconditionally accept the jurisdiction and venue of the state or federal courts of such state for the adjudication of any dispute arising out of or related to this Agreement. The invalidity or unenforceability of any term or condition of this Agreement shall not affect the validity or enforceability of the remainder of the Agreement. You grant permission to us to inspect the Equipment at all reasonable times, regardless of location. You shall not assign, sell, sublease or otherwise transfer any of your rights or obligations under this Agreement or in the Equipment without our express written permission.