

R.H. MARLIN, INC.

ADDITIONAL TERMS AND PROVISIONS OF LEASE

1. On local rentals, the rental period shall begin on and include the date of shipment to the lessee and shall end on and include the date of 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 including 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-rata 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) hours days per week, or twenty-one (21) eight (8) hour days in any on 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.
 - 1/168th of the monthly rate for each hour in excess of one hundred sixty-eight (168) hours worked in any thirty (30) consecutive day period.
3. It is understood between the parties that the lessor is not the manufacturer of the equipment herein leased, nor the agent of the manufacturer of said equipment 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 laws, 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 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 during said operation and test. 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 straight rentals on non-tractor equipment the lessee agrees to maintain said machinery and equipment in the same condition as when delivered to it by 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 machinery and equipment, whether from injuries to 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 lessor, usual and ordinary wear and tear excepted, and to pay all freight, demurrage, storage, switching, drayage, trackage, 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. On all rentals with purchase options the conditions in paragraph 5 will apply with the exception that the lessee agrees to fully maintain non-tractor equipment as well as tractor equipment, 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 damage or shortage. 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 said 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 double time other 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 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 county 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 county 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 county" to mean the county in which the lessor has its home office.

ALSO INCLUDE CERTIFICATE OF INSURANCE

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14. The Lessee agrees to protect the Lessor for all loss and damages occasioned by fire, theft, flood, accident, explosion, wreck, an act of God or any other causes, without regard as to whether or not there is any negligence on the part of the Lessee, that may occur during the life of this lease, and until such machinery and/or equipment has been returned into the possession of the Lessor and accepted by it. For the purpose of 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 hereinbefore stated shall be a true and just value forming a basis for such adjustment. In making such adjustment, it is understood that no rentals theretofore paid or due shall apply to the payment of such loss.
15. The lessee further expressly agrees and assumes to indemnify, defend, and hold harmless the Lessor from all liabilities, claims, demands, loss, attorney's fees, expense, penalties and actions either for bodily injury, death or property damage of any character whatsoever occasioned by the operation, handling or transportation of any of the equipment and/or machinery during the rental period and while said equipment and/or machinery is in the possession of, under the custody and control of Lessee or his sub contractors, or sub lessees, if any, their employees, workmen, servants or agents, made by any person, firm or corporation, including employees, workmen, servants, or agents of the Lessee and the Lessor that may have been caused or alleged to have been caused directly or indirectly, or by any act of omission or commission, negligent or otherwise of the Lessee, his sub contractors or sub lessees, if any their employees, workmen, servants, or agents or of the Lessor, its employees, workmen, servants or agents, or by reason of any condition or activity on the premises wherein the equipment is being used, stored, maintained or repaired.

The equipment and/or machinery being leased by the Lessee under this Contract of lease shall be considered as being under the sole custody Control of the Lessee during the period of use under this lease by others than the Lessor and should any person or persons in the employ of the Lessor be used to operate said equipment and/or machinery during the period of such use, such person or persons shall be deemed during such period of operation to be an employee or employees of and under the exclusive control, jurisdiction and direction of the Lessee.
16. The Lessee further agrees, during the term of this lease , to:
 - (a) Keep the equipment herein leased fully insured against loss or damage resulting from peril of every kind and nature, including, but not limited to, fire, theft, flood, explosion, accident, and act of God, whether resulting from Lessee's negligence or otherwise, which policies shall name the Lessor as an insured thereunder and provide payment of the proceeds to Lessor in the event of such loss or damage.
 - (b) Maintain Workman's Compensation insurance covering Lessee's employees, and having Section B limit of \$500,000.00
 - (c) Maintain public liability insurance covering Lessor against loss of every kind of nature arising out of the use, transportation or storage of the equipment herein leased, including, but not limited to, death or bodily injury and property damage (including contractual liability) with a combined single limit of \$1,000,000.00 and lessor named as additional insured.

All insurance required hereunder shall be in such form and with such companies as shall be acceptable to Lessor, and certificates of all such insurance coverage shall be furnished to Lessor at the time of delivery of the equipment covered by this lease, which certificates shall provide that the policies may not be cancelled except after ten days prior written notice to Lessor.
17. Title to the property herein leased and to all replacements thereof or substitutions thereof, is and shall remain in the Lessor, and said machinery and equipment shall not be attached or annexed to any building or real estate and said equipment shall at all time during the term of this lease be and remain personal property.
18. The lessee agrees, whenever requested by lessor, to give lessor the exact location of all of the machinery and 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 machinery and 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 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, renewals thereof, covering rentals herein specified shall not in any manner whatsoever change or invalidate the terms 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 of 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. This lease contains the entire agreement between the parties, and no modification, option to purchase, or other agreement shall be binding upon the parties hereto unless reduced to writing and signed by an authorized representative of Lessor.
24. 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."
25. Lessor reserves the absolute right to assign this lease, and in the event of any such assignment Lessee hereby waives any counterclaim, or set-off which it claims to have against Lessor in any action brought by the assignee of this lease.
26. Lessee agrees that this lease is subject and subordinate to the lien of any mortgage or security interest which may now, or hereafter, be placed on the aforesaid equipment by Lessor.

We agree to all the above conditions which are thoroughly understood.

R.H. Marlin, Inc.

Lessee

Lessor

By _____
Title

By _____
Authorized

Date: _____

Date: _____

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