

TERMS AND CONDITIONS OF RENTAL CONTRACT

For good and valuable consideration, you and Acme Electric Motor, Inc, a North Dakota corporation (referred to herein as "Acme," "Lessor," "we," "us" and "our") agree as follows:

1. As used herein, "P.1" refers to the first page or "face" of this Contract; "Contract" refers to P.1 together with these Terms and Conditions of Rental Contract; "Rented Item(s)" or "Item(s)" means the item(s) rented to you, as identified on P.1 (including any "Instructions" and/or safety equipment provided per Section [or "§"] 5 below); "Site" means the delivery or use address set forth on P.1; and "Customer," "Lessee," "you" and "your" mean the customer or "Lessee" identified on P.1.

2. You agree to rent from us the Rented Item(s) for the period(s) specified on P.1 (the "Term"), in exchange for which, you agree to pay us our stated Rental rate(s) (the "Rent"), together with any other charges accruing hereunder, without proration, reduction or setoff, until all Rented Item(s) is/are returned to and accepted by us in the return condition required under this Contract (including § 6). We have estimated the Rent based on your estimate of the length of the Term (the "Estimated Rent"). You agree: (a) to pay Acme: (i) any deposit and the Estimated Rent specified on P.1 in advance of the Term (the "Prepayment"); and (ii) any other amounts coming due hereunder upon demand; and (b) that: (i) we may deduct any amount you owe us from any Prepayment; (ii) no interest will accrue on any Prepayment; (iii) no Prepayment will be deemed a limit of your liability to Acme; and (iv) all Prepayments are **NON-REFUNDABLE** unless otherwise agreed by Acme. Anything remaining with, in or on any Item(s) upon return will, at our option, be deemed surrendered and abandoned.

3. Unless otherwise specifically agreed by Acme, all rental rates are for normal use of the Rented Item(s) on a single-shift basis during the Term, not exceeding 8 hours per 24-hour period for which Rent is charged hereunder (each, a "Day"); 40 hours per 7-Day period, 160 hours per 28-Day period, and otherwise in accordance with the terms hereof and the "Instructions" described in § 5. Additional Rent will be charged for late returns, overuse, and misuse. No allowance will be made for weekends, holidays, time in transit or any other period of nonuse.

4. Except with respect to Rented Items which Acme rents from one or more third parties (each, a "Third-Party Owner" or "TPO") and then re-rents to you ("Re-Rented Items"), Acme owns and will retain title to all Rented Items at all times. Your only right with respect to such Item(s) (including Re-Rented Item(s)) is to use it/them in full compliance with this Contract during the Term. You SHALL NOT: (a) permit the taking or existence of any lien, claim, security interest or encumbrance on any such Item; or (b) loan, transfer, sublease, store, modify, repair, surrender or assign any Rented Item or this Contract without our prior written consent (a transfer of over 50% of the equity or voting control of Lessee will be deemed a "transfer" for purposes hereof). We may sell and/or assign any or all of the Rented Item(s) and/or this Contract, in which event, you will attorn to the assignee, who will not be responsible for any pre-existing obligations or liabilities of Acme hereunder, at law or in equity.

5. Upon the earlier of your receipt, or our delivery to the Site, of the Rented Item(s) unless you immediately reject it/them, you represent, warrant, acknowledge and agree that: (a) each Item: (i) is complete and in good order, repair and operating condition; (ii) is appropriate for your purposes and in all ways acceptable to you; and (iii) was selected (not based on any recommendation by Acme), examined and inspected by you or your agent(s); and (b) you: (i) have received, read and understand all training, instructions, user manuals, maintenance requirements, and other information, if any (including all EPA, OSHA, NFPA, IFC, ASME, DOT, FMCSA, MSHA, IEE and/or ANSI Standards) pertaining to such Item(s) (collectively, "Instructions"); (ii) will fully comply therewith (including Tier 4 Silica Dust and Electronic Logging Device requirements, as applicable); (iii) have been made aware of the need to use all recommended and required safety equipment (including RESPIRATORY and FALL PROTECTION devices); (iv) will use each Item only for its intended purpose, in a reasonable and safe manner; (v) will timely give all required notice(s) to, and obtain all necessary licenses, authorizations, permits and approvals from, all affected parties (including governmental authorities, utilities, cable companies and the Site owner(s)), and ensure all underground lines, cables and conduits are clearly and properly marked before using any Item(s) to dig or disturb the ground surface (Call 811 or 800-795-0555 and go to www.ndonecall.com) at least 48 hours in advance; (vi) will immediately cease using any Item that is damaged, breaks down, malfunctions or proves defective (a "Malfunction"); and (vii) will ensure that all others comply herewith. You will notify us immediately if any of the above statements is/are or becomes incorrect at any time.

6. You agree to protect, properly maintain and care for each Rented Item at all times, keep it safely and securely stored and locked when not in use, and return it to us on time at the end of the Term, clean, free of silica dust and other contaminants, and otherwise in good order, condition and repair, properly serviced and maintained, and if applicable, full of the appropriate fuel, fluid and lubricants. If you fail to do so, in addition to any other amounts set forth in this Contract (including P.1), you will pay us: (a) Rent for each succeeding full rental period until all Item(s) have been returned or replaced as required; and (b) all costs and expenses we incur in connection with such failure. In the event of a Malfunction, you will immediately notify, and return the Malfunctioning Item(s) to, Acme, and provided such Malfunction did not result from or in connection with any wrongful or negligent act or omission of, or any breach of any provision of this Contract by, you or anyone you permit to use or deal with such Item(s), we will, at our option: (a) repair the subject Item; (b) provide you with a comparable Item; or (c) return the unused portion of the Rent and cancel this Contract. The foregoing remedies are EXCLUSIVE. We will have no other obligation(s) regarding Malfunctions, all of which you waive.

7. You agree to ensure that the Site is reasonably safe, secure and fit for use of the Rented Item(s). If we agree to provide any service(s) (including delivery and/or retrieval of any Item(s)), you will: (a) pay our regular charge(s) therefor, and for all waiting time; (b) be present at the Site at the agreed time(s); and (c) ensure our personnel have full access to the Site. Acme will not be responsible for any delay(s) caused by the acts or omissions of any other parties, including providers of other equipment or services ("Other Providers") for which you hereby release and agree to indemnify, defend and hold harmless Acme. If you are not present upon delivery or retrieval of any Item(s), you agree to accept the statements of our representatives regarding the same (including status, condition and quantities).

8. **WARNINGS: POWERED TOOLS AND EQUIPMENT, INCLUDING EXCAVATORS, TRACTORS, CHAINSAWS, AND EQUIPMENT USED FOR LIFTING, LOADING, MOWING, TRIMMING, EDGING, TILLING, CUTTING, GRINDING, CHIPPING, DIGGING, SHREDDING, BREAKING, BORING, AND/OR TOWING CAN BE DANGEROUS AND SHOULD BE SERVICED, MAINTAINED, REPAIRED AND USED WITH GREAT CARE, ONLY FOR ITS/THEIR INTENDED PURPOSE(S), AND ONLY BY PROPERLY TRAINED, FAMILIARIZED, QUALIFIED, CERTIFIED, INSTRUCTED, AND IF APPLICABLE, LICENSED, ADULTS.**

9. **ACME IS NOT THE MANUFACTURER OR DESIGNER OF ANY OF THE ITEM(S), all of which are provided "AS-IS". NEITHER ACME NOR ANY TPO MAKES ANY WARRANTY(IES), EXPRESS OR IMPLIED (INCLUDING ANY WARRANTY(IES) OF MERCHANTABILITY, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, FUNCTION, DESIGN, QUALITY, CAPACITY, FREEDOM FROM DEFECTS AND/OR GOOD AND WORKMANLIKE PERFORMANCE, AS WELL AS ANY WARRANTY(IES) ARISING FROM OR IN CONNECTION WITH COURSE OF DEALING, COURSE OF PERFORMANCE AND/OR USAGE OF TRADE)** regarding any Item(s) or Service(s) provided hereunder, nor does Acme or any TPO make any warranty against **INTERFERENCE OR INFRINGEMENT**, all of which you waive. No depictions, descriptions, specifications, recommendations or advertisements shall be deemed to constitute representations or warranties by Acme or any TPO.

10. YOU AGREE TO PROVIDE ANY AND ALL APPLICABLE **FAMILIARIZATION, TRAINING, INSTRUCTIONS AND WARNINGS** TO ALL USERS, OPERATORS AND OCCUPANTS OF THE RENTED ITEM(S), and ensure that each such Item is used safely and only: (a) for its intended

purpose(s): (b) within its rated capacity; (c) unless otherwise specifically agreed by Acme on a case-by-case basis, at the Site; (d) BY PROPERLY TRAINED, FAMILIARIZED, QUALIFIED, CERTIFIED AND/OR LICENSED (AS APPLICABLE) OPERATORS; and (e) otherwise in full compliance with this Contract at all times. You will not, nor will you permit anyone else to: (i) violate this Contract or any applicable law, policy of insurance or warranty; (ii) expose any Rented Item(s) to any flammable, explosive, noxious, caustic, poisonous, radioactive or otherwise harmful or hazardous substance(s) or circumstance(s); or (iii) without our prior consent (which may be granted, conditioned or withheld in our sole and absolute discretion), take possession of or exercise control over any Rented Item.

11. **INDEMNITY/HOLD HARMLESS: TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, YOU HEREBY: (A) ASSUME ALL RISK OF PERSONAL AND BODILY INJURY, LOSS, DAMAGE, DESTRUCTION AND CONTAMINATION OF, TO, AND/OR ARISING IN CONNECTION WITH THE ITEM(S) AND/OR SERVICE(S) REFERENCED IN THIS CONTRACT, INCLUDING WITHOUT LIMITATION, ALL LIABILITIES, CLAIMS AND DAMAGES ARISING IN CONNECTION WITH THE SELECTION, PROVISION, INSPECTION, DESIGN, MANUFACTURE, USE, LOADING, UNLOADING, TRANSPORTATION, DEMONSTRATION, STORAGE, SERVICING, MAINTENANCE, REPAIR, DELIVERY AND/OR RETRIEVAL OF SUCH ITEM(S) AND/OR SERVICE(S), WHETHER OR NOT YOUR FAULT; AND (B) RELEASE AND DISCHARGE, AND AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS ACME AND EACH TPO, and their respective members, managers, officers, directors, shareholders, owners, agents, employees, insurers, subrogees, representatives, successors and assigns (each, an "Indemnitee") for, from and against all injuries, liabilities, claims, damages, losses, costs and expenses (including without limitation, attorneys' fees) arising from and/or associated with any of such Item(s) and/or Service(s); and (C) WAIVE all rights and remedies available under the Uniform Commercial Code, as well as all direct, indirect, incidental, consequential, general, special, exemplary and punitive damages, against each and every Indemnitee.**

12. You agree to maintain all insurance Acme may require, including without limitation: (a) liability insurance with minimum limits of \$1,000,000 per occurrence; and (b) property damage/ inland marine insurance covering all Rented Items for the full (new) replacement value thereof. Such policies shall, as applicable: (i) name Acme and each TPO as an additional insured and loss payee; (ii) waive subrogation against each of them; (iii) be primary and non-contributory (our insurance will be excess); and (iv) include such other provisions (including deductibles) as Acme may require.

13. If and only if, we have offered, and you have elected to purchase our **OPTIONAL DAMAGE WAIVER ("DW")** and paid the non-refundable DW Fee set forth on Page 1 in advance of the Term, then solely with respect to Item(s) covered by DW ("Covered Items"), your liability for the cost to repair or replace such Covered Items will be limited as set forth in our Damage Waiver Guide and Addendum, a copy of which you acknowledge receiving and carefully reviewing. You may decline DW if you fully and timely comply with this Contract (including § 12). **DW IS NOT INSURANCE, NOR IS IT A WARRANTY.**

14. We may, without notice or liability to you, monitor (in person and/or electronically) and/or inspect any Rented Item(s) at any time, and all information thereby obtained will be the sole and exclusive property of Acme. To the maximum extent permitted under applicable law, you hereby grant to Acme a lien on all real and personal property: (a) placed in or on; (b) improved with; and/or (c) on which may be located or used, any Rented Item(s). You authorize Acme to submit all amounts coming due hereunder to your debit and/or credit card(s). If any performance required of Acme is delayed or rendered impractical as a result of any act or omission of/by you, any Other Provider(s) or any "Act of God" (any event, fact or circumstance beyond our reasonable control), we will be excused from such performance. You waive the benefits of all statutes of limitations regarding Acme's rights and remedies. All amounts due hereunder but not timely paid will bear interest at the lesser of: (a) 18% per annum, or (b) the highest rate permitted under applicable law until paid. You agree to pay Acme the maximum lawful charge for any check you write which is returned unpaid. Acme's maximum liability in connection with this Contract is limited to the amount(s) actually paid by you hereunder. This Contract allocates to you the risk of injury, loss of, or damage to, persons or property arising in connection with the subject matter of this Contract, and that allocation is reflected in a reduced Rent. You agree to pay all taxes (including sales, use, transfer, value added and other taxes), tolls, fines, fees, assessments and other charges related to each Item. In the event any legal action is commenced in connection with this Contract, if Acme is the prevailing party, Acme will be entitled to recover its costs and expenses associated therewith (including without limitation, attorneys' fees and expenses) from you. Neither our exercise, nor our failure or delay in the exercise, of any rights or remedies available in connection herewith will constitute an election of remedies or a waiver of any right or remedy we may have.

15. This Contract, and any Addenda provided by Acme (including as applicable, our Tier IV, Aerial Equipment, Silica Dust, and Damage Waiver Addenda), each of which is incorporated herein, constitute(s) the entire agreement between you and Acme, superseding all other agreements and representations (including Acme's website and advertising). The terms of this Contract are severable. If any provision of this Contract shall be deemed invalid or unenforceable by any court of competent jurisdiction, such provision will be modified to the minimum extent necessary to make such provision valid and enforceable, or if no such modification shall be possible, deleted, and in either such event, the remainder of this Contract will remain valid and in full force and effect. This Contract cannot otherwise be amended or extended except in a writing signed by Acme. You acknowledge that this Contract: (a) constitutes a true "operating lease" (and not a disguised financing); (b) is fair and reasonable under the circumstances; and (c) shall be interpreted under the laws of, and proper venue for any and all associated civil legal proceedings shall lie solely and exclusively in, the federal, state and local courts located in or nearest to the state and county in which the Acme facility from which you obtained the Item(s) is located (unless waived by Acme). You consent and submit to such jurisdiction and venue and waive all claims that such venue lies in an inconvenient forum. Time is of the essence. There are no third-party beneficiaries hereto other than TPOs (if any) with respect to your obligations.

16. Your duties hereunder are unconditional. If you or any guarantor: (a) fail to fully and timely pay or perform your obligations arising under, or otherwise fail to fully and timely comply with, any provision of this Contract or any other agreement with Acme; (b) provide any incorrect or misleading information to Acme; (c) become insolvent; or (d) die or cease conducting business, or if any Rented Item(s) shall be lost or damaged (except to the extent covered by LDW as provided in §13), you will be in default, whereupon, Acme may with or without legal process or notice (and without liability to you), to the maximum extent permitted under applicable law: (i) terminate your rental(s); (ii) seek relief from stay; (iii) recover, empty, lock, disable, store and/or repair any Item(s) without being guilty of breach, trespass or liable for any injuries or property damage (for which you agree to indemnify, defend and hold harmless Acme, its agents and employees); (iv) perform your obligations hereunder on your behalf, without being obligated to do so; (v) purchase replacement Item(s); (vi) recover from you and/or any guarantor our associated direct and indirect damages, losses, costs and expenses (including without limitation, Rent for the remainder of the Term, interest and attorneys' fees); and/or (vii) pursue any other rights and/or remedies available in connection therewith, all of which shall be cumulative.

17. These Terms and Conditions will be deemed to apply not only to all Item(s) identified on P.1, but also to all other Items you obtain from Acme at any time (except only as otherwise agreed by Acme). Digital, electronic, photocopied and facsimiled signatures and initials included in this Contract shall be deemed the equivalents of originals for all purposes.

18. **WARNING:** Wrongfully obtaining, retaining or controlling property or services of another which is/are available only for compensation, by deception, threat, false token, or other means to avoid payment may be deemed theft, resulting in **CIVIL LIABILITY AND/OR CRIMINAL PROSECUTION**. See NDCC §12.1-23, *et seq.* for details.

LESSEE ACKNOWLEDGES THAT A LARGE-PRINT VERSION OF THESE TERMS AND CONDITIONS HAS BEEN MADE AVAILABLE TO LESSEE

