

TERMS AND CONDITIONS OF RENTAL CONTRACT
(Enlarged Version)

For good and valuable consideration, you and Toro Equipment Rentals LLC, a California limited liability company (also referred to in this Contract as "Toro," "Lessor," "we," "us" and "our") agree as follows:

1. As used in this Contract, "P.1" refers to the first page or "face" of this Contract; "Contract" refers to P.1 together with these Terms and Conditions; "Rented Item(s)" or "Item(s)" means the item(s) rented to you, as identified on P.1; "Site" means each location where the Item(s) will be delivered and/or used, as set forth on P.1; and "Customer," "Lessee," "you" and "your" mean the "Renter," "Customer" or "Lessee" identified on P.1.

2. You agree to: (a) rent from Toro the Rented Item(s) for the period(s) specified on P.1 (the "Term"); (b) fully and timely pay us as and when due the rent ("Rent") and other amount(s) set forth on P.1, together with all other charges accruing hereunder, without proration, reduction or setoff; (c) timely return all Rented Item(s) to us at the end of the Term full of the proper fuel(s), fluid(s) and lubricants, complete, in good order, condition and repair, and free of contamination (including silica, beryllium, asbestos and pathogens); and (d) remain liable for all associated injuries and property damage (including all damage to the Rented Item(s)), for the entire scheduled Term and until all Rented Item(s) is/are returned to and accepted by Toro in the condition required under subsection (c) above. We have estimated the Rent based on your estimate of the length of the Term (the "Estimated Rent"). You agree: (i) to pay us the deposit (if any) and the Estimated Rent specified on P.1 and all other amounts coming due hereunder upon demand; and (ii) that: (A) we may deduct any amount you owe us from any prepayment; (B) no interest will accrue on any such prepayment; (C) no such prepayment will be deemed a limit of your liability to us; and (D) all such prepayments are NON-REFUNDABLE unless otherwise agreed in writing by Toro. Anything remaining with, in or on any Item(s) upon return will, at our option, be deemed abandoned. Unless otherwise agreed in writing by Toro, 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 (each, a "Rental Day"), 40 hours per 7-Rental Day Period, 160 hours per 28-Rental Day period (zero hours for all uncharged-for periods), and in accordance with this Contract. Additional Rent at our highest incremental rate will be due for late returns and overuse. No right of/to cancellation or reduction of Rent shall exist for weather delays, time in transit, Act(s) of God, events of *force majeure*, or other period(s) of nonuse.

3. Upon the earlier of your receipt, or our delivery to the Site, of the Rented Item(s) unless you reject it/them within 48 hours thereafter, you represent, warrant, acknowledge and agree that: (a) each Item: (i) is complete and in good order, condition and repair; (ii) is appropriate for your purposes and in all ways acceptable to you; and (iii) was selected (not based on any recommendation by Toro), carefully examined, counted, inspected and tested by you or your agent(s); and (b) you: (i) have received, carefully reviewed and understand all laws, rules, regulations, training, instructions, user manuals, maintenance requirements, and other information, if any, including all applicable EPA, OSHA, Cal/OSHA (including 8 CCR §§ 3441 and 3700, *et seq.*), UL, IEEE, IFC, IBC, ANSI and other applicable Standards (collectively, "Instructions"); (ii) will fully comply therewith (including Tier 4, Silica Dust and Electronic Logging Device requirements); (iii) have been made aware of the need to use all applicable personal protective equipment and safety devices (including RESPIRATORY and FALL PROTECTION devices as well as devices that protect against power surges and electric shock); (iv) will use each Item only for its intended purpose, in a reasonable and safe manner; (v) will timely give any and all applicable notice(s) to, and obtain all applicable licenses, authorizations, permits and approvals from, all affected parties, including governmental authorities, utilities, cable companies and the owner(s) of the Site, and ensure that all underground lines, cables and conduits are properly marked before digging or disturbing the ground surface (call 811 and go to www.ca811.org at least 3 full business days in advance); (vi) will immediately cease using any Item that is damaged, breaks down, or proves defective (a "Malfunction"); and (vii) will ensure that all others comply with this Contract at all times. You will notify us immediately if any of the foregoing shall be breached or proven incorrect.

4. Except with respect to Item(s) we rent from third parties (each, a "TPO") and re-rent to you, Toro owns and will retain title to Rented Items at all times. You will have exclusive control over the Rented Item(s) during the Term, subject however, to your duty to fully and timely comply with this Contract. **You SHALL NOT:** (a) permit the taking or existence of any lien, claim, security interest or encumbrance on any Rented Item(s); or (b) loan, transfer, sublease, re-rent, surrender possession or control of, sell, encumber, assign or dispose of any Item(s) or this Contract, without our prior written consent (in our sole discretion). We may, at any time: (i) substitute for any Rented Item(s) one or more other item(s) of similar utility; and/or (ii) sell and/or assign all or any part of our interests in 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 liabilities or obligations of Toro.

5. You will ensure the Site is clean, safe, secure and otherwise fit for delivery and use of the Item(s). If we agree to provide any service(s) (including delivery and/or retrieval), you agree to: (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 unrestricted access to the Site. We will not be responsible for any delay(s) caused by the acts or omissions of you, your agents or employees, or 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 Toro. If you are not present upon delivery or retrieval of any Item(s), you agree to accept the statements of Toro's representatives regarding the same (including status, condition and quantities of the Item(s) and the Site).

6. In the event of a Malfunction as defined in § 3, you will immediately notify, and return the Malfunctioning Item to, Toro, 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 such Item; (b) provide you with a comparable Item; or (c) with respect solely to the Malfunctioning Item(s), return the unused portion of the Rent and cancel this Contract. **The**

foregoing remedies are EXCLUSIVE. We will have no other obligation(s) with respect to Malfunctions, all of which you waive, together with all associated rights, remedies, claims and damages as provided in § 11.

7. WARNINGS: THE RENTED ITEM(S) CAN BE DANGEROUS. DO NOT USE LIGHT TOWERS INDOORS; ENGINES MAY EMIT TOXIC GAS FUMES. NEVER CLIMB ON LIGHT TOWERS OR USE AERIAL EQUIPMENT WITHOUT PROPER FALL PROTECTION. THE RENTED ITEM(S) SHOULD BE SERVICED, MAINTAINED, CLEANED, REPAIRED AND USED WITH GREAT CARE, **ONLY FOR THEIR INTENDED PURPOSE(S)**, AND ONLY BY **PROPERLY QUALIFIED, INSTRUCTED, TRAINED AND FAMILIARIZED**, ADULT USERS, OPERATORS AND OCCUPANTS. YOU AGREE TO PROVIDE ALL APPLICABLE FAMILIARIZATION, TRAINING, INSTRUCTIONS AND WARNINGS TO ALL SUCH PARTIES, and ensure that each such Item is used, operated and occupied safely and only: (a) **for its intended purpose(s)**; (b) within its rated capacity; (c) unless otherwise specifically agreed by Toro at the Site; and (d) otherwise in full compliance with this Contract and the Instructions, at all times.

8. You agree to maintain all insurance we may require, including: (a) liability insurance with minimum limits of \$1,000,000 per occurrence; (b) workers' compensation and employer's liability insurance (if you are an employer); (c) property damage/inland marine insurance covering all Items for the full (new) replacement cost thereof, and whenever possible: (i) naming Toro as an additional insured and loss payee; (ii) waiving subrogation against Toro; (iii) being primary and non-contributory; and (iv) including such other provisions (including deductibles) as Toro may require. You irrevocably appoint Toro as your agent and attorney-in-fact for purposes of submitting and negotiating claims on all such policies.

9. If and only if, we have offered, and you have paid for our **OPTIONAL LIMITED DAMAGE WAIVER ("LDW")** (set forth on P.1, if available) in advance of the Term, you will have no liability to us for 80% of the repair/replacement costs for physical damage to Item(s) covered by LDW ("Covered Item(s)"); provided however, that you will, remain fully liable for: (a) intentional damage and all loss of and damage to: (i) Item(s) not covered by LDW; (ii) Covered Item(s) lost or damaged during transportation and/or as a result of: (A) your breach of this Contract; (B) theft or other failure to timely return Covered Item(s) to us; (C) negligence, misuse and/or abuse of Rented Item(s) (including without limitation, submerging, overturning and overloading); (iii) GPS and telematics, batteries, keys, glass, tires, tubes, tracks, booms, belts, chains, knobs, fittings and hoses; (b) 20% of the first \$5,000 of repair/replacement costs for Covered Item(s); and (c) all repair and replacement costs exceeding \$5,000 in the aggregate across all Covered Item(s). You may decline LDW if you provide the property/physical damage/inland marine insurance referenced in § 8. **LDW IS NOT INSURANCE, NOR IS IT A WARRANTY.**

10. **TORO IS NOT THE MANUFACTURER OR DESIGNER OF ANY OF THE RENTED ITEM(S)**, all of which are provided **"AS-IS"**. **NEITHER TORO EQUIPMENT RENTAL LLC 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 CONTAMINATION, GOOD AND WORKMANLIKE PERFORMANCE, AND ANY WARRANTY(IES) ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE)** regarding any Item(s) or Service(s) provided hereunder, nor does Toro or any TPO make any warranty(ies) against **INTERFERENCE OR INFRINGEMENT**, all of which you waive. No depictions, models, samples, descriptions, specifications, recommendations or advertisements constitute representations or warranties by Toro.

11. **INDEMNITY/HOLD HARMLESS: TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, YOU HEREBY: (A) ASSUME ALL RISK** OF PERSONAL AND BODILY INJURY, ILLNESS, PRODUCTS LIABILITY, LOSS, THEFT, DAMAGE AND CONTAMINATION OF, TO, AND/OR ARISING IN CONNECTION WITH THE ITEM(S) AND 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, CLEANING, TRANSPORTATION, DEMONSTRATION, STORAGE, SERVICING, MAINTENANCE, REPAIR, DELIVERY AND/OR RETRIEVAL THEREOF, WHETHER OR NOT YOUR FAULT ("RISKS"); **(B) RELEASE AND DISCHARGE, AND AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS, TORO**, each TPO, their respective parents, affiliates and subsidiaries, and their respective owners, shareholders, members, managers, officers, directors, agents, employees, insurers, representatives, subrogees, successors and assigns (each, an "Indemnitee"), for, from and against: (i) all such RISKS; and (ii) all other liabilities, claims, damages, losses, costs and expenses (including without limitation, attorneys' fees) arising from or in connection with the Item(s), this Contract, our negligence, and/or any breach hereof by you, your agents, employees, successors or assigns; and **(C) WAIVE** all rights, remedies, claims, damages and defenses available under the Uniform Commercial Code, as well as all direct, indirect, incidental, consequential, general, special, exemplary and punitive damages, against each Indemnitee.

12. **Section 2449(d)(2) of the California Code of Regulations** Sets Idling Limits for ALL In-Use Off-Road Diesel-Fueled vehicles operating in the State. No vehicle or engine subject to this regulation may idle for more than 5 consecutive minutes. Idling of a vehicle that is owned by a rental company is the responsibility of the Lessee, and by signing this Contract, Lessee acknowledges its acceptance of, and agreement to fully comply at all times with, these requirements. The Idling Limits do not apply to: (1) Idling when queuing; (2) idling to verify that the vehicle is in safe operating condition; (3) idling for testing, servicing, repairing or diagnostic purposes; (4) idling necessary to accomplish work for which the vehicle was designed; (5) idling required to bring the Item ("machine system") to operating temperature; and (6) idling necessary to ensure safe operation of the Rented Item ("vehicle"). **Section 2449 (j) Disclosure of Regulation Applicability:** When operated in California, any off-road diesel vehicle may be subject to the California Air Resources Board In-Use Off-road Diesel Vehicle Regulation. It therefore could be subject to retrofit or accelerated turnover requirements to reduce emissions of air pollutants. For more information, please visit the California Air Resources Board website at <http://www.arb.ca.gov/msprog/ordiesel/ordiesel.htm>. Lessee acknowledges that it is a violation of (and assumes all potential civil and criminal liability under) Sections 4442 and 4443 of the California Public Resources Code to use

or operate an internal combustion engine on any forest, brush or grass-covered land ("Fire Hazard Areas") unless the Rented Item is equipped with a spark arrester and otherwise constructed, equipped and maintained for the prevention of fire. Accordingly, Lessee agrees to ensure compliance of the Rented Item(s) at all times if and when being used in any of the above referenced Fire Hazard Areas. It is the sole responsibility of the lessee or renter to follow the requirements of the regional notification center law pursuant to Article 2 (commencing with Section 4216) of Chapter 3.1 of Division 5 of Title 1 of the Government Code. **Prop 65:** **▲ WARNING:** One or more of the Rented Item(s) contains or produces (**AND WILL EXPOSE YOU TO**) one or more chemicals known to the State of California to cause cancer, birth defects or other reproductive harm (see www.P65Warnings.ca.gov). **PERP Program:** Customer may be renting equipment registered under the California Air Resources Board (CARB) Portable Equipment Registration Program (PERP). The operator of the Rented Item(s) is subject to the requirements of the PERP regulation and local Air Pollution Control District rules. Under the PERP Regulation and this Contract, you are required to keep a copy of this Contract and the CARB registration certificate (if any), including operating conditions and notification requirements, with the Rented Item(s) at all times. You must also complete the log provided with the Rented Item(s) as required by PERP and return the log with the Rented Item(s). (See <http://www.arb.ca.gov/portable/portable.htm>). **Fugitive Dust:** You agree to comply with the Fugitive Dust Rules established by your Local Air Pollution Control District and take "every reasonable precaution to minimize emissions." Check local rules at: <http://www.arb.ca.gov/drdb/drdb.htm>. **Estimated Personal Property Tax Reimbursement Amount:** You agree to pay us an additional amount equal to the estimated personal property tax reimbursement equal to up to .75 percent of the base Rent, as authorized under § 1656.5 of the California Civil Code and Part 13.7 of the California Revenue and Tax Code (or their respective successor provision(s)).

13. Your duties hereunder are unconditional. If: (a) you or any guarantor shall: (i) fail to fully and timely honor, pay, perform and/or comply with this Contract and/or any of your obligations arising hereunder; (ii) provide any incorrect or misleading information to us; (iii) become insolvent or declare bankruptcy; or (iv) die or cease conducting business; or (b) any Item(s) shall be lost or, unless covered by LDW per § 9, damaged, you will be in **DEFAULT** under this Contract, whereupon, we 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, restrict, shut down and/or disable any Item(s) without being guilty of breach, trespass or wrongful interference, or liable for any injuries or property damage (for which you shall indemnify, defend and hold harmless Toro, 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 (jointly and severally) our associated direct and indirect damages, losses, costs and expenses (including Rent for the entire scheduled Term, overtime, loss of use interest, attorneys' fees and collection costs); and/or (vii) pursue any or all other rights and/or remedies available hereunder, at law and/or in equity, all of which are cumulative.

14. This Contract, and any Addenda we provide, each of which is incorporated herein, represent the entire agreement between you and Toro, superseding all other agreements and representations (including our website and advertising). The terms of this Contract are severable. If any provision of this Contract is deemed invalid or unenforceable by any court of competent jurisdiction, such provision will be deleted, and the remainder of this Contract will remain valid and enforceable. This Contract cannot otherwise be amended or extended except in a writing signed by Toro Equipment Rental LLC. Time is of the essence hereof. There are no third-party beneficiaries hereto other than the applicable Indemnitees. These Terms and Conditions apply to all Item(s) identified on P.1, and to all other Items you obtain from us at any time (except only as otherwise agreed by Toro). This Contract (a) is an "operating lease" (and not a financing); (b) is fair and reasonable; (c) will bind and be enforceable by and against you, Toro Equipment Rental LLC, the other Indemnitee(s), and their respective insurers, subrogees, successors and permitted assigns; and (d) shall be governed by the laws of California. At Toro's option, disputes arising in connection herewith shall be submitted to binding arbitration before a single arbitrator and at a location selected by Toro under the rules of the AAA. Proper venue for all other civil legal actions commenced in connection herewith shall lie solely in the federal, state and local courts located in or nearest to Riverside County, CA. You consent and submit thereto and waive all claims that such venue lies in an inconvenient forum. Digital, electronic, photocopied and facsimiled signatures and initials on this Contract shall be deemed originals.

15. If any performance required of us is hindered or delayed as a result of any act or omission of any Other Provider(s) or any "Act of God" event of *force majeure*, or other event, fact or circumstance beyond our reasonable control, we will be excused from such performance. You waive all statutes of limitations. You agree to pay all taxes (including all sales, use, fuel and other taxes), fines, fees, assessments and other charges related to each Item. You hereby authorize and grant to us a lien on all real and personal property (a) placed in or on; (b) improved with any Rented Item(s). We may, without notice or liability to you, monitor (in person and/or electronically) and/or inspect any Rented Item(s) at any time. You consent thereto and agree that all information thereby obtained will be our property. All amounts due under this Contract, but not timely paid, will bear interest at the highest rate permitted under applicable law until paid. You authorize us to submit all amounts due and coming due hereunder and/or in connection herewith to any debit and/or credit card(s) you provide. Our maximum liability in connection with this Contract is limited to the amount(s) you have paid to us hereunder. If any legal action is commenced in connection with this Contract, if Toro prevails, Toro will be entitled to recover its costs and expenses associated therewith (including without limitation, attorneys' fees) 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.

16. **WARNING:** Wrongfully obtaining property or services of another or failing to return rented property within the time(s) specified in the statute identified below, may be deemed theft **resulting in Civil Penalties and/or Criminal Prosecution.** See CA Penal Code, § 484, *et seq.*, and its/their successor provision(s) for details.