

**1. Agreement.** These Rental Agreement Terms and Conditions and the Rental Agreement, Proposal, Invoice, Quote, or other document(s) incorporating them by reference, including all documents, exhibits, schedules, and addendums attached thereto or specifically incorporated by reference by them, constitute the sole and entire agreement (“**Agreement**”) between Hawthorne Machinery Co. or its applicable subsidiary, affiliate, or related entity (“**Hawthorne**”) and the purchasing customer (“**Customer**”) (together with Hawthorne, the “**Parties**,” and each a “**Party**”) with respect to rental of construction and/or power equipment or other property (“**Equipment**”) by Hawthorne on behalf of or to Customer (“**Services**”). This Agreement supersedes all prior and contemporaneous understandings and agreements, both written and oral regarding the Services. No purchase order, work order, or statement of work issued in connection with the Services by Customer or a third party shall be binding on Hawthorne unless accepted by Hawthorne in writing. The provision of the Services to Customer shall not constitute acceptance of any terms and conditions contained in any request for proposal, purchase order, statement of work, or other similar document issued by Customer or a third party, nor does it serve to modify or amend this Agreement.

**2. Precedence.** Should the terms of any proposal, purchase order, or statement of work issued by Customer or a third party conflict with the terms and conditions of this Agreement, the terms of this Agreement shall control. The Parties agree that the Services will be governed by the following documents in this order of precedence: the Rental Agreement, Proposal, Invoice, Quote, other document(s) issued by Hawthorne incorporating these terms and conditions by reference, these Rental Agreement Terms and Conditions, other writings signed by the Parties.

**3. Acceptance.** Acceptance of any portion of the Services, providing payment in whole or in part, taking possession of any Equipment to which this Agreement applies, or acceptance of the Agreement in any form (whichever occurs first) shall constitute acceptance of these Rental Agreement Terms and Conditions and any terms set forth in the document(s) issued by Hawthorne incorporating them by reference.

**4. Timing.** Hawthorne shall use reasonable efforts to meet any performance dates specified in the Agreement. Customer agrees that any such dates shall be estimates only.

**5. Change in Services.** If Customer wishes to change the scope of the Services, it shall submit details of the requested change to Hawthorne in writing. Hawthorne may from time to time change the Services without the consent of Customer provided that such changes do not materially affect the nature or scope of the Services, the fees, or any performance dates set forth in the Agreement.

**6. Customer Warranties.** Customer warrants that (i) if an entity, it is duly organized and validly existing in good standing; (ii) it is duly authorized to execute, deliver, and perform its obligations under this Agreement; (iii) it is not insolvent and is paying all of its debts as they become due; (iv) any payments made pursuant to the Agreement are intended by it to be a substantially contemporaneous exchange for new value given to it; (v) each payment made of a debt incurred by it under this Agreement is or was in the ordinary course of its business or financial affairs, and (vi) all information supplied by Customer is complete and accurate.

**7. Customer Obligations.** Customer shall pay, or reimburse Hawthorne for all prices, fees, expenses, or charges related to the Services when they become due, cooperate with Hawthorne in all matters relating to the Services, and provide such access to Customer’s premises and facilities as may reasonably be requested by Hawthorne for the purposes of performing the Services. Customer shall provide all direction, information, approvals, authorizations, notes, contracts, security agreements, financing statements, decisions or materials requested by Hawthorne to perform the Services. Customer shall maintain the premises on and around which the Services will be performed in a reasonably safe condition and shall notify Hawthorne in advance of any hazards, dangerous conditions and defects. Failure to comply with any portion of this section will constitute a material breach (“**Material Breach**”) of the Agreement, alleviate Hawthorne of any responsibility to perform the Services, and enable Hawthorne to terminate the Agreement.

**8. Compliance with Law.** Each Party agrees to comply fully, at its sole cost, with all applicable federal, state and local laws, rules and regulations.

**9. Customer’s Acts or Omissions.** If Hawthorne’s performance under the Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants, or employees, Hawthorne shall not be deemed in breach of its obligations under the Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Customer to the extent arising directly or indirectly from such prevention or delay.

**10. Fees and Expenses.** Customer shall (i) reimburse Hawthorne for all reasonable costs and expenses incurred in connection with the Services or in collecting any late payments and (ii) pay all other amounts due within thirty (30) days of receipt of an invoice from Hawthorne unless specified otherwise in the Rental Agreement, Proposal, Invoice, Quote, or other document(s) issued by Hawthorne incorporating these terms and conditions by reference, in which case the terms of payment specified by Hawthorne in the incorporating document will control. Failure to notify Hawthorne in writing of any dispute regarding an invoice within sixty (60) days of receipt of said invoice waives Customer’s right to dispute such invoice. Customer’s obligation to pay amounts invoiced shall be absolute and unconditional and shall not be subject to any delay, reduction, set-off, defense, or counter-claim. Unless specified otherwise in writing, Customer shall pay all costs of transportation, which include but are not limited to government duties, local taxes, customs fees, and shipping costs regardless of whether they arise before, during, or after performance of the Services. All credit card charges of \$3,000 or more will be subject to an additional three percent (3%) charge.

**11. Late Payments.** All late payments shall bear interest at the lesser of the rate of 1.5% per month (18% per annum) or the highest rate permitted under applicable law, calculated daily and compounded monthly, from the date such payment was due until the date paid in full as reimbursement to Hawthorne for clerical and other expenses incurred as a result of the delinquency, it being expressly agreed it would be impractical or difficult to determine these actual expenses. In addition to all other remedies available to it (which Hawthorne does not waive by the exercise of any rights hereunder), Hawthorne shall be entitled to suspend the provision of any Services if Customer fails to pay any amounts due. If Customer fails to pay

any amounts when due, all unpaid sums shall become immediately due and payable. Additionally, Hawthorne shall have the right, but not the obligation, to apply any funds paid by Customer to Hawthorne at any time to satisfy unpaid amounts. Customer also expressly agrees to pay the charges mentioned in this section as liquidated damages and not as penalty representing reasonable and fair compensation for the foreseeable losses/expenses resulting therefrom. Customer agrees to pay Hawthorne a \$25.00 Service Charge on each dishonored check returned. Hawthorne has the right to file a Preliminary Notice if payment is not received. Failure to provide any Preliminary notice information when requested could constitute a revocation of extension of credit.

**12. Taxes.** Customer shall be responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Customer hereunder, excluding any taxes imposed on, or with respect to, Hawthorne’s income, revenues, gross receipts, personnel or real or personal property or other assets unless otherwise specified in writing.

**13. Disclaimer of Warranty.** HAWTHORNE MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. HAWTHORNE IS NEITHER A MANUFACTURER OF ANY PARTS USED IN THE SERVICES NOR AN AGENT THEREOF.

**14. Normal Use.** Any rental rate provided to Customer covers normal use only, not to exceed eight (8) hours per day, forty (40) hours per week or one hundred and sixty (160) hours per four week period. Any excess use will be pro-rated against the appropriated rate and charged to Customer.

**15. Limitation of Liability.** CUSTOMER ASSUMES ALL RISK AND LIABILITY FOR THE LOSS OF, DAMAGE TO, DEATH OF, OR INJURY TO ANY PERSON OR PROPERTY CAUSED BY THE USE, CONDITION, POSSESSION, OR STORAGE OF PROPERTY LEASED FROM HAWTHORNE AS WELL AS ALL OTHER RISKS AND LIABILITIES ARISING FROM THE SAME. IN NO EVENT SHALL HAWTHORNE BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING ATTORNEYS’ FEES AND COSTS AND EXPERT-WITNESS FEES AND COSTS) OF ANY NATURE WHATSOEVER WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL HAWTHORNE’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE LESSER OF (i) THE FEES PAID TO HAWTHORNE PURSUANT TO THE AGREEMENT IN THE ONE-YEAR PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR (ii) \$25,000. UNLESS SPECIFICALLY AGREED TO IN WRITING, HAWTHORNE WILL NOT BE LIABLE FOR ANY LIQUIDATED DAMAGES OF ANY KIND AND IS NOT BOUND BY ANY AGREEMENT CONTAINING THE SAME.

**16. Duty to Indemnify.** Customer will indemnify, defend, and hold harmless Hawthorne, its agents, employees, affiliates and their respective owners, officers, directors, employees, agents, successors and permitted assigns from any and against any and all claims, losses, expenses, liabilities, deficiencies, judgments, settlements, interest, awards, fines, causes of action, damages, costs, penalties, taxes, assessments, charges, punitive damages and expenses of whatever kind, including reasonable attorneys’ fees, (“losses”), incurred, or reasonably anticipated to be incurred, by Hawthorne arising from or related to customer’s use, operation, possession, condition, or storage of Equipment, customer’s failure to perform any portion of the Agreement, Customer’s breach or non-fulfillment of any representation, warranty or covenant under the Agreement, Customer’s negligent or more culpable act or omission (including any reckless or willful misconduct) in performing its obligations under the Agreement, or failure to comply with any applicable federal, state or local laws, regulations or codes, which losses include but are not limited to (a) loss of or damage to Equipment for any cause; (b) injury to or death of any person; and (c) damage to real or personal property, excepting those losses that arise from Hawthorne’s sole negligence or willful misconduct. Customer will pay interest at the rate of 10% per annum from the day payment is made by Hawthorne through the day Hawthorne is reimbursed by Customer.

**17. Normal Wear and Tear.** Customer agrees to return Equipment to Hawthorne in the same condition in which it was leased and, at Hawthorne’s discretion, agrees to compensate Hawthorne for any damage in excess of normal wear and tear. At Hawthorne’s discretion, a cleaning charge for one day’s rental or more may apply.

**18. Storage and Use.** Customer shall be liable for all damages to or loss of Equipment and liability incurred prior to Equipment’s return to Hawthorne. If Equipment is to be retrieved by Hawthorne from Customer, Customer agrees to provide a secure storage location and Customer accepts all risk including damage to and liability relative to the Equipment for a reasonable period of time until the Equipment is retrieved by Hawthorne. Customer will use and store the Equipment in a careful and proper manner and will not permit it to be operated or used in violation of any and all applicable manuals, user guides, instructions, or applicable federal, state or local statute, ordinance, rule or regulation relating to the possession, use or maintenance of the Equipment as specified by the manufacturer.

**19. Customer’s Examination of Equipment.** Customer acknowledges that it has examined and accepts responsibility for all hitches, bolts, safety chains, stop and tail lighting, hauling tongues and brakes, together with all devices and material used to attach the Equipment to

Customer's towing vehicle. Customer further acknowledges that the Equipment is suitable for Customer's needs and understands (without further instructions) its proper operation and use.

**20. Failure of Equipment.** In the event of any failure of the Equipment, Customer at its expense shall immediately return it to Hawthorne's premises. Customer shall not repair Equipment without Hawthorne's written authorization.

**21. Insurance and Rental Protection Plan.** Customer will provide Hawthorne no less than two days before the date on which the Services are to begin and no less than five days before the expiration date of existing insurance an Accord certificate by an "A" rated admitted carrier evidencing the required insurance coverage with Hawthorne Machinery Co. as follows: A) Certificate Holder: Hawthorne Machinery Co., Attention: Risk Management, 16945 Camino San Bernardo, San Diego, CA 92127. B) General Liability: Limits Required: \$1,000,000 Per Occurrence/\$2,000,000 Aggregate per year. Endorsement: Additional Insured - Hawthorne Machinery Co., its Affiliated Companies, Directors & Officers, Agents and Employees. Primary Insurance: Primary Insurance is required. The insurance must be primary and non-contributory. C) Business Auto (If Applicable): Coverage: Requires \$1,000,000 limit in business auto liability coverage. Physical Damage: Limits must equal or exceed the value of the item(s) leased or rented. Additional Insured: If renting or leasing licensed, on-highway vehicles, such as water trucks, dump trucks or trailers, Hawthorne Machinery Co., its Affiliated Companies, Directors & Officers, Agents and Employees must be named as Additional Insured on your Auto Policy. D) Worker's Compensation: Limits Required: Statutory limits required by the state. Employer's Liability \$1,000,000. Waiver of Subrogation: A Waiver of Subrogation is required in favor of Hawthorne Machinery Co. E) Property/Physical Damage: Limits Required: Blanket coverage limits must equal or exceed the value of the item(s) leased or rented. Form: Coverage is required to be written on Special Form, including theft. Endorsement: Hawthorne Machinery Co. must be named as Loss Payee. Customer must provide Hawthorne a valid Physical Damage certificate or purchase Hawthorne's Rental Protection Plan ("RPP") to be eligible to receive the Services.

**22. Rental Protection Program.** By entering into this Agreement, Customer agrees to purchase RPP and pay the then current rate or fee for Hawthorne's RPP in effect at the time of this Agreement or obtain, and provide Hawthorne satisfactory evidence of, the insurance required by Hawthorne before or at the time the Services begin. Customer also agrees to pay any Equipment Damage Fee that may become due as a result of its participation in RPP. If Customer purchases RPP, Hawthorne agrees to waive its rights of subrogation against Customer for all losses covered under the RPP, which terms are specifically incorporated by this reference and are available at [www.hawthornecat.com/terms](http://www.hawthornecat.com/terms). Customer expressly agrees and understands that the RPP is NOT insurance and does not offer coverage for risks including, but not limited to, Public Liability, Auto Liability, General Liability, or Workers Compensation. Customer shall be liable to Hawthorne for any loss or damage (1) caused by use of Equipment in violation of any of the terms of this Agreement or of any law or ordinance, (2) to crane, dragline, or derrick booms, or forklift masts or mast carriages resulting from overloading or exceeding the rated capacity of Equipment or from a collision when a boom is in motion, (3) caused by reckless conduct, or willful or intentional conduct of Customer, (4) to electrical appliances, motors, or other electrical devices, caused by artificial electrical current, (5) due to theft, disappearance, or conversion unless such theft, disappearance, or conversion is immediately documented with the appropriate public authorities (police report), and a copy is given to Hawthorne, (6) resulting from the lack of lubrication, the use of improper fuel, or other failure of Customer to perform the required maintenance and servicing of Equipment, (7) caused by exposure to hazardous, corrosive, contaminated or radioactive materials, (8) to the tires or tubes, such as blowouts, bruises, cuts or other causes inherent in the use of Equipment, and/or (9) to Equipment used outside of the Continental limits of the United States of America, Hawaii, Puerto Rico, territories of the United States of America, and Canada.

**23. Refusal of RPP.** If Customer refuses to pay for the RPP, then Hawthorne may terminate the Agreement at its sole option. However, if Hawthorne elects to continue the Agreement, the RPP will not be effective and Customer shall be fully responsible for all loss and damage to Equipment as specified in the Section titled "Loss or Destruction of Equipment."

**24. Loss or Destruction of Equipment.** Customer is responsible to Hawthorne for any loss or damage to Equipment, except for ordinary wear and tear. If the Equipment is stolen, lost or damaged, Customer shall be liable to Hawthorne for the full value of the Equipment, together with interest at the highest legal rate on such value, plus all of Hawthorne's expenses related to said loss or damage, including, but not limited to, loss of use, appraisal fees, or cost of recovery. **Only if Customer has met all of the conditions as outlined in Section 17 titled "Normal Wear and Tear" and Section 18 titled "Storage and Use," and Hawthorne's RPP applies shall this Section not apply, and Section 22 titled "Rental Protection Program" shall apply to any physical damage covered under RPP not caused by the negligence or willful misconduct of the Customer.**

**25. Fuel.** It is the responsibility of the Customer to use appropriate fuels. Engine damage arising from the use of incorrect fuel will be charged to Customer.

**26. Hawthorne's Right to Inspection.** Hawthorne shall have the right during business hours to enter Customer's premises for the purpose of inspecting the Equipment and making any repairs and adjustments necessary to ensure the proper and safe operation thereof. Hawthorne at its sole discretion may remove the Equipment and replace it with similar Equipment covered by this Agreement at any time during the term of the Agreement.

**27. Confidentiality.** From time to time during the term of the Agreement, either Party (as "Disclosing Party") may disclose or make available to the other Party (as "Receiving Party") non-public proprietary and confidential information that, if disclosed in writing or other tangible form is clearly labeled as "confidential," or if disclosed orally, is identified as confidential when disclosed and promptly thereafter is summarized in writing and confirmed as confidential ("Confidential Information"); provided, however, that Confidential Information does not include any information that (i) is or becomes generally available to the public other than as a result of Receiving Party's breach of this section; (ii) is or becomes available to Receiving Party on a non-confidential basis from a third party source, provided

that such third party is not and was not prohibited from disclosing such Confidential Information; (iii) was in Receiving Party's possession prior to Disclosing Party's disclosure hereunder; (iv) was or is independently developed by Receiving Party without using any Confidential Information; or (v) is disclosed to a third person by Disclosing Party without similar restrictions. Except as otherwise specified in these Service Terms and Conditions, the Receiving Party shall (x) protect and safeguard the confidentiality of Disclosing Party's Confidential Information with at least the same degree of care as Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care, (y) not use Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations, and (z) not disclose any such Confidential Information to any person or entity, except to Receiving Party's representatives who need to know the Confidential Information to assist Receiving Party, or act on its behalf, to exercise its rights or perform its obligations. If Receiving Party is required by applicable law or legal process to disclose any Confidential Information, it shall, prior to making such disclosure, use commercially reasonable efforts to notify Disclosing Party of such requirements to afford Disclosing Party the opportunity to seek, at Disclosing Party's sole cost and expense, a protective order or other remedy. Each Party shall be entitled to injunctive relief for any violation of this Section.

**28. Term.** This Agreement shall commence on the date specified in the applicable Rental Agreement, Service Authorization, Proposal, Quote, or other document(s) incorporating these terms and conditions by reference, or, if no such date is specified, as of acceptance of any portion of the Services by Customer, the Customer providing payment in whole or in part, or Customer taking possession of any Equipment to which this Agreement applies, shall continue until the completion of the Services unless sooner terminated pursuant to this Agreement, and shall automatically renew at the end of each term for successive terms equal in duration to the initial term.

**29. Termination by Hawthorne.** If Customer fails to make any of the payments required by the Agreement, fails to keep the Equipment in proper working condition, misuses the Equipment in any manner, does not keep or perform any of the conditions set out herein, breaches this Agreement or if Customer becomes insolvent, files a petition for bankruptcy, commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, Hawthorne may terminate the Agreement and Customers rights under the Agreement, declare the balance of all unpaid amounts and all other charges of any kind required of Customer under the Agreement to be payable immediately, and be entitled to the balance due together with interest at the rate of 10% per annum from the date of notification, and repossess the Equipment without legal process free of all rights of Customer to the Equipment. Customer authorizes Hawthorne or Hawthorne's agent to enter onto any premises where the Equipment is located and repossess and remove it. Customer specifically waives any right of action Customer might otherwise have arising out of the aforementioned entry and repossession and releases Hawthorne of any claim for trespass or damage caused by reason of the entry, repossession, or removal. Customer will reimburse Hawthorne for all reasonable expenses of repossession and enforcement of Hawthorne's rights and remedies, together with interest at the rate of 10% per annum from the date of payment. Notwithstanding any other provision of this Lease, Customer will pay, subject to any limits under applicable law, Hawthorne's attorneys' fees and legal expenses of any kind to enforce any provision in this Agreement.

**30. Force Majeure.** Hawthorne shall not be liable, nor be deemed to have defaulted or breached this Agreement, for any failure or delay caused by or resulting from acts or circumstances beyond Hawthorne's reasonable control including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either Party's workforce), restraints or delays affecting carriers, an inability or delay in obtaining supplies of adequate or suitable materials, telecommunication breakdown or power outage.

**31. Communications.** All notices, requests, consents, claims, demands, waivers and other communications (each, a "Communication") must be in writing and addressed to the other Party at the address provided in the Rental Agreement, Proposal, Invoice Quote, or other document(s) incorporating these terms and conditions by reference, or such other address that the receiving Party has designated in accordance with this Section. Unless otherwise agreed to in writing, all Communications must be delivered by facsimile, e-mail, personal delivery, courier or certified or registered mail (return receipt requested, postage prepaid). A Communication is effective only on receipt by the receiving Party if the Party giving the Communication has complied with the requirements of this Section. Communications shall be deemed received (i) if given by facsimile or e-mail, on the date of transmission if sent prior to 3:00 p.m. (PST) on a business day and otherwise on the following business day, (ii) if by courier or personal delivery, on the date of delivery, and (iii) if by mail, two (2) days after the date of mailing.

**32. Applicable Law/Venue.** This Agreement (and all matters arising out of or relating to it) will be governed in all respects by the laws of the State where the Services are performed without regard to any choice or conflict of law provisions. When applicable, each Party hereby irrevocably submits to the exclusive jurisdiction of the courts situated in San Diego County in the State of California or Honolulu County in the State of Hawaii and waives all claims that such venue is in an inconvenient forum.

**33. Waiver of Jury Trial.** EACH PARTY KNOWINGLY, VOLUNTARILY, IRREVOCABLY AND UNCONDITIONALLY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED ON OR ARISING OUT OF THIS AGREEMENT OR THE SUBJECT MATTER HEREOF (INCLUDING, WITHOUT LIMITATION, CONTRACT, TORT, BREACH OF DUTY, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS), AND WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY (i) UNDERSTANDS THAT THIS IS A WAIVER OF IMPORTANT LEGAL RIGHTS AND (ii) ACKNOWLEDGES HAVING HAD A

