

**FIVE PEAK, INC**  
**TERMS AND CONDITIONS**

**INSURANCE:**

In those cases where licensed highway vehicles are rented, Lessee agrees to provide and maintain full automobile and regular liability insurance naming FIVE PEAK, INC. as additional insured on all leased or rented equipment during the life of lease or the rental agreement. PROOF OF COVERAGE SHALL BE A CERTIFICATE OF INSURANCE NAMING THE LESSOR AS AN "ADDITIONAL NAMED INSURED" ON THE LESSEE'S GENERAL LIABILITY POLICY AND AS "LOSS PAYEE" ON LESSEE'S EQUIPMENT FLOATER. The minimum liability limits on such insurance shall be One Million Dollars (\$1,000,000.00), written on either a combined single limit or on a split limit basis for each contract of insurance.

ADDITIONAL NAMED INSURED ON THE LESSEE'S GENERAL LIABILITY & Auto Liability Policies AND AS "LOSS PAYEE" ON LESSEE'S EQUIPMENT FLOATER. The minimum liability limits on such insurance shall be One Million Dollars (\$1,000,000.00), written on either a combined single limit or on a split limit basis for each contract of insurance.

In addition to the said liability coverage, the Lessee agrees in all instances to provide and maintain full insurance coverage on all leased or rented equipment written to the full insurable value subject to such deductible as acceptable to the Lessor on the all-risk form of insurance for physical loss and/or damage to said equipment and shall insure against but not be limited to the perils of fire, extended coverage, theft, vandalism, malicious mischief, collapse, water damage and such other perils as may be required by Lessor in its sole judgement.

Said insurance coverage and contract terms shall be evidenced on a certificate of insurance and shall provide further that in the event the liability and/or physical loss policies are cancelled prior to the expiration date shown on the certificate, the issuing insurance companies shall be required to provide FIVE PEAK, INC. with (30) days written notice of such cancellation prior to the effective date of cancellation. The cost of any such insurance policies and endorsements shall be the obligation of Lessee.

Lessee further agrees to indemnify and hold FIVE PEAK, INC. harmless from any and all claims whatsoever relating to or arising from transportation, use or possession of rent equipment for injury to persons or damage to property and from any and all expenses incurred in the defense of any such claims.

Lessee further agrees to indemnify and hold FIVE PEAK, INC., harmless from any and all claims whatsoever relating to or arising from transportation, use or possession or rental, equipment for injury to persons or damage to property and from any and all expenses incurred in the defense of any such claims.

Lessee shall provide and maintain all Workmen Compensation, which shall be written to comply with all state laws in all states in which the equipment shall be used or operated by Lessee.

By signature of the rental agreement, it is acknowledged that a full and complete copy of any physical damage insurance policy provided by Lessor is obtained by the Lessee from the Lessor.

**EQUIPMENT CONDITIONS:**

Lessee acknowledges that they are fully familiar with the equipment covered by this agreement and that they fully understand the operating instructions and warning and caution signs. Lessee also acknowledges that they are aware of the limitations of the equipment and agree not to exceed them. Lessee agrees to show the operating instructions and warning and caution signs and explain the equipment's limitations to any and all persons who may operate the equipment. Lessee shall use the equipment in a careful and proper manner and shall comply with all laws, ordinances and regulations relating to the possession, use or maintenance of the equipment. If Lessee is not fully familiar with the equipment covered by this agreement, or the operating instructions or warning and cautions signs, they hereby acknowledge that they have asked for and received complete operating instructions and explanation regarding warning and caution signs. Lessee acknowledges receipt of all manufactures operational manuals pertaining to the equipment and has thoroughly studied and has understood the same. Lessee is solely responsible to advise any persons operating the equipment or in the vicinity of the equipment of all safety operating procedures and safety precautions.

Any repairs which become necessary to said equipment shall be done by the Lessor at any time unless permission has been given in writing the Lessee to do such repairs. The cost of repairs for normal use to be borne by Lessor, all additional by Lessee. Lessee will pay for all fuel and oil used during the terms of this lease and will MAINTAIN PROPER OIL AND COOLANT LEVELS AT ALL TIMES.

**SAFETY EQUIPMENT:**

Lessee is to perform regular inspections of safety equipment and correct any deficiencies before continuation of machine operation.

**OIL SAMPLES:**

Lessee shall take oil samples at time of oil change, engine oil and speed reducer each 120 hours of machine operation, and transmission, differentials, and hydraulics each 500 hours of machine operation. Samples must be taken while the oil is hot and well mixed to ensure the sample is representative of the oil in the compartment. Oil samples must be turned into the local caterpillar dealer's oil lab within two days of sample. The cost of oil sampling and testing shall be borne by the Lessee. The written reports prepared in the oil lab shall be submitted to Lessor immediately upon completion of testing.

The Lessee agrees and guarantees to return the equipment above described in good condition as when received and if otherwise to pay the expenses of putting it in such condition, less ordinary wear incident to normal use in the hands of a competent operator. This guarantee is absolute and may not be excused by theft, act of God, or for any other reason whatsoever. This equipment furnished by FIVE PEAK, INC. is understood to be in good order at the time of shipment and upon receipt if the Lessee finds it otherwise, FIVE PEAK, INC. shall be notified within 48 hours after arrival, and the Lessor has the right to put the same in good order at its expense, but will not be responsible for any expenses contracted without their written consent. Failure to send notification will be construed to mean acceptance by the Lessee and shall necessitate maintenance of all the equipment in good condition by the Lessee throughout the term of the lease. LESSOR MAKES NO WARRANTIES EXPRESS OR IMPLIED AS TO THE CONDITION OF THE EQUIPMENT LEASED NOT AS TO VISIBLE OR HIDDEN DEFETS IN MATERIAL WORKMANSHIP OR CAPACITY OF THE EQUIPMENT.

NON-WARRANTY: THE EQUIPMENT IS LEASED "AS IS" AND WITHOUT ANY WARRANTY WHATSOEVER, EXPRESSED OR

IMPLIED, INCLUDING ANY WARRANTY OF MERCHANT-ABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

The lessee shall be liable to FIVE PEAK, INC., be held responsible for injury, delays or damages consequential or otherwise, resulting by reason of the use of condition of said equipment, or by reason of delays on the part of Lessor or railroads, or trucking companies in making delivery or loss or damage to equipment in transit or from strikes or other contingencies beyond its control or from any cause whatsoever.

If at any time, Lessor in its sole discretion determines its rights to the equipment are endangered or that the equipment is being used beyond its capacity or in any manner improperly cared for or abused or if there shall be any default by Lessee in the terms and conditions of this lease, Lessor may upon notice REPOSSESS the equipment and cancel this lease.

The equipment described is to be used at the address shown on the face of this agreement and said equipment is not to be removed from that location except in the written consent of FIVE PEAK, INC.

Upon request b Lessor, Lessee shall provide to Lessor the following information: (a) a copy of the contract governing all projects on which the equipment is used, (b) a copy of the payment bond, if any, issued pursuant to the contract and (c) the name and location of all projects where the equipment has been used. Lessee agrees to promptly provide to Lessor on request any and all other information whatsoever, as Lessor shall in its sole judgment deem appropriate. Failure to provide such information shall be deemed a default on this lease.

#### **CHARGES:**

The rental period shall begin at the time when the equipment is loaded at shipping and when equipment is properly loaded for return. Lessee shall pay all drayage charged to the place of work and return to Lessor's yard, or to such place as FIVE PEAK, INC. shall designate, it being understood, however that Lessee shall be put to not greater expense in return of equipment than if equipment were returned to the place from which it was originally obtained.

All amounts charged on rental and leases will be due on date of receipt of the invoice or later date as specified on invoice and a financecharge will be imposed on this account if said account is not paid on date the amount comes due.

Balance due is determined pursuant to invoice. Lessee will incur no FINANCE CHARGE if the amount is paid in full when due. Rental past due will incur interest from the date due at the rate of 24% per annum. This is not however an agreement to accept periodic payments.

In the event of lessees default in paying of the payments as billed, the balance of rent for the entire term herein described shall immediately become due and payable and the Lessee by his signature hereto irrevocable constitutes any attorney of any court of record, attorney for Lessee in the name of rent Lessee upon default of payment of any or other payments which may be due hereunder to enter appearance of the Lessee in any such court, waive process and service thereof, and confess judgement for any rent or other payments which may be due hereunder, with costs and reasonable attorney's fees, and to waive all errors and rights of appeal from any such judgment on file and consents in writing that any court order or writ as Lessor shall deem appropriate to enforce its remedies may be issued immediately.

In the event of a default in payment of any installment, mentioned herein, FIVE PEAK, INC. may enter the premises, repossess said equipment, lock or remove same from said work, the same as though this lease had not been made.

**RENTAL DAYS** means the first to elapse of 24 hours or eight hours of equipment use. Any period of equipment use, less than eight hours, or any period of time less than 24 hours during which the equipment is held by Lessee shall constitute a full Rental day.

**RENTAL WEEK** means the first to elapse of seven calendar days or 40 hours of equipment use.

**RENTAL MONTH** 4 weeks or 160 hours of equipment use. If it is not clear which was first to elapse of one of the above stated periods of time or its corresponding period of equipment use, the latter will be presumed. The rent charged under this lease is based on an eight-hour day. If used in longer shifts, not exceeding sixteen hours, Lessee agrees to pay an increase of 80 percent in the rental rate, or if run three shifts of eight hours each, two-and-one-half times the rate named. The lessee agrees to notify Lessor of any increase in the working schedule and permit Lessor to inspect job time records, which will be uses as a guide to estimating time.

Any holdover beyond the term of this lease as set forth above shall extend the term of the lease, on the same terms and conditions as set forth herein except, that during any holdover period Lessor may repossess the equipment and terminate the lease, with or without default, upon 24 hour notice. On termination of this lease, during any holdover period, the rent for the entire lease period shall be computed on the lowest basis provided above and adjusted with Lessee accordingly.

Lessor shall have any and all remedies provided in this lease, at law or equity, including but not limited to, the right to sue for damages, collection of unpaid rent, repossession and consequential damages for Lessee's breach of this lease.

All remedies given Lessor hereunder are cumulative, and the exercise of any one remedy by Lessor shall not be to the exclusion of any other remedy.

This agreement shall not only be binding upon the parties hereto but shall inure to and be binding upon their heirs, successors in interest, personal representative, and assigns, (where permission to assign by Lessor is given). Lessees right under this lease are not assignable without Lessor's written permission.

#### **GENERAL TERMS:**

If any words, phrase, clause, sentence or paragraph of this lease is or shall be invalid for any reason, the same shall be deemed severable from the remainders hereof and shall in no way effect or impair the validity of this lease or any other portion thereof.

It is hereby agreed that title to the equipment above described remains in the Lessor name and it is not intended hereby to vest any rights in the Lessee to said equipment other than as specifically provided herein.

In the event that the equipment set forth in this contract is damaged and requires repair at FIVE PEAK, INC. or any other service facility, the terms and conditions as set forth herein continue during the period of repair.

#### **PURCHASE OPTION:**

ANY OPTION TO PURCHASE MUST BE IN WRITING AND SIGNED BY AN OFFICER OF THE LESSOR'S COMPANY, AND THE LESSEE. IT IS EXPRESSLY UNDERSTOOD AND AGREED BY THE LESSOR AND THE LESSEE THAT, UNLESS WRITTEN OPTION AGREEMENT IS SIGNED BY BOTH PARTIES, NO SUCH OPTION EXISTS.

#### **SUBLETTING:**

Neither the whole nor any part of the equipment hereby leased, shall be sublet, or suffered to the sublet by Lessee: or removed from location at which it was intended by Lessor to be used, as herein stated, except by written consent of Lessor obtained in writing before said removal.

**TAXES:**

Lessee shall pay all taxes relating to this equipment during the rental period.

**REMEDY OF LESSEE:**

Should the equipment after acceptance by Lessee become defective or unfit for use, Lessee's sole remedy shall be to return equipment to Lessor at its warehouse. This agreement then may be terminated provided Lessee has paid to Lessor all rental, including rental for the minimum lease period, and other charges due here under to the date of such return. Lessor shall not be liable to Lessee for any loss, delay or damage of any kind resulting from any defect in or inefficiency or breakage of the equipment.

**REMEDIES OF LESSOR:**

In the event Lessee defaults or becomes insolvent, ceases doing business as a going concern, makes or attempts to make an assignment for the benefit of the creditor, becomes the subject as an actual or alleged debtor or bankrupt under any chapter of the Bankruptcy Act, or does or attempts to sell, transfer, encumber sublet or part with possession of the equipment, or if the equipment is levied upon under judicial process against Lessee, Lessor shall have the right, without notice of Lessee, to exercise any one or more of the following remedies.

1. To declare all unpaid obligations including rental, tire changes, insurance charges, and any other charges to be immediately due and payable.
2. To require Lessee to assemble the equipment rented hereunder and make said equipment available to Lessor for pickup at any place within the State of Utah which Lessor designates.
3. To waive any default without waving any other than existing or future default.
4. To enter the premises where the equipment is located, with or without legal process, and to take possession of the equipment, and to use all necessary force to do so. Lessee thereafter shall have no right to the equipment and expressly waives to the extent allowed by law all claims for injury or loss caused by such repossession.

All remedies of the Lessor hereunder are cumulative, and are in addition to such other remedies as might be provided by law and may, to the extent permitted by law, be exercised concurrently or separately, and exercise of any one remedy shall not be deemed to be an election of such remedy or to preclude the exercise of any other remedy.

Time is of the essence.

This writing contains the entire agreement between the parties hereto, and any representation or agreement not contained herein shall be of no force or effect whatsoever.

The termination or cancellation of this lease by Lessor, for any reason, shall not terminate or cancel Lessors right to pursue any remedies provided herein or at law or equity against Lessee.

This agreement is enforceable under the law of the State of Utah.