

TERMS AND CONDITIONS OF RENTAL CONTRACT (Enlarged Version)

For good and valuable consideration, you and DeFlorio Enterprises, LLC., dba "Apex Rentals" (hereinafter also referred to as "APEX," "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 device(s) provided per the terms of Section [or "§"] 4 below); "Site" means the delivery or use address set forth on P.1; and "Customer," "Lessee," "you" and "your" mean the "Customer/Lessee" identified on P.1.
2. You agree to rent the Rented Item(s) from APEX for the period(s) specified on P.1 (the "Term"), at the end of which, you agree to return such Item(s) to us as required hereunder. You agree to pay us our stated rental rate(s) (the "Rent"), together with all other charges accruing hereunder, without proration, reduction or setoff, and remain liable for all loss of, damage to and/or destruction of the Rented Item(s) for the duration of the Term and until all such Rented Item(s) is/are returned to and accepted by APEX in the proper return condition as required under this Contract (including § 12). Unless otherwise agreed in writing by APEX, 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 "Rental Day"), 40 hours per 7-Rental Day Period, 160 hours per 28-Rental Day period, and otherwise in accordance with the terms of this Contract and the "Instructions" referenced in § 4. Additional prorated Rent will be charged for late returns and overuse. No allowance will be made for weather delays, time in transit or other period(s) of nonuse. We have estimated the Rent based on your estimate of the length of the Term (the "Estimated Rent"). Unless we otherwise agree in writing: (a) you shall pay us: (i) any deposit and the Estimated Rent specified on P.1 in advance of the Term (the "Prepayment"); and (ii) all other amounts coming due hereunder upon demand; and (b)(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 us; (iv) all Prepayments are **NON-REFUNDABLE** except only as provided in § 6; and (v) anything remaining with, in or on any Item(s) upon return to us will be deemed surrendered and abandoned.
3. Except with respect to Rented Items which APEX rents from one or more third parties (each, a "TPO") and then re-rents to you ("Re-Rented Items"), APEX owns and will retain title to all Rented Items at all times. You will have exclusive control over the Rented Item(s) during the Term; subject however, to your obligation to fully and timely comply with this Contract at all times. 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, share, transfer, sublease, store, surrender or assign any Rented Item(s) or this Contract, without our prior written consent (in our sole discretion)**. APEX may at its option from time to time, substitute Rented Item(s) and/or sell or assign all or any part of its interests in one or more 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 APEX or any TPO.
4. Upon the earlier of your receipt, or the delivery to the Site, of the Rented Item(s) unless you thereupon reject it/them, 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 APEX), carefully examined 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, MSHA, ASME, IBC, IFC, IEEE, ASSE, DOT, FMCSA, IFTA, 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, FALL PROTECTION and other safety devices**); (iv) will use each Item only for **its intended purpose**, in a reasonable and safe manner; (v) will timely give 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 clearly and properly marked before using any Item(s) to dig or disturb the ground surface

(Call 811 OR 888-DIG-SAFE (888-344-7233)) at least 3 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 or misleading.

5. You agree to ensure the Site is reasonably clean, safe, secure and otherwise fit for delivery and use of the Rented Item(s) at all times. If we agree to provide any service(s) (including without limitation, 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 full access to the Site. We will not be responsible for any delay(s) caused by you, your agents, employees or any other parties, including providers of other equipment or services ("Other Party(ies)") for which you hereby agree to indemnify, defend and hold harmless APEX. 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 the status, condition, quality, existence or lack of defects and quantities of and/or with respect to the Item(s) and the Site).

6. In the event of a Malfunction, you will immediately notify, and return the Malfunctioning Item to, APEX, 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 any Other Party(ies), we may, at our option: (a) repair the Malfunctioning Item; (b) provide you with a comparable replacement Item; or (c) with respect only to the Malfunctioning Item(s), return the unused portion of the Rent and cancel this Contract. The foregoing remedies are **EXCLUSIVE**. APEX will have no other obligation(s) with respect to Malfunctions, all of which you waive, together with all associated direct, incidental, consequential and other indirect damages.

7. **WARNINGS: THE RENTED ITEM(S) CAN BE DANGEROUS.** ACCORDINGLY, YOU AGREE TO: (A) PROVIDE ALL APPLICABLE **TRAINING, FAMILIARIZATION, INSTRUCTIONS AND WARNINGS** TO ALL PERSONS WHO USE, OPERATE, OCCUPY OR OTHERWISE DEAL WITH ANY RENTED ITEM(S); AND (B) ENSURE THAT EACH RENTED ITEM IS TRANSPORTED, SERVICED, MAINTAINED, REPAIRED, USED, OPERATED AND OCCUPIED: (I) WITH EXTREME CARE; (II) WITHIN ITS RATED CAPACITY; (III) UNLESS OTHERWISE SPECIFICALLY AGREED BY APEX, AT THE SITE; (IV) **BY PROPERLY TRAINED, FAMILIARIZED, QUALIFIED, CERTIFIED, SUPERVISED AND/OR LICENSED (AS APPLICABLE) ADULTS**; AND (V) OTHERWISE IN FULL COMPLIANCE WITH THIS CONTRACT, THE INSTRUCTIONS REFERENCED IN § 4 AND ALL APPLICABLE LAWS, RULES AND REGULATIONS, AT ALL TIMES.

8. **NO WARRANTIES:** APEX IS NOT THE MANUFACTURER OR DESIGNER OF ANY OF THE ITEM(S) REFERENCED IN THIS CONTRACT, ALL OF WHICH ARE PROVIDED "**AS-IS**". NEITHER APEX 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 ANY COURSE OF DEALING, COURSE OF PERFORMANCE AND/OR USAGE OF TRADE) REGARDING ANY ITEM(S) OR SERVICE(S) REFERENCED IN THIS CONTRACT, NOR DOES APEX OR ANY TPO MAKE ANY WARRANTY(IES) AGAINST INTERFERENCE OR INFRINGEMENT, ALL OF WHICH YOU WAIVE. **NO DESCRIPTIONS, SPECIFICATIONS, DEPICTIONS OR ADVERTISEMENTS CONSTITUTE REPRESENTATIONS OR WARRANTIES BY APEX OR ANY TPO. THERE ARE NO WARRANTIES OTHER THAN THOSE APPEARING ON THE FACE HEREOF.**

9. **TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, YOU: (A) ASSUME ALL RISK** OF PERSONAL AND BODILY INJURY, LOSS, PROPERTY DAMAGE, DESTRUCTION AND CONTAMINATION OF, TO, AND/OR ARISING IN CONNECTION WITH, THE ITEM(S) AND/OR SERVICE(S) REFERENCED IN THIS CONTRACT, INCLUDING ALL LIABILITIES, CLAIMS, DAMAGES, LOSSES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES) ARISING FROM AND/OR IN CONNECTION WITH THE SELECTION, PROVISION, INSPECTION, DESIGN, MANUFACTURE, USE, LOADING, UNLOADING, TRANSPORTATION, DEMONSTRATION, INSTALLATION, STORAGE, SERVICING, MAINTENANCE, REPAIR, DELIVERY AND/OR RETRIEVAL OF SUCH ITEM(S) AND/OR SERVICE(S), WHETHER OR NOT YOUR FAULT (COLLECTIVELY, "RISKS"); (B) **RELEASE AND DISCHARGE, AND AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS, APEX AND EACH TPO,** and their respective owners, affiliates, subsidiaries, shareholders, members, managers, officers, directors, agents, employees, insurers, subrogees,

representatives, successors and assigns (each, an "Indemnitee"), for, from and against all such RISKS, as well as all other liabilities, claims, damages, losses, costs and expenses (including attorneys' fees) arising from and/or in connection with the Rented Item(s), this Contract, our negligence, and/or your breach of any one or more of the terms hereof; and except only as provided in § 6, **(C) WAIVE all rights, remedies 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.**

10. You agree to maintain all insurance we may require, including: (a) liability insurance with minimum limits of \$1,000,000 per occurrence; (b) property damage/inland marine insurance covering all Items for the full (new) replacement cost thereof; (c) workers' compensation insurance; and (d) for all automobiles and trailers included in or with the Rented Item(s): (i) hired auto liability insurance with minimum limits of \$1,000,000; (ii) hired auto physical damage insurance for actual cash value; and (iii) contents insurance for the full new replacement cost of all contents thereof. Such policies shall, whenever possible: (i) name APEX and each TPO as an additional insured and loss payee; (ii) waive subrogation against them; (iii) be primary and non-contributory; and (iv) include such other provisions (including deductibles) as we may require. You irrevocably appoint APEX as your agent and attorney-in-fact for purposes of submitting and negotiating claims on all of the above referenced policies.

11. 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 first \$5,000 of 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) 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) any breach of this Contract by you or your agents, employees, sublessees, transferees, borrowers, successors and/or assigns; (B) theft or other failure to timely return Covered Item(s) to us; (C) negligence, misuse and/or abuse of Rented Item(s) (including submerging, overturning and overloading); (iii) GPS and telematics systems, batteries, keys, glass, tires, tubes, tracks, booms, belts, chains, knobs 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 § 10. Your insurance, if any, will continue to apply and will remain primary. You agree to assist us in recovering thereunder for all losses covered by LDW. **LDW IS NOT INSURANCE, NOR IS IT A WARRANTY.**

12. 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 APEX on time, clean, free of contaminants (including without limitation, asbestos, beryllium and silica) 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, then in addition to the amounts set forth elsewhere in this Contract, you will pay us: (a) hourly Rent until all Item(s) has/have been returned or replaced as required; and (b) all costs and expenses we incur in connection with such failure. You will not, nor will you permit anyone else to: (i) abuse, misuse, overuse, remove from the Site, conceal, repair, modify or damage any Rented Item(s); (ii) violate any law, policy of insurance or warranty; (iii) expose any Rented Item(s) to any flammable, explosive, harmful or hazardous substance(s) or circumstance(s); (iv) disable, misuse or circumvent any safety equipment or device(s) in, on or with any Rented Item(s); or (v) take possession of or exercise control over any Rented Item(s), without our prior consent (granted, conditioned or withheld in our sole and absolute discretion). Additionally, **YOU SHALL NOT PLACE OR STORE IN OR ON ANY RENTED ITEM(S)** (including trailers) any: (A) toxic, noxious, flammable, explosive, corrosive, contaminated or other potentially harmful or hazardous materials and/or substances; or (B) contraband.

13. You agree to pay all taxes (including all sales, use, transfer, value added and other taxes), fines, fees, assessments, tolls and other charges related to each Item. In the event legal action is commenced in connection herewith, we will be entitled to recover our costs and expenses associated therewith (including without limitation, attorneys' fees) from you if we prevail. To the maximum extent permitted under applicable law, you grant to APEX a lien on all real and personal property: (a) placed in or on; and/or (b) improved with, any Rented Item(s). We may, without notice or liability to you, monitor and/or inspect, in person and/or electronically (including via Telematics/GPS systems) any Rented Item(s) at any time. You consent thereto and agree that all information thereby obtained will be our exclusive property. If any performance required of APEX is delayed or impaired as a result of any act or omission of/by you, any Other Party(ies) 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 our rights and remedies. All amounts due hereunder but not timely paid will bear interest at the lesser of: (i) 18% per annum; or (ii) the highest rate permitted under applicable law until paid. You authorize APEX to charge all amounts coming due hereunder to any debit and/or credit card(s) you provide. You agree to pay us the maximum lawful charge for any check you write which is returned unpaid. Our maximum liability in connection with this Contract is limited to the amount(s) actually paid by you and received by us hereunder. 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 of our rights or remedies.

14. Your duties hereunder are unconditional. If you or any guarantor shall: (a) fail to fully and timely honor, pay, perform or comply with this Contract and/or any of your obligations arising in connection herewith; (b) provide any incorrect or misleading information to us; (c) become insolvent; or (d) die or cease conducting business, or if any Rented Item(s) shall be lost or, except to the extent covered by LDW per § 11, damaged, you will be in **DEFAULT** under this Contract, whereupon, we may with or without legal process or notice (and without liability to you or any guarantor), to the maximum extent permitted under applicable law: (i) terminate your rental(s); (ii) seek relief from stay; (iii) recover, empty, lock, restrict and/or disable any Rented Item(s) without being guilty of breach, trespass or wrongful interference, or liable for any injuries or property damage (for which you will indemnify, defend and hold harmless each Indemnitee); (iv) perform your obligations hereunder on your behalf, without being obligated to do so; (v) purchase replacement Item(s); (vi) recover from you our associated direct and indirect damages, losses, costs and expenses (including without limitation, Rent for the balance of the scheduled Term, overtime, loss of use, interest, attorneys' fees and collection costs); and/or (vii) pursue any other rights and/or remedies available hereunder, at law and/or in equity, all of which shall be cumulative.

15. All disputes arising in connection with this Contract and/or its subject matter, shall, at the sole option of APEX, be submitted to binding arbitration in accordance with the Rules of the American Arbitration Association before a single arbitrator and in a location selected by APEX. Judgment on the arbitrator's award shall be final and binding on the parties hereto and may be entered in any court of competent jurisdiction. This Contract shall be governed by and enforceable under the laws of New Hampshire, and proper venue for all civil legal actions commenced in connection therewith which are not made subject to arbitration as provided above shall lie solely in the federal, state and local courts located in or nearest to Merrimack County, New Hampshire (unless waived by APEX). You consent and submit thereto and waive all claims that such venue lies in an inconvenient forum.

16. Time is of the essence. There are no third-party beneficiaries hereto other than the applicable Indemnitees. This Contract, and any addenda provided by APEX represent(s) the entire agreement between you and APEX, superseding all other oral and written agreements and representations (including our website and advertising). This Contract cannot otherwise be amended or extended except in a writing signed by APEX. 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 APEX). You acknowledge that this Contract: (a) constitutes a true operating lease, and not a disguised financing; (b) is fair and reasonable; and (c) shall be enforceable by you, DeFlorio Enterprises, LLC., and the other Indemnitees. The terms of this Contract are severable. If any provision (t)hereof is deemed invalid or unenforceable by any court of competent jurisdiction, such provision will be deleted, and the remainder of (t)hereof will remain valid and enforceable. Digital, electronic, photocopied and facsimiled signatures appearing on this Contract and/or any Addenda will be deemed originals.

17. Any item(s) sold to you ("Sale Items"), as provided on Page 1 are provided "**AS-IS**" and "**WITH ALL FAULTS**," and are subject to the terms of this Contract (modified to address sales); provided that our obligations under § 6 shall expire and terminate 3 days after the date of purchase. All item(s) not specifically identified as Sale Items on P.1 will be deemed "Rented Item(s)".

18. **WARNING:** Misappropriating, failing to return, concealing, selling, encumbering and/or failing to pay rent for property of another may subject the offender to **CIVIL PENALTIES** and/or **CRIMINAL PROSECUTION**. See New Hampshire Statutes § 637:8, *et seq* and its/their successor provision(s) for details.