

## **EQUIPMENT LEASE FORM DCR 303**

### **STANDARD TERMS AND CONDITIONS**

The parties hereto agree as follows:

1. **LEASE**

The Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Equipment.

2. **TERM**

The term of this Lease respecting the Equipment commences on the date and time the Equipment is delivered to the Lessee. The term of this Lease ends on the date designated.

3. **BOOKING AND CANCELLATION**

Booking is not confirmed until the Lessor is in receipt of a purchase order by fax or otherwise. Unconfirmed bookings will be given first right of refusal provided the Lessee can be reached and is able to make a decision within two hours. Weekday cancellations of confirmed bookings will be accepted upon 24 hours written notice. Weekend cancellations of confirmed bookings will be accepted upon 24 hours written notice for Saturday and 48 hours written notice for Sunday. Notwithstanding the above, cancellation charges will be payable by the Lessee if the Equipment is in transit or already delivered and will consist of the above rates including the rate for the Equipment and delivery of same.

4. **DELAYS AND WAITING TIME**

All delays and waiting time will be invoiced at the advertised rates.

5. **RENT**

The rent for the Equipment shall be the amount designated. Lessee shall pay the Lessor rent in advance at the office of the Lessor or upon receipt of an invoice. Interest will be charged on overdue accounts at the rate of 18% per annum.

6. **USE AND LOCATION**

The Lessee shall use the Equipment in a careful and proper manner as specified in the Manufacturer's Operator's Manual and solely for the purpose for which said Equipment was manufactured and intended and the Equipment shall be used only at the Equipment Location unless the written consent of the Lessor is obtained.

7. **ABANDONMENT**

The Lessor shall have the right, in the circumstances, which in the sole discretion of the Lessor indicate that the Equipment has been or will be abandoned and whether or not the Lease is in default in payment of the rental charges hereunder, to enter the Equipment Location and take the Equipment for safe storage at the Lessor's premises without in any way terminating this Agreement and without relieving the Lessee of any obligation hereunder including the obligation to pay rent for the term of the Agreement.

8. **LESSEE'S INSPECTION**

The Lessee shall inspect the Equipment forthwith upon receipt thereof. Unless Lessee within two hours of receipt of the Equipment gives written notice to Lessor, specifying any defect in or other proper objection to the Equipment, Lessee agrees that it shall be conclusively presumed as between Lessor and Lessee that Lessee has fully inspected and acknowledged the Equipment is in good condition and repair, and that Lessee is satisfied with and has accepted the Equipment in such good condition and repair.

9. **LESSOR'S INSPECTION**

The Lessor shall at any and all times during business hours have the right to enter into and upon the premises where the Equipment may be located for the purpose of inspecting the same or observing its use. The Lessee shall give Lessor immediate notice of any attachment or other judicial process affecting any item of Equipment and shall whenever requested by Lessor advise Lessor of the exact location of the Equipment.

10. **ALTERATIONS**

Lessee shall not make any alterations, additions or improvements to the Equipment without the prior written consent of Lessor. All additions and improvements of any kind or nature made to the Equipment shall belong to and become the property of the Lessor upon the expiration or other termination of this Lease.

11. **REPAIRS**

Lessee, at its own cost and expense, shall keep the Equipment in good repair, condition and working order fair wear and tear excepted, and shall furnish any and all parts, mechanisms and devices required to keep the Equipment in good mechanical and working order. It is understood that this paragraph shall include, without limitation, the repair and/or replacement of tires.

12. **LOSS AND DAMAGE**

Lessee hereby assumes and shall bear the entire risk of loss and damage to the Equipment from any and every cause whatsoever. No loss or damage to the Equipment or any part thereof shall impair any obligation of Lessee under this Lease each of which shall continue in full force and effect.

In the event of loss or damage of any kind whatsoever to the Equipment, Lessee at the option of Lessor shall:

- (a) Place the same in good repair, condition and working order, or,
- (b) Replace the same with like Equipment in good repair, condition and working order, or,
- (c) If same is determined by Lessor to be lost, stolen, destroyed or damages beyond repair pay Lessor in cash the replacement cost of the Equipment. Upon such payment this Lease shall terminate with respect to the equipment so paid for and Lessee thereupon shall be entitled to the Equipment as-is, where-is, without warranty expressed or implied with respect to any matter whatsoever.

13. **SURRENDER**

Upon the expiration or earlier termination of this Lease, Lessee shall return each piece of Equipment to Lessor (unless Lessee has paid Lessor the replacement cost pursuant to paragraph 12 herein) in good repair, condition and working order, ordinary wear and tear resulting from proper use thereof alone excepted.

14. **INSURANCE**

Lessee shall keep the Equipment insured against all risks of loss or damage from every cause whatsoever for not less than the full replacement value thereof as determined by Lessor with deductible not to exceed \$5,000.00; and shall carry liability insurance with limits of not less than \$5,000,000.00 covering the Equipment. All insurance shall be in form and amount and with Companies approved by Lessor. Lessee agrees to provide Lessor with a Certificate of Insurance prior to receiving Equipment and showing Lessor as Loss Payee with respect to Equipment and as Additional Insured on the liability coverage. The Certificate shall include a waiver of subrogation in favour of Lessor with fifteen days notice from the insurer or agent in the event any policy is to be cancelled or materially changed. The proceeds of the "All-Risks" insurance, at the option of Lessor, shall be applied towards the replacement, restoration or repair of the Equipment or, toward payment of the obligations of the Lessee hereunder. Lessee appoints Lessor as Lessee's attorney to make claim for, receive payment of, and execute and endorse all documents, cheques or drafts for loss or damage under any insurance policy.

15. **TAXES/FINES**

Lessee shall keep the Equipment free and clear of all levies, liens and encumbrances and shall pay all license fees, registration fees, assessments, charges and taxes relating to the Equipment, excluding, however, all taxes on or measured by Lessor's income.

16. **LESSOR'S PAYMENT**

In case of failure of Lessee to procure or maintain insurance or to pay fees, assessments, charges and taxes, all as hereinbefore specified, Lessor shall have the right but shall not be obligated, to effect such insurance or pay said fees, assessments, charges and taxes, as the case may be. In that event, the cost thereof shall be repayable to Lessor with the next instalment of Rent, and failure to repay the same shall carry with it the same consequences, including interest at 18% per annum, as failure to pay any instalment of Rent.

17. **LESSOR'S WARRANTY**

Lessor warrants that, at the time of delivery to the Lessee, the Equipment is in good repair and working condition and suitable for the purpose for which it is required by the Lessee.

18. **INDEMNITY**

The Lessee shall indemnify Lessor against, and hold the Lessor harmless from, any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including lawyer's fees, arising out of or connected with or resulting from the Equipment, including without limitation, the possession, use, operation or return of the Equipment.

19. **RELEASE**

The Lessor shall not be liable for any death or injury arising from or out of any occurrence related to the Equipment, nor shall the Lessor be responsible for any loss of or damage to any property of the Lessee from any cause whatsoever, whether or not such death, injury, loss or damage results from the negligence of the Lessor or its agents, servants or employees or other persons for whom the Lessor may, in law, be responsible.

20. **SECURITY**

As security for the prompt and full payment of the Rent and the faithful and timely performance of all provisions of this Lease, and any extension or renewal thereof, the Lessee has deposited with Lessor the Security Deposit. In the event of any default in the performance of any of the covenants on the part of the Lessee herein contained, Lessor shall have the right, but shall not be obligated to apply said security to the curing of such default. Any such application by Lessor shall not be a defence to any action by Lessor arising out of said default; and upon demand, Lessee shall restore said security to the full amount set forth in the Schedule. Upon the expiration, or other termination of this Lease, or any extension or renewal thereof, provided Lessee has paid all of the Rent herein called for and fully performed all of the other provisions of this Lease on its part to be performed, Lessor will return to Lessee any then remaining balance of said security.

21. **DEFAULT**

If Lessee fails to pay Rent or any other amount herein provided within ten days after the same is due and payable, or if Lessee fails to observe, keep or perform any other provisions of this Lease required to be observed, kept or performed by Lessee, Lessor shall have the right to exercise any one or more of the following remedies:

- a) to declare the entire amount of rent hereunder immediately due and payable as to the Equipment without notice or demand to Lessee;

- (b) to sue for and recover all Rents, and other payments, then accrued or thereafter accruing with respect to the Equipment;
- (c) to take possession of the Equipment, without demand or notice, wherever same may be located, without any Court Order or other process of law. Lessee hereby waives any and all damages occasioned by such taking of possession. Any taking of possession shall not constitute termination of this Lease as to any and all items of Equipment unless Lessor expressly so notifies Lessee in writing.
- (d) to terminate this Lease as to the Equipment;
- (e) to pursue any other remedy at law or in equity.

Notwithstanding any said repossession, or any other action which Lessor may take, Lessee shall be and remain liable for the full performance of all obligations on the part of Lessee to be performed under this Lease.

All such remedies are cumulative, and may be exercised concurrently or separately.

22. **BANKRUPTCY**

Neither this Lease nor any interest therein is assignable or transferrable by operation of law. In the event of the Lessee's bankruptcy, or if a Writ of Execution is levied on the Equipment and is not released or satisfied within ten days thereafter, or if a Receiver is appointed in any proceeding or action or to which the Lessee is a party with authority to take possession or control of the Equipment, Lessor shall have and may exercise any one of more of the remedies set forth in paragraph 17 herein, and this Lease shall, at the option of the Lessor, without notice, immediately terminate and shall not be treated as an asset of the Lessee after the exercise of said option.

23. **LESSOR'S EXPENSES**

Lessee shall pay Lessor all costs and expenses, including lawyer's fees, incurred by Lessor in exercising any of its rights or remedies hereunder or enforcing any of the terms, conditions or provisions herein.

24. **ASSIGNMENT**

Without the prior written consent of Lessor, Lessee shall not assign, transfer, pledge or hypothecate this Lease, the Equipment or any interest therein or, sublet or lend the Equipment or permit the Equipment to be used by anyone other than the Lessee or the Lessee's employees.

25. **OWNERSHIP**

The Equipment is, and shall at all times, be and remain the sole and exclusive property of Lessor; and the Lessee shall have no right, title or interest therein or thereto except as expressly set forth in this Lease.

26. **ENTIRE AGREEMENT**

This instrument constitutes the entire agreement between Lessor and Lessee; and it shall not be amended, altered or changed except by a written agreement signed by the parties hereto.

27. **NOTICES**

Service of all notices under this agreement shall be sufficient if given personally or mailed to the party involved at its respective address hereinbefore set forth, or at such address as such party may provide in writing from time to time. Any such notice mailed to such address shall be effective three days after mailing.

28. **BENEFIT OF AGREEMENT**

Subject to the provisions hereinbefore set forth, this Agreement shall enure to the benefit of and be binding upon the respective successors and assigns of the Lessor and Lessee.

29. **TIME**

Time is of the essence of this Lease and all of its provisions.