



STANDARD TERMS AND CONDITIONS
Equipment Lease Form DCR 309

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 8% per annum.

6. USE AND LOCATION

Lessee shall ensure that the Equipment is operated by personnel that hold current licenses and/or certificates to match the equipment leased as required by law, under the Occupational Health & Safety Act (Ontario) and any other applicable laws and standards, as well as those required by the Manufacturer. The Lessee shall use the Equipment in a safe and proper manner, as specified in the Manufacturer's Operator's Manual and solely for the purpose which said Equipment was manufactured and intended. The Equipment shall be used only at the Equipment delivery location, unless the prior written consent of the Lessor is obtained.

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7. ABANDONMENT

The Lessor shall have the right, in the circumstances, which in the sole reasonable 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 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 to be in good condition and repair, and that Lessee is satisfied with and has accepted the Equipment in such good condition and repair. Furthermore, the lessee agrees to inspect the Equipment daily, weekly and monthly as laid out in the manufacturer's manual, supplied with the Equipment, and if there are any defects found, the Equipment must be immediately taken out of service and the Lessor notified immediately. Lessee agrees to keep a daily log of all inspections done while the equipment is in their care, control and custody.

9. CARE, CONTROL & CUSTODY

The Lessee shall be responsible, for the Equipment, including any and all aspects of this contract, from the time the Equipment is dropped at the designated delivery address by the Lessor or picked up from one of the Lessors location's, for the duration of the contract and until the Equipment is picked up by the Lessor at the designated pick-up address or delivered back to the lessors location during normal hours of operation be the lessee.

10. LESSOR'S INSPECTION

The Lessor shall, upon providing advance notice to Lessee, at any and all times during business hours that do not interfere with production, 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 prompt 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.

11. 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.

12. REPAIRS

Lessee, at its own cost and expense, shall keep the Equipment in good repair, condition and working order, reasonable 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 damaged tires.

13. 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. Lessee's use of the Equipment hereunder from the date that the Equipment is delivered to the Lessee until the date that either the Lessor has picked up the Equipment from the Lessee or the Lessee has returned the Equipment to the Lessor at the Lessor's designated return location, except to the extent arising out of or resulting from the gross negligence or willful misconduct of Lessor, its employees, agents, contractors or representatives or any mechanical defect or malfunction of the Equipment, or a breach by Lessor of any representation, warranty or any other provision contained herein, provided such mechanical defect could not have been ascertained during Lessee's daily inspections. 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 for which Lessee is responsible hereunder, 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 damaged beyond repair, pay Lessor in cash the greater of the replacement cost or the actual fair market value of the Equipment with all existing upgrades. 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.

14. 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 or fair market value, pursuant to paragraph 13 herein) in good repair, condition and working order, ordinary wear and tear resulting from proper use thereof alone excepted.

15. 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.

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16. **TAXES/FINES**

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

17. **LESSOR'S PAYMENT**

In case of failure of Lessee to procure or maintain insurance or to pay fees, assessments, charges and taxes required of Lessee hereunder, 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.

18. **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 as designed by the manufacturer and is in compliance with all applicable federal, state, provincial and local laws, rules, and regulations, ordinances, licensing requirements and business codes, as well as all applicable manufacturers' specifications.

19. **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 actual reasonable outside legal fees, arising out of or connected with or resulting from the possession, use, operation or return of the Equipment by Lessee hereunder, except to the extent arising out of or resulting from the gross negligence or wilful misconduct of the Lessor, its employees, agents, contractors or representatives, or a breach of this Agreement by Lessor of any representation, warranty or any other provision of this Agreement or any mechanical defect or malfunction of the Equipment, provided same could not have been ascertained by Lessee's daily inspection.

20. **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, except to the extent from any cause whatsoever, whether or not such death, injury, loss or damage results from the gross negligence or willful misconduct of the Lessor or its agents, servants, contractors, representatives or employees or other persons for whom the Lessor may, in law, be responsible, or a breach by Lessor of any representation, warranty or any other provision of this Agreement, or any mechanical defect or malfunction of the Equipment provided same could not have been ascertained by Lessee's daily inspection.

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21. **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 the material breach of this Agreement (provided Lessor provide prior written notice to Lessee and permit Lessee a reasonable opportunity to cure), 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, is not in material breach of this Agreement, Lessor will return to Lessee any then remaining balance of said security.

22. **DEFAULT**

The following are events of default hereunder:

- (a) if Lessee fails to pay Rent or any other amount herein provided within three days after the same is due and payable;
- (b) if Lessee fails to observe, keep or perform any other provisions of this Lease required to be observed, kept or performed by Lessee or is otherwise in material breach of this Agreement;
- (c) if Lessee shall or shall attempt to abandon, remove, sell, encumber or sublet any item of Equipment;
- (d) if a judgment is entered against Lessee in respect of the Equipment and is not released or satisfied within 10 days; or
- (e) if Lessee shall become insolvent or make an assignment for the benefit of creditors, or a trustee or receiver shall be appointed for Lessee or for a substantial part of its assets, or bankruptcy, reorganization or insolvency proceedings shall be instituted by or against Lessee,

Then 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) demand the return of the Equipment;
- (c) without demand or legal process, enter the premises where the Equipment is located and take immediate possession of and remove the same, without liability for such entry or for damage to property or otherwise;
- (d) recover from Lessee, as liquidated damages and not as a penalty, any and all amounts then due and owing, plus the aggregate of any and all amounts to become due over the remainder of the term of the Lease;
- (e) to terminate this Lease as to the Equipment;

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(f) 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.

23. LESSOR'S EXPENSES

Lessee shall pay Lessor all its own costs all 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 duly qualified 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 agreement 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. The terms and conditions of this agreement shall form part of every contract entered into between the lessee and lessor. Lessee shall acknowledge this agreement on an annual basis.

27. NOTICES

Service of all notices under this agreement shall be sufficient if given by facsimile or email involved at its respective facsimile number and email 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 on the date that the transmission has been made.

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.

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30. **TERMINATION**

Notwithstanding anything to the contrary contained herein, Lessee may, with or without cause, terminate this Agreement at any time upon five (5) days prior written notice to Lessor. Upon such termination, Lessee shall have no further obligations to Lessor hereunder and Lessor shall immediately refund to Lessee any and all sums previously paid by Lessee pursuant to this Agreement (excluding the pro-rata amounts which corresponds to Lessee's actual use of the Equipment hereunder prior to termination).

31. **GOVERNING LAW**

This Agreement shall be governed by the laws of Ontario.

ACCEPTED AND AGREED:

LESSOR: DWIGHT CRANE LTD.

LESSEE: _____

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Fax No.: _____

Fax No.: _____

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