



## Rental Agreement

Salesman: \_\_\_\_\_

Customer: \_\_\_\_\_ Customer #: \_\_\_\_\_ Buyer's Name: \_\_\_\_\_ PO #: \_\_\_\_\_  
Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Phone #: \_\_\_\_\_  
Customer Email: \_\_\_\_\_ Customer Type: \_\_\_\_\_ Project Type: \_\_\_\_\_  
Delivery Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Insurance Agent: \_\_\_\_\_ Phone #: \_\_\_\_\_ Insurance Value: \_\_\_\_\_

## Project Information

Project Name: \_\_\_\_\_ Project Address: \_\_\_\_\_  
General Contractor: \_\_\_\_\_ Contact Name: \_\_\_\_\_ Phone #: \_\_\_\_\_

SMR: \_\_\_\_\_ Ship Date: \_\_\_\_\_ Rental Start Date: \_\_\_\_\_ Estimated Rental Term(mos): \_\_\_\_\_

Equip. #	Make	Model	Description	Serial #	Rental Amount
4 Week Rental (160 hours)					

### Additional Charges:

Freight Out		
Freight In		
Fue	per gallon	
DEF	per	
Other		

Daily Rate	
Weekly Rate	
Overtime Rate	

### Sales Tax:

Taxable	
State	
County	
City - Tax Code	
Rate	
Tax Amount	
Amount Due	

### Comments:

- ❖ PAYMENT: Terms are net 15. For billing purposes, 3 weeks equals one month, 3 days equals one week.
- ❖ RETURN OF EQUIPMENT: Customer is responsible to return the equipment clean and with fuel and DEF tanks full. Customer will be charged for fuel, DEF and cleaning if necessary.
- ❖ FREIGHT: All equipment is FOB Modern Machinery's yard unless otherwise agreed to by the parties in writing.
- ❖ MAINTENANCE OF EQUIPMENT: Customer is responsible for all maintenance of this equipment while in their possession. Customer must check machine fluid levels daily and follow recommended service intervals set forth in the operators manual. All damage arising from any cause whatsoever is the responsibility of the customer. TIRES: Loader and Articulated Truck tires must meet certain specifications. Customers may not replace tires without specific approval from Modern Machinery.
- ❖ INSURANCE: Physical damage coverage is NOT provided by Modern Machinery. A certificate of insurance, for coverages as detailed on page 2 of this agreement, must be provided to Modern Machinery within 10 days of this agreement.
- ❖ ENTIRE AGREEMENT: This is the entire agreement. No other terms other than those documented herein are binding on either party. This agreement is subject to the terms and conditions set forth on pages 1 and 2 of this document, including the applicable manufacturer's warranty.
- ❖ CUSTOMER ACKNOWLEDGES HE/SHE HAS READ BOTH PAGES AND RECEIVED A COPY OF THIS ENTIRE ORDER.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Signed: \_\_\_\_\_

Modern Machinery Co., Inc.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Signed: \_\_\_\_\_  
Title: \_\_\_\_\_

Customer

# RENTAL AGREEMENT (“AGREEMENT”) – TERMS AND CONDITIONS

**USAGE** – Customer agrees to pay the rental price listed on the front page of the Agreement. Rental amounts do not include applicable taxes, included but not limited to sales, income, property, and use taxes, payment of which is the Customer's responsibility. The Agreement shall extend beyond the term at the same rental rate if the Customer holds the equipment over the specified term of this Agreement. Double shift rates (150% of single shift) are based on 320 hours of usage (as determined by the service meter hours reading) per 4 weeks and triple shift rates (200% of single shift) are based on 480 hours per 4 weeks.

**RENTAL PURCHASE OPTION** – Rental equipment does not carry the option to purchase unless Modern Machinery and Customer agree in writing upon the same prior to the start of the rental.

**SAFETY** – Customer acknowledges that it and its operators are familiar with the operation of the rented equipment and that all necessary and proper safety equipment is in place and they agree not to permit any such safety equipment to be removed or tampered with, that they are aware of the limitations of the equipment and agree not to exceed such limitations. Customer agrees that they are responsible for ensuring that all operators read all warnings and operating instructions; Customer agrees not to allow use by any operator not properly trained in the use of operation of the equipment or who fails to use equipment in accordance with all safety procedures. Customer agrees to comply with all laws, ordinances and regulations relating to the possession, use or maintenance of the equipment, and that they are solely responsible to advise any person operating the equipment or near the equipment of all safety operating procedures and safety precautions.

**MAINTENANCE AND EQUIPMENT CONDITION:** This equipment is understood to be in good working order at the time of shipment and upon receipt. If the Customer finds it otherwise, Modern shall be notified within 24 hours after arrival and Modern has the right to put the same in good working order at its expense. MODERN MAKES NO WARRANTIES EXPRESS OR IMPLIED AS TO THE CONDITION OF THE EQUIPMENT NOR AS TO DEFECTS IN MATERIAL WORKMANSHIP, OR CAPACITY OF THE EQUIPMENT. Customer is responsible for the cost of all maintenance of this equipment (except for machines covered under Komatsu Care) and will pay for all wear parts, fuel, oil and filters used during the term of this Agreement and will MAINTAIN PROPER OIL, COOLANT, DEF AND OTHER FLUID LEVELS AT ALL TIMES. Recommended service intervals for the equipment are set forth in the operator's manual. Any damage to this equipment arising from any source whatsoever will be charged to the Customer. Any repairs which become necessary to said equipment shall be done by Modern unless permission has been given in writing to the Customer to do such repairs. The cost of repairs for normal use is to be borne by Modern. If Customer returns equipment with less than a full tank of fuel or DEF, it will be refilled and charged to Customer. Customer shall not expose the equipment to any hazardous material or waste. In the event the Equipment is exposed to any hazardous material or waste, Customer shall immediately (1) notify Modern, (2) remove the equipment from such exposure and (3) completely clean and decontaminate the equipment. If the equipment cannot be completely cleaned, decontaminated and otherwise discharged from all adverse effects of such exposure, Customer shall pay Modern the full value of the equipment. Customer indemnifies and holds Modern harmless from any and all claims, actions, expenses, damages, costs and liabilities arising from any such exposure of the equipment to hazardous material or waste. This indemnification survives and continues after the term of this Agreement. The Customer agrees and guarantees to return the equipment in as good a condition as received or to pay the expense of putting it in such condition, less ordinary wear incident to normal use in the hands of a competent operator, including physical cleanliness. This guarantee is absolute and may not be excused by theft, acts of God, or for any other reason whatsoever. If at any time, Modern in its sole discretion determines its rights to the equipment are endangered or that the equipment is in any manner improperly cared for or abused or if there shall be any default be Customer in the terms and conditions of this Agreement, Modern may without notice REPOSSESS the equipment and cancel this Agreement. The equipment shall be used solely by the Customer or Customer's agents.

**SALE OF RENTED EQUIPMENT** - Modern reserves the right to sell the equipment to a third-party buyer at any time. Modern shall provide Customer with written notice of its intent to sell the equipment and Customer shall have a right of first refusal on such a sale. If Customer chooses not to purchase the equipment or fails to respond to any sale notice within five (5) business days, Modern shall be authorized to sell the equipment. Modern, prior to the sale of the equipment, shall provide Customer with replacement rental equipment with equivalent operational capacity. Such replacement rental equipment shall be subject to the same terms and conditions contained herein.

**INSURANCE REQUIREMENTS** – Customer shall provide and maintain Commercial General Liability insurance and other insurance necessary to protect Modern and its affiliates continuously during the life of this Agreement from any and all claims for bodily injury, death or property damage made or arising out of the operation, handling or transportation of the equipment rented under this Agreement with limits of not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence and \$2,000,000 general aggregate. Such insurance shall be endorsed, without limitation, condition or exclusion, to include a waiver of rights of recovery against Modern

Machinery Co., Inc. or its insurers by the Customer and its insurers, as well as a waiver of subrogation against Modern Machinery Co., Inc. or its insurers. Insurance shall also include contractual liability, name Modern Machinery Co., Inc. as an Additional Insured and provide that this insurance is primary and that any insurance purchased by Modern is non-contributory. Certificates of insurance for the coverages required above along with a copy of the additional insured endorsement, waiver of rights of recovery, waiver of subrogation and primary noncontributory language evidencing such insurance coverage shall be provided to Modern prior to Customer taking possession of the equipment. Customer will provide Modern with 30 days advance notice of cancellation or nonrenewal of all coverages required by this agreement.

Customer shall provide All Risk Physical Damage insurance on all rented equipment, written to the full replacement value subject to a deductible acceptable to Modern and shall insure against but not be limited to the perils of fire, theft, vandalism, malicious mischief, overload, collapse, water damage and such other perils as may be required by Modern in its sole judgment. Modern shall be shown as loss payee. If the equipment is damaged while in the custody of the Customer, Customer is responsible for all costs of repair whether or not such costs are covered by insurance. Customer shall provide and maintain Workers Compensation Insurance written to comply with all state laws in which the equipment shall be used or operated by Customer.

**INDEMNIFICATION** – Customer agrees to indemnify and hold Modern and its affiliates harmless from all claims whatsoever relating to or arising from the transportation, use, maintenance or possession of the equipment, for injury to persons or damage to property, and from any and all expense incurred in the defense of any such claims. In no event shall Modern be held responsible for injury, delays or damages consequential or otherwise, resulting by reason of delays on the part of Modern 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. Risk of loss of the equipment passes from Modern to the Customer when the equipment is delivered to the delivery address on the first page of the Agreement if transportation is arranged by Modern or when tendered to the Customer's trucking representative if transportation is arranged by the Customer. Customer shall have the risk of loss until the equipment is returned to Modern's yard or other location as mutually agreed or when tendered to Modern's trucking representative if return freight is arranged by Modern.

**LIMITATION OF LIABILITY** - MODERN SHALL IN NO EVENT BE LIABLE by reason of the equipment rented hereunder, or by reason of any negligence or other liability in tort, for ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, such as, but not limited to, damages or loss of other property or personal injury, LOST PROFITS OF ANY KIND, down time of men or equipment, cost of replacement equipment, or claims of customers or other parties contracting with Customer. Modern shall in no event be liable for damages in any amount greater than the rental payments made by Customer to Modern.

**NO WARRANTY** -OTHER THAN THE APPLICABLE MANUFACTURER'S WARRANTY, ALL EQUIPMENT RENTED BY MODERN IS RENTED "AS IS" AND WITH ALL FAULTS, AND MODERN MAKES NO WARRANTIES OF ANY KIND WHATSOEVER, EITHER EXPRESS OR IMPLIED, except as to clear title of the equipment. ANY OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED. No other warranty is authorized to be made on behalf of Modern.

**GOVERNING LAW** - This Agreement shall be governed by the laws of the state of the Modern branch location that entered into this Agreement. Customer agrees to pay all reasonable court costs and attorney fees incurred by Modern to enforce the terms of this Agreement

**DEFAULT** - Default occurs when Customer fails to pay Modern, becomes insolvent, or fails to perform its obligations according to the terms of this Agreement. A waiver by Modern of any default does not constitute a waiver of any subsequent default. Upon default, the obligations secured by this Agreement shall immediately become due and payable in full without further notice or demand. In the event of default and upon the written demand of Modern, the Customer will peacefully surrender the equipment to Modern. If Customer fails to peacefully surrender the equipment, Modern shall have the right, without notice or resort to judicial proceedings, to enter upon the premises of the Customer or any agent of the Customer where the equipment may be or where Modern believes the equipment may be, and disassemble, render unusable and/or repossess all or a portion of the equipment. If Modern requests, the Customer shall fully assemble the equipment, make the equipment available at a reasonably convenient location designated by Modern, and authorize Modern to take full possession of the equipment at that location. Customer shall secure access to property owned by third parties if necessary for Modern to exercise its repossession rights.

**ASSIGNMENT** - If Modern assigns this Agreement, Customer will make all remaining payments on this Agreement to the assignee third party and not to Modern. The assignee third party will have all of the rights of Modern, but will not be subject to any claims, set-offs, or defenses asserted by Customer. Customer may not assign its rights under this Agreement without the express written approval of Modern.

Customer Initials \_\_\_\_\_  
02/20/2022