



EQUIPMENT RENTAL AGREEMENT

Date: _____

Between EDWARD EHRBAR, INC.

AND _____

STREET ADDRESS _____

CITY _____

STATE _____

ZIP CODE _____

, (herein called customer)

Subject to the terms and conditions hereof and of the "Incorporated Provisions," EDWARD EHRBAR, INC. rents to customer the equipment described below or in any attached Supplements, including all accessories and attachments thereon (herein collectively called "Equipment").

<u>Machine Description</u>	<u>Serial No.</u>	<u>Rental Rate Plus Sales Tax if Applicable</u>	<u>Value For Insurance Purposes</u>
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1. **CONDITION OF EQUIPMENT:** Customer acknowledges that it has examined and accepts said equipment in its present condition.

2. **DELIVERY AND RETURN:**
 Delivery: Equipment shall be delivered from _____
 to _____ at CUSTOMER expense.
 Return: Equipment shall be returned to EDWARD EHRBAR, INC. _____ at
 CUSTOMER expense.

3. **TERM:** The term of this agreement shall be for a period of _____
 Beginning _____, and ending _____.
 If the equipment is retained after the expiration of said initial term, such retention shall be construed as a continuance of this Agreement at the same rental rate and upon the same terms except that at any time after the expiration of initial term customer agrees to return the Equipment to EDWARD EHRBAR, INC. on the first anniversary date of this Agreement after written request from EDWARD EHRBAR, INC. to return Equipment given at least 3 days prior to that anniversary date.

4. **RENTAL:** CUSTOMER agrees to pay EDWARD EHRBAR, INC. the aggregate sum of \$ _____ rental for the use of the Equipment during the initial term. Said rental shall be paid in advance. The first payment shall be paid upon the execution of this Agreement. The above rental is based on Equipment usage not in excess of _____ hours per () for each unit. Any Equipment usage of a unit in excess of agreed hours shall be charged at the rate of \$ _____ per hour for that unit.
 Hours of use shall be as determined by the device used to record hours of use attached to each unit of Equipment. If such device becomes inoperable, user shall notify EDWARD EHRBAR, INC. immediately and in such event will make its records available to EDWARD EHRBAR, INC. so that hours of use during the period of inoperability may be determined. User agrees to pay overtime charges within ten (10) days after receipt of invoice thereof.
 All rentals shall be paid without any notice or demand (except as set forth) and without abatement, deduction or setoff; the operation and use of the Equipment shall be at user's risk and the obligation of user to pay rent hereunder shall be unconditional.

5. **LOCATION OF EQUIPMENT:** The Equipment shall be kept at _____ street, _____ city, _____ state during the term hereof and CUSTOMER shall not remove the Equipment therefrom without the prior written consent of EDWARD EHRBAR, INC. CUSTOMER will permit EDWARD EHRBAR, INC. to inspect the Equipment at all reasonable times.

6. **FUEL**
All Equipment is supplied with a full tank of fuel. CUSTOMER agrees to pay a fuel charge for any amount of fuel required to refill tank to full capacity upon completion of rental. Fuel will be invoiced at the current per gallon charge and is due upon receipt of invoice.

7. **MAINTENANCE AND REPAIR** Agreed X _____
 A. CUSTOMER, at its own cost and expense, shall provide all normal preventative maintenance as prescribed by manufacturer. Said maintenance shall be at regular expected levels IE: daily, weekly, monthly or dependant upon usage & application. Customer shall supply all necessary fuel, oil, grease, water, and filters. Customer shall maintain tires, cutting edges and bucket teeth. Upon periodic inspection of Equipment by EDWARD EHRBAR, INC., should any customer's required maintenance or repair be found to be delinquent, maintenance or repairs shall be performed by EDWARD EHRBAR, INC. and invoiced to the customer at normal retail Service Dept. rates in effect at time of service.

B. All other maintenance and repair shall be the responsibility of EDWARD EHRBAR, INC. CUSTOMER agrees to make the Equipment available for maintenance and repair at reasonable times during EDWARD EHRBAR, INC.'s working hours. If any unit of equipment shall be out of service for needed repairs, EDWARD EHRBAR, INC. shall, after written notice by CUSTOMER, arrange to repair such unit. If the desired unit is not repaired within reasonable time by EDWARD EHRBAR, INC. after receipt of such notice, then at EDWARD EHRBAR, INC.'s option: (i) EDWARD EHRBAR, INC. may temporarily substitute similar equipment in good operating condition until the disabled equipment is repaired, which substituted equipment, shall be subject to the terms and payment of rentals provided in this Agreement, or (ii) the rental for the disabled unit shall cease for the balance of the period until the disabled unit is repaired.

IN WITNESS WHEREOF, both parties have executed this Agreement as of the date shown above.

Agreed X _____

EDWARD EHRBAR, INC.

CUSTOMER: _____

By _____

By _____

Title _____

Title _____

- See other side for "Incorporated Provisions" -

INCORPORATED PROVISIONS

8. CARE OF EQUIPMENT:

A. CUSTOMER agrees to take good care of the Equipment and without limiting the foregoing, to keep Equipment clean, to use and operate Equipment within its rated capacity to restrict the use and operation thereof to safe, careful and competent personnel selected, employed and controlled by CUSTOMER, to prohibit any one other than duly authorized personnel of EDWARD EHRBAR, INC. from making any repairs or modifications to the Equipment (unless otherwise previously authorized, in writing, by EDWARD EHRBAR, INC.); and to notify EDWARD EHRBAR, INC. immediately of any accident, affecting the Equipment, setting forth all relevant facts, and thereafter promptly to furnish EDWARD EHRBAR, INC. in writing, all information required by EDWARD EHRBAR, INC. in connection therewith. CUSTOMER shall be liable for any and loss or damage to the Equipment due to its failure to observe any of the foregoing.

B. If any unit of Equipment is damaged or any part of the component thereof fails as the result of overloading or abusive or other improper usage, CUSTOMER agrees to pay promptly, on receipt of invoices from EDWARD EHRBAR, INC., all costs and expenses incurred by EDWARD EHRBAR, INC. in connection with repairing the Equipment so damaged.

C. CUSTOMER agrees to return all tires in recappable condition at the conclusion of the rental period.

D. CUSTOMER agrees to pay cleaning charges upon receipt on invoice from EDWARD EHRBAR, INC.

9. INDEMNIFICATION: CUSTOMER assumes all risk, responsibility and liability arising from the possession, operation and use of the Equipment howsoever imposed including damages for injury and death to person and damage to property howsoever arising therefrom or because thereof. CUSTOMER shall indemnify, save and hold EDWARD EHRBAR, INC. and its assigns harmless from any and all of the following, whether the same be actual or alleged; All claims of any nature, penalties, liability and expense, including reasonable attorney's fees, howsoever arising or incurred because of loss, use, operation, maintenance and storage of said Equipment, including its return to EDWARD EHRBAR, INC. In addition, CUSTOMER shall be responsible and shall pay EDWARD EHRBAR, INC. for any damage to or loss of the Equipment and any expenses, including reasonable attorney's fee, incurred by reason of said damage or loss or for recovery of payment from CUSTOMER.

10. LIMITATION OF WARRANTIES AND LIABILITIES: Owner makes no representation or warranty of any kind, oral or written, express or implied, with respect to merchantability of the equipment, its fitness for a particular purpose, or with respect to infringement or the like, except as stated herein. User waives all claims for special, indirect, or consequential damages, including loss of use or profits, however arising.

11. INSURANCE: CUSTOMER, at its own expense, shall carry public liability insurance, in sums customarily carried by EDWARD EHRBAR, INC. on its Equipment, against bodily injury, including death, and against property damage. CUSTOMER shall also keep all Equipment insured at the full insurable value against fire, theft and under extended coverage and against physical damage to the Equipment. All insurance shall be in amounts and companies accepted to EDWARD EHRBAR, INC. The public liability insurance shall list EDWARD EHRBAR, INC. as ADDITIONAL INSURED on said policy and cover EDWARD EHRBAR, INC. as the owner of the property and may include CUSTOMER as the operator of the property. All other insurance shall provide that any payments for loss or damage there under shall be payable to EDWARD EHRBAR, INC., listing EDWARD EHRBAR, INC. as LOSS PAYEE on either an Inland Marine Policy or Equipment Floater to the General Liability Policy. CUSTOMER shall furnish certificates of such insurance to EDWARD EHRBAR, INC. upon the execution of this Agreement, which insurance shall be maintained during the term of this Agreement and shall provide for 10 days' prior written notice to EDWARD EHRBAR, INC. of any cancellation thereof.

12. TAXES: In addition to the rentals payable hereunder, CUSTOMER shall pay any Federal, state, county, municipal or other taxes levied against or on the Equipment or the use or rental thereof during the term of the Agreement or any extension thereof.

13. INTEREST: All delinquent payments or rent or other payments are to be made by CUSTOMER hereunder shall, at EDWARD EHRBAR, INC.'s option, bear interest at the rate of 3% above the prime annual rate charged by the local bank in which CUSTOMER maintains a business account or if such rate shall be unlawful, then at the maximum Lawful rate permissible under the laws of the State of New York. Said interest shall be payable from the date payment was due, and in addition thereto, EDWARD EHRBAR, INC. shall be entitled to receive expenses of collection, including reasonable attorney's fees.

14. TITLE, SUBLETTING AND ASSIGNMENT:

A. This is an Agreement of rental only and nothing herein conveys to CUSTOMER any right, title or interest in or to the Equipment. CUSTOMER shall not permit any of the Equipment to be used by anyone other than CUSTOMER; nor shall CUSTOMER assign, sublet, sell, pledge, loan or mortgage the Equipment or suffer any claim, encumbrance or lien to be made on the Equipment.

B. EDWARD EHRBAR, INC. may finance the purchase price of the equipment leased hereunder, and in conjunction therewith grant a security interest to the seller of said Equipment and his assigns. In the event of such financing, the CUSTOMER hereby acknowledges that its rights in and to the Equipment rented hereunder shall be subject and subordinate to the rights of the holder of any such security interest.

C. LESEE further agrees that LESSOR has the right to assign its rights under this Agreement, and in the event of such assignment and receipt of notice thereof, CUSTOMER shall make payments due hereunder unconditionally directly to any such assignee.

D. CUSTOMER authorizes EDWARD EHRBAR, INC. to file a financing statement signed only by a security interest in the machinery and equipment in all jurisdictions when such authorization is permitted by Law.

15. DEFAULT: IF CUSTOMER: (a) Fails to pay the rental set forth herein or any other sums CUSTOMER may owe to EDWARD EHRBAR, INC. when the same shall become due whether in connection with this Agreement or otherwise; (b) Fails to perform any condition or other provision provided for in this Agreement; (c) Becomes insolvent or its subject to any proceeding in bankruptcy; (d) Suffers the appointment of any receiver; or (e) Fails to return the Equipment upon termination of the Agreement or upon the anniversary date as herein provide, then EDWARD EHRBAR, INC. and its agents are hereby authorized to enter CUSTOMER's property, without notice and without legal process, to retake the Equipment, and CUSTOMER hereby waives all damages or losses suffered or caused by reason of such retaking by EDWARD EHRBAR, INC. CUSTOMER agrees to pay all expenses, including reasonable attorney's fees, that may be incurred by EDWARD EHRBAR, INC. in enforcing this Agreement, in collecting the rental and other sums due hereunder and in retaking the property. The remedies herein provided in favor of EDWARD EHRBAR, INC. shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in EDWARD EHRBAR, INC.'s favor existing at law or in equity.

16. MISCELLANEOUS: Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof. No provisions of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. The captions in the Agreement are for convenience only and shall not define nor limit any of the terms or provisions hereof. This Agreement shall in all respects be governed by, and construed in accordance with, the laws of the State of New York.

17. NOTICES: Unless otherwise expressly specified or permitted by the provisions hereof, all notices, requests, demands or other communications to or upon the respective parties hereto shall be in writing sent either by mail or facsimile and shall be deemed to have been given or made when deposited in the mails postage prepaid, or facsimiled. Said notice shall be addressed to the address specified in this Agreement or at such other address as either party shall from time to time designate in writing to the other.