

As used herein, "FS" shall mean Foley Supply, LLC, "Customer" shall mean the customer listed on the front of this Agreement, and "Equipment" shall mean the rented items specified on the front of this Agreement. All other capitalized terms are as defined on the front of this Agreement or as specified herein.

1. **Rental Term.** The rental term begins when the Equipment is delivered to Customer and continues until it is picked up by FS or returned to FS during its regular business hours and properly received. In no case, except as expressly waived by FS, shall the rental term be less than the Minimum Rental Period.

Rental Day means the first to elapse of 24 hours (regardless of use) commencing on the hour and minute first rented (the "time elapsed" rate) or eight hours of Equipment use (the "Equipment use" rate) as recorded by an hour meter provided on the Equipment. Rental Week means the first to elapse of seven calendar days (regardless of use) or 40 hours of Equipment use as recorded by an hour meter on the Equipment. Rental Month means the first to elapse of a calendar month (regardless of use) or 176 hours of Equipment use as recorded by an hour meter provided on the Equipment. Rent for the entire rental shall be calculated either by (i) a time elapsed rate for the entire rental or (ii) the Equipment use rate for the entire rental; and the method used shall be that which yields the highest rental.

If the Equipment is used for less than the Minimum Rental Period, the full rate for the Minimum Rental Period shall, as a minimum, be due. FS reserves the right to assess additional rental charges if the hour meter is malfunctioning and it is not reported to FS, and, in FS's reasonable determination, the Equipment was used for more hours than is allowed for the otherwise applicable time elapsed rental rate. FS shall have the right, at its discretion, to inspect the Equipment during the rental period to check the reading on an hour meter on the Equipment or for compliance with the terms of this Agreement.

2. **Rental Charges & Payment.** Unless FS has granted Customer an "Open Account" status, Customer shall pay FS an advance Rent equal to the applicable rental rate multiplied by the Minimum Rental Period. At the end of the Minimum Rental Period, and upon every anniversary thereof, Customer shall pay an advance Rent equal to the applicable rental rate multiplied by the Minimum Rental Period until the Equipment is properly returned. Customer agrees that all bills/invoices submitted to Customer are subject to adjustment based upon later review of the Equipment's hour meter or of the Equipment's condition. If Customer elects the Fire, Theft and Vandalism (FTV) waiver, charges for FTV will be due at the same time that the Equipment Rent is due.

If the Equipment is initially rented with a credit card, then unless other arrangements are agreed upon, FS shall be entitled to charge the credit card periodically and at such times as FS may determine for all amounts calculated to be due. Customer shall execute and deliver all authorizations required or desired by FS for such charges to be made to the credit card account.

3. **Condition of Equipment Upon Return.** Customer agrees to return all rented items to FS's renting location during regular business hours, in the same good condition and repair as when delivered, subject only to reasonable wear and tear. An additional charge for cleaning of the Equipment may be assessed if the Equipment is returned in an unclean condition. Customer agrees to pay for any additional rental charges, damages to or loss of the Equipment because it was not returned and accepted by FS within FS's regular business hours.

4. **Use of the Equipment.** Customer agrees to use the Equipment only at the specified location. Customer acknowledges receipt of all manufacturers' operation manuals pertaining to the Equipment and has thoroughly studied and understands the manuals. Customer is solely responsible to advise any persons operating the Equipment or in the vicinity of the Equipment of all safety operating procedures and safety precautions. Customer assumes all responsibility to ensure that all operators are properly trained and competent and use the Equipment in compliance with the operating instructions and all applicable safety standards and procedures. Customer knows and will instruct all operators of the limitations of the Equipment, and Customer agrees that the Equipment will be used only for its designed purposes within its specified performance capabilities. Customer shall at Customer's sole expense comply with all Federal, State and Local laws, regulations, and ordinances, relating to the use of the Equipment while it is rented to Customer, including without limitation the regulations of the Occupational Safety and Health Administration (OSHA).

CUSTOMER SHALL INDEMNIFY, DEFEND, AND HOLD FS, ITS AGENTS, EMPLOYEES, OFFICERS, DIRECTORS, OWNERS, INSURERS, AND THEIR SUCCESSORS AND ASSIGNS HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, CLAIMS, PENALTIES, INJURIES (BOTH AS TO BODY AND PROPERTY), AND ALL COSTS AND EXPENSES THEREOF (INCLUDING ATTORNEYS' FEES AND EXPENSES) IN ANY WAY RELATING TO OR ARISING OUT OF THE EQUIPMENT, IN WHATEVER MANNER, IN CONNECTION WITH ANY EVENT OCCURRING PRIOR TO THE PROPER RETURN OF THE EQUIPMENT. Customer shall give prompt notice in advance to any occurrence under which FS may be entitled to indemnification hereunder which shall include the names and addresses of all persons involved in the occurrence and all witnesses. The conditions of this section shall survive the termination of the term of this Agreement.

5. **Risk of Loss, Insurance, and Fire, Theft and Vandalism (FTV) Waiver.** Upon delivery of the Equipment to Customer, Customer shall bear the entire risk of loss, damage, theft, or destruction of the Equipment or any part thereof, from any and every cause whatsoever, which shall occur prior to the proper return of the Equipment, and no such loss, damage, theft, or destruction shall relieve Customer of its obligation to pay Rent or to comply with any other provision of this Agreement. The amount of damage for any loss of or injury to the Equipment shall be based upon the then actual reasonable market value and without regard to Rent paid or accrued.

Unless Customer chooses to accept the Fire, Theft and Vandalism Waiver, then Customer will, at its own expense and at all times during the term of this Agreement, maintain in force Property Insurance in an amount adequate to cover any damages to, or loss of, the Equipment. Customer's policy must expressly cover non-owned equipment while in Customer's care, custody or control.

In addition, Customer will, at its own expense and at all times during the term of this Agreement maintain in force Commercial General Liability Insurance with a combined, single limit for bodily injury, including death, and property damages of \$1,000,000.00, on a primary and not excess or contributory basis, for Customer's liability for damages sustained by any person, including, but not limited to, agents or employees of Customer, as a result of the maintenance, use, operation, possession, storage, erection, dismantling, servicing or transportation of Equipment. .

The amount, terms and conditions of the insurance required by this Agreement must be acceptable to FS. Customer will, on demand, furnish FS a Certificate of Insurance evidencing such insurance, endorsed to provide that such insurance may not be canceled or materially modified except on 30 days prior written notice to FS. Customer agrees to abide by all terms and conditions of said insurance. Customer, its agents and employees will cooperate fully with FS and Customer's insurer in an investigation, prosecution or defense of any claim or suit arising therefrom and will do nothing to impair or invalidate the applicable insurance coverage. Neither FS's acceptance of Customer's Certificates of Insurance nor Customer's failure to provide a Certificate of Insurance will be deemed a waiver, limitation or modification of Customer's insurance, indemnity or other obligations under this Agreement or Customer's liability hereunder. Customer agrees to assign any and all proceeds from such insurance to FS. Customer agrees that subrogation will be waived against FS and its insured in all policies of Customer's insurance, and that Customer's insurance will be primary.

If the Equipment is used in compliance with the Rental Agreement and if Customer accepts the "Fire, Theft, and Vandalism Waiver" option (hereafter called "FTV"), which is NOT INSURANCE, at the beginning of the rental period by initialing the FTV Accepts Box on the front of the Rental Agreement, and pays the additional charges for the FTV when due, then FS agrees to waive, to the extent specified herein and in the Rental Agreement, Customer's responsibility to FS for loss of or damage to the Equipment exceeding the lesser of \$1,000 or three times the monthly rental rate, per item of Equipment. FS reserves the right to deny FTV to Customer. Customer not initialing either the "YES" or "NO" FTV box will be deemed to have accepted FTV. NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS PARAGRAPH, CUSTOMER WILL BE LIABLE FOR ALL LOSS OR DAMAGE TO THE EQUIPMENT AND EXPENSE OF FOLEY RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF CUSTOMER, WHICH INCLUDES, BUT IS NOT LIMITED TO THE USE OR OPERATION OF THE EQUIPMENT IN A RECKLESS OR ABUSIVE MANNER, OR INTENTIONAL DAMAGE TO THE EQUIPMENT BY CUSTOMER OR WITH CUSTOMER'S PERMISSION, OR UNDER ANY OF THE FOLLOWING CIRCUMSTANCES: (A) striking overhead objects with the Equipment; (B) vandalism, malicious mischief, theft or conversion of the Equipment not documented by Customer's prompt filing with the applicable public authorities (with an immediate written copy to FS) of a formal written theft, vandalism or conversion report; (C) any exposure to radioactive, contaminated or other hazardous materials; (D) boom damage from overloading of a boom or from a collision when a boom is in motion; (E) the Equipment's rollover or upset; (F) use of or operation of the Equipment by a person other than an employee of Customer possessing all necessary permits and not otherwise prohibited by law from such operation; (G) use or operations of the Equipment in violation of any law or ordinance; (H) the failure of a Customer to perform, or the improper performance of, the basic maintenance required under the Rental Agreement; (I) any failure of Customer to comply with any requirement of the Rental Agreement; (J) over spray of concrete, paint, or any other material; (K) use of the Equipment in violation of the applicable manufacturer instruction manual, overloading, or exceeding rated capacity; and (L) Customer's failure to secure the Equipment by leaving the keys readily available to any unauthorized operator or by not reasonably restricting access to the Equipment as a prudent person would protect his or her own equipment. If such charges for the FTV are not paid as specified in the Rental Agreement, then at FS's option and discretion, FS may terminate the Rental Agreement without prejudice to any of its other remedies. Pending exercise of FS's option, or if FS's option is not exercised, the FTV will not be in effect regardless of any initialing of the "Accepts" Box and Customer will remain fully responsible for loss and damage to the Equipment. In the event of any loss or damage to the Equipment, FS will subrogate with respect to any rights of Customer to recover against any person or entity.

6. **Further Assurances.** Upon request by FS, Customer shall promptly provide to FS the following: (a) A copy of the contract governing all projects on which the Equipment is used; (b) A copy of the payment bond, if any, issued pursuant to the contract; (c) The name and location of all projects where the Equipment has been or will be used; and (d) any other information FS shall in its sole judgement deem appropriate. Failure to provide such information shall be deemed an Event of Default of this Agreement.

7. **Limited Express Warranty and Substitution of Equipment.** FS will replace or repair the Equipment if it is defective in materials or workmanship. Customer recognizes that FS reserves the right, at its sole discretion, to substitute the Equipment with other equipment of the same model type and series designation.

8. **Maintenance and Repairs.** All labor and material for normal operation and maintenance as specified in the operation and maintenance manual for the Equipment shall be the responsibility of Customer, and Rent shall not abate because of the need for such maintenance. Except for (i) defects in materials or of workmanship, (ii) amounts covered by the FTV Waiver (less amounts Customer is responsible for) if elected by Customer, or (iii) normal and customary wear and tear, Customer shall be responsible for repair of all damage, and labor and materials necessary to perform all repairs, of any kind or nature to the Equipment necessary to place it in the same condition it had upon the initial delivery thereof to Customer. FS reserves the right to invoice Customer for any amounts for which it is responsible under this section after FS has had the opportunity to fully inspect the Equipment. FS reserves the right to remove the Equipment from the job at any time when, in its opinion, the Equipment is in danger or it is deemed necessary for the purpose of repair or inspection.

9. **Termination and Survival.** FS or Customer may for any reason or for no reason, terminate the term of this Agreement, but such termination shall not be effective until after the Minimum Rental Period. The termination of the term of this Agreement shall not terminate or cancel FS's right to pursue any remedies provided herein at law or equity against Customer. All warranties and obligations of Customer shall continue until the Equipment is properly returned to FS as specified herein.

10. **Default.** In addition to the other events specified herein, each of the following shall constitute an Event of Default hereunder: (a) Customer fails to make any payment of Rent or other amount due to FS when due; (b) Customer fails to return the Equipment to FS after termination; (c) Customer fails to perform or observe any other term, covenant, or condition of this Agreement; (d) Any representation or warranty made by Customer herein or other document provided or executed by Customer shall be false or misleading at any time in any material respect; (e) Customer's default in the performance or obligations under any other agreement now existing or hereafter made with FS; or (f) Customer ceases doing business as a going concern, transfers all or substantially all of its assets, becomes or is adjudicated insolvent or bankrupt, makes an assignment for the benefit of creditors, or Customer institutes any bankruptcy, insolvency, reorganization, dissolution, liquidation, or similar proceedings. Customer shall promptly notify FS of the occurrence of any Event of Default.

11. **Remedies.** Upon the occurrence of any Event of Default, FS may, with or without notice to Customer, exercise any remedy provided by law or any one or more of the following remedies, as FS in its sole discretion shall elect and such remedies shall be cumulative: (a) Require Customer, at Customer's expense, to return any or all of the Equipment, or FS, at its option, may enter onto Customer's premises and repossess and remove the Equipment, or render the Equipment unusable without removal, and FS shall not be deemed to have committed a trespass by so doing; (b) Declare immediately due and payable all Rents and other amounts due to or become due; (c) Sell by public or private sale, release, hold, retain, or otherwise dispose of the Equipment in any manner FS chooses, free and clear of any claims or rights of Customer; or (d) recover from Customer as damages as may be allowed under the Uniform Commercial Code or any other remedy under other statute or common law. The exercise of the foregoing remedies by FS shall not constitute a termination of this Agreement unless FS so notifies Customer in writing. No failure or delay by FS to exercise any right or remedy hereunder shall operate as waiver thereof. Additionally, Customer shall be liable for all costs, expenses and damages incurred by FS by reason of the occurrence of any Event of Default or the exercise of FS's remedies thereto, including but not limited to, all attorneys' fees and costs and damage or loss due to the exercise of FS's remedies, and all incidental and consequential damages.

12. **Ownership of Equipment, Assignment, and Nature of Transaction.** The parties agree that FS retains all right and title to the Equipment. Customer shall not assign or in any way dispose or otherwise relinquish possession or control of all or any part of the Equipment or any of its rights or obligations or enter into any sublease of all or any part of the Equipment without the prior written consent of FS. FS may, without notice to Customer, assign or sell its interest in, grant a security interest in, or otherwise transfer, in whole or in part, this Agreement or any or all of the Equipment or any of its rights, interests, or obligations with respect thereto, to one or more persons or entities. Customer agrees to defend FS's title against, and keep the Equipment free of, all liens, claims, and encumbrances. Customer agrees to execute any documents necessary to secure FS's rights in the Equipment.

13. **Other.** This Agreement shall inure to the benefit of and be binding upon each of the parties hereto and each of their respective heirs, administrators, executors, personal representatives, and permitted successors and assigns. If any provision is in conflict with any statute or rule of law of any state or district in which jurisdiction may lie for enforcement, then such provision shall be deemed null and void to the extent that it may conflict therewith; and the remaining provisions hereof shall not be invalidated, but may be reformed by the court to the extent necessary to protect the rights of the parties. This Agreement is governed by the laws of the state of Kansas and embodies the entire and final understanding between the parties hereto with respect to the Equipment and supercedes any preexisting agreements, arrangements, representations, or warranties with respect to the Equipment.