

# TERMS AND CONDITIONS OF RENTAL & SALE CONTRACT WITH LIFTING GEAR HIRE CANADA, INC

For good and valuable consideration, you and Lifting Gear Hire Canada Inc., a Canadian corporation ("LGH") agree as follows:

1. As used herein, "Page 1" or "P.1" refers to the Delivery Ticket, Quote, or Order Confirmation provided to you by LGH; "Contract" refers to P.1 together with these Terms and Conditions of Rental Contract, "§" means a numbered Section of this Contract; "Rented Item(s)" or "Item(s)" means the item(s) rented (or if applicable, sold) to you, as identified on P.1 (including any "Instructions" described in § 5); "Site" means the Delivery Address or Job Site set forth on P.1; "Customer," "Lessee," "you" and "your" mean the customer or "Lessee" identified on P.1, and "Lessor," "we," "us" and "our" mean LGH.
2. You agree to rent from LGH and LGH agrees to rent to you the Rented Item(s) for the period commencing on the date and time the Item(s) is/are delivered or made available to you by LGH (the "Commencement Date") until the later of: (a) the end of the 7<sup>th</sup> day following the Commencement Date, or (b) the date and time the rental is terminated by either you or LGH, and LGH provides to you an "off-rental" release number (the "Term"). You agree to pay us our stated rental rate(s) (the "Rent"), together with all other charges accruing hereunder, without proration, reduction or setoff, until all Rented Item(s) is/are returned to and accepted by LGH in the return condition required under this Contract (including § 4). All rental rates are for normal use of the Rented Item(s) in accordance with the terms hereof and the "Instructions" described in § 5. No allowance will be made for weekends, holidays, or other period(s) of nonuse. You agree: (a) to pay to LGH: (i) any deposit and/or prepayment specified on P.1 in advance of the Term ("Prepayment"); and (ii) any additional amounts coming due hereunder upon demand; and (b) that: (i) we may deduct any amount you owe us from any Prepayment; (ii) no interest will accrue on any Prepayment; (iii) no Prepayment will be deemed a limit of your liability to LGH; and (iv) all Prepayments are non-refundable unless otherwise specifically agreed in writing by LGH. Anything remaining with, in or on any Rented Item(s) upon return will, at our option, be deemed surrendered and abandoned.
3. You will ensure the Site is clean, safe, secure and fit for delivery and use of the Rented Item(s). If we agree to provide any services (including delivery and/or retrieval), you agree to: (a) pay our regular charge(s) for the same, and for all waiting time; (b) be present at the Site at the agreed time(s); and (c) ensure our personnel have full access to the Site at all times. We will not be responsible for mishaps or delay(s) caused by you, your agents or employees or any other parties, including providers of other goods or services ("Other Providers") for which you agree to indemnify, defend and hold harmless LGH. If you are not present upon our delivery or retrieval of any Item(s), you agree to accept the statements of our representatives regarding the same (including the status, condition, quality and quantities of the Item(s) and the Site).
4. You agree to protect, properly maintain and care for each Rented Item at all times, keep it safely and securely stored and locked when not in use, and return it to us on time at the end of the Term, complete, clean, free of contamination (including silica, beryllium and asbestos), and in good condition, properly serviced and maintained, and if applicable, full of the proper fuel, fluids and lubricants. If you fail to do so, then in addition to your other obligations arising under this Contract, you will pay us: (a) Rent for each succeeding full rental period until all Rented Item(s) have been returned or replaced as required; and (b) all costs and expenses we incur in connection with such failure (including without limitation, the full new replacement cost of the Rented Item(s)).
5. Upon your execution of this Contract (or upon our later delivery of the Rented Item(s), unless you immediately reject it/them), you represent, warrant and agree that: (a) each Item: (i) is in good repair and operating condition and is in all ways acceptable to you; (ii) is appropriate for your purposes; and (iii) was selected (not based on any recommendation by LGH), examined and inspected solely by you; and (b) you: (i) have received, read and understood the training, instructions, user manuals, maintenance requirements, and other information, if any (including all applicable Environment Canada, CSA, CCOHS, CanOSH, Transport Canada, NFPA, ASSE, ASME, MHSA, ACRP, IEEE, IBC, SAIA and/or ANSI Standards, and their United States equivalents, if any) regarding the proper and safe transportation, installation, fueling, use, maintenance and storage of such Rented Item(s) (collectively, "Instructions"); (ii) will fully comply therewith (including EPA Tier 4 and EU Tier IV regulations, as applicable); (iii) have been made aware of the need to use all recommended and required safety equipment (including fall protection devices); (iv) will use each Item only for its intended purpose, in a reasonable and safe manner; (v) will give any required notice(s) to, and obtain all necessary licenses, authorizations and permits from, the appropriate governmental authorities; (vi) have obtained, or will timely obtain, all necessary licenses, permits, authorizations and approvals; (vii) will advise all local utilities and cable companies before using any Rented Item(s) to dig or disturb the ground surface (go to [www.clickbeforeyoudig.com](http://www.clickbeforeyoudig.com), at least 3 full business days in advance); (viii) will immediately cease using any Rented Item that breaks down, malfunctions or proves defective (a "Malfunction"); and (ix) will ensure that all others comply herewith. You will notify LGH immediately if any of the above statements is/are or becomes incorrect at any time.
6. In the event of a "Malfunction" (as defined in § 5), you will immediately notify LGH, and provided such Malfunction did not result from or in connection with your breach of any provision of this Contract, we will, at our option: (a) repair the subject Rented Item; (b) provide you with a comparable item as soon as reasonably possible; or (c) return any unused Deposit and cancel this Contract with respect to the Malfunctioning Item. The foregoing remedies are EXCLUSIVE. Neither LGH nor any Owner will have any other obligation(s) regarding Malfunctions, all of which you waive.
7. Except with respect to Items we rent from one or more third parties (each, a "TPO") and then re-rent to you ("Re-Rented Item(s)"), LGH owns and will retain title to all Rented Items at all times. You will have exclusive control over the Rented Item(s) during the Term; subject however, to your obligations to fully and timely comply with this Contract at all times. You **SHALL NOT**: (a) permit the taking or existence of any lien, claim, security interest or encumbrance on any such Item; or (b) loan, transfer, sublease, repair, store, surrender or assign any Rented Item or this Contract without our prior written consent. LGH may at any time: (i) substitute for any Rented Item(s) one or more other item(s) of similar utility; and/or (ii) sell and/or assign all or any part of its interests in the Rented Item(s) and/or this Contract, in which event, you agree to attorn to the assignee, who shall not be responsible for, any pre-existing obligations or liabilities of LGH.

8. **WARNINGS: SAFETY WARNINGS:** THE RENTED ITEM(S) CAN BE **DANGEROUS**, AND MAY MOVE, SHIFT, TIP, SINK, OVERTURN, LEAK, OR COLLAPSE, PARTICULARLY DURING SEVERE WEATHER AND/OR ON STEEP TERRAIN. YOU AGREE TO: (A) EXERCISE, AND TO CAUSE ALL OTHERS TO EXERCISE, **EXTREME CARE** WHEN DEALING WITH SUCH ITEM(S); (B) PROVIDE ALL APPLICABLE **FAMILIARIZATION, TRAINING, INSTRUCTIONS AND WARNINGS** TO ALL USERS, OPERATORS AND OCCUPANTS OF SUCH ITEM(S); (C) ensure that each Rented Item is used reasonably, safely and **only: (i) for its intended purpose(s); (ii) within its rated capacity; (iii) at the Site; (iv) BY PROPERLY TRAINED, QUALIFIED, CERTIFIED, FAMILIARIZED AND/OR LICENSED (AS APPLICABLE) ADULTS (SEE § 9); and (v) otherwise in full compliance with this Contract and all applicable laws, rules and regulations, at all times. You will not, nor will you permit anyone else to: (I) abuse, misuse, overuse, conceal, repair, modify or damage any Rented Item; or (II) expose any such Item(s) to any harmful or hazardous substances or circumstances.**

9. **CERTIFICATIONS: VARIOUS FEDERAL, PROVINCIAL, TERRITORIAL AND/OR LOCAL JURISDICTIONS, AND/OR STANDARD SETTING/PUBLISHING BODIES, INCLUDING WITHOUT LIMITATION, THE CANADIAN STANDARDS ASSOCIATION ("CSA"), THE CANADIAN CENTRE FOR OCCUPATIONAL HEALTH AND SAFETY ("CCOHS"), THE CANADIAN MINISTRY OF LABOUR, HEALTH CANADA, CANOSH, AND PROVINCIAL/TERRITORIAL OCCUPATIONAL HEALTH AND SAFETY OR "WORKSAFE" AUTHORITIES, REQUIRE (OR IN THE FUTURE, MAY REQUIRE) PERFORMANCE OF SPECIFIC INSPECTIONS, MAINTENANCE, REPAIRS AND/OR REPORTING, AND/OR THAT ONE OR MORE OPERATORS OF THE RENTED ITEM(S) BE TRAINED AND/OR CERTIFIED BY ONE OR MORE PUBLIC, PRIVATE OR MILITARY TRAINING OR CERTIFICATION AUTHORITIES.** You agree to fully and timely comply with all applicable laws, rules, standards, regulations, guidelines and ordinances pertaining to each Rented Item (including without limitation, the foregoing, as well as all operator standards, rules, regulations, and certification requirements). Without limiting the foregoing, **YOU WILL ENSURE THAT: (A) ONLY INDIVIDUALS WHO MAINTAIN CURRENTLY VALID AND APPROPRIATE LICENSES AND CERTIFICATIONS FROM ALL APPLICABLE GOVERNMENTAL AUTHORITIES AND/OR OTHER ISSUING BODIES OPERATE OR HAVE ACCESS TO ANY RENTED ITEM(S); and (B) all Transport Canada and similar Provincial and/or Territorial (as applicable) requirements are fully and timely satisfied.**

10. **LGH IS NOT THE MANUFACTURER OR DESIGNER OF ANY RENTED ITEM(S), all of which are provided "AS-IS". NEITHER LGH NOR ANY TPO MAKES ANY WARRANTY, EXPRESS OR IMPLIED (INCLUDING ANY WARRANTY OF MERCHANTABILITY / MERCHANTABILITY QUALITY, SUITABILITY, FITNESS FOR A PARTICULAR OR COMMUNICATED PURPOSE, FUNCTION, DESIGN, QUALITY, CAPACITY, FREEDOM FROM DEFECTS AND/OR WORKMANLIKE PERFORMANCE, AS WELL AS ANY WARRANTY ARISING UNDER OR CORRESPONDING TO ANY "SALE OF GOODS ACT" OR FROM OR IN CONNECTION WITH ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE) regarding any Rented Item(s) or Service(s) provided hereunder, nor does LGH or any TPO make any warranty against INTERFERENCE OR INFRINGEMENT, all of which you hereby waive. NO DESCRIPTIONS, SPECIFICATIONS, OR ADVERTISEMENTS REGARDING THE RENTED ITEM(S) OR ANY SERVICES PROVIDED, ACKNOWLEDGED OR APPROVED BY OR AT THE DIRECTION OF LGH CONSTITUTE REPRESENTATIONS OR WARRANTIES.**

11. **INDEMNITY/HOLD HARMLESS. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, YOU HEREBY: (A) ASSUME ALL RISK OF PERSONAL INJURY, LOSS, PROPERTY DAMAGE, DESTRUCTION AND CONTAMINATION OF, TO, AND/OR ARISING IN CONNECTION WITH, ALL RENTED ITEM(S) AND SERVICE(S) REFERENCED HEREIN, INCLUDING WITHOUT LIMITATION, ANY AND ALL LIABILITIES, CLAIMS AND DAMAGES ARISING IN CONNECTION WITH THE SELECTION, PROVISION, INSPECTION, DESIGN, MANUFACTURE, USE, LOADING, UNLOADING, TRANSPORTATION, DEMONSTRATION, STORAGE, SERVICING, MAINTENANCE, REPAIR AND/OR RETAKING OF SUCH RENTED ITEM(S) AND/OR SERVICE(S), WHETHER OR NOT YOUR FAULT; (B) RELEASE AND DISCHARGE LGH AND EACH TPO FROM AND AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS LGH AND EACH TPO, AND THEIR MANAGERS, OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, OWNERS, INSURERS, SUBROGEEES, REPRESENTATIVES, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL LIABILITIES, CLAIMS, DAMAGES, LOSSES, COSTS AND EXPENSES (INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES) ARISING FROM OR ASSOCIATED WITH THE SUBJECT MATTER OF THIS CONTRACT (INCLUDING YOUR BREACH HEREOF), EVEN IF ARISING FROM THE NEGLIGENCE OF LGH AND/OR ANY TPO; and (C) waive any and all incidental, consequential, special, and punitive damages, against LGH and each TPO.** Notwithstanding anything contained in any purchase order or other communication to the contrary, in the event LGH provides you with rigging plans, you acknowledge and agree that said rigging plans are only examples of what might work as a rigging plan. LGH makes no representation or warranty that said rigging plans will be sufficient for your project or particular job. You agree to have any rigging plans that you use reviewed and approved by your engineer or an engineer that you hire prior to any use. You hereby agree to indemnify and hold LGH harmless from any liability, claim, damages, losses, costs and expenses, including attorneys' fees resulting from any rigging plans provided by LGH.

12. You agree to maintain such policies of insurance, with such insurers, as LGH deems necessary, but in any event, at least: (a) liability insurance coverage with minimum limits of at least \$2,000,000 per occurrence; (b) property damage/inland marine insurance covering all Rented Items for the full new replacement value thereof (each being specifically scheduled or within the limits of your Leased/Rented Equipment Floater, and including without limitation, cranes, boom damage, and loss occasioned by flood); and (c) Workers' Compensation Insurance satisfying the laws of the state(s) which has/have jurisdiction over your employees. Such policies shall: (i) name LGH as an additional insured and loss payee (other than with respect to workers' compensation insurance); (ii) waive subrogation against LGH; and (iii) be primary and non-contributory. **IF YOU FAIL TO FULLY AND TIMELY COMPLY WITH THIS §12, LGH MAY, AT ITS OPTION TO THE EXTENT PERMITTED UNDER APPLICABLE LAW (BUT WITHOUT BEING REQUIRED TO DO SO) OBTAIN INSURANCE MEETING THE FOREGOING REQUIREMENTS AND CHARGE YOU FOR IT (ALL OF WHICH CHARGES YOU AGREE TO PAY TO LGH IMMEDIATELY UPON DEMAND).**

13. Your duties hereunder are **unconditional**. If you or any guarantor shall: (a) fail to fully and timely honor, pay, perform or comply with this Contract and/or any of your obligations arising hereunder or in connection herewith; (b) provide any incorrect or misleading information to us; (c) become insolvent or bankrupt; or (d) die

or cease conducting business, or if any Rented Item(s) shall be lost or damaged, you will be in default under this Contract, whereupon, we may with or without legal process or notice (and without liability to you), to the maximum extent permitted under applicable law: (i) cancel the Term and/or this Contract (and/or your rights to use and possess the Rented Item(s)); (ii) seek relief from stay; (iii) recover, empty, lock, disassemble and/or disable such Item(s) without being guilty of breach, trespass or wrongful interference, or liable for any injuries or property damage (for which you agree to indemnify, defend and hold harmless each Indemnitee); (iv) perform your obligations hereunder on your behalf, without being obligated to do so; (v) purchase replacement Item(s); (vi) recover from you and/or any guarantor our associated direct and indirect damages, losses, costs and expenses (including without limitation, Rent for the balance of the scheduled Term, loss of use, interest, attorneys' fees, collection costs and costs of court); and/or (vii) pursue any other rights and/or remedies available hereunder, at law and/or in equity, all of which shall be cumulative.

**14.** To the maximum extent permitted under applicable law, LGH will be entitled to a lien on all real property improved with any Rented Item(s), or on which it/they may be located or used. LGH may, without notice or liability to you, monitor and/or inspect (in person and/or electronically) any Rented Item(s) at any time. You consent thereto and agree that all information generated thereby will be the property of LGH. If any performance required of LGH is delayed or rendered impractical as a result of any act or omission of/by you, any Other Provider(s) or any "Act of God" (e.g., any event, fact or circumstance beyond LGH's reasonable control), LGH will be excused from such performance. You waive the benefits of all statutes of limitations regarding LGH's rights and remedies. All amounts due hereunder but not timely paid will bear interest at the lesser of: (a) 18% per annum; or (b) the highest rate permitted under applicable law until paid. You authorize LGH to obtain and retain your credit information and history, and to submit all amounts coming due hereunder for payment on your debit or credit card, and you waive all offsets, chargebacks, and other associated claims. You agree to pay us the maximum lawful charge for any check you write which is returned unpaid. Except only as set forth herein, this Contract cannot be further amended or extended except in a writing signed by both you and LGH. LGH's maximum liability in connection with this Contract is limited to the amount(s) actually paid by you to LGH hereunder. You agree to fully and timely pay: (a) our attorneys' fees and other costs of enforcing this Contract, and (b) all taxes (including all sales, use and other taxes), tolls, fines, fees, assessments and other charges related to each Item and/or this Contract. Neither our exercise, nor our failure or delay in the exercise, of any rights or remedies will constitute an election of remedies or a waiver of any of our rights or remedies.

**15.** This Contract, and any Addenda provided by LGH, represent the entire agreement between you and LGH, superseding all other oral, written and implied agreements, representations and terms (including LGH's website, advertising and correspondence). Accordingly, you hereby waive the common law doctrine of "collateral contract" and all claims arising therefrom. The terms of this Contract are severable. If any provision hereof is deemed invalid or unenforceable by any court of competent jurisdiction, such provision will be modified to the minimum extent necessary to make such provision valid and enforceable, or if no such modification shall be possible, deleted, and in either such event, the remainder of this Contract will remain valid and in full force and effect. Time is of the essence. There are no third-party beneficiaries hereto, other than the TPO(s), if any. **This Contract will be deemed to apply not only to all Item(s) identified on Page 1, but also to all other items you obtain from LGH at any time** (except only as otherwise agreed by LGH). This Contract (a) has been specifically negotiated by the parties hereto (each waiving any right to claim it constitutes an "adhesion contract"); (b) cannot be modified except as provided herein or as agreed in writing by LGH; and (c) shall be interpreted under the laws of the Province of Ontario, Canada, with proper venue for any and all associated legal proceedings lying solely in the federal and provincial courts located in or nearest to Oakville, Ontario. You hereby consent and submit to such jurisdiction and venue and waive all claims that such venue constitutes an inconvenient forum. Digital, electronic, photocopied or facsimiled signatures and initials on this Contract and any Addendum provided by LGH will be enforceable as originals.

**16.** Any item(s) sold to you ("Sale Items"), as provided on Page 1 are provided "**AS-IS**" and "**WITH ALL FAULTS**," and are subject to the terms hereof, modified ("*mutatis mutandis*") as necessary to address sales. All Item(s) not identified as "Sale Items" on Page 1 will be deemed "Rented Item(s)."

**17. WARNING: FAILURE TO RETURN RENTED PROPERTY CAN, IN CERTAIN CIRCUMSTANCES, BE CONSIDERED THEFT, RESULTING IN CIVIL LIABILITY AND/OR CRIMINAL PROSECUTION.**

The undersigned Lessee acknowledges and agrees that, from time to time, it may rent one or more additional Item(s) from LGH. By signing below, Lessee acknowledges and agrees that it will be bound by the foregoing Terms and Conditions with respect to each Item identified on the applicable P.1, each time it receives such Item(s), **WITHOUT THE NECESSITY OF SIGNING A NEW AGREEMENT IN EACH INSTANCE. LESSEE'S RECEIPT OF SUCH ITEM(S) NOW OR AT ANY TIME IN THE FUTURE, WHETHER DIRECTLY OR THROUGH ONE OR MORE OF LESSEE'S AGENTS, EMPLOYEES AND/OR REPRESENTATIVES, SHALL CONSTITUTE LESSEE'S ACKNOWLEDGMENT OF, AND AGREEMENT TO, THE TERMS HEREOF (AND OF EACH APPLICABLE "P.1") IN EACH SUCH INSTANCE.**

**IMPORTANT. PLEASE READ CAREFULLY BEFORE SIGNING:**

You, for yourself and for the "Customer / Lessee," acknowledge and agree that you have carefully reviewed, fully understand, **and agree to** all of the terms and conditions set forth above as well as "P.1" as defined in §1 above), and that you have received a complete and legible copy of this Contract.

**SIGNATURE OF/FOR CUSTOMER / LESSEE:**

**Company Name:** \_\_\_\_\_

**By:** \_\_\_\_\_

Name (Printed): \_\_\_\_\_

Title: \_\_\_\_\_