

## **Mad Pelican Terms and Conditions**

### **1. Use and Operation of Equipment**

Customer agrees that the Equipment shall be used solely in scope of Customer's business and the Equipment shall remain in Customer's possession and under its control. The Equipment shall be operated only by the Customer or its employees for its Intended Purpose. Intended Purpose shall be defined as use of the Equipment in Customer's business but is limited to operations within the guidelines set forth in the manufacturer's manual which has been provided to the Customer. Activities that would void the warranty of the Equipment shall be deemed not an Intended Purpose. Customer agrees the Equipment will be operated or driven only by employees that are knowledgeable in the operation of the Equipment and are licensed, if required. When the Equipment is not in use, Customer agrees to store the Equipment in a protected area. The Equipment shall not be subleased, or this Rental Agreement assigned without the express written consent of the Owner.

### **2. Maintenance and Repairs**

Customer shall be responsible for and shall bear the expense of all maintenance of the Equipment. Customer shall, at its expense, during the term hereof, maintain the Equipment in good operating order, repair and appearance and practice preventative maintenance at regular intervals as suggested in the Equipment's manufacturer's manual, receipt of a copy of which is hereby acknowledged. Owner undertakes no obligation with respect to repairs or replacement of parts, attachments, accessories, or that in performing maintenance and repairs it will perform them properly. Customer agrees to maintain the Equipment in the same condition as when delivered to it by Owner, usual and ordinary wear and tear excepted. Customer agrees work itself provided Customer's employee is qualified to work on the Equipment or will have such work performed only by qualified persons who are reasonably satisfactory to Owner, with Owner agreeing to provide Customer with a prompt response to any inquiries about whether the specified maintenance or repair personnel are satisfactory. For the purposes of this section, a "qualified" person shall mean someone who has national certification(s) in the Equipment and multiple years of experience working with the Equipment.

### **3. Return of the Equipment**

Customer agrees that at the termination of this Equipment Addendum, Customer shall return the Equipment to Owner the same operating condition, order, repair, and appearance as when received, ordinary wear and tear excepted. Customer further agrees to return the Equipment in the same amount of fuel as received or pay Owner to replace the fuel upon return at Owner's current standard rate per gallon. In the event excessive cleanup of the Equipment is necessary when the Equipment is returned, Customer agrees to pay a reasonable fee to Owner for said clean-up. Customer shall not put any logo or other signage on the Equipment that would cause harm to the Equipment. Customer also agrees to provide Owner all maintenance and return all manuals related to the Equipment. Customer acknowledges the End of Rent Guide that outlines areas that can create additional charges. In addition to the Inspection rights under Section 4, Owner shall have the right to conduct an end of the rental inspection of the Equipment.

#### **4. Inspection**

Customer shall, whenever requested, disclose the exact location of the Equipment. Owner or its representatives may, for the purpose of inspection, at all reasonable times, enter upon any job, building or place where the Equipment is located. Owner acknowledges, however, that such entry may require an escort by Customer's employees as well as compliance with prevention regulations and company policies. If the Equipment is equipped with a GPS monitoring system, Customer agrees to keep the location services connected to the Equipment and in good working condition.

#### **5. Warranty, Condition of Equipment and Damages**

Except as may otherwise be offered by the manufacturer of the Equipment, the Equipment is rented "AS IS" with no implied warranties, including but not limited to any warranty of merchantability or fitness for a particular purpose, and there are no express warranties. Customer assumes all risks inherent in the operation and use of the Equipment and acknowledges that the Equipment is in good working condition and acceptable to Customer. To the fullest extent permitted by law, Customer shall indemnify and hold harmless MPE, its officers and employees, from and against any and all claims for personal injury, death or property damage arising out of or related to the Equipment. This includes claims brought by third parties and claims brought by Customer, and whether or not caused in part by the negligence of MPE. The indemnity obligation shall not apply to damages or losses caused by the sole gross negligence or willful misconduct of MPE. In no event shall MPE's aggregate liability to Customer or any third party for any cause whatsoever exceed the total fees paid by Customer under this Agreement during the three (3) months preceding the date that the claim arose.

#### **6. Ownership**

The Equipment is and shall remain the exclusive property of Owner.

#### **7. Insurance**

Customer agrees to protect Owner with commercial general liability insurance coverage; such insurance shall cover loss, injury, death, or damage occasioned or caused by or in connection with the Equipment. Additionally, the Customer shall insure the Equipment against physical loss or damage for not less than the actual cash market value of the Equipment as well as diminution in value and loss of use by Owner. Customer's commercial general liability insurance policy and physical damage or inland marine insurance policy shall:

- (a) have minimum coverage limits of \$1,000,000 per occurrence;
- (b) be issued by an insurance company with an A.M. Best's rating of A/VII or better, or otherwise satisfactory to Owner;
- (c) be endorsed to include Owner as an additional insured and loss payee;
- (d) contain no exclusions or limitations of coverage as regards "booms", capacity overloading, theft, waterborne or over-water exposures to the extent applicable, transit or hauling or any other similar restrictions;
- (e) be in full force and effect throughout the term of this Agreement;
- (f) be primary.

Customer is responsible for any deductibles or other amounts necessary to completely indemnify the owner.

The proceeds of any such insurance, at the option of Owner, shall be applied toward the replacement of like Equipment, or restoration or repair of the Equipment. Customer agrees to provide proof of insurance upon request of Owner and notice of any cancellation. Additionally, the Customer agrees to maintain workers' compensation insurance to cover every contractor or employee to be employed or retained by Customer in connection with the use of the Equipment. Coverage limits shall be satisfactory to the Owner, and in no event shall coverage be less than any applicable statutory limits.

#### **8. Loss or Damage**

Customer agrees to pay Owner for any loss of and damages to the Equipment that may occur during the term of this Agreement except to the extent such loss or damage arises out of a negligent act or omission of Owner, or its officers, agents, or employees. It is further understood and agreed that in making any adjustment for loss of or damages to the Equipment, Customer shall be credited with the amount of insurance payment received by Owner under insurance policies of Customer, if an insurance recovery is affected hereunder. In making such adjustment it is understood that no rentals theretofore paid or due shall apply to the payment of such loss. Customer, in addition to liability for loss or damage herein otherwise provided for, shall be liable for all loss and damage to said Equipment caused by strikes, riot and civil commotion arising from any cause whatsoever while the Equipment is in Customer's possession. In the event of damages, Customer is responsible for rental payments during downtime repairs.

#### **9 Indemnification**

CUSTOMER AGREES TO HOLD HARM PELICAN EQUIPMENT & RENTAL, LLC AND ITS AFFILIATES ("MPE") HARMLESS AND UNCONDITIONALLY INDEMNIFY AND DEFEND MPE AGAINST AND FOR ALL LIABILITY, COST, EXPENSES, CLAIMS AND DAMAGES (COLLECTIVELY, "CLAIMS") WHICH MPE MAY AT ANY TIME SUFFER OR SUSTAIN OR BECOME LIABLE FOR BY REASON OF ANY ACCIDENT, DAMAGES OR INJURIES EITHER TO THE PERSONS OR PROPERTY OF EITHER PARTY, OR OF ANY OTHER PARTIES, IN ANY MANNER ARISING FROM THE EQUIPMENT RENTED HEREIN OR ITS USE, EXCEPT TO THE EXTENT SUCH CLAIMS ARISE OUT OF A NEGLIGENT ACT OR OMISSION OF MPE, ITS OFFICERS, AGENTS OR EMPLOYEES.

Such indemnity obligation shall include but not be limited to

- (a) all liability for wages, taxes, insurance contributions, other such payments, benefits under any workers compensation or similar law and employer's liability charges or other similar expenses arising out of a Claim and reflecting Customer's employment of personnel who operate or maintain the Equipment
- (b) all liability for or arising from a Claim related to the manufacture, operation, condition, possession, use or misuse of the Equipment or any action or inaction of the operator of the Equipment (including but not limited to that caused by operators of the Equipment designated

by or through MPE pursuant to any agreement except such as may arise from the negligence of MPE);

(c) all fees, cost and expenses arising out of or relating to (a) and (b) above, including, but not limited to, reasonable attorneys' fees incurred by MPE if Customer fails to defend MPE in accordance with this section.

Customer agrees that Customer's obligations under this section are conditional on MPE

(i) providing Customer with prompt written notice of a Claim,

(ii) rendering to MPE, at Customer's cost, all reasonable assistance for the defense or settlement of such Claim, and

(iii) not settling or compromising any Claim without the prior written consent of MPE.

### **10 Default and Remedies**

If Customer shall fail to make any rental payment when due, use Equipment for any purpose other than the Intended Purpose, institute or have instituted against it any proceedings under any bankruptcy or insolvency law or shall fail to comply with any other provision of this Agreement (hereinafter "Default"), the Owner may immediately and without notice

(a) terminate this Agreement, at which time in the event of termination by Owner, all of Customer's rights under this Agreement shall cease and/or

(b) exercise one or more rights and remedies available to Owner under any applicable state or federal law.

In the event of any Default, Customer agrees to surrender possession of the Equipment on demand and Owner, or its agent may enter upon Customer's premises to the full extent allowed by law and take possession thereof. Owner's failure at any time to require strict performance by Customer of any of the provisions of this Agreement shall not waive or diminish the right thereafter to demand strict compliance therewith with any other provisions. Waiver of any default shall not waive any other default. The remedies in this Agreement provided in favor of Owner shall be available to its respective successors and assigns and shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its or their favor existing at law or in equity.

### **11. Encumbrances, Taxes and Other Laws**

Customer shall keep the Equipment free and clear of any liens or other encumbrances and shall not permit any act where Owner's title or rights may be negatively affected. Customer shall be responsible for complying with and conforming with all laws and regulations related to the possession, use or maintenance of the Equipment. Furthermore, Customer shall promptly pay all taxes, fees, licenses, and governmental charges, together with penalties or interest thereon, related to the possession, use or maintenance of the Equipment. Customer agrees to notify Owner if the Equipment is moved to another taxing jurisdiction.

### **12. Governing Law**

This Agreement is governed by the laws of the state of where the Equipment was rented, disregarding its principles governing conflict of laws which might otherwise result in the application of the laws of another jurisdiction.

**13. Entire Agreement**

This Agreement and any addenda referred to herein constitute the entire agreement of the parties hereto. No oral agreement, guaranty, promise, condition, representation, or warranty shall be binding. All prior conversations, agreements or representations related hereto and/or to the Equipment are superseded hereby, and no modification hereto shall be binding unless in writing and signed by an authorized person of the party to be bound.

**14. Arbitration**

Except for provision set forth in Section 5 and Owner exercising its remedies under Section 10, all claims, disputes, controversies, differences or misunderstandings between the parties arising out of, or by virtue of this Agreement or the interpretation of this Agreement which cannot be resolved by the parties hereto shall be settled or determined by binding arbitration under the then-current rules of the American Arbitration Association. The exclusive jurisdiction for any such arbitration shall be county or parish of where the Equipment was rented. The arbitrator's fees for any such arbitration shall be shared equally.

**15. Severability**

Unenforceability or invalidity of one or more clauses in this Agreement shall not have an effect on any other clause in this Rental. If it is possible, any unenforceable or invalid clause in this Agreement shall be modified to show the original intention of the parties.

**16. Authority to Bind Customer**

The undersigned, to the extent signing as an agent or officer of the Customer, warrants and represents to Owner that he/she is authorized to execute this Agreement and bind the Customer for all obligations undertaken herein. To the extent the undersigned is not authorized to obligate the Customer, he/she agrees to indemnify and hold harmless Owner for any losses it incurs.

**17. LATE FEE POLICY**

Mud Pelican Equipment & Rentals has issued a new company policy that will no longer allow employees to waive late fees. A late fee of 1.5% will be applied to the total past due balance after 30 days of the invoice due date.