Bercon Rentals Inc.
420 Grays Road, Hamilton, ON L8E 4H6
Tel: 905.560.5500 Fax: 905.560.5502
Email: ar@berconrentals.ca Web Site: www.berconrentals.ca

EQUIPMENT RENTAL TERMS AND CONDITIONS
("Rental T&C")

1. **Acknowledgment.** The customer ("**Lessee**") and Bercon Rentals Inc. ("**Lessor**") acknowledge and agree that the terms and conditions contained herein shall govern the rental of any and all equipment by the Lessee from the Lessor, and the term "**Equipment**" as used herein shall refer to all such equipment, together with all parts and attachments belonging or relating thereto. Except as otherwise expressly agreed by the Lessor and Lessee in writing, in the event of a conflict between the terms and conditions contained in this Rental T&C and any terms or conditions set out in any purchase order, acceptance or other document the Lessee and Lessor agree that the terms and conditions set out in this Rental T&C shall govern.

2. **Inspection.** The Lessee may inspect the Equipment before delivery. If the Lessee does not inspect the Equipment before its delivery to the Premises (as defined herein), or identify any issue with the Equipment, then the Lessee is deemed to have accepted that the Equipment is in good, clean and unmarred condition and running order, without broken or worn out parts.

3. **Rental Period.** It is agreed that the Equipment shall be rented for a period which shall commence on and include the date of delivery of the Equipment to the location designated by the Lessee (subject to the limitations contained herein) and which shall end on and include the date of actual delivery of the Equipment to the Lessor's premises, or at any other premises if instructions to do so are given by the Lessor (the "**Rental Period**"). At the end of the Rental Period, the Lessee shall obtain an "off rent" number from the Lessor. Subject to Section 7 herein, in no circumstances, shall (i) any single rental period for the Equipment be made for an open or indefinite term, or (ii) the rental of the Equipment (including the initial rental period and any extensions or renewals thereof) exceed eleven (11) months in duration. **It is specifically agreed that the Lessee shall remain responsible for the Equipment, including any and all costs thereto, until it has been returned to the Lessor, in the manner specified herein.**

4. **Rental Period Calculation**. Rent on the Equipment, payable by the Lessee to the Lessor, shall be billed in accordance with the applicable rental rate of the Equipment and calculated on the following terms:

    a. "**month**" shall mean a period of twenty-eight (28) consecutive days;

    b. "**week**" shall mean a period of three (3) consecutive days; and

    c. "**day**" shall mean a period of eight (8) consecutive hours.

    The Lessor shall calculate the rent payment by reference to the greater of either the number of hours accumulated by the Lessee on the Equipment's hour meter divided by eight (8) or the total number of calendar days of the Lessee's possession. If the Equipment is returned by the Lessee more than two (2) hours after the expiry of the Rental Period, the Equipment shall be deemed to have been rented by the Lessee for one (1) additional day for the purposes of calculating the total rental charges. The minimum rental charge shall be one (1) day.

5. **Rental Charges.** The Lessee shall pay the rent for the entire Rental Period on the Equipment without any offsets, deductions or claims. Further, the Lessee acknowledges and agrees that,

    a. monthly and daily rental rates shall not be subject to any deductions on account of any non-working time in the month or day, as the case may be;

    b. monthly and daily rental rates contemplate an operating day of eight (8) hours.

6. **Maintenance Requirements.** The Lessee shall not remove, alter, disfigure or cover up any numbering, lettering or insignia displaying upon the Equipment, and shall ensure that no Equipment is subjected to careless or needlessly rough usage. Without limiting the generality of the foregoing, in addition to the rent, the Lessee shall pay the cost of:

    a. all fuel and lubricants required to operate the Equipment;

    b. all repairs and maintenance required to be made to the Equipment in order to keep it in good repair and proper operating condition in accordance with the operator's manual;

    c. replacement of broken or worn out parts (all replacement parts used must be original equipment manufacturer's parts);

    d. repairs to and/or replacement of tires and tubes on the Equipment;

    e. charging batteries for the Equipment, if and as applicable.

Bercon Rentals Inc.
420 Grays Road, Hamilton, ON L8E 4H6
Tel: 905.560.5500 Fax: 905.560.5502
Email: ar@berconrentals.ca Web Site: www.berconrentals.ca

7. **Risk of Loss.**

    a. In addition to rent, maintenance and other costs contained herein, the Lessee hereby assumes the entire risk of loss, theft, damage or interruption of the Equipment, in whole or in part during the Rental Period and the appraisal for any such loss or damage shall be based on the replacement cost of the Equipment without deduction or depreciation. With respect to any loss or damage, the Lessor shall be the sole judge of the condition of the Equipment and the Lessee agrees to pay to the Lessor the cost of repairing or restoring the Equipment in accordance with the provisions hereof, reasonable wear and tear excepted.

    b. In the event of theft, of or to the Equipment, the Lessee shall continue to be responsible for rent until the earlier of,

        i. the time the Equipment is returned to the Lessor, reasonable wear and tear excepted; and

        ii. the time the Lessor receives the full replacement cost of the Equipment.

8. **Use Requirements.** In addition to any other covenants contained herein, the Lessee is responsible for ensuring that during the Rental Period,

    a. the use of the Equipment is within the parameters of use for which the Equipment was manufactured;

    b. the Equipment will be used solely by employees of the Lessee who are property trained and competent to operate the Equipment;

    c. the Lessee's employees that operate, engage or work with the Equipment follow safe operating procedures in accordance with any operator's manual provided by the Lessor and any and all applicable government laws and regulations;

    d. the use of the Equipment is in compliance with all applicable laws and in compliance with the conditions of coverage in applicable insurance policies and that it is not to be used in any manner which is illegal or which renders it uninsurable or renders any insurance coverage void;

    e. the use of full body safety harnesses is mandated and enforced on all aerial lift equipment, as required by any operator's manual and/or government legislation.

9. **Encumbrances.** Save and except as noted in Section 10 below, the Lessee shall be prohibited from permitting any liens, charges, security interests or encumbrances of any nature whatsoever ("**Encumbrances**") from being placed on the Equipment. In the event an Encumbrance is placed on the Equipment, the Lessee shall have same removed forthwith. Should the Lessee fail to remove the Encumbrance, it shall pay to the Lessor the Lessor's cost of discharging any Encumbrances created by Lessee, which shall include any and all legal fees.

10. **Security Interest.** The Lessee acknowledges and agrees that the Lessor's ownership and other interest in the Equipment may constitute or create a security interest under applicable personal property security legislation, and, to the extent so constituted or created, secures the payment and performance of all obligations of the Lessee under these Rental T&Cs. To the extent applicable, the Lessor's interest in the Equipment is intended to constitute a purchase-money security interest. The Lessee will sign all documents and do all acts required to perfect the Lessor's security interest. The Lessee waives the right to receive a copy of any financing statement, financing change statement, verification statement or similar document, except to the extent such waiver is prohibited by applicable law. The Lessee authorizes the Lessor to register, renew, amend and discharge such financing statements, financing change statements or other registrations as the Lessor considers necessary or desirable to perfect, maintain and protect the Lessor's ownership and security interest in the Equipment.

11. **Equipment Location.**

    a. It is agreed that the Equipment will only be used by the Lessee at the address the Lessee advises the Lessor (the "**Premises**") for the duration of the Rental Period.

    b. The Lessee agrees that the Equipment will not be removed from the Premises without the written consent of the Lessor. In no circumstance may the Equipment be used outside of Canada.

12. **Lessor Right of Inspection.** The Lessor reserves the right to the following:

    a. enter upon the Premises and be given free access and afforded all necessary facilities for the purpose of inspecting the Equipment; and

    b. remove the Equipment from the Premises at any time and without liability when, in the Lessor's sole and absolute discretion, the Equipment is in danger of any kind and because of any condition and the Lessee waives any and all claims as against the Lessor with respect to same.

Bercon Rentals Inc.
420 Grays Road, Hamilton, ON L8E 4H6
Tel: 905.560.5500 Fax: 905.560.5502
Email: ar@berconrentals.ca Web Site: www.berconrentals.ca

13. **Insurance.** During the Rental Period, Lessee shall obtain and maintain, at its own expense, insurance covering property damage, theft and casualty and public liability and all risk property insurance, in such an amount and with such coverages as are satisfactory to the Lessor. Prior to delivery, and upon the Lessor's request, from time to time, the Lessee will promptly provide Lessor with certificates of insurance satisfactory to Lessor evidencing such insurance coverage with the Lessor added as a first loss payee on each policy. In the event of any loss or damage to the Equipment, the Lessor will have the right of subrogation with respect to any right of the Lessee to recover against any person, firm or corporation. The Lessee will execute and deliver whatever instruments are required and do whatever else is necessary to secure such rights. The Lessee will cooperate fully with Lessor and/or its insurer(s) in the prosecution of those rights and will neither take or permit nor suffer any action to prejudice Lessor's rights with respect thereto. The Lessee hereby assigns to Lessor the benefit of and proceeds from any and all insurance policies held by the Lessee covering the Equipment. Notwithstanding the Lessee's failure to obtain or maintain insurance in accordance with this Rental T&C or to otherwise comply with the insurance requirements hereof or the insufficiency of Lessee's insurance coverage, the Lessee's liability and indemnification obligations herein will not be voided, limited or reduced and Lessor may claim against the Lessee for recovery of any losses.

14. **No Warranty.** The Lessor makes no representation or warranty, express or implied, as to any matter whatsoever, including, without limitation, the design or condition of the Equipment, its merchantability or its fitness or capacity or durability for any particular purpose, the quality of the material or workmanship of the Equipment or conformity of the Equipment to the provisions and specifications of any purchase order or orders relating to same. The Lessee agrees that there are no such express or implied warranties by the Lessor and furthermore, that all implied and statutory representations and warranties are expressly excluded and denied. The Lessee hereby waives all claims against the Lessor for any losses which the Lessee may have against Lessor, either directly or indirectly, by reason of the condition of the Equipment or its suitability for any particular purpose.

15. **Aggregate Liability.** The aggregate liability of the Lessor, if any, shall be limited to the amounts paid to the Lessor by the Lessee under the Equipment rental. In no event will the Lessor be liable for special, consequential, punitive, incidental or indirect damages (including without limitation, damages for loss of profit, loss of business opportunity and other economic loss) arising from any reason whatsoever, whether or not loss is based on contract, warranty, negligence, indemnity or otherwise. The Lessee acknowledges the foregoing and confirms it is fair and reasonable.

16. **Indemnification.** The Lessee shall indemnify and hold the Lessor harmless from and against all damages, claims, liability, losses, lost profits, penalties, fines, liens, costs and expenses, including, without limitation, all reasonable costs of collection, legal and court costs and other expenses incurred by the Lessor in the collection of any rent, any other amounts owing herein, or in connection with the enforcement of this Rental T&C which the Lessor may suffer or may be required or condemned to pay by reason of Lessee's breach of any one or more of the terms hereunder or for personal injuries (including death) or for property damages of any kind (including, without limitation damages to the Equipment) suffered by any person by reason of the Equipment or the operation, handling, transportation or use thereof during the Rental Period or by or while in the hands of the Lessee or the latter's employees, agents or carriers. The indemnification amounts shall become due and payable immediately by Lessee and are collectible without proof of damages. This indemnification shall survive the expiration or termination of the Equipment rental.

17. **Title.** Title to the Equipment shall at all times be and remain vested in the Lessor and nothing contained herein or by any corollary document hereto shall be deemed to have the effect or conferring upon the Lessee any right to title whatsoever in or to the Equipment. The Lessee shall give the Lessor immediate notice in case any of the Equipment is levied upon or from any cause becomes liable to seizure. The Lessee shall, at its sole expense, protect and defend Lessor's title as well as the interest of Lessor against any person, firm, corporation or other entity claiming against or through the Lessee and shall, at all times, keep the Equipment free and clear from any legal process or Encumbrances whatsoever (except any placed thereon by the Lessor) and shall give Lessor immediate written notice thereof and shall indemnify and hold the Lessor harmless from and against any loss caused thereby.

18. **Event of Default.** It will be an event of default, if:

    a. the Lessee fails to promptly pay when due, whether by acceleration or otherwise, any amount owing to Lessor hereunder;

    b. the Lessee fails to observe, or perform any of Lessee's obligations hereunder or breaches any of the covenants, terms or agreements herein or in any other agreement of any kind between Lessee and Lessor or Lessor's assignee;

    c. the Lessee commits or threatens to commit an act of bankruptcy or ceases or threatens to cease carrying on business as a going concern, or if a proceeding in bankruptcy, receivership, insolvency, reorganization or winding-up is instituted by or against Lessee or any of its property or any compromise or arrangement between Lessee and any of its creditors is proposed or sought;

    d. a trustee, receiver or receiver and manager is appointed for the Lessee or for part or all of the property of Lessee;

Bercon Rentals Inc.
420 Grays Road, Hamilton, ON L8E 4H6
Tel: 905.560.5500 Fax: 905.560.5502
Email: ar@berconrentals.ca Web Site: www.berconrentals.ca

e. the Equipment or any portion thereof becomes subject to any Encumbrance or to any levy or attachment (except for any Encumbrance given in favour of the Lessor or any lien, levy or attachment relating to the Lessor);

f. the Equipment is in danger of being confiscated;

g. the Lessee overtaxes, overloads, misuses, damages, destroys or abuses the Equipment or uses it for any illegal purpose.

19. **Remedies.** In the event of default the Lessor shall have the right to any of the following remedies at the Lessor's sole and exclusive discretion:

a. to declare any amounts owing by the Lessor immediately due and payable as to the Equipment without notice or demand to the Lessee; or

b. enter on the Premises and repossess the Equipment without liability to any person or property whatsoever for such entry, repossession or termination of the Equipment rental, and proceed to re-let the Equipment by way of sub-lease to other persons as agent of the Lessee in which case the Lessee herein agrees that it shall be obligated to pay the rental charges hereunder until such sub-lease is made or until the Rental Period, whichever occurs sooner. In the event of sub-lease of the Equipment the Lessee agrees to pay any deficiency in rental charges occasioned by the renting of the Equipment to another person at a lower rental charge than that provided for herein up to the termination of the Rental Period. The Lessee also agrees to pay the Lessor all costs incidental to any such repossession and sub-leasing; or

c. declare the Equipment rental to be at an end, in which case the right to possession shall immediately fall to the Lessor and the Lessee shall immediately return the Equipment to the Lessor at the Lessee's own expense and the Lessee shall immediately pay to the Lessor, as liquidated damages and not as penalty, the balance of the rental charges until the Rental Period expires. The Lessee further agrees to pay the Lessor all costs incidental to the repossession; or

d. to pursue any other remedy available to the Lessor at law or in equity, without limitation. All remedies of the Lessor hereunder are cumulative and may, to the extent permitted by law, be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed to be an election of such remedy or to preclude the exercise of any other remedy. No failure on the part of the Lessor to exercise and no delay in exercising, any right of remedy hereunder precludesany other or further exercise thereof or the exercise of any other right or remedy.

To the extent permitted by law, the Lessee waives the benefit of any statute which restricts the Lessor's enforcement right to the recovery of money due and owing, to taking possession of the Equipment, or to the choice between such recovery or taking possession. Where such a waiver is effective, taking possession of the Equipment, its surrender, or its subsequent sale, shall not affect and shall not be affected by the Lessor's right to sue Lessee, its guarantor or indemnitor, if any, for money due and owing under the Equipment rental.

20. **Theft.** The Lessor, in its own discretion, may report the Equipment as stolen when held beyond five (5) days from the contemplated termination of the Rental Period unless notified in writing by the Lessee that the Lessee wishes to extend the Rental Period to a specified date, which extension must be approved by the Lessor in its sole and absolute discretion. The Lessor, in its own discretion, may report the Equipment as stolen at any time prior to the expiry of the Rental Period if, in the Lessor’s sole and absolute discretion, there in indication that the Equipment has been subject to theft.

21. **Assignment.**

a. The Lessor may assign, at its sole discretion at any time, without notice to or the consent of the Lessee, its right, title and interest herein, the Equipment and all monies due or to become due by the Lessee. The Lessee hereby acknowledges that such assignee does not assume any obligations or liabilities of the Lessor by reason of such assignment including, without limitation, any maintenance or other service obligations and the Lessee promises and agrees to settle all claims against the Lessor directly with the Lessor and the Lessee hereby waives, relinquishes and disclaims as to such assignee all counterclaims, rights of set off and defences the Lessee may have against the Lessor in respect of any monies due. Furthermore, the Lessee hereby agrees that, upon receipt of notice from such assignee, it shall make all payments of any kind due and owing herein to the Lessor directly to such assignee. The Lessee’s rights to the Equipment shall at all times be subject and subordinate to the rights of such assignee.

b. The Lessee shall not be entitled to (i) assign its obligations with respect to the Equipment; or (ii) permit the Equipment to be subleased to or otherwise used by any other Person, without the prior written consent of the Lessor, which consent may be unreasonably withheld by the Lessor.

Bercon Rentals Inc.
420 Grays Road, Hamilton, ON L8E 4H6
Tel: 905.560.5500 Fax: 905.560.5502
Email: ar@berconrentals.ca Web Site: www.berconrentals.ca

22. **Invalidity.** If any provision herein or any part of any provision herein is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, such provision or part shall not affect the validity, legality or enforceability of any other provision herein or the balance of any provision herein absent such part and such invalid, illegal or unenforceable provision or part shall be deemed to be severed from this Rental T&C and this Rental T&C shall be construed and enforced as if such invalid, illegal or unenforceable provision or part had never been inserted herein.

23. **Headings.** The division of this Rental T&C into articles and sections and the insertion of headings is for convenience of reference only and shall not affect the construction or interpretation of this Rental T&C or any part of it.