



610 Salt Road  
 Webster NY 14580  
 Phone: (877) 617-7368  
 Fax: (585) 545-3010  
 www.rocxgroup.com

# CREDIT APPLICATION

## BUSINESS DETAILS

**NAME OF BUSINESS** \_\_\_\_\_ PHONE (\_\_\_\_) \_\_\_\_\_

**ADDRESS** \_\_\_\_\_ FAX (\_\_\_\_) \_\_\_\_\_

STREET \_\_\_\_\_ COUNTY \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIPCODE \_\_\_\_\_

IF TAX EXEMPT TAX ID # \_\_\_\_\_

**CREDIT LINE REQUESTED:** \$ \_\_\_\_\_

**AFFILIATED ENTITIES:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**IDENTITY OF OFFICERS, MEMBERS AND/OR MANAGERS**

NAME _____	NAME _____	NAME _____
HOME ADDRESS _____	HOME ADDRESS _____	HOME ADDRESS _____
CITY _____ STATE _____ ZIPCODE _____	CITY _____ STATE _____ ZIPCODE _____	CITY _____ STATE _____ ZIPCODE _____
(____) _____	(____) _____	(____) _____
PHONE _____	PHONE _____	PHONE _____
SS# _____ TITLE _____	SS# _____ TITLE _____	SS# _____ TITLE _____

## BANK REFERENCES

**1. BANK** \_\_\_\_\_ **CONTACT** \_\_\_\_\_

**ADDRESS** \_\_\_\_\_

STREET \_\_\_\_\_ CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIPCODE \_\_\_\_\_

ACCOUNT TYPE  SAVINGS \_\_\_\_\_  CHECKING \_\_\_\_\_  R.E.MORTGAGE \_\_\_\_\_

ACCOUNT NUMBER \_\_\_\_\_ ACCOUNT NUMBER \_\_\_\_\_ ACCOUNT NUMBER \_\_\_\_\_

**2. BANK** \_\_\_\_\_ **CONTACT** \_\_\_\_\_

**ADDRESS** \_\_\_\_\_

STREET \_\_\_\_\_ CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIPCODE \_\_\_\_\_

ACCOUNT TYPE  SAVINGS \_\_\_\_\_  CHECKING \_\_\_\_\_  R.E.MORTGAGE \_\_\_\_\_

ACCOUNT NUMBER \_\_\_\_\_ ACCOUNT NUMBER \_\_\_\_\_ ACCOUNT NUMBER \_\_\_\_\_

## TRADE REFERENCES

**1. COMPANY** \_\_\_\_\_ **CONTACT** \_\_\_\_\_ **YRS DONE BUSINESS WITH** \_\_\_\_\_

**ADDRESS** \_\_\_\_\_

STREET \_\_\_\_\_ CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIPCODE \_\_\_\_\_

PHONE NO. (\_\_\_\_) \_\_\_\_\_ FAX (\_\_\_\_) \_\_\_\_\_

**2. COMPANY** \_\_\_\_\_ **CONTACT** \_\_\_\_\_ **YRS DONE BUSINESS WITH** \_\_\_\_\_

**ADDRESS** \_\_\_\_\_

STREET \_\_\_\_\_ CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIPCODE \_\_\_\_\_

PHONE NO. (\_\_\_\_) \_\_\_\_\_ FAX (\_\_\_\_) \_\_\_\_\_

**3. COMPANY** \_\_\_\_\_ **CONTACT** \_\_\_\_\_ **YRS DONE BUSINESS WITH** \_\_\_\_\_

**ADDRESS** \_\_\_\_\_

STREET \_\_\_\_\_ CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIPCODE \_\_\_\_\_

PHONE NO. (\_\_\_\_) \_\_\_\_\_ FAX (\_\_\_\_) \_\_\_\_\_

# BUSINESS INFORMATION

STATE OF INCORPORATION/ STATE OF ORGANIZATION _____	DATE INCORPORATED / ORGANIZED _____	NATURE OF BUSINESS _____
REAL ESTATE OWNED _____	ADDRESS _____	CITY _____ STATE _____
DATE PURCHASED _____	MKT VALUE _____	MTG BAL _____
REAL ESTATE OWNED _____	ADDRESS _____	CITY _____ STATE _____
DATE PURCHASED _____	MKT VALUE _____	MTG BAL _____

# AGREEMENT

## IF CREDIT IS GRANTED, THE UNDERSIGNED APPLICANT AGREES:

1. To pay all invoices within thirty (30) days of the statement due.  
Terms are two-percent (2%) 10th net thirty (30) days, with NO DISCOUNT ON SALES TAX;
2. That RocxGroup will not accept credit cards in payment of existing debt. Credit card payments will only be accepted for payments for the net amount of the sale at the time of shipment;
3. To notify RocxGroup in writing within seven (7) days after receipt of any invoice or statement that is disputed for any reason;
4. To pay service charges of one & one-half percent (1 ½ %) per month on account balances due over thirty (30) days;
5. To pay all of RocxGroup' collection costs including, without limitation, reasonable attorneys' fees;
6. That RocxGroup may rely on the information herein and it authorized to contact the references listed above and credit agencies in the connection with investigating the undersigned's credit and financial responsibility; and
7. That the credit terms are subject to change at any time without prior notice.

8. Applicant acknowledges that sales and rental of Equipment are subject to the RocxGroup General Terms and Conditions a copy of which has been furnished to Applicant; Applicant acknowledges that RocxGroup reserves the right to change such Terms and Conditions at its discretion.
9. Applicant agrees that sales and rental agreements for RocxGroup are governed by New York law and that any legal proceedings brought concerning Equipment sold or rented, or to collect any sums due RocxGroup, may be brought only in a State or Federal Court sitting in Monroe County, New York, and applicant consents to and submits to the jurisdiction of such courts for such purposes.

NAME OF BUSINESS: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

PRINT TITLE: \_\_\_\_\_

\*A personal guarantee is required for all corporate/limited liability company, limited partnership accounts (form attached).

# GUARANTY AGREEMENT

## ROCXGROUP LLC

610 Salt Road Webster NY 14580 Phone: (585) 545-3000 | Fax: (585) 545-3010 www.rocxgroup.com

# GUARANTY AGREEMENT

The undersigned hereby jointly and severally guaranty to RocxGroup LLC ("RocxGroup") the full and prompt payment when due of all indebtedness now existing or which may hereafter arise by reason of Equipment sold or rented by RocxGroup or any subsidiary or affiliate of RocxGroup to \_\_\_\_\_, and/or to any of its divisions, affiliates or subsidiaries (hereinafter collectively called the "Customer"). This guaranty is continuing and unconditional. The term "undersigned" as used in this guaranty shall mean each person who has signed this guaranty. This guaranty is given in order to induce RocxGroup to extend credit to Customer. RocxGroup is unwilling to extend credit or continue to extend credit to Customer without this guaranty. This guaranty is given for good and valuable consideration, including without limitation, financial accommodations given by RocxGroup to Customer in the past.

This guaranty shall continue until RocxGroup receives written notice of cancellation of this guaranty by registered mail signed by the undersigned. Any cancellation notice shall not, however, affect any liability on any transaction covered by this guaranty before the written cancellation notice is received by RocxGroup.

The undersigned hereby jointly and severally waive: notice of acceptance of this guaranty, notice of presentment, demand for payment or notice of protest of any of Customer's obligations, and all defenses, offsets or counterclaims the undersigned may have against Customer or RocxGroup. The undersigned also waives all subrogation rights that it has against Customer and Customer's property.

The undersigned jointly and severally agree that RocxGroup may, without noticed, extend, in whole or part, the time of payment of any indebtedness or obligations due RocxGroup from Customer or renew or modify any agreement with Customer without affecting the undersigned's indebtedness or obligation under the guaranty. The undersigned also agrees to pay reasonable attorneys' fees, costs and disbursements incurred by RocxGroup in enforcing this guaranty.

**This guaranty is being signed by the undersigned in his/her individual capacity. Any descriptive terms placed after the undersigned's name shall not affect his/her personal liability hereunder.** All words in the singular or male gender shall be deemed to be in the plural or female gender when the context and construction so require. The undersigned agrees to submit to the jurisdiction of the courts in the State of New York, either State or Federal, and that any action or proceeding on this guaranty shall be venued in Monroe County, New York. The undersigned authorizes RocxGroup to contact credit agencies and investigate the credit and financial standing of the Customer and the undersigned.

This is the total agreement of the parties and can only be modified in writing signed by RocxGroup and the undersigned.

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

WITNESS: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

WITNESS: \_\_\_\_\_

# CONDITIONS OF SALE

## ROCXGROUP LLC

### GENERAL TERMS AND CONDITIONS OF SALE:

**1. General:** As used herein, "Rental Contract" refers to the Equipment Rental Rental Contract to which these General Terms and Conditions of Rental are appended. "RocxGroup" refers to RocxGroup HEAVY EQUIPMENT SALES AND RENTAL. RocxGroup is also referred to in the Rental Contract as Lessor. "Lessee" refers to the Lessee identified as such on the first page of the Rental Contract. "Equipment" refers to the personal property described in the Rental Contract and which is the subject of the rental to Lessee (including all accessories and attachments). "Manufacturer" refers to the manufacturer of the Equipment. "Store" refers to the RocxGroup business premises identified on the first page of the Rental Contract. "Job Site" refers to the location where the Equipment will be used by Lessee, as identified on the first page of the Rental Contract. Other capitalized terms are defined below.

LESSEE UNDERSTANDS AND AGREES THAT RocxGroup IS RENTING THE EQUIPMENT BASED UPON AND IN RELIANCE UPON THESE TERMS AND CONDITIONS, UNMODIFIED BY ANY ORAL OR WRITTEN STATEMENTS BY LESSEE OR BY ANY TERMS CONTAINED IN ANY WRITING OF LESSEE. LESSEE'S SIGNATURE ON THE RENTAL CONTRACT CONSTITUTES LESSEE'S ACKNOWLEDGEMENT AND AGREEMENT TO ALL OF THE TERMS CONDITIONS STATED HEREIN. BY TAKING DELIVERY OF THE EQUIPMENT, LESSEE ACKNOWLEDGES AND AGREES THAT THESE TERMS AND CONDITIONS APPLY WHETHER OR NOT LESSEE HAS SIGNED THESE TERMS AND CONDITIONS.

**2. Terms and Conditions Pertaining to the Rental of Equipment:** Lessee and RocxGroup acknowledge and agree to all of the following as well as to the terms and conditions set forth on the first page of the Rental Contract:

**(a) Condition of Equipment at Delivery; Inspection:** Prior to taking possession of the Equipment from RocxGroup, Lessee personally inspected the Equipment and found it to be in good and safe condition, free from defects and suitable for the purposes for which Lessee is renting the Equipment.

**(b) Loading/Unloading:** Unless otherwise indicated on the first page of the Rental Contract, Lessee is responsible for transport of the Equipment from the RocxGroup Store to the Job Site, and its return to the RocxGroup Store at the end of the rental period. If Lessee is responsible for transport, Lessee acknowledges that it is Lessee's responsibility to secure the Equipment on Lessee's transport vehicle. The Lessee may request the RocxGroup employees to assist in the loading of the Equipment. If such assistance is provided, Lessee agrees to assume the risk of, hold RocxGroup harmless from, and defend RocxGroup against any losses (including but not limited to property damage and personal injury) which might result from such loading and unloading and at all times when the Equipment is in Lessee's possession. RocxGroup DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO WHETHER THE EQUIPMENT HAS BEEN LOADED IN A SAFE AND SECURE MANNER ONTO LESSEE'S TRANSPORT VEHICLE. Lessee also acknowledges that if it has inspected the trailer coupling mechanisms and safety chain before leaving RocxGroup premises and the same is in good working order and condition. Lessee agrees to maintain the trailer coupling mechanism and safety chain in good working order and condition, and to inspect the same periodically, but not less than every 250 miles.

**(c) Equipment Use; Compliance with Laws.** Lessee acknowledges that RocxGroup has no control over the utilization and use of the Equipment by Lessee, the trade or occupation of Lessee, and the qualifications for lack thereof of the Lessee to use the Equipment. Lessee shall operate the Equipment and assumes any and all, responsibility to guarantee that the Equipment is used only: (i) at the Job Site (unless Lessee notifies RocxGroup of a different or additional address at which the Equipment is to be used and the duration of intended use at such other location); (ii) for the purposes for which the Equipment was manufactured and intended as set forth in the Manufacturer's safety and operating instructions, and (iii) by a "Properly Trained Individual", defined as a person employed by Lessee who is at least 21 years old and has received the training and instruction necessary to operate the Equipment in correct and safe manner. Use of the Equipment (a) in violation of any of the preceding clauses (i), (ii), (iii) and/or (b) in any manner which constitutes an exception to the Loss/Damage Waiver (whether or not Lessee elected or declined such Loss/Damage Waiver) is prohibited and shall constitute "Improper Use." Lessee further agrees that at Lessee's sole expense, Lessee will comply with all governmental safety or health regulations (including without limitation the Occupational Safety and Health Administration (OSHA) and Mine Safety and Health Administration (MSHA), all operational and/or maintenance standards or requirements, and all municipal, county, state and federal laws applicable to the use of the Equipment. Lessee agrees that RocxGroup shall have no responsibility for Lessee's compliance therewith. All licenses, fees or taxes arising from Lessee's rental and/or use of the Equipment shall be paid for by Lessee.

**(d) Rental Period.** The "Rental Period" shall be defined as the period of time for and during which the Equipment is rented to Lessee as set forth on the first page of this Rental Contract, plus any and all extension(s) granted pursuant to Subsection 2(f) below. Notwithstanding the stated Rental Period, Rental Charges as provided in Section 1(e), below, commence accruing upon the earlier of the date for delivery set forth on the first page of this Rental Contract or when the Equipment leaves the RocxGroup Store, and shall continue to accrue until the Equipment is returned to RocxGroup as provided for in Section 2(g), below. Rental Charges accrue during weekends and holidays. In the event Lessee returns the Equipment prior to the expiration of the Rental Period set forth on the first page of this Rental Contract, Lessee shall be required to pay (a) the Rental Charges set forth on the first page of this Rental Contract or (b) Rental Charges for the actual period during which the Equipment out of RocxGroup possession, whichever is greater.

**(e) Rental Charges:** As consideration for the rental of the Equipment, Lessee agrees to pay rental charges ("Rental Charges") at the rate set forth in the first page of this Rental Contract. Lessee also agrees to comply with the other terms and conditions of this Rental Contract. The rental rate on the first page of this Rental Contract is for Equipment usage not exceeding a maximum of 8 hours in any one day ("Daily Maximum Usage"), 5 eight hour days in any one week ("Weekly Maximum Usage") and 20 eight-hour days in any 30 consecutive day period ("Monthly Maximum Usage") (collectively, "Normal Usage"). USAGE AND LOCATION OF THE EQUIPMENT MAY BE MONITORED BY METER OR SATELLITE/GPS MONITORING. Use in excess of the Normal Usage, or usage in violation of the terms and conditions of this Agreement, shall be deemed "Excessive Usage." In the event of Excessive Usage, Lessee shall pay Rental Charges for each hour or fractional hour of Excess Usage at the "Overtime Rate" indicated on the first page of this Rental Contract. Rental Charges do not include fuel. Lessee is solely responsible for payment of fuel and other consumables used in the operation of the Equipment

**(f) Extension of Rental Period.** In the event Lessee desires to extend the Rental Period beyond the expiration date stated on the first page of this Rental Contract, Lessee shall immediately make a written request to RocxGroup for such extension, including the proposed expiration date for such extension. Upon written approval of such extension by the RocxGroup, Lessee and RocxGroup will execute a written extension setting forth the terms of such extension. Unless otherwise indicated in such written extension, all terms and conditions of this Rental Contract shall apply during the extension. In the event Lessee does not return the Equipment upon the expiration of the Rental Period and any approved extension, the Lessee's obligations to pay Rental Charges and observe the terms of this Rental Contract, shall continue until such

time as the Equipment is returned. In addition, RocxGroup shall be entitled to pursue any and all of its rights, remedies and damages for such failure to timely return the Equipment.

**(g) Return of the Equipment.** Lessee acknowledges and agrees that (i) Lessee shall return the Equipment to the Store (or such other location as RocxGroup may direct) during normal business hours at the end of the Rental Period; (ii) RocxGroup may suffer economic damages in the event of Lessee's failure to timely return the Equipment, for which Lessee agrees it will be fully liable, and (iii) until such time as Lessee returns the Equipment to RocxGroup, Lessee will be legally responsible to pay the applicable rental rate as stated on the first page of this Rental Contract. Additionally, failure to return the Equipment within forty-eight (48) hours of the expiration of the Rental Period (or any extension thereof), in certain circumstances, may be construed as evidence of an intention to fraudulently convert the Equipment and RocxGroup may, in its sole discretion, report to law enforcement authorities that the Equipment is missing and may have been stolen.

**(h) Condition of Equipment upon Return.** Prior to its return, Lessee shall clean the Equipment and return the Equipment to RocxGroup in the same condition as when the Equipment was received by Lessee, reasonable wear and tear resulting from Normal Usage, excepted. Unless Lessee has elected and paid for the Loss/Damage Waiver provided for in Section 2(n), below, Lessee agrees to pay for any and all loss or damage to the Equipment occurring during the period between the delivery of the Equipment to Lessee and its return to RocxGroup, regardless of how or by whom caused. If Lessee has elected and paid for the Loss/Damage Waiver, Lessee shall not be obligated to pay for loss or damage to the extent the cause of such loss or damaged is covered by the terms thereof (See Section 2(n), below). Reasonable wear and tear shall mean the normal natural deterioration of Equipment caused by Normal Use in accordance with the terms of this Rental Contract. In the event of Excessive Usage, in addition to paying Rental Charges at the Overtime Rate, Lessee shall reimburse RocxGroup for the costs of refurbishing or otherwise restoring the wear and tear attributable to such Excessive Usage and any other damages (including loss of value and loss of useful life) caused by such Excessive Usage. If the Equipment is returned unclean, Lessee will pay RocxGroup for cleaning at the rate set forth on the first page of the Rental Contract. Excess tire or rubber track wear will be prorated based on the tire vendor's wear chart. Any tire or rubber track with cuts to the cord or severe tread chunks missing will be the responsibility of the Lessee. Lessee will reimburse RocxGroup upon invoicing for new tire costs plus installation (including service call) less pre-existing wear. Equipment must be returned with at least as much fuel as when delivered to Lessee. Costs of refueling by RocxGroup will be charged to Lessee at the rate on the first page of this Rental Contract.

**(i) Payment of Charges; Non-Payment.** Lessee agrees to pay to RocxGroup, all Rental Charges and other amounts (including reimbursement for damages and Excess Usage) due by Lessee as provided for herein. Rental Charges will be paid in advance unless an approved credit account has been established. Rental and other amounts due by approved credit Lessees, and all other amounts (including damages) due by non-credit approved Lessees, are due net 30 days upon receipt of an invoice from RocxGroup. A service charge equal to the lesser of 1.5% or the maximum rate permitted by applicable law, will be charged on all accounts which are overdue. RocxGroup reserves the right to require and advance deposit on any rental. In the event of non-payment when due, Lessee shall reimburse RocxGroup for all costs of collection including, without limitation, reasonable attorney fees, court costs and any other expenses actually incurred.

**(j) Liability for Damage to Persons and Property; Indemnification.** Lessee assumes the risk of any and all damage or injury to persons or property of any kind or nature, including wrongful death, caused by, resulting from or in any way connected with the use of the Equipment while the Equipment is subject to the terms of this Rental Contract, or arising out of the breach of any provision of this Rental Contract. Lessee agrees to indemnify and hold harmless RocxGroup and its members, officers, employees, successors and assigns, from and against any and all suits, actions, proceedings, claims, judgments, demands, damages, losses, costs and liabilities of any kind or nature (including, but not limited to, all attorney's fees and defense costs) (collectively "Losses") caused by, resulting from or in any way connected with the use of Equipment at any time while it is subject to the terms of this Rental Contract, or arising out of a breach of any provision of this Rental Contract. Such indemnification shall apply whether or not such Losses were caused by the active or passive negligence or other fault of RocxGroup or any other person indemnified hereunder including. Losses include but are not limited to claims of wrongful death of employees of Lessee or anyone else, property damage and any of the foregoing whether based on contract or tort including claims arising or imposed in accordance with the doctrine of strict or absolute liability. Lessee's indemnification obligations contained in this Section 1(j) shall survive the expiration or termination of this Rental Contract.

**(k) Liability for Loss or Total Destruction of Equipment.** In the event of (a) loss, (b) total destruction, (c) loss of possession of the Equipment, or (d) Lessee's inability to return the Equipment to RocxGroup for any reason whatsoever, Lessee shall pay RocxGroup the full replacement value of the Equipment, together with the applicable Rental Charges at the rate set forth on the first page of this Rental Contract. Payment of the applicable rental rate shall continue until such time as RocxGroup, using commercially reasonable efforts, is able to replace the Equipment. Lessee's payment obligation under this provision may be reduced by Lessee's election of the Loss/Damage Waiver, if the cause of such loss or total destruction is covered by the terms thereof

**(l) Equipment Maintenance and Storage.** Lessee shall, at its own expense, maintain the Equipment in a careful and proper manner and, in any event, in accordance with Manufacturer's specifications. Lessee shall store the Equipment in a safe and secure location and shall take all commercially reasonable measures necessary to protect the Equipment against theft, vandalism, or malicious mischief.

**(m) Equipment Damage or Malfunction.** If the Equipment is damaged (including damage caused by Excessive Usage or Improper Use) or malfunctioning in any way, Lessee shall immediately discontinue use of the Equipment, and also immediately notify RocxGroup of such damage or malfunction. RocxGroup agrees that, within a reasonable period of time of receiving such notification, it will repair the Equipment (or, within RocxGroup's sole discretion, replace such Equipment with a like piece of Equipment.) If the RocxGroup deems it advisable to repair the Equipment, Lessee shall be liable to RocxGroup for (i) the cost, including parts and labor, either incurred by RocxGroup to have the Equipment repaired by a third party or customarily charged by RocxGroup to perform such repairs, and (ii) the applicable Rental Charges at the rate on the first page of this Rental Contract until such repair has been completed. Lessee shall not be liable for the foregoing if the Equipment is malfunctioning (not damaged) and such malfunction is not related to Lessee's use or operation of the Equipment. If, in RocxGroup's sole discretion, the Equipment is damaged to such an extent that the Equipment cannot be adequately repaired, RocxGroup may consider such damage to be a total loss, and Lessee shall be liable to RocxGroup as though such damage constitutes a total loss. Such liability may be reduced by a reasonable estimate of the scrap value, if any, of the Equipment.

**(n) Loss/Damage Waiver. NOTE: THIS IS NOT INSURANCE. IF LESSEE ACCEPTS THE LOSS/DAMAGE WAIVER, IN CONSIDERATION OF THE ADDITIONAL CHARGE PAID BY LESSEE, LESSEE'S LIABILITY FOR LOSS OR DAMAGE TO THE EQUIPMENT SHALL BE MODIFIED ONLY AND STRICTLY AS FOLLOWS:**

# CONDITIONS OF SALE

## ROCXGROUP LLC

### GENERAL TERMS AND CONDITIONS OF SALE: (continued)

- (i) **Loss or Damage Resulting from Theft/Vandalism:** In the event the loss or damage to the Equipment is caused by theft or vandalism (other than by Lessee), Lessee shall report such loss or damage to RocxGroup and the police or other proper authority no later than twenty-four (24) hours after occurrence, and Lessee shall furnish to RocxGroup, within ten (10) days of such loss or damage, a copy of the written police report or the report of another proper authority regarding such loss or damage. Provided that Lessee reports such loss or damage as provided for herein, and is otherwise in compliance with Section 1(i), above, RocxGroup agrees to limit its claim against Lessee to the lesser of: (a) two (2) times the four (4) week rental rate for such Equipment, or (b) the actual out of pocket loss or damage incurred by RocxGroup after application of applicable insurance proceeds.
- (ii) **Loss of Damage Not Resulting from Theft/Vandalism:** In the event that the loss or damage to the Equipment is not caused by theft or vandalism and is not a result of one or more of the causes set forth below, RocxGroup shall waive its claim against Lessee for such loss or damage; provided, however, Lessee reports such loss or damage to RocxGroup not later than twenty-four (24) hours after the occurrence. Lessee's liability to RocxGroup for loss or damage to the Equipment is NOT waived by RocxGroup under any of the following circumstances:
- a. Loss or damage from overloading or exceeding the rated capacity of the Equipment or other misuses or improper use of the Equipment;
  - b. Loss or damage from the Equipment striking overhead objects;
  - c. Loss or damage associated with the Equipment's rollover or upset;
  - d. Loss or damage resulting from lack of neglect of proper servicing of Equipment, including without limitation, the proper lubrication of the Equipment;
  - e. Loss or damage to the Equipment resulting from any exposure to radioactive, contaminated or other hazardous material;
  - f. Loss, damage, or failure of tires and tubes under any circumstances;
  - g. Loss or damage relating to use or operation of the Equipment for any illegal purpose, in any illegal manner, or in violation of any law or ordinance;
  - h. Loss or damage relating to use or operation of the Equipment (i) by any person other than an employee of Lessee who has been properly trained to operate the Equipment, or (ii) in violation of the Manufacturer's or operating safety instructions;
  - i. Loss or damage associated with altering the Equipment to be used in a manner in which it was not intended to be used;
  - j. Loss or damage caused by boom or mast damage from overloading or from the collision or striking of other objects when the boom or mast is in motion;
  - k. Loss or damage of any nature to scaffolding;
  - l. Loss or damage during the loading, unloading or transportation of the Equipment;
  - m. Loss or damage caused by dishonesty of Lessee, its employees or persons to whom the Equipment is entrusted;
  - n. Loss or damage caused by third parties or during unauthorized use of the Equipment;
  - o. Loss due to mysterious disappearance of Equipment; and
  - p. Loss or damage related to use of the Equipment in violation of any of the terms of this Rental Contract.

THIS LOSS/DAMAGE WAIVER IS NOT INSURANCE AND DOES NOT PROTECT LESSEE FROM LIABILITY TO OTHERS ARISING OUT OF POSSESSION, USE OR OPERATION OF THE EQUIPMENT. LESSEE HEREBY ACKNOWLEDGES REVIEWING THIS RENTAL CONTRACT, SPECIFICALLY SECTIONS 2(n) and 2(o) WITH ITS INSURANCE AGENT.

- (o) **Insurance.** Lessee shall provide, at its own expense, Commercial General liability insurance (including bodily injury and property damage liability coverage) to insure both Lessee and RocxGroup and its members, employees and agents, with limits of not less than \$1,000,000 per occurrence and aggregate covering bodily injury, death and property damage. The insurance shall name RocxGroup as an "Additional Insured" on a primary and non-contributory basis and a per project aggregate shall apply with a Waiver Of Subrogation clause in favor of RocxGroup. In addition, if the Equipment is to be used on any roadway, Lessee shall provide, at its own expense, automobile liability and physical damage insurance including comprehensive, collision and other standard coverages for roadway vehicles with a \$1,000,000 Per Occurrence limit. Said Insurance shall name RocxGroup as an "Additional Insured" on a primary and non-contributory basis. The Lessee's Insurance Carrier(s) shall have a rating in Best's Rating Guide of not less than A- V and be an "Admitted Carrier" in New York State. In addition, Lessee shall provide, at its expense, property casualty insurance with extended coverage to cover damage to the Equipment in an amount sufficient to cover the full replacement value of the Equipment. Lessee shall also maintain workers compensation insurance within statutory limits. All of the foregoing are hereafter collectively referred to as the "Insurance Coverages." Prior to taking delivery of the Equipment, Lessee shall provide a Certificate of Insurance evidencing such Insurance Coverages in form acceptable to RocxGroup, and which shall: (i) include a non-owned vehicle endorsement, (ii) waive any right of subrogation against RocxGroup and (iii) name RocxGroup as Additional Insured on all liability coverages and a Loss Payee on all property casualty insurance. Lessee shall keep such insurance in force until the Equipment has been returned to RocxGroup. The Certificate of Insurance shall provide for a 30-day notice of cancellation to RocxGroup. In the event that Lessee fails to maintain the required Insurance Coverages in force and effect, Lessee agrees to pay all losses incurred by RocxGroup as a result thereof, including all deductibles. LIABILITY COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS WILL NOT BE PROVIDED BY ROCXGROUP UNDER ANY CIRCUMSTANCES.
- (p) **Subrogation.** If the Lessee has any right of recovery in the event of any loss or damage to the Equipment, RocxGroup will be subrogated to any such right of Lessee to recover against any person, firm or entity, and Lessee will execute and deliver whatever else is necessary to secure such rights. Lessee will cooperate fully with RocxGroup and/or its insurer(s) in the protection of RocxGroup's right to subrogation, and Lessee will neither take nor permit any action to prejudice RocxGroup's rights or its insurer's rights with respect thereto.
- (q) **Ownership of Equipment.** RocxGroup holds all title and ownership rights in the Equipment. Lessee shall not (1) pledge or mortgage the Equipment, (2) subject the Equipment, or allow it to be subjected, to any lien, or (3) permit any charge against, or encumbrance on, the Equipment. Lessee agrees that RocxGroup may inspect and examine the Equipment, observe Lessee's use and operation thereof, and re-take the Equipment at any time if RocxGroup reasonably believes that Lessee has at any time compromised or may compromise, in any way RocxGroup's ownership interest in the Equipment. At its discretion, RocxGroup may file a Uniform Commercial Code Financing Statement to give notice of this Rental Contract.
- (r) **Financing.** This Rental Contract and all of Lessee's rights in and to the Equipment hereunder are subject and subordinate to any rights, title and interest of any and all persons who have financed or leased the Equipment to RocxGroup pursuant to any contracts or instruments ("Financings"). Lessee acknowledges that this Rental Contract, together with any and all rights to the Equipment shall, at the option of such persons, be subordinate to and shall terminate upon the occurrence of any event of default under such Financings.
- (s) **Default.** Lessee's failure to perform any provision of this Rental Contract shall give RocxGroup the right to terminate this Rental Contract and immediately retake possession of the Equipment. Should RocxGroup retake possession of the Equipment, Lessee shall be fully liable for all Rental Charges through the date of retaking, together with damages, costs and expenses resulting therefrom. Lessee acknowledges that RocxGroup shall be permitted to pursue any and all other remedies available at law and in equity (including money damages, specific performance and injunctive relief). Lessee agrees that RocxGroup and its agents may enter the premises where the Equipment is located and take all action necessary to take control of and retake the Equipment, without prior notice to Lessee and without process of law. LESSEE HEREBY WAIVES ANY RIGHT OF ACTION AGAINST ROCXGROUP FOR SUCH RETAKING OR ENTRY.
- (t) **Disclaimer of Warranties; Limitation of Liability.** LESSEE UNDERSTANDS AND ACKNOWLEDGES THAT ROCXGROUP IS NEITHER THE MANUFACTURER OF THE EQUIPMENT NOR THE AGENT OF THE MANUFACTURER. ROCXGROUP MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY FOR INTENDED USE, DESIGN, OR WORKMANSHIP OF THE EQUIPMENT. LESSEE ACKNOWLEDGES THAT, EXCEPT FOR ANY WARRANTY PROVIDED BY THE MANUFACTURER OF THE EQUIPMENT, THE EQUIPMENT IS BEING RENTED TO LESSEE ON AN "AS IS" AND "WITH ALL FAULTS" BASIS, WITHOUT ANY WARRANTIES, EXPRESS OR IMPLIED, AS TO CONDITION AND WITHOUT ANY RECOURSE WHATSOEVER TO ROCXGROUP. LESSEE FURTHER ACKNOWLEDGES THAT IT IS RELYING SOLELY ON ITS OWN EXAMINATION OF THE EQUIPMENT AND IS NOT RELYING ON ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, FROM ROCXGROUP. LESSEE HEREBY EXPRESSLY ASSUMES THE RISK OF, AND RELEASES AND WAIVERS ANY AND ALL RIGHTS THAT IT MAY HAVE AGAINST ROCXGROUP FOR, ANY AND ALL LIABILITIES AND DAMAGES, INCLUDING INCIDENTAL AND CONSEQUENTIAL DAMAGES, CAUSED BY, RESULTING FROM OR IN ANY WAY CONNECTED WITH THE EQUIPMENT, THE OPERATION OR USE OF THE EQUIPMENT, ANY DEFECT IN OR FAILURE OF THE EQUIPMENT, AND/OR ROCXGROUP'S FAILURE TO PRESENT OR DELIVER THE EQUIPMENT.
- 3. Additional Terms:**
- (a) **Authority to Sign; Complete Information.** The person executing this Rental Contract on behalf of Lessee hereby acknowledges that (i) he/she is a representative or agent for Lessee, (2) he/she is authorized to sign this Rental Contract as a representative or agent, and (3) by his/her signature hereon, he/she makes such Lessee liable in full for payment of all charges and performance of all obligations imposed upon Lessee pursuant to this Rental Contract. Lessee represents and warrants that all information furnished to RocxGroup by Lessee is true, correct and complete.
- (b) **Attorney's Fees.** Lessee agrees to pay all attorney fees and expenses incurred by RocxGroup in the enforcement of the terms and conditions of this Rental Contract.
- (c) **Severability.** If any provision of this Rental Contract shall be held invalid or unenforceable by competent authority, such provision shall be construed so as to be limited or reduced to be enforceable to the maximum extent compatible with the law as it shall then appear. The total invalidity of unenforceability of any particular provision of this Rental Contract shall not affect the other provisions hereof, and this Rental Contract shall be construed in all respects as if such invalid or unenforceable provision were omitted.
- (d) **Waiver.** Any failure by RocxGroup to insist upon strict performance by Lessee of any term of this Rental Contract shall not be construed as a waiver by RocxGroup of its right to demand strict compliance herewith.
- (e) **Captions.** The captions herein were provided solely for reference and shall have no bearing on the interpretation of this Rental Contract.
- (f) **Entire Agreement.** This Rental Contract shall constitute the entire agreement between the parties hereto and supersedes all prior agreements and contracts, written or oral, concerning the subject matter herein and there are no oral understandings, statements or stipulations bearing upon the effect of this Rental Contract which have not been incorporated herein.
- (g) **Governing Law.** The laws of the State of New York shall govern the interpretation, validity and performance of the terms of this Rental Contract.
- (h) **Litigation.** Any litigation involving this Rental Contract shall be adjudicated in a court with jurisdiction located in Monroe County, New York and the parties irrevocably consent to the personal jurisdiction and venue of such court.
- (i) **Counterparts.** This Rental Contract may be executed simultaneously in one or more counterparts, each one of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (j) **Assignment.** Lessee shall not assign, transfer or sublet Lessee's rights or obligations under this Rental Contract. Any attempted assignment by Lessee shall be null and void, RocxGroup may assign, or transfer its rights and/or obligations under this Rental Contract without the Consent of Lessee. Lessee agrees that an assignee of RocxGroup may succeed to and be entitled to exercise all the rights of RocxGroup. Such assignee's rights shall be free from all defenses, offsets, setoffs, recoupments, or counter claims which Lessee may be entitled to assert against RocxGroup. No such assignee shall be obligated to perform any duty, covenant or condition required to be performed by RocxGroup under the terms of this agreement.
- (k) **Modification.** This Rental Contract may be modified or amended only by a written instrument signed by each of Lessee and RocxGroup.
- RocxGroup LLC** has the following active assumed names:
- RocxGroup Equipment Sales and Rental
  - RocxGroup Equipment Sales
  - RocxGroup Equipment Rental
  - RocxGroup



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