



## TERMS AND CONDITIONS OF CONTRACT (GA)

This document is a contract between Phoenix Crane Service, Inc. hereinafter referred to as Lessor, and the Customer or Lessee, for service and/or equipment for a project in common and is comprised of the face and reverse side. Please read both sides in their entirety, as they contain important terms and conditions. The term "LESSOR" shall include the Lessor, its parent, subsidiaries, affiliates, partners, joint interest owners, members, shareholders, co-owners, and joint ventures, if any, and the agents, officers, directors, employees and representatives of these other persons. The term "LESSEE" shall include the Lessee, its parent, subsidiaries, affiliates, and joint ventures, if any, as well as its subcontractors, and the agents, officers, directors, employees and representatives of these other persons.

**1. Defense, indemnification and hold harmless:** in consideration of and in exchange for the use of lessor's equipment for the purposes of lifting and/or hoisting materials or property, to the fullest extent permitted by law, lessee agrees to indemnify, hold harmless and defend lessor, its employees and agents, from all claims for death or injury to persons, including lessor's employees, for all loss, damage or injury to property, including the equipment, arising in any manner out of lessee's work and/or use of the equipment and operator. Pursuant to Georgia code §13-8-2, lessee shall not be required to indemnify, hold harmless, insure, or defend lessor, including lessor's officers, agents, or employees, against liability or claims for damages, losses, or expenses, including attorneys' fees, arising out of bodily injury to persons, death, or damage to property caused by or resulting from the sole negligence of the lessor or its officers, agents, or employees. The indemnification above shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for the lessee under workers' compensation acts, disability benefits acts, or other employee benefits acts. Lessee's obligations hereunder shall further not be limited by the amount of its liability insurance, and the providing of such insurance for lessor shall not operate to waive any of the above obligations. This provision is separate and distinct from any other provision or paragraph in this contract, including any provision or paragraph concerning indemnification and providing of insurance. If this paragraph is declared invalid, then all other paragraphs of this contract shall stand. The lessee's obligation to indemnify lessor shall survive the termination of this agreement.

**2. INSURANCE** – Pursuant to Georgia Code § 13-8-2, the Lessee shall not be required to insure Lessor, including Lessor's officers, agents, or employees against liability or claims for damages, losses, or expenses, including attorneys' fees, arising out of bodily injury to persons, death, or damage to property caused by or resulting from the sole negligence of the Lessor or its officers, agents, or employees. Subject to the foregoing code section, the Lessee at its expense agrees to carry, maintain and provide the following insurance coverages prior to the Equipment's arrival on the job site; a) worker's compensation and employer's liability insurance applicable to Lessee's employees, with limits of at least the statutory minimum or \$1,000,000, whichever is greater; b) primary non-contributory commercial general liability insurance on an occurrence basis, including bodily injury and property damage coverages with minimum limits of \$1,000,000 per occurrence and \$2,000,000, in the aggregate; c) follow form excess/umbrella non-contributory insurance in the amount of at least \$5,000,000; said primary and excess/umbrella policies must be endorsed so that they are primary and non-contributory to all of Lessor policies; d) inland marine/all-risk physical damage insurance, on a primary non-contributory basis, to cover the full replacement cost of the Equipment, including any boom or jib, for its loss or damage from any and all causes of loss; said insurance policy shall include loss of use coverage for Contractor's Equipment,



Leased, Rent, Borrowed, including Continued Rental Expenses coverage for at least \$500,000; e) riggers liability insurance with minimum limits of \$1,000,000 per occurrence and \$2,000,000, in the aggregate; f) the Lessor and all affiliated partnerships, joint ventures, corporations and anyone else who Lessor is required to name as an additional insured, are to be included as additional insureds on all liability insurance policies, including excess/umbrella policies on ISO endorsement forms CG 20 10 10 01, CG 20 37 10 01, CG 20 28 07 04, and CG 20 34 03 97. Lessee shall name Lessor as a Loss Payee and Additional Insured on all insurance policies, and Lessee shall provide all insurance certificates and/or insurance policies to Lessor when requested; g) all Lessee's policies must remove any exclusion for explosion, collapse and underground operations (XCU); h) all Lessee's policies must remove the "employer's liability exclusion" for all additional insureds; i) all of Lessor's policies and the policies of anyone Lessor is required to insure, are excess over all of Lessee's policies. To the extent that the Lessee may perform under this agreement without obtaining the above coverages, such an occurrence shall not operate, in any way, as a waiver of the Lessor's right to maintain any breach of contract action against Lessee. Lessee hereby agrees to waive any and all rights of subrogation and any and all lien rights which may accrue to it or its insurers. Lessee understands that this waiver shall bind its insurers of all levels and agree to put these insurers on notice of this waiver and to have any necessary endorsements added to the insurance policies applicable to this agreement. To the extent that the Lessor may perform under this Agreement without obtaining the above coverage, such an occurrence shall not operate, in any way, as a waiver of Lessor's right to maintain any breach of contract action against the Lessee.

**3. OPERATION OF EQUIPMENT** - It is expressly agreed by and between the parties hereto that the Equipment and all persons operating the Equipment are under the supervision and control of Lessee under this lease. In the absence of Lessee's presence at the jobsite, the parties expressly agree that all persons operating the Equipment are under the direct supervision and control of Subcontractor hired by Lessee. In the event that Lessee assigns the task of supervision to Subcontractor then all persons operating the Equipment are under the supervision and control of Subcontractor. In any case it shall be the duty of Lessee to give specific instructions and directions to all persons operating the leased Equipment. **Lessee agrees to provide or otherwise select competent and experienced personnel to direct the operation of the equipment, in accordance with OSHA 29 CFR 1926.1428 signal person qualifications and both Lessee and Subcontractor further agree that the standard of care and responsibilities will be in accordance with all American National Standards Institute (ANSI) and that ASME B30.5-2018 (and as amended) shall be used when operating the equipment, specifically Chapter 5-3 Operation, as well as the OSHA 29 CFR Subpart CC Cranes and Derricks in Construction sections 1926.1400 – 1926.1442.** The Lessee acknowledges and agrees that it is the responsibility of the Lessee to independently determine the weight of every load to be lifted to prevent compromising all or any portion of the Equipment. Any load measuring device used by the Crane Operator shall be used as an operator-aide only. If any Equipment has been fitted with a load measuring device, the Lessee hereby acknowledges and agrees that the Lessor has made no warranties or representations whatsoever with respect to the ability of the said load measuring device to accurately or consistently measure the weight of loads being lifted by such Equipment.

**4. ENTIRE AGREEMENT** - The parties agree that the terms of this agreement are the sole and exclusive agreement between the parties, intended by the parties to be the only and final terms and agreements between them, superseding any and all oral or written understandings as otherwise might have been claimed to have existed, the assertion of which the parties hereby waive. This agreement shall be interpreted fairly and reasonably and neither more strongly for nor against either party.



**5. CONDITIONS –GROUND/POWERLINES/RIGGING—**The Lessee hereby agrees that Lessee will assume all responsibility for the ground or soil conditions in the area where the Equipment is to be stored, parked or operated. All power lines in the work area shall be identified prior to the work's beginning. All power lines are to be de-energized prior to the Equipment's being operated in or around such power lines. Lessee shall contact the local electric utility or other such authorized entity to arrange to have the power lines de-energized prior to beginning work. Even if power lines are de-energized, Lessee shall ensure the Equipment is kept clear of such power lines at the distances required by OSHA, ANSI and any other safety regulations or standards. If it is not possible to de-energize power lines, then the Lessee shall be responsible for the insulating of any power lines, the grounding of all equipment, and they will use rigging or other equipment designed to prevent electrocution. Lessee is required to provide any and all rigging to be used with the Equipment. If chokers, slings, straps, chains, hooks, spreaders, fittings, rope or wire, etcetera; are loaned to the Lessee by the Lessor for the Lessee's convenience, such property is solely the Lessee's responsibility. Lessee assumes responsibility to inspect the rigging before use and Lessee assumes responsibility for any defects in any rigging, whether the property of Lessee or otherwise. Lessee assumes all liability for the adequacy of, design of, or the strength of, any lifting lug or device embedded in or attached to any object to be lifted. Lessee assumes the responsibility for damage to any load on hook due to a failure of the rigging. **Lessee assumes the responsibility for the method of rigging and agrees that all persons involved in the rigging process are qualified according to OSHA's definition 1926.1401 and are under Lessee's direct supervision and control.**

**6. TERMS OF PAYMENT –** Lessee is responsible for all towing charges and crane time in the event crane is stuck while on the jobsite. All invoices are due thirty (30) days after invoicing, an additional finance charge of 1 ½% per month (18%per annum) may be added on total balance unpaid after 30 days from the date of invoice. If the matter is referred to collection, an additional 20% will be added, which Lessee agrees is reasonable.

**7. FORCE MAJEURE; LIMITATION OF LIABILITY:** Lessor shall not be responsible or liable for any delays or its failure to perform the terms and conditions of this Agreement if such delay or failure is caused by events or circumstances beyond the control of Lessor, including without limitation, acts of God, fire, catastrophe, weather conditions, strikes, lockouts, labor shortages, unavailability of parts, war, riots, civil commotion, confiscation, or governmental action or restriction, including frost law restrictions.

**8. AUTHORIZED SIGNATURE -** In the event this agreement has been executed on the reverse side by an individual on behalf of a corporation or other business entity, the person(s) whose signature is affixed hereto and the party for which those individual(s) have signed this agreement represent to Lessor that the individual signing has full authority to execute this agreement on behalf of said corporation or other business entity.

**9. NO CONFLICT:** If any provisions hereof conflict with any statute or rule of law of any jurisdiction wherein it may be sought to be enforced, then such provisions shall be deemed null and void to the extent that they may conflict therewith, but without invalidating the remaining provisions of the Agreement.