

KMC Forklift Service Rental Full Terms and Conditions

Condition of Equipment The receipt and acceptance by Lessee of items of machinery, equipment and other personal property, (referred to below as "equipment") shall constitute acknowledgment that such equipment has been accepted and found in good, safe and serviceable condition, and fit for use, unless Lessee makes a claim to contrary to Lessor by certified mail, return receipt requested, addressed to lessor's office within three (3) days after receipt of such equipment. The complaint shall set forth in detail the complete nature and condition of the equipment received. In the event of notice to Lessor by Lessee that an item of equipment is not in good, safe and serviceable condition, fit to use upon its arrival, Lessor shall have the right to put such equipment in good, safe and serviceable condition and fit for use within reasonable time, or to cancel agreement.

Maintenance or Repair Lessor will provide maintenance and repairs as required by normal use of the equipment, except such routine maintenance and set out under Lessee's Responsibilities, on page 1. Repairs or other service made necessary by damages to the equipment, or by Lessee's misuse or extraordinary use or inadequate routine maintenance of equipment, will be performed by lessor at Lessee's expense. Lessor may perform maintenance and repairs of the equipment at any time.

Damage to Equipment Lessor shall not remove, alter, disfigure or cover-up, any numbering, lettering or insignia, displayed on the equipment. Lessee shall not allow the equipment to be subject to any careless, needless, or rough use. All risk of loss or damage to the equipment shall be borne by Lessee notwithstanding damage to any item of Lessee, Lessee shall have the responsibility for the repair (to OEM accepted specification) of any damage to the equipment and Lessee shall repair, or caused to be repaired, each damaged item of equipment promptly after damage. In the event any item of equipment is destroyed, stolen, or damaged, to such an extent that Lessee finds it impossible to continue its use, Lessee shall immediately pay the remaining unpaid rental payment as to such equipment and all of Lessee's right, title and interest in such equipment with any and all insurance rights Lessee may have with respect to such equipment, shall be assigned to Lessor, and Lessee shall be responsible for, and shall indemnify Lessor, against any and all loss or damage to the equipment. If at any time Lessor shall feel such its rights to the equipment are endangered or that the equipment is being used beyond its capacity in any manner, or improperly cared for Lessor may, without notice, remove the equipment and cancel this agreement. Rental Protection is available for 15% of total rental, before taxes. Rental Protection has a deductible of \$1000.00 or 10% of the replacement value, whichever is greater.

Assignment and Sublease Neither this agreement nor Lessee's right here under shall be assignable by Lessee without Lessor's prior written consent. Lessor may, without necessity of prior consent by Lessee assign its rights and obligations under this agreement or may assign only its rights to receive lease payment under this agreement, and Lessee upon receipt of written notice of any such assignment shall abide thereby.

Liability Insurance Lessee will furnish at its own expense bodily injury liability and property damage liability insurance coverage to insure both Lessee and Lessor. For the purpose of this agreement Lessee shall include KMC Forklift Services Inc., including their agents and assigns, in the amount of at least \$300,000 per person and \$500,000 per occurrence for bodily injury or death, and \$300,000 for property damage other than lease price of equipment. Lessee shall obtain a certificate of insurance evidencing said insurance coverage, waving in the right of subrogation against Lessor and naming Lessor as an additional insured to said insurance policy. The certificate of insurance shall also provide for a 30-day notice of cancellation to Lessor. Said insurance shall be on a primary and not in excess basis. Rental Protection is available for 15% of total rental, before taxes. Rental Protection has a deductible of \$1000.00 or 10% of the replacement value, whichever is greater.

Liability coverage for bodily injury and property damage caused others will not be provided by Lessor under any circumstances.

Casualty Insurance Lessee expressly agrees to ensure, at its own expense, the equipment for the replacement value shown on this agreement at the time of lease for damage as a result of fire, theft, collision, or any other causes, and to name Lessor as loss payee under such insurance coverage. Notwithstanding any of the above Lessee agrees to be responsible for any and all damage to the equipment for any reason, including, and without limitation, any damage as a result of negligence on its own part willful or not, and for loss of rental while the equipment is undergoing repairs for any damage. Rental Protection is available for 15% of total rental, before taxes. Rental Protection has a deductible of \$1000.00 or 10% of the replacement value, whichever is greater. RPP can we waived when COI (Certificate of Insurance), naming KMC Forklift Service Inc as loss payee, is placed on file. This will need to be updated annually.

Indemnity to Lessor Lessee shall indemnify, protect and save and keep harmless Lessor, it's agent, servants, successors and assigns, from and against all losses, damage, injuries, claims, demands and expenses, including legal expenses, of whatever nature, arising out of that use, maintenance, condition or operation at any item of equipment, regardless of where, how and by whom and, regardless of whether arising from the joint or concurrent negligence of Lessor. At Lessor's request, Lessee shall assume the settlement in defense of any suits or other legal proceedings brought to enforce all losses, damages, injuries, claims, demands and expenses, and shall pay all judgments entered in any such suit(s) or other legal proceedings. Lessee shall notify Lessor in writing within five days of institution of suit(s) or the occurrence of any event which might be the basis of an adverse claim regarding the equipment.

The indemnities and assumptions of liabilities and obligations here in provided shall continue in full force and effect notwithstanding termination of this agreement, whether by expiration of the time, by operation of law or otherwise.

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Optional Rental Protection Plan In the event proof of acceptable property insurance coverage for the Equipment is not provided to Lessor, Lessee agrees to purchase the optional Rental Protection Plan ("RPP") equal to 15% of the gross rental rate for such Equipment. Subject to this Section, Lessor shall waive certain property damage claims against Lessee for stolen, damaged, or destroyed Equipment that is covered by the RPP, except for a deductible amount equal to (a) 10% of Lessor's cost to repair damaged Equipment, or \$5,000, whichever is lesser; and/or (b) 10% of the original equipment cost of the Equipment to replace stolen or destroyed Equipment, or \$5,000, whichever is lesser. Notwithstanding anything to the contrary contained herein, the following exclusions shall not be covered under the RPP, and Lessee shall remain fully liable for all loss or damage to the Equipment: (i) neglect, willful misconduct, abuse, gross negligence, misuse, negligence, improper use, and/or wrongful application of the Equipment; (ii) use, possession, and/or operation of the Equipment by a person other than the Customer or Customer's authorized employees or operators; (iii) overloading, exceeding rated capacity or speed limit, improper or lack of routine inspection, overturning, and/or striking overhead objects; (iv) failure to properly secure the Equipment, as determined solely by Lessor, including, without limitation, leaving the ignition key or similar accessible by unauthorized persons while the Equipment is unattended, or storing the Equipment in an unsecured location; (v) mysterious disappearance, loss, vandalism, or wrongful conversion by or from any person, including one entrusted with the Equipment, unless, (A) Customer notifies Lessor within one (1) business day of discovery, and (B) Customer files (and delivers to Lessor) a police report or other filing with the applicable public authorities within one (1) business day of discovery; (vi) Customer's failure to pay any and all amounts due and owing to Lessor at any time (including, but not limited to, the RPP charge set forth herein); (vii) Customer's violation of any of the terms of the Contract, any other contract or invoice with Lessor, and/or violation of any common law, federal, provincial, municipal, or other local laws, orders, rules, regulations, or decisions of any regulatory body, or any manufacturer's instructions or warnings; and/or (viii) exposure and/or contamination with or from radioactive, contaminated, hazardous, toxic, explosive, or corrosive materials. ***RPP IS NOT LIABILITY INSURANCE*** and does not relieve Customer of other insurance requirements, risk of loss, indemnification and/or other obligations herein.

RPP can be waived once COI naming KMC Forklift Service Inc is provided.

Operator's Qualifications The equipment will be operated only by trained, qualified personnel and Lessee will not make any repairs, adjustments or alterations, without Lessor's written consent. Failure to abide by these terms will make Lessee fully responsible for any damage or loss from whatever nature

Authority It is expressly understood that the parties signing this agreement have done so with full power and authority for the corporation or entity they purport to represent.

Continuation of Rental Except as otherwise set forth herein, rental of the equipment shall continue subject to the terms of this agreement until the equipment is returned to facility of Lessor.

Warranty, Disclaimer, Limitations Lessee acknowledges that expressly provided herein, Lessor has made no warranties, express or implied regarding the equipment, Lessor agrees that in the event of any defect in material or workmanship, Lessor, upon being notified of such failure, and the return of the equipment to Lessor's place of business, will promptly repair the equipment to the extent that such repairs are covered by manufacturer's warranty. So that Lessor obtains compensation for performing such repairs from the manufacturer. The Lessor may, at its own option, replace the equipment with comparable equipment, or cancel this agreement in its entirety. If Lessor in accordance herewith cancels disagreement any unearned rental previously paid shall be refunded to Lessee. Lessee shall be responsible for any cost incurred in returning the equipment to its job site. Neither Lessor, its assigns, the wholesaler, nor the manufacturer make any other warranty or representation with respect to the equipment and expressly disclaims any warranty as to its condition, fitness for a particular purpose, merchantability or performance. The foregoing shall be The Lessee's sole and exclusive remedy with respect to a defect in the equipment and neither Lessor, the wholesaler nor the manufacturer shall be liable for any incidental, special or consequential damages (such as loss or profits), which may result from the failure of the equipment. Further, Lessor shall not be liable for any loss, delay or damage of any kind or character resulting from defects in or inefficiency of the equipment.

Addition of Accessories Lessee will not, without prior written consent of Lessor, install any accessories or devices on the equipment. If such installation will impair the originally intended function or use of the equipment, Lessee will be responsible for all damage. All accessories or devices fixed to the equipment shall automatically become the property of Lessor unless such part or device can be removed without in any way affecting the originally intended function or use of the equipment. Any damage to the equipment caused by removal of such accessories or devices shall be repaired at Lessee's expense.

Compliance with Regulations Lessee agrees to comply with and conform to all applicable municipal, county, state and federal laws relating to the operation of the equipment including and without limitation, all laws relating to hazardous waste and toxic substances.

Inspection Lessor and its representatives may, for the purpose of inspection of the equipment at all reasonable times, enter upon any job, building or place where equipment is located.

Location of Equipment Lessee shall keep the equipment located at the point of delivery stated herein unless Lessee receives written permission from Lessor to move the equipment to another specified location, in no event shall the equipment be located outside of the state of Texas without prior written permission from Lessor.

Rental Period, Late Return, Excessive Usage For purposes of this agreement, calculation of the rental shall commence on the date equipment leaves Lessor's storage yard and shall terminate when such equipment is returned to Lessor's yard, subject to Lessee's obligation to pay the minimum guaranteed a rental set forth herein. Equipment returned beyond the rental, or subject to excessive hourly usage will be subject to an additional charge in accordance with Lessor's rental rate.

Prohibited Use of the Equipment Lessee will not operate the equipment in connection with any use, storage, handling, shipment, disposal or other use of hazardous or toxic substances, waste or other prohibited or dangerous contaminants, without the prior approval of Lessor and Lessee will promptly notify Lessor if any such equipment is, or became subject to, contamination from any hazardous or toxic substances.

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Default If Lessee shall fail to make any rental payment when due, shall attempt to sell or encumber the equipment, shall cease operating, shall institute or have instated against it proceeding under any bankruptcy or insolvency law, shall make an assignment for the benefit of creditors, or shall fail to comply with any provision of this agreement, or if any attachment execution, writ or process, is levied against the equipment or any of the Lessee's property, or if for any reason Lessor deems itself insecure or the equipment unsafe, Lessor may, at its option, declare this agreement in default and all of Lessee's rights in the equipment hereunder shall cease. Upon such default, Lessee agrees to deliver the equipment to Lessor on demand and Lessor may enter up on any job, building or place, where equipment is located and take possession thereof without notice to Lessee. In the event of any such action Lessee agrees to pay all minimum guaranteed rentals and all other rentals do, the cost of repair for any damages to the equipment, the cost of removal of the equipment from possession of the Lessee, and all freight, storage, transportation and other charges incurred in such removal and return to Lessor at this place of business. If legal action is necessary to enforce Lessee's obligation hereunder Lessee agrees to be responsible for the cost thereof, including reasonable attorney's fees. Lessor may hold, use, sell, lease or otherwise dispose of the equipment or keep any item of equipment idle if Lessor so chooses, without affecting the obligations of the Lessee hereunder with respect to equipment that is subject of a default by Lessee. Lessor shall be entitled to all sums do and unpaid, plus all sums to become do as rental to the end of the respective rental period of each of equipment as if this lease had not been declared in default and all of the damages sustained by Lessor by virtue of such breach. Any repossession or resell of any equipment shall not bar any action for deficiency as provided above and the bringing of an action or the entry of the Judgment against Lessee shall not bar Lessor to repossess all the equipment.

Past Due Rentals All past due rentals in other amounts due here under shall be your interest at the rate of 18% per annum or the maximum rate allowed by law, whichever is less.

Title to Equipment Lessor and Lessee expressly agree that all the property subject to this agreement is personal property and is in the nature of equipment as defined in the uniform Commercial Code of The State of Texas, and that the same shall never be attached or affixed to real estate, so as to become a fixture. Lessor and Lessee further expressly agree that this agreement is a contract of lease only, and that Lessee shall not acquire any title to any equipment subject hereto. Lessee shall keep the equipment free from liens and claims and shall not do or permit any act or thing whereby Lessor's title or rights in and to any of the equipment may be encumbered or impaired. Lessee agrees to execute financing statements acknowledging this agreement subject thereto.

Place of Payment All payments hereunder shall be payable at lessor's main office. 7941 Wickson Ridge Dr, Bryan, TX 77808

Taxes Lessee shall pay all applicable taxes.

Minimum Guaranteed Rental. This agreement is irrevocable by Lessee for the full term hereof Lessee acknowledges that the guaranteed minimum rental period set forth herein is based upon the specialized nature of the equipment and or the specific terms of the lease of the equipment or such other factors which Lessor and Lessee acknowledge have been considered in the Minimum Guaranteed Rental amount.

General Time is of the essence of this contract. Lessor's failure at any time to require strict performance by Lessee of any of the provisions of this agreement shall not waive nor diminish lessors right thereafter to demand strict compliance therewith or with any provision. Waiver of any default shall not waive any other default. Any alteration or modification of this agreement shall be in writing and signed by the parties hereto. Lessee acknowledges receipt of a signed copy hereof. This agreement contains the entire understanding of the parties and such understanding may not be modified or terminated except in writing signed by the parties.

This agreement shall be governed by the laws of the state of Texas. All remedies either under this agreement or by law afforded to Lessor shall be cumulative and alternative. Any provisions in this agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invading the rest of this agreement.

Available Rental Purchase Option You are able to purchase the equipment, after a minimum of 6 months, unless other arrangements are made, for current market value. If selected up front, purchase price will be included on invoice and rental agreement, and an agreed upon percentage of rental cost will apply to purchase price. 6 month rental minimum will still apply, and the equity is reserved until last month of term. Equipment must be on ongoing maintenance, and any damage, abuse, and tire replacement, will be charged back to customer. This can be paid either as billed, or it will add to purchase price at end of term. All needed repair is Lessee responsibility. Credit approval or Credit Card agreement required. Must guarantee 6 months of rental. KMC Forklift Service reserves the right to transfer the RPO offering to a bank of our choice at anytime. Bank will honor remaining term and all conditions of agreement as allowed by law, and KMC will notify customer of transfer in writing and by email. Default, or return of equipment, on an RPO agreement, may not reduce, eliminate, or remove your obligation to the agreed upon terms to KMC or the Bank if a Bank owns the RPO at time of default. _____