

# TERMS AND CONDITIONS OF CONTRACT (TX)

**1. INDEMNIFICATION (FOR ALL CONTRACTS EXCEPT FOR CONTRACTS PERTAINING TO A WELL FOR OIL, GAS, OR WATER OR TO MINE FOR A MINERAL) – LESSEE AGREES TO PARTIALLY INDEMNIFY AND SAVE LESSOR, ITS EMPLOYEES AND AGENTS HARMLESS FROM ALL CLAIMS FOR DEATH OR INJURY TO PERSONS, INCLUDING LESSOR'S EMPLOYEES, OF ALL LOSS, DAMAGE OR INJURY TO PROPERTY, INCLUDING THE EQUIPMENT, ARISING IN ANY MANNER OUT OF LESSEE'S OPERATION. LESSEE'S DUTY TO INDEMNIFY HEREUNDER SHALL INCLUDE ALL COSTS OR EXPENSES ARISING OUT OF ALL CLAIMS SPECIFIED HEREIN, INCLUDING ALL COURT AND/OR ARBITRATION COSTS, FILING FEES, ATTORNEYS' FEES AND COSTS OF SETTLEMENT. PURSUANT TO V.A.T.S. INSURANCE CODE §151.102 LESSEE SHALL NOT BE REQUIRED TO INDEMNIFY, HOLD HARMLESS, OR DEFEND ANY PARTY AGAINST A CLAIM CAUSED BY THE NEGLIGENCE OR FAULT, THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR THE BREACH OF CONTRACT OF THE LESSOR, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE LESSOR, OTHER THAN THE LESSEE OR ITS AGENT, EMPLOYEE, OR SUBCONTRACTOR OF ANY TIER. HOWEVER, THE INDEMNIFICATION OBLIGATION 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 WORKER'S COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS. THE LESSEE'S OBLIGATIONS HEREUNDER SHALL FURTHER NOT BE LIMITED BY THE AMOUNT OF ITS LIABILITY INSURANCE AND THE PURCHASE 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 PARTIAL INDEMNIFICATION AND PROCUREMENT OF INSURANCE. IF THIS PARAGRAPH IS DECLARED INVALID, THEN ALL OTHER PARAGRAPHS OF THIS CONTRACT SHALL STAND.**

**MUTUAL INDEMNIFICATION (ONLY FOR CONTRACTS PERTAINING TO A WELL FOR OIL, GAS, OR WATER, OR TO MINE FOR A MINERAL, PURSUANT TO V.T.C.A. CIVIL PRACTICE CODE §127.001-127.007) – LESSOR AND LESSEE AGREE TO INDEMNIFY EACH OTHER AND EACH OTHER'S CONTRACTORS AND THEIR EMPLOYEES AGAINST LOSS, LIABILITY OR DAMAGES ARISING IN CONNECTION WITH BODILY INJURY, DEATH, AND DAMAGE TO PROPERTY OF THEIR RESPECTIVE EMPLOYEES, CONTRACTORS OR THEIR EMPLOYEES, AND INVITEES OF EACH PARTY ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OF THE CONTRACT. THIS PROVISION ONLY APPLIES TO CONTRACTS FOR A WELL FOR OIL, GAS, OR WATER, OR TO MINE FOR A MINERAL, PURSUANT TO V.T.C.A. CIVIL PRACTICE CODE §127.001-127.002. THIS PROVISION IS SEPARATE AND DISTINCT FROM ANY OTHER PROVISION OR PARAGRAPH IN THIS CONTRACT, INCLUDING ANY PROVISION OR PARAGRAPH CONCERNING INDEMNIFICATION AND PROCUREMENT OF INSURANCE. IF THIS PARAGRAPH IS DECLARED INVALID, THEN ALL OTHER PARAGRAPHS OF THIS CONTRACT SHALL STAND.**

**2. INSURANCE** – The Lessee agrees to purchase the following insurance coverages prior to the Equipment's arrival on the job site. Pursuant to V.A.T.S. INSURANCE CODE §151.104, additional insured coverage shall be limited in scope, in the same manner as set forth above, such that it shall not provide coverage which is prohibited for an agreement to indemnify, hold harmless, or defend. The Lessee shall procure the following coverages for Lessor: a) worker's compensation and employer's liability insurance, 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) excess/umbrella non-contributory insurance in the amount of \$5,000,000 and Lessee's primary and excess/umbrella policies must be endorsed so that they are primary and non-contributory to all of Lessor's insurance policies and Lessor's policies are excess to Lessee's policies; d) inland marine/all-risk physical damage insurance, on a primary non-contributory basis, to cover the full insurable value of the Equipment, including any boom or jib, for its loss or damage from any and all causes, including, but not limited to, overloading, misuse, fire, theft, flood, explosion, overturn, accident, and acts of God occurring during the rental term; e) all policies are to be written by insurance companies acceptable to the Lessor; 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 insured on all liability insurance policies, including excess/umbrella policies (ISO Form CG 20 10 10 01 and ISO CG 20 37 10 01 must be used), Lessee shall name Lessor as a Loss Payee on all insurance policies, and Lessee shall provide all insurance certificates to Lessor when requested; g) all policies shall be endorsed to require the insurer to give thirty (30) days advance notice to all insured's prior to cancellation; h) all of Lessor's policies, and the policies of anyone Lessor is required to insure are excess over all of Lessee's policies. In the event of loss, proceeds of property damage insurance on the Equipment shall be made payable to Lessor. Lessee's agreements to indemnify and hold Lessor harmless from any liability, damage and loss are in addition to, and not an alternative to, these insurance provisions and the purchase of any of the above coverages shall not operate to waive any of the above indemnity provisions. To the extent that the Lessee may perform under this lease 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 the Lessee. Lessee hereby agrees to waive any and all rights of subrogation and any and all lien rights (including those arising from worker's compensation/employer's liability policies or other employee benefit programs, commercial general liability policies, or similar policies) which may accrue to it or its insurers. This shall include, but not be limited to, rights of subrogation and lien rights. The Lessee understands that this waiver shall bind its insurers of all levels, and agrees to put these insurers on notice of this waiver and to have any necessary endorsements added to the insurance policies applicable to this lease.

**3. OPERATION OF EQUIPMENT** -- It is expressly agreed by and between the parties hereto that the Equipment and all persons operating, repairing, or maintaining and assembling/disassembling the Equipment are under the exclusive jurisdiction, supervision and control of Lessee under this lease. It shall be the duty of Lessee to give specific instructions and directions to all persons operating, repairing, and maintaining 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 Lessee further agrees that the standard of care and responsibilities will be in accordance with all American National Standards Institute (ANSI) specifications, and that ASME B30.5-2011 (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.** Lessee specifically agrees that the Lessor has absolutely no control over any person operating or assisting in operating, repairing, or maintaining the leased Equipment. Lessor may provide an operator with the Equipment. Lessee may reject this operator; however, if operator is not rejected, the operator is under the Lessee's exclusive direction and control and is Lessee's agent, servant, and employee. The lease payments made by the Lessee shall include the operator's wages, even though the operator's wages may be disbursed by the Lessor. This lease is upon the agreement of the parties that Lessor has no right to replace or substitute personnel except at the direction of and with the approval of Lessee and that the Lessee shall have the right to control, including the right of termination, and shall be deemed to have exercised that right as to all details or operation of the leased Equipment and personnel the Lessee selects to operate the leased Equipment. If the Equipment is damaged, involved in an accident, or made inoperable in any way, the Lessee shall notify Lessor in writing within 48 hours of its occurrence, specifying the extent and nature of the accident or damage. The cost of any repair necessary to restore the Equipment to its original condition shall be paid by Lessee. Any time beyond the minimum term required to make such repairs shall extend the term of this agreement to include such reasonable additional repair time as is necessary under the circumstances. Time is of the essence of this lease and all its provisions. Lessor's failure to require strict performance by Lessee of any of the lease provisions, or Lessor's acceptance of late or partial performance hereunder shall not constitute a waiver of any prior defaults of Lessee, nor of Lessor's rights under this agreement. This lease shall be binding upon and shall inure to the benefit of the parties and their successors, administrators, executors, trustees and assigns. This agreement shall be interpreted according to the laws of Lessor's location stated on the front page. This agreement shall be interpreted fairly and reasonably and neither more strongly for nor against either party. **THIS CONTRACT SHALL BE IN EFFECT FOR A DURATION OF ONE YEAR FOR THIS OR SIMILAR EQUIPMENT OR UNLESS EXPRESSLY TERMINATED IN WRITING BY Lessor.** In the event that the Lessee loans, sublets or allows a third party to use the crane and the services of the operator, Lessee agrees to have said third party sign and agree to the terms of this contract.

**4. CONDITIONS –GROUND/POWERLINES/RIGGING**—The Lessee hereby agrees that it will assume all responsibility for the ground or soil conditions in the area where the Equipment is to be stored, parked or operated. The Lessee shall perform or have performed all necessary inspections or testing to determine the nature of the ground or soil and its ability to support the Equipment while in operation or otherwise. If the ground or soil condition is such that it cannot support the Equipment, the Lessee shall take all necessary measures to ensure that these conditions are remedied prior to the Equipment being placed on that ground or soil. These measures include, but are not limited to, the provision of proper shoring or cribbing or other measures. Lessee assumes all responsibility to protect the Equipment and persons in or around the Equipment from the danger of power lines. Lessee shall not expose the Equipment or any persons in or around such Equipment to the danger of energized power lines. All power lines in the work area shall be identified prior to the work beginning. All power lines are to be de-energized prior to the Equipment 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 keep the Equipment 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 will be required to 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, are loaned to the Lessee by the Lessor for the Lessee's convenience; they are solely the Lessee's responsibility. Lessee assumes responsibility for any defects in any rigging, whether the property of Lessee or otherwise. 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 under Lessee's direct supervision and control. **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.**

**5. NO RELIANCE ON LOAD MEASURING DEVICE** -- 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. The Lessee further acknowledges and agrees that it is the responsibility of the Lessee to independently determine the weight of every load to be lifted by any crane comprising all or any portion of the Equipment, so as to ensure that any such load measuring device shall be used as an operator-aid only. Lessee acknowledges and agrees that if he relies in any way whatsoever on any load measuring device, he does so completely at his own risk.

**6. 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 whose signature is affixed hereto and the company for which the individual has 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.

**7. STORAGE OF EQUIPMENT** – Lessor shall not be liable for any loss or injury to Lessee's property stored in Lessor's yard, and it is further understood and agreed to that Lessee's property/Equipment stored is not insured by Lessor against loss or injury, however caused. Lessee is responsible for maintaining insurance coverage on a first party basis to cover the goods/Equipment/machinery stored with Lessor.

**8. DELAY** – Customer waives all claims against Bragg for any delay, impact damages, or loss of material by any reason of any shutdown, or failure of equipment furnished under this Agreement. Lessee acknowledges and agrees that in the event of prevention, delay or work stoppage due to a strike, lockout, labor dispute, act of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental action, civil commotion, fire and other casualty, and all other causes beyond control of Bragg shall excuse Bragg's performance under this Agreement for the period equal to such prevention, delay, or work stoppage.

**9. PAYMENT** – Lessee agrees to pay as rent when due the reasonable lease value of the furnished equipment and operating personnel. The reasonable lease value is agreed to be that set out by Bragg's regularly published rate sheets effective at the commencement of this Agreement. If Bragg has separately quoted different rates to Lessee prior to commencement of the lease, then those rates shall apply. Lessee promises to pay, in addition, all costs of collection including reasonable attorney fees if collection action is brought by Bragg. Lessee promises to pay, in addition, interest at the rate of one and one-half percent per month on the unpaid compounded balance past due. **Invoices are due and payable 30 days after invoice date.** Lessee agrees to supply all of the information required for the completion of any preliminary lien notice required by applicable law

**10. ALTERATIONS** – The terms and provisions of this Agreement are negotiated to the satisfaction of both parties. Alterations to the printed terms and conditions may be made by noting same, in writing on the reverse hereof, which alterations must be initialed and dated by both parties to be effective. Any alteration affecting the interests of Bragg under this agreement must be initialed and dated by an officer of Bragg.