

**Proserv Equipment Rental LLC (“Proserv”)**  
**Terms and Conditions of Rental**

These Terms and Conditions of Rental pertain to the rental of all equipment and/or items listed on the rental agreement executed by and between the Customer (as defined below) and Proserv or incorporated by reference in a rental confirmation from Proserv to the Customer (however documented, the “Rental Contract”), including all parts and accessories associated with such equipment (collectively, the “Equipment”). By accepting the Equipment, the Customer agrees to be bound by these terms and conditions. These Terms and Conditions of rental together with the Rental Contract are collectively referred to herein as the “Agreement.”

**1. RENTAL PERIOD AND ACCOUNTS**

Proserv hereby rents the Equipment to the Customer for the period starting when the Equipment leaves Proserv's premises or is delivered to the Customer and ending upon its return to Proserv's premises or when picked up by Proserv, subject to any minimum rental period charge set forth in the Rental Contract.

Any disputed invoices must be brought to Proserv's attention within fifteen (15) days of receiving the invoices; otherwise, the invoices will be considered correct and undisputed. Proserv, at its discretion, may place any account with an outstanding balance on hold, require deposits, and/or pick up the rented Equipment without further notice after allowing the Customer two (2) business days following written notice (including via email) to rectify any delinquency. The Customer acknowledges that if Proserv engages a collection agency or attorney to enforce the Agreement, the Customer will be responsible for paying Proserv's reasonable collection and attorney's fees and costs incurred in enforcing the Agreement, regardless of whether a lawsuit is filed.

The Customer authorizes Proserv to conduct any necessary credit inquiries in connection with the Agreement. The Customer agrees that its bank and trade references may accept a copy of the Agreement as authorization to disclose to Proserv and/or its respective designees (including any assignees or potential assignees) the Customer information typically provided to a prospective creditor. This information may include the length of time the account has been active, average monthly balances, payment trends, and details of any lending relationship. The Customer represents and warrants that they are not a “Consumer” as defined in the Federal Consumer Credit Protection Act or any related legislation, and they waive any rights granted to them under those acts, their successors, or any other federal or state laws relating to “Consumer” rights. Furthermore, the Customer represents and warrants that all rentals, purchases, or credit extended under the Agreement will be used exclusively for business and commercial purposes. The individual who is either a principal of the credit applicant or a sole proprietorship of the credit applicant acknowledges that their individual credit history may be considered during the credit evaluation process and hereby consents to and authorizes Proserv to obtain a consumer credit report on the applicant as needed.

Terms are NET 30 upon issuance of the invoice. Service charges will be applied to past due amounts at the lower of 1.5% per month or the maximum rate permitted by law.

## **2. RECEIPT AND USE OF EQUIPMENT**

By accepting delivery, the Customer acknowledges that the Equipment is in good working condition and includes all necessary devices and materials for its proper use. The Customer agrees not to abuse, harm, or operate the Equipment improperly, and to possess and operate it in compliance with all applicable laws and regulations. The Customer assumes full responsibility for the operation of the Equipment and shall only allow licensed, trained, and experienced operators to operate the Equipment in accordance with the Equipment's specifications and standard safety practices. The Customer shall not permit anyone other than qualified employees to operate the Equipment without Proserv's express written authorization.

**For Equipment Dealers:** If the Customer intends to re-rent the Equipment, they are obligated to assume comprehensive responsibility for its maintenance. This entails diligently adhering to both the monthly and annual maintenance routines outlined in the manufacturer's recommended schedule. The responsibility for managing all services and warranty matters pertaining to their end-users lies with the Customer. Moreover, it is imperative for the Customer to promptly notify Proserv of any maintenance, service, or warranty calls that arise during the re-rental period. This notification must be accompanied by the submission of all pertinent documentation related to the service or warranty request.

## **3. FAILURE OF EQUIPMENT**

In the event of Equipment failure, the Customer must promptly notify Proserv. The Customer shall not incur any expenses for Equipment repairs without Proserv's written authorization.

## **4. RETURN OF EQUIPMENT**

If Proserv is responsible for delivering and picking up the Equipment, the Customer will be held responsible for any loss or damage to the Equipment from the time of Proserv's delivery until it is picked up by Proserv.

On the other hand, if the Customer has agreed to pick up the Equipment from Proserv and return it, the Customer will be held responsible for any loss or damage that occurs to the Equipment or any third party from the moment of pickup until Proserv regains physical possession.

In either case, the Customer assumes full responsibility for the Equipment until Proserv regains physical possession. When returning the Equipment to Proserv, it should be in the same condition and repair as when it was initially delivered to the Customer, with reasonable wear and tear allowed as outlined in Section 6.

## **5. HAZARDOUS MATERIALS**

The Customer represents and warrants that upon return, all Equipment will be free from regulated substances, such as hazardous substances, hazardous materials, hazardous wastes, toxic substances, or pesticides, as defined in applicable federal, state, and local environmental laws, regulations, and rules. The Customer agrees to indemnify and hold Proserv harmless from any liabilities, costs, or claims imposed on or incurred by Proserv resulting from the Customer's breach of the above warranty.

## **6. LOST OR DAMAGED EQUIPMENT**

Customer is responsible for any damage, loss, or theft of the Equipment up to the fair market value or the cost of repair and rental at the regular rental rate until repairs are completed. Proserv Crane shall be listed as loss payee for equipment rented, leased or borrowed. However, the Customer is not held responsible for reasonable wear and tear. Reasonable wear and tear refers to the normal deterioration caused by ordinary and reasonable use. The following circumstances shall not be considered reasonable wear and tear: damage resulting from a lack of lubrication or recommended maintenance, and damage caused by improper operation, including overloading, or exceeding the rated capacity of the Equipment.

## **7. INDEMNIFICATION**

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE CUSTOMER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS PROSERV AND ITS OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, MEMBERS, MANAGERS, EMPLOYEES, AFFILIATES, REPRESENTATIVES AND AGENTS (THE "INDEMNITEES") FROM ANY AND ALL ACTIONS, CAUSES OF ACTION, CLAIMS, SUITS, DEMANDS, INVESTIGATIONS, OBLIGATIONS, JUDGMENTS, LOSSES, COSTS, LIABILITIES, DAMAGES, FINES, PENALTIES AND EXPENSES, INCLUDING ATTORNEY'S FEES, WHICH ARE INCURRED BY, ACCRUED, ASSERTED, MADE OR BROUGHT AGAINST, OR RECOVERABLE FROM ANY OF THE INDEMNITEES ARISING FROM OR RELATING TO, DIRECTLY OR INDIRECTLY, THE CUSTOMER'S ACCEPTANCE, POSSESSION, TRANSPORT, USE, OPERATION, CONTROL, MAINTENANCE AND/OR REPAIR OF THE EQUIPMENT, WHETHER OR NOT THE SAME ARISES FROM DAMAGE TO PROPERTY (REAL OR PERSONAL), INJURY OR DEATH TO PERSONS (INCLUDING BUT NOT LIMITED TO CUSTOMER'S EMPLOYEES, AGENTS, AND REPRESENTATIVES), FAILURE TO COMPLY WITH APPLICABLE LAWS, REGULATIONS, AND ORDINANCES, THE EQUIPMENT CONDITION, THE LOSS OF USE OR SEIZURE OF THE EQUIPMENT, OR OTHERWISE.

THE CUSTOMER EXPRESSLY AGREES TO WAIVE ANY WORKERS' COMPENSATION IMMUNITY IT MAY OTHERWISE HAVE. THE CUSTOMER'S OBLIGATION TO INDEMNIFY THE INDEMNITEES SHALL SURVIVE THE TERMINATION OF THE AGREEMENT. IN JURISDICTIONS IN WHICH THE INDEMNIFICATION PROVIDED FOR IN THIS SECTION IS BROADER THAN THAT ALLOWED BY APPLICABLE LAW, THIS SECTION SHOULD BE INTERPRETED AS PROVIDING THE BROADEST

INDEMNIFICATION PERMITTED AND SHOULD BE LIMITED ONLY TO THE EXTENT NECESSARY TO COMPLY WITH SAID LAW.

The Customer must promptly inform Proserv if the Equipment is involved in or part of an accident and provide a complete report of the accident, including the names and addresses of all involved parties and witnesses. Customer is responsible for all damages, injuries, or losses arising from any accident or act relating to the possession or use of the Equipment.

## **8. DISCLAIMER OF WARRANTY AND REMEDIES**

PROSERV WARRANTS THAT THE EQUIPMENT WILL BE DELIVERED IN GOOD OPERATING CONDITION. PROSERV'S SOLE RESPONSIBILITY, AND THE CUSTOMER'S SOLE REMEDY, UNDER THE ABOVE WARRANTY SHALL BE, AT ITS OPTION, TO EITHER REPAIR OR SUITABLY REPLACE THE EQUIPMENT WITHIN A COMMERCIALY REASONABLE TIME. THE ABOVE WARRANTY IS CONTINGENT UPON THE PROPER USE OF THE EQUIPMENT BY THE CUSTOMER AND SHALL NOT APPLY IF ADJUSTMENT, REPAIR, OR REPLACEMENT IS REQUIRED BECAUSE OF ACCIDENT, MISUSE, IMPROPER HANDLING, IMPROPER OPERATION, IMPROPER MAINTENANCE, UNUSUAL PHYSICAL STRESS OR WEATHER CONDITIONS. THE FOREGOING IS THE EXCLUSIVE AND ENTIRE WARRANTY GIVEN IN CONNECTION WITH THE EQUIPMENT WHICH IS OTHERWISE BEING LEASED IN "AS IS" CONDITION. PROSERV MAKES NO OTHER WARRANTY AND EXPRESSLY DISCLAIMS ANY AND ALL EXPRESS AND IMPLIED WARRANTIES AS TO THE EQUIPMENT, INCLUDING ANY WARRANTY OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. PROSERV SHALL NOT BE LIABLE FOR ANY DELAYS, WORK STOPPAGES, LOSS OF USE OF EQUIPMENT, LOST TIME, INCONVENIENCE, LOST PROFITS OR ANY OTHER DIRECT OR INDIRECT INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES RELATING TO THE POSSESSION, TRANSPORT, USE, OPERATION, CONTROL, MAINTENANCE AND/OR REPAIR OF THE EQUIPMENT, OR ANY LOSS, DAMAGE OR INJURY RESULTING THEREFROM.

## **9. FAILURE TO DELIVER**

The Customer releases and discharges Proserv from all liability or damages (including consequential and special damages) that might be caused by Proserv's failure or inability to deliver any Equipment by any specified date or time.

## **10. INSURANCE**

Proserv does not provide, extend, or afford any insurance coverage to Customer or authorized operator(s). The Customer shall maintain Commercial General Liability and Auto Liability

insurance that covers all operations and contractual obligations (including the indemnity obligation set forth in Section 11) with minimum limits of \$2,000,000 per occurrence each for General Liability and Auto Liability (can use combination of Liability and Excess Limits) and shall name Proserv as an additional insured with a waiver of subrogation. The Customer's worker's compensation coverage shall provide \$1,000,000 Employers Liability limits and include a waiver of subrogation provision for Proserv. The Customer's insurance shall be primary and non-contributory in relation to any insurance carried by Proserv. **The Customer shall provide coverage for Proserv for any losses, claims, accidents, or incidents arising from the Customer's use of the Equipment, including claims of negligence or other wrongdoing on behalf of Proserv.** Both parties agree that the rental of the Equipment does not constitute a construction contract.

The Customer shall provide a certificate of insurance to Proserv as evidence of the aforementioned insurance coverages. The certificate should state that coverage will not be canceled without 30 days' prior written notice to Proserv.

#### **11. SUBLETTING AND LOCATION**

The rented Equipment shall not be sublet, assigned, re-rented, loaned, or removed from the location where the Customer represented it would be used, except with the advanced written consent of Proserv.

#### **12. RETAKING OF EQUIPMENT**

If the Equipment is not returned at the termination of the rental or if it becomes necessary for Proserv to retake the Equipment to protect it or Proserv from loss or damage, Proserv and its agents may enter the Customer's property to retake the Equipment, without notice or legal process. The Customer waives all rights to a prior judicial hearing in such cases. Proserv and its agents may take all reasonably necessary actions to retake the Equipment and the Customer waives any claims for damages and losses, both physical and pecuniary, resulting from Proserv retaking the Equipment. The Customer agrees to reimburse Proserv for all costs and expenses incurred in retaking the Equipment.

#### **13. COMPLIANCE WITH LAW AND SAFETY REGULATIONS**

As Proserv has no control over the use of the Equipment by the Customer, the Customer agrees, at its sole expense to comply with all laws and regulations, including the Occupational Safety and Health Administration Act of 1970 (OSHA) as well as all other federal, state, and local laws, regulations, and ordinances, that may affect the Equipment, or its operation, while in the Customer's possession. **The Customer shall indemnify and hold Proserv harmless from any liability or expense, including attorney fees, arising from any actual or asserted violations of such laws, regulations, and ordinances.**

#### **14. LEGAL FEES AND VENUE**

Customer shall be responsible for paying Proserv's reasonable legal fees, court costs, and agency fees incurred in enforcing these terms and conditions, provided that Proserv prevails in such action. Both parties agree that the Agreement is to be interpreted under the laws of the State of Texas. In the event of legal action to enforce the Agreement, the jurisdiction and legal venue shall be Harris County, Texas. However, Proserv reserves the right to bring legal action in the jurisdiction from which the Equipment was rented, and the laws of that jurisdiction, at the option of Proserv, shall govern the Agreement. **THE CUSTOMER WAIVES THE RIGHT TO A JURY TRIAL OF ANY OR ALL CLAIMS OR DISPUTES THAT MAY ARISE FROM THE AGREEMENT.**

**15. TAXES AND FEES**

The Customer shall reimburse Proserv for any additional fees, charges, or taxes imposed by any municipal or local subdivision related to the rental or use of the Equipment as stated in the Agreement. Additional fees, such as estimated personal property tax and environmental reimbursement fees are subject to change at any time.

**16. AUTHORITY TO SIGN**

Any individual signing the Rental Agreement represents and warrants that they are of legal age and have the authority and power to sign on behalf of the Customer.

**17. ENTIRE AGREEMENT**

The Agreement constitutes the entire agreement between the parties regarding the subject matter herein. It may not be amended except by a written agreement signed by both parties.

\_\_\_\_\_  
Full Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Its.