

1. THESE TERMS AND CONDITIONS SHALL PREVAIL OVER ALL OTHER INCONSISTENT PROVISIONS IN ANY OTHER CONTRACT DOCUMENTS, INCLUDING ANY PURCHASE ORDER ISSUED AT ANY TIME, PRIME CONTRACT, and UPPER TIER CONTRACT RELATING TO ANY WORK, EQUIPMENT, QUOTE, BID, OR PROPOSAL. Customer ("Customer" or "Lessee") shall be conclusively deemed to have accepted the terms and conditions herein, and to have entered into this Agreement with Supplier ("Supplier" "Vendor", "Lessor" or "SWIR") This Agreement shall be interpreted in accordance with the laws of the state where the Supplier is located and the laws of the United States of America, including, but not limited to, federal transportation law while the Cargo or Equipment is in transit. However, for any accident occurring outside the state where the Supplier is located, paragraph 3 and 4 is deleted and incorporated by reference into this agreement is the state specific Indemnity provision (paragraph 3) and the state specific insurance provision (paragraph 4) for the state where the accident occurs, which may be found at **URL:**

<http://www.swirusa.com/Incorporations/AllStatesAgreement.pdf> "Equipment" or "EQUIPMENT" is defined in the Agreement as the equipment being used with the services or leased to the Customer.

2. CHANGE IN CONDITIONS. Any changes to the condition of the site or work from the time of the proposal to the time when Supplier starts the work shall be the responsibility of the Customer. Customer shall immediately notify Supplier by email of any changes not previously disclosed regarding the setup or site conditions. In the event of an increase in the work, the contract price shall be increased by a fair and reasonable valuation based upon the original contract rates. In either an increase or decrease in work, Customer shall provide an extra work notification to Supplier. Signing a time sheet is an automatic or extra work notification & serves as authorization of overtime pay.

3. ARIZONA INDEMNIFICATION AND RELEASE PROVISIONS -- IT IS THE PARTIES INTENT THAT THIS PROVISION IS SPECIFICALLY IN COMPLIANCE WITH ALL ARIZONA LAWS including §32-1159; §34-226 and §41- 2586, AND TO THE FULLEST EXTENT PERMITTED BY ARIZONA LAW, LESSEE AGREES TO INDEMNIFY, RELEASE, AND SAVE LESSOR, ITS EMPLOYEES AND AGENTS HARMLESS FROM ALL CLAIMS OR LOSS FOR DEATH OR INJURY TO PERSONS INCLUDING LESSOR'S AND LESSEE'S EMPLOYEES, OF ALL LOSS, DAMAGE OR INJURY TO PROPERTY, INCLUDING THE EQUIPMENT, ARISING IN ANY MANNER OUT OF LESSEE'S OPERATION OR USE OF THE EQUIPMENT. LESSEE'S OBLIGATION TO INDEMNIFY SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO, INDEMNITY FOR ANY AND ALL LIABILITY OF LESSOR ARISING OUT OF ANY STATUTE, REGULATION OR DUTY IMPOSED BY LAW. LESSEE'S OBLIGATION TO INDEMNIFY SHALL ALSO INCLUDE, BUT NOT BE LIMITED TO, LESSOR'S COMPLETE SCOPE OF WORK, INCLUDING ALL SERVICES, ADVICE, RECOMMENDATIONS, PLANS AND SPECIFICATIONS PROVIDED. IT IS THE PARTIES' INTENT THAT THIS DUTY TO INDEMNIFY IS AS BROAD AS PERMITTED BY ARIZONA LAW. 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. Lessee shall be required to indemnify Lessor for Lessor's own negligence or fault, whether the negligence or fault of the Lessor be direct, indirect or derivative in nature. However, the Lessee shall not be required to indemnify Lessor for liability for loss or damage resulting from the sole negligence of the Lessor or the Lessor's agents, employees or Indemnitees. 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 or procurement of insurance. If this paragraph is declared invalid, then all other paragraphs of this contract shall stand. Furthermore, as part of Lessee's additional obligations hereunder, Lessee shall bear the cost of any investigation or adjustment (including but not limited to, attorneys' fees and costs, private investigator/adjuster fees and costs, expert fees and costs, costs of storage and down time for inability to use the Equipment, and costs of testing of property, Equipment, or other items) initiated by the Lessor, Lessor's insurance carriers or Lessor's third party adjusters into any accident of any kind, when such accident, or occurrence happens, involving directly or indirectly the leased Equipment, whether or not such accident involves personal injury, death or damage to the leased Equipment or other property or all of these.

4. ARIZONA INSURANCE – To the fullest extent permitted by Arizona law, the Lessee agrees to purchase, maintain and carry the following insurance coverages prior to the Equipment's arrival on the job site. 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 ("CGL") 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 following form non-contributory insurance in the amount of at least \$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; d) inland marine/all-risk and or builder's risk which includes an 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 during the rental term and Lessee shall pay all deductibles and or coinsurance requirements of the inland marine/builders risk policies provided by Lessee and Lessee shall also provide the greater of 6 months or \$500,000.00 rental reimbursement coverage or similar coverages for the Lessor's benefit for any loss or if the equipment is damaged, stolen, lost or destroyed; e) all policies are to be written by insurance companies acceptable to the Lessor; f) for all liability insurance policies (including any excess/umbrella policies) Lessee shall name as an additional insured, Lessor and Lessor's officers, directors, shareholders, members, managers, partners and employees, all affiliated partnerships, joint ventures and corporations of Lessor and anyone whom Lessor is required by contract to name as an additional insured; g) Lessee shall use all of the following ISO endorsements to provide additional insured status and coverage to Lessor: CG 2001 04 13, CG 20 10 10 01, CG 20 37 10 01, CG 20 28 07 04, CG 20 34 03 97, CG 2033 10 01, CG 20 26 04 13, CG 2038 04 13, CG 25 03 03 97, or CG 24 04 05 09; h) Additional Insured coverage shall include, but not be limited to, coverage for any and all liability of Lessor arising out of any statute, regulation or duty imposed by law; i) Additional Insured coverage shall include, but not be limited to, coverage for Lessor's complete scope of work, including all services, advice, recommendations, plans or specifications provided; j) Lessee shall provide punitive damage coverage for Lessor's benefit on all liability policies, unless prohibited by state law; k) Lessee shall name Lessor as a Primary Loss Payee on all insurance policies; l) Lessee shall provide all insurance certificates to Lessor when requested by Lessor and prior to start of work by Lessor; m) all of Lessor's policies, and the policies of anyone Lessor is required to insure shall be excess over all of Lessee's policies; n) all Lessee's policies shall be endorsed to require the insurer to give at least thirty (30) days advance notice to all insured's, including additional insured's, prior to cancellation or non-renewal; o) all Lessee's policies must remove any exclusion for explosion, collapse and underground operations (XCU); p) all Lessee's policies must remove the "employer's liability exclusion" for all additional insureds; and q) all Lessee's policies must include coverage for blanket contractual liability for the obligations assumed here-under and also for the liabilities assumed in the Indemnity section above. In the event of loss, proceeds of property damage insurance on the Equipment shall be first 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

5. LIMITATION OF LIABILITY. NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT, IN NO EVENT WILL SUPPLIER BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, INDIRECT, SPECIAL, LIQUIDATED, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING, PERFORMANCE OR USE OF THE EQUIPMENT OR SERVICES PERFORMED HEREUNDER, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS

CONDUCT, INCLUDING NEGLIGENCE, EVEN IF SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SUPPLIER'S LIABILITY ON ANY CLAIM OR ANY KIND OF LOSS OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR FROM THE PERFORMANCE OR BREACH THEREOF BY SUPPLIER SHALL IN NO CASE EXCEED THE PAYMENTS RECEIVED BY SUPPLIER FROM CUSTOMER FOR THE EQUIPMENT OR SERVICES UNDER THIS AGREEMENT DURING THE PREVIOUS THREE (3) MONTHS (HEREAFTER REFERRED TO AS "DAMAGES CAP"). SUPPLIER SHALL NOT BE LIABLE TO CUSTOMER, UNDER ANY CIRCUMSTANCES, WHETHER PURSUANT TO AGREEMENT, WARRANTY (EXPRESS OR IMPLIED), TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, WILLFUL AND WANTON MISCONDUCT, INTENTIONAL ACTS, OR PRODUCTS AND/OR STRICT LIABILITY) OR OTHERWISE CAUSED OR ALLEGED TO BE CAUSED DIRECTLY OR INDIRECTLY BY THE EQUIPMENT OR SERVICES, OR BY ANY INADEQUACY THEREOF, OR BY ANY DEFECT THEREIN, OR BY ANY ACT OF OMISSION IN CONNECTION THEREWITH IN EXCESS OF THE DAMAGES CAP. THE DAMAGES CAP ON CARGO TRANSPORTED BY SUPPLIER IS LIMITED TO A RELEASE VALUE OF \$2.50 PER POUND, WITH A MAXIMUM RECOVERY OF \$100,000 PER TRUCK LOAD.

6. ASSUMPTION AND RELEASE. In addition to other provisions of this Contract, the Customer assumes all of the risks associated with the performance of any and all work occurring under or arising out of this Contract. This includes, but is not limited to, any risks, claims, suits, or causes of action that may arise from negligence or carelessness on the part of the Customer or the Customer's agents, servants or employees, independent contractors or anyone else the Customer is responsible for. Further, the Customer waives, releases and discharges the Supplier and its agents, servants or employees, from any and all liability, including but not limited to, liability arising from any and all negligence or fault, for any death, disability, personal injury, property damage, or actions of any kind which may hereafter occur or arise out of the performance of any and all work under, or arising out of this Contract.

7. LIFT DIRECTOR. It shall be the duty of the Customer to have a person on site qualified as a "Lift Director" pursuant to ASME B30.5 to give specific instructions and directions to all persons operating, maintaining, mobilizing/demobilizing and assembling/disassembling the leased Equipment. Customer understands and agrees that Customer is responsible for operating the Equipment in accordance with American National Standards Institute (ANSI) and ASME B30.5-2014 (and as amended), Customer specifically agrees that the Supplier has absolutely no control over the Lift Director. The Lift Director has the exclusive right to supervise and control the use of the Equipment and the operator. If an operator refuses to comply with a signal, direction or order for any reasons, including the operator's belief that such a signal, direction or order creates an unsafe condition, Customer agrees that such refusal does not change or alter the Lift Director's exclusive right to supervise and control the use of the Equipment and the operator. The Customer further agrees that all Equipment used, and all work performed and all persons operating the Equipment, shall be solely within and in furtherance of, Customer's contractual scope of work on any given project. The Supplier has no right to replace or substitute personnel and any such replacement or substitution shall only be at the direction of and with the approval of the Lift Director and the Lift Director shall have the right to control, including the right of termination, and the Lift Director shall be deemed to have exercised that right as to all details or operation of the Equipment and the personnel operating the Equipment.

8. OPERATION AND USE OF EQUIPMENT. Customer shall, at all times, transport, store and/or operate the Equipment (also referred to as load handling Equipment or "LHE") in a safe and competent fashion and shall be responsible for the actions of all those persons involved in the transportation, storage and/or operation of the Equipment. Customer shall, at all times, comply with all applicable local, state, federal and provincial statutes, rules and regulations relating to the operation of the LHE. During transportation, delivery, set-up, use and operation of the Customer, directly and through its agents, servants and employees, shall at all times, assume the roles and fulfill all the responsibilities of the; a) A/D director (Assembly/Disassembly director), b) controlling entity, c) Lift Director, d) Lift Planner, e) Site Supervisor, f) Site Safety Officer, g) Crane User and/or LHE User, i) Crane Operator and or LHE Operator, j) Signaller, k) Rigger, l) Spotter; and m) Transport Operator, as those terms are defined in 29CFR1926.1400 OSHA), ASME P30.1 Lift Planning and ASME B30.5 Mobile and Locomotive Cranes. If Supplier supplies any lifts plans for use by the Customer and/or the Lift Director,

Customer agrees that the lift plans are supplied for informational purposes only, and the Lift Director is ultimately responsible to review and approve the lift plan for use. Supplier is not responsible for any information used in the preparation of the lift plan. Customer is solely responsible for gathering and providing all information used in the lift plan. Customer hereby guarantees that those agents, servants and employees assigned the roles and functions set forth above shall be, at all times, through education, training, experience, skill and physical fitness, as necessary, be competent and capable to perform the functions they are assigned.

9. GROUND CONDITIONS. Customer shall be solely responsible for the ground conditions and the proper use of supporting materials during the transportation, storage and the placement of the Equipment for operation of the Equipment. "Ground conditions" means the ability of the ground to support the Equipment (including slope, compaction, and firmness). "Supporting materials" means blocking, mats, cribbing, or similar supporting materials or devices. The Equipment must not be assembled or used unless ground conditions are firm, drained, and graded to a sufficient extent so that, in conjunction (if necessary) with the use of supporting materials, the Equipment manufacturer's specifications for adequate support and degree of level of the Equipment are met. The Customer shall ensure that ground preparations necessary to meet the requirements of this paragraph are provided, which includes, but is not limited to, the identification, communication and elimination of hazards in, around and beneath the Equipment set-up area, including below grade.

10. POWER LINES. Customer shall be solely responsible for ensuring that the Equipment is not transported, used or operated in proximity to energized power lines, wherever they are located. Customer shall contact the electric utility and arrange for all power lines in proximity of any transportation or to be de-energized. If de-energizing of power lines is not possible, then Customer will ensure that all power lines are properly insulated. Finally, at a minimum, Customer shall strictly follow all requirements found in any applicable code or regulation, in particular those found in 29 CFR 1926.1408 and 1409. Customer shall not rely upon any proximity warning device to determine whether the Equipment is maintaining a safe distance from any power lines.

11. RIGGING. Customer is required to provide any and all rigging to be used with the Equipment including, but not limited to, chokers, slings, straps, chains, hooks, spreaders, fittings, rope or wire. Customer and the Lift Director assume the responsibility for the manner, means and method of rigging, the condition of the rigging, the condition and use of any lifting lugs and hereby guarantees that those agents, servants and employees involved in the rigging of any load shall be, at all times, through education, training, experience, skill and physical fitness, as necessary, be competent and capable to perform the functions they are assigned.

12. LOAD CALCULATIONS AND DEVICES. If any Equipment has been fitted with a load measuring device, the Customer hereby acknowledges and agrees that the Supplier 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 the Equipment and Customer will not rely upon said device. Customer shall independently determine the weight of every load to be lifted by the Equipment and Customer shall independently calculate the lifting capacity of the Equipment for each and every lift and shall make the decision to proceed with any lift, based only on the expertise and judgment of the Customer and the Lift Director.

13. ACCIDENT INVESTIGATION. In the event of any accident, loss or casualty event involving any use of the Equipment, whether resulting in property damage or bodily injury or other loss or damage, Customer shall, under Supplier and/or Supplier's insurer's direction, provide, at its sole cost and expense, for the full and complete investigation of any such accident, loss or casualty event. Costs and expenses of any investigation may include, but shall not be limited to, reasonable fees and costs for, lawyers, experts, forensic investigations, adjusters, and inspection, disassembly, transportation and/or storage of the Equipment. The Customer agrees that it will pay all defense costs of investigations conducted by Supplier, or entities working on Supplier's behalf.



14. NO WARRANTIES; EQUIPMENT "AS IS". SUPPLIER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY, ITS DESIGN, ITS CAPACITY, ITS PERFORMANCE, ITS CONSTRUCTION OR WORKMANSHIP, OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. SUPPLIER FURTHER DISCLAIMS ANY LIABILITY WHATSOEVER FOR LOSS, DAMAGE, OR INJURY TO CUSTOMER OR THIRD PARTIES AS A RESULT OF ANY DEFECTS, LATENT OR OTHERWISE, IN THE EQUIPMENT. AS TO SUPPLIER, CUSTOMER HAS MADE THE DECISION TO LEASE THIS EQUIPMENT AND ANY OPERATOR/OILER/TECHNICIAN BASED ON CUSTOMER'S REQUIREMENTS FOR THIS PROJECT. LESSOR MADE THIS EQUIPMENT, OPERATOR/OILER/TECHNICIAN AVAILABLE FROM A POOL OF AVAILABLE PERSONNEL AND MACHINES FOR CUSTOMER'S USE AND THE DECISION TO USE THIS EQUIPMENT, OPERATOR/OILER/TECHNICIAN IS SOLELY CUSTOMER'S DECISION. CUSTOMER LEASES THE EQUIPMENT "AS IS". SUPPLIER SHALL NOT BE LIABLE TO CUSTOMER FOR ANY LOSS, DELAY, OR DAMAGE RESULTING FROM DEFECTS IN THE EQUIPMENT OR ANY ACCIDENTAL BREAKAGE NOT CAUSED IN WHOLE OR IN PART BY CUSTOMER. NOTWITHSTANDING THE FOREGOING, SUPPLIER SHALL REPLACE THE EQUIPMENT WITH SIMILAR EQUIPMENT IF THE EQUIPMENT FAILS TO OPERATE IN ACCORDANCE WITH THE MANUFACTURERS SPECIFICATIONS AND/OR OPERATING INSTRUCTIONS. SUCH REPLACEMENT SHALL BE MADE AS SOON AS REASONABLY POSSIBLE AFTER CUSTOMER RETURNS THE NON-CONFORMING EQUIPMENT.

15. DAMAGE TO PROPERTY. If Customer's use of the Equipment requires or results in the Equipment being transported, setup, stored or operated outside of the curb line of the public roadway, the Customer shall obtain the permission of any and all property owners whose property may be entered upon. Further Customer will restore, repair and/or replace any property that may be damaged as a result of such transportation, setup, storage or operation. Finally, Customer shall be solely responsible for any Equipment, damage, towing or removal charges and any additional rental charges arising from such transportation, setup, storage or operation of the Equipment.

16. DEMURRAGE. If the Equipment is not returned during or by the end of the term, then for every hour, or portion thereof, from the end of the term to the time when the Equipment is returned to the Supplier, as required herein, the Customer shall pay a penalty (in addition to the regular rental rate) equal to three (3) times (x) the standard hourly rental rate for such Equipment. If the Equipment is returned damaged, the Customer is responsible to pay for all repairs to put the Equipment back in the same condition it was in at the time of renting to Customer. In addition, the Customer is responsible to pay the monthly/daily lease rates to Supplier until the Equipment is put back into the same condition at the time of leasing to Customer.

17. MAINTENANCE; DAMAGE TO OR DESTRUCTION OF EQUIPMENT. The Customer shall keep and maintain the Equipment in good operating condition during the term of the rental at Customer's sole cost and expense. Customer is solely responsible for all manufacturer required maintenance and all federal, state or local inspections of the Contract unless a separate agreement for maintenance is agreed to and executed by both parties. The Customer shall pay the Supplier the higher of the full insurable value for any Equipment or the replacement value of the Equipment which is not returned or returned damaged, because it is lost or stolen or destroyed or damaged beyond repair. Further, Customer will pay the full cost of repair for any Equipment, which is damaged and in need of repair, to put it into the same condition it was in at the time of rental and pay all rental rates and fees for the Equipment until the Equipment is put back into the same condition it was in at the time of leasing. The amount of Supplier's invoice for replacement or repair is conclusive as to the amount Customer shall pay under this paragraph for repair or replacement. The invoice is a rental amount due under Contract.

18. RENTAL PERIOD AND CHARGES. The rental period shall start at the time the Equipment first leaves the Company's yard/terminal. The rental period includes all time necessary for the transport, mobilization, demobilization, assembly and disassembly of the Equipment and continues until the Equipment is returned and accepted by the Company. Equipment will not be accepted by the Company until it is returned in the same condition as when the Equipment left the yard. If the Equipment is returned in a damaged state, this agreement is extended until the Equipment is restored to its condition at the

time it left the Company's yard at the inception of this agreement. If a periodic rental rate is charged by Company, rental charges will be billed to the Customer for each period or portions of the period from the time the equipment leaves the Company's yard, until it is returned and accepted by Company. If a term rental rate is charged by Customer, rental charges are billed to the Customer for the full term even if the equipment is returned before the end of the term. Each piece of Equipment is charged based upon a 160-hour monthly use of the Equipment. Any Equipment used more than 160 hours in a calendar month will be charged for each additional hour or fraction thereof per month as follows: Hours of operation in excess of 160 hours per month ÷ 160 hours x monthly rental rate. There are no unused hour carryovers allowed from month to month. No allowance without a prior written amendment to this lease will be allowed for any equipment, or accessory, which is claimed not to have been used. The Customer further covenants and agrees to open for inspection by the Customer, any and all payroll records and hour meters for the purpose of verifying the actual hours worked. The acceptance of returned equipment by Company does not constitute a waiver of any of the rights Company has under this Contract. Customer is not allowed to back charge, nor deduct from rental rates for any reason including any down time associated with any Equipment. Rentals shall not be subject to any set-off or deduction for any reason whatsoever and, without limiting the generality of the foregoing, by reason of non-working or down time, howsoever caused, during the Rental Period or any extension thereof, nor shall the Customer be relieved from his responsibility to pay rent for the entire Rental Period by reason of the fact that the Equipment is returned prior to the expiration of the minimum rental period. All charges for use of the Equipment must be paid as billed by the Company in accordance with the Prompt Pay statute of the state where the Equipment is being used. Customer acknowledges that a fundamental principle of this Contract is that it shall pay the sums due under this Contract as and when required. Accordingly, Customer unconditionally and irrevocably waives any and all rights to withhold from, set-off against, reduce or delay any amount owed to Customer, for any reason or by any amount whatsoever, including by any amount claimed to be owed by Company to Customer. Weather and Customer delay rates will be billed in accordance with the rates established in the "Work Order." A Customer delay rate is applied while any "Scope" work is being performed such as Crane Assembly, Component Exchange, or Demobilization of Equipment and is stopped or halted for any reason. A Weather Delay is any weather-related event including but not limited to lightening, wind above manufacturers or regulatory operating limits of the Equipment, or the turbine manufacture limits set forth in the installation manual.

19. RENTAL PAYMENTS. All invoices submitted by Supplier shall be due and payable by Customer within ten (10) days of the invoice date. Customer shall pay to Supplier the lesser of the highest rate allowed under applicable law, or 1.5% per month, on the total balance of any and all invoices, or any portion of any and all invoices, that remain unpaid ten (10) days after the invoice date. Invoices will be credited with payments on the oldest outstanding invoice. Any claim for withholding payments must be filed by Customer in accordance with the Construction Prompt Pay statute where the work is being performed and pursuant to the dispute resolution terms of this Contract, within 60 days of the date of the disputed invoice. If Customer fails to follow the Construction Prompt Pay statute and file a dispute within 60 days, Customer waives any all rights to dispute any invoiced amount. The parties may agree in writing to extend the time period to file a dispute to 120 days for good cause shown and if the parties are negotiating in good faith. Company may, upon reasonable notice, require Customer to pay rentals in advance if customer falls more than (30) days behind in making any payment. Customer acknowledges that a fundamental principle of this Agreement is that it shall pay the sums due under this Agreement as and when required. Accordingly, Customer unconditionally and irrevocably waives any and all rights to withhold from, set-off against, reduce or delay any amount owed to Company for any reason or by any amount whatsoever, including by any amount claimed to be owed by Company to Customer.

20. SECURITY DEPOSIT. Any security deposit paid by Customer to Supplier, is paid to guarantee Customer's full and faithful performance of all terms, conditions and provisions of this Contract, including rental payments, maintenance or damage to the Equipment. When Customer performs all such terms, conditions and provisions, an equal sum shall be returned without interest to Customer.

21. TERMINATION; DEFAULT. The Supplier may terminate this Contract immediately and take possession of all Equipment

leased under any lease/Contract upon the failure of Customer to; 1) make rental payments, or any other payments required, within 30 days of being invoiced, or 2) if Customer is acquired by or merges with any other entity unless this Contract is assumed in writing by the new entity and such assumption is agreed to by Supplier; or 3) dissolves or liquidates a substantial part or all of its business or becomes subject to a bankruptcy, receivership, or other similar proceeding filed by or against it, or 4) fails to maintain the Equipment in accordance with the manufacturer's required maintenance/inspection schedule, or the federal, state or local required maintenance/inspection schedule; 5) fails to operate the Equipment in accordance with the manufacturer's guidelines (which includes exceeding the manufacturer's rated load capacities for the Equipment, or using counter-weights in excess of the manufacturer's specification) or 6) fails to operate the Equipment in accordance with American National Standards Institute (ANSI) including ASME B30.5-2014 (and as amended), or 7) Customer shall fails to perform any other term of this Contract not listed in this section and such failure shall continue for five (5) days after written notice hereof to Customer by Supplier or 8) Customer fails to timely pay the premium, deductible or co-insurance requirements of any policy including any Equipment inland marine policies. Further, If Customer is in default of any item described in item 1 through 8 above, Customer shall be in default of this Contract. If Customer is in default, Supplier shall have the right to immediately exercise one or more of the following remedies: a) to declare the entire amount of rent hereunder immediately due and payable, without notice or demand to Customer ; b) to sue for and recover all rental payments, and other payments, then accrued or thereafter accruing; c) to immediately take possession of the Equipment or to remotely turn off the Equipment so that it cannot be used until all defaults are cured, without demand, notice, or legal process, wherever they may be located and Customer hereby waives any and all damages or rights occasioned by such taking of possession, or remote turnoff and any taking of possession shall not constitute a termination of this Contract as to the rights of the Supplier and as to any or all items of Equipment, unless Supplier expressly so notifies Customer in writing; d) to terminate this Contract or any other Contract with Customer as to any or all items of Equipment; and e) to pursue any other remedy at law or in equity. Notwithstanding any said repossession, or any other action which Supplier may take, Customer shall be and remain liable for the full performance of all obligations on the part of Customer to be performed under this Contract. All such remedies are cumulative, and may be exercised concurrently or separately. If Customer is in default of any other Contract, then Supplier, at Supplier's sole discretion may hold this and all other Contracts in default and terminate any Contract and take possession of all Equipment. If Customer appears to be a credit risk, Supplier may terminate this Contract and take possession of the Equipment.

**22. TAXES-FEES-PERMITS.** Customer shall be responsible for any and all fees, permits, sales, use, excise, value added, utility, personal property or other taxes and any license fees and/or assessments relating to Customer's use or possession of the equipment. Customer shall pay such fees, permits, taxes and other charges to Supplier in accordance with invoices submitted by Supplier. Taxes are charged for storage unless a tax exempt certificate (AZ 5000 Form) or similar is provided by Customer.

**23. TITLE TO EQUIPMENT.** The Equipment shall at all time remain the property of Supplier. Customer shall do nothing to encumber or interfere with those rights and shall take all actions necessary to protect those rights. Customer shall not acquire any interest in or rights to the Equipment, other than the rights of use set forth in this Contract.

**24. INSPECTION.** Customer shall allow Supplier entry upon or access to any premises where the Equipment is stored or used, at all reasonable times, to locate and inspect the state and condition of the Equipment. Customer shall inspect all the Equipment within twenty-four (24) hours after delivery by Supplier. Unless Customer gives written notice to Supplier, within the inspection time period, specifying any defect in or other proper objection to the Equipment, Customer agrees that Customer shall be deemed to have fully inspected and acknowledged that the Equipment is in full compliance with the terms of this Contract, in good condition and repair and is the type of Equipment that Customer has requested.

**25. LOCATION OF EQUIPMENT.** The Customer shall not remove the Equipment from the location shown herein as the place of use of the Equipment, without prior written approval of the Supplier. The Customer shall inform the Supplier upon demand of the exact location of the Equipment while it is in the Customer's possession.

26. **WAIVER OF SUBROGATION/LIEN.** Customer hereby agrees to waive any and all rights of subrogation and any and all lien rights which may accrue to it or its insurers. This shall include, but not be limited to, rights of subrogation and lien rights arising from workers compensation/employer's liability policies or other employee benefit programs or acts, commercial general liability policies, or any other loss incurred by the Customer, or any other party, as a result of bodily injury or property damage. The Customer 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 Contract.

27. **LIMITATION.** - Any action, demand, lawsuit, arbitration or any other claim by Customer against Supplier arising out of, or related to this Contract must be commenced in accordance with Section 17 and Section 26 but in no event later than one (1) year from the date on which any such right, claim, or cause of action shall have first accrued.

28. **DISPUTE RESOLUTION.** Prior to use of the Equipment Customer shall agree to be bound by Dispute Resolution Agreement, which shall include, among other things, a jury waiver, mandatory mediation and a binding arbitration clause. The Dispute Resolution Contract between the parties is incorporated into and made a part of this Contract. INCORPORATED BY REFERENCE INTO THIS CONTRACT IS THE DISPUTE RESOLUTION AGREEMENT AT URL(S): [www.swirusa.com/Incorporations/CustomerDisputes.pdf](http://www.swirusa.com/Incorporations/CustomerDisputes.pdf)

29. **COMPLIANCE WITH LAW.** Customer shall, at all times, (i) comply with all federal, state, provincial and local laws and regulations in all material respects relating to this Contract; and (ii) maintain any and all licenses, permits, and other authorizations required by federal, state, provincial and local laws which includes New York Labor Law § 200, 240, 241 or any state's non-delegable duty law. Further, Customer certifies that: (i) it is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and (ii) it is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity, or nation. Finally, Customer shall, at all times, perform its obligation under this Contract in compliance with all applicable financial sanction laws, rules and regulations, including, but not limited to, all applicable laws, rules and regulations regarding bribery or money laundering. Customer further agrees that any and all transactions or funds transfers occurring under this Contract shall be subject to scrutiny for compliance with all such laws, rules and regulations and that any and all transactions or funds transfers may be embargoed or otherwise restricted until compliance with these laws, rules and regulations can be verified.

30. **INTELLECTUAL PROPERTY.** Documents, materials, processes and systems owned or developed by or licensed or leased to Supplier, which may be used by or come into the possession of Customer as a result of this Contract, shall be deemed proprietary to and shall belong to, and remain the sole property of Supplier.

31. **INTERPRETATION.** This Contract shall be interpreted as an understanding of parties on equal footing and without resort to any rule of construction resolving ambiguity against the drafter.

32. **INDEPENDENT CONTRACTOR.** This Contract does not create or evidence a partnership or joint venture and Customer and its agents, servants and employees, shall at all times, be an independent contractor, and employees of Customer shall in no event be considered employees of Supplier, nor shall they be eligible for any employee benefits or other benefits from Supplier.

33. **EMPLOYEE.** The term "employee" shall include all operators, oilers, technicians, or any other person that is assembling, disassembling, and performing maintenance work or repair work on the Equipment, mobilizing, demobilizing or providing any work on the Equipment.



34. **SURVIVAL- SEVERABILITY.** To the fullest extent permitted by the laws of the state where the Equipment is being used, provisions of this Contract shall be interpreted to be valid and enforceable under applicable law; provided, however, that if any provision is held invalid or unenforceable, such provision will be deemed deleted from the Contract and replaced by a valid and enforceable provision which so far as possible achieves the parties' intent in agreeing to the original provision. The Contract's remaining provisions will stay in effect. This document is a complete and exclusive statement of all the terms of this lease and includes all the representations of the parties. All prior discussions and negotiations are incorporated into this Contract as the final Contract of the Parties. All of the representations, warranties, guaranties, limitations of liability, Contracts to procure insurance and indemnities contained in this Lease shall survive the expiration, suspension or termination of this Lease, including the provisions in section, 1-4, 6, 11-17, 24-27, 34-38, 40-41 and 43-46.

35. **ATTORNEY'S FEES.** Customer shall pay or reimburse to Supplier all costs and expenses, including attorneys' fees, incurred by Supplier in exercising any of its rights or remedies or enforcing any of the terms or conditions found in this Contract.

36. **NO ASSIGNMENT.** This Contract shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns, except that Customer shall not be permitted to assign this Contract without the express written consent of the Supplier.

37. **WAIVER.** Supplier's failure or delay in enforcing Customer's performance of its obligations under this Contract shall not be a waiver of any obligation found in this Contract.

38. **TRADE SECRETS.** The Parties shall keep all Trade Secrets as defined by the Defense of Trade Secret Act ( which include any quote, bid, drawing, operational sequence, lift plan, site plan or job and project specific details, ("Submission") along with this Agreement and its terms confidential and the Customer shall not share the Submission with any competing entity of Company. Each party shall keep the Trade Secret (as defined below) of the other party confidential and shall not use any of that Confidential Information for any purpose other than in connection with this Agreement and the Submission. The "Trade Secret" of a party is any, financial information or other confidential or proprietary information in any way relating to that party's services, including all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing. A party may, without violating this paragraph, make such disclosures (i) to its directors, officers, employees, attorneys, and other agents as may be necessary to permit that party to perform its obligations and to exercise its rights hereunder, and (ii) as it reasonably deems are required by law, though a party will use its reasonable best efforts to notify the other party in advance of any such disclosure required by law. The parties' respective obligations under this paragraph shall survive the termination of this Agreement. The parties hereto acknowledge that disclosure of the Submission will cause irreparable harm; consequently, each explicitly agrees that the other party shall be entitled to seek injunctive relief, without needing to post a bond or to prove the inadequacy of damages, to prevent any violation or imminent violation of, or to compel specific performance with this paragraph. Furthermore, all parties understand and agree that the Submission and this Agreement is also protected by each state's laws on Trade Secrets including the adoption by each state of the Uniform Trade Secrets Act.

39. **FORCE MAJEURE.** Except as otherwise expressly set forth herein, in the event a party shall be delayed or hindered in, or prevented from, the performance of any act required of it hereunder by reason of strike, inability to procure materials, failure of power, telecommunications or connectivity failure, restrictive governmental laws or regulations, riot, insurrection, war, act of God, or other event outside the reasonable control of that party (each such cause or event being hereinafter referred to as a "Force Majeure"), then performance of such acts will be excused for the period of the delay and the period for performance of any such act shall be extended for a period equivalent to the period of such delay. Any time a party is

experiencing a Force Majeure that is expected to result in a significant failure or delay, that party will endeavor to give notice to the other party describing the Force Majeure and the nature of the failure or delay and giving an estimate as to how long the delay will last. A party claiming an excusable delay or failure under this paragraph shall use reasonable efforts to alleviate or overcome the Force Majeure as soon as practicable.

40. THIRD PARTY BENEFICIARY. Nothing in this Contract, expressed or implied, is intended to confer upon any person or entity, other than the parties and their legal successors and permitted assigns, any rights, benefits, or obligations.

41. CHOICE OF LAW, VENUE. **This proposal and any Contracts arising from acceptance hereof shall be governed by and interpreted in accordance with the laws of the State where work is being performed, and the Federal laws of the United States of America applicable therein, including, but not limited to, federal transportation law while the cargo is in transit.** However, if a state law requires that a construction indemnity statute apply to Equipment rented in the state where the Equipment is being used, then that State's laws shall apply. The venue for all disputes among and between the parties concerning the validity, construction, or effect of this Contract, or the rights and obligations created hereunder, shall be in the city, county and state where the Supplier is located. The Dispute Resolution Section 28 takes precedence over this section. This section applies only potentially to claims not covered by the Dispute Resolution Section 28.

42. NOTICE. All notices to be given pursuant to this Contract shall be provided to the respective party at the addresses contained in this Contract shall be deemed to have been properly given when either (i) personally delivered, or (ii) mailed by registered or certified mail, postage prepaid with return receipt requested, or (iii) delivered by private courier, or (iv) delivered by FedEx, UPS, USPS, or similar courier, or (v) delivered via email. Notice by electronic mail pursuant to (v) shall become official notice under this Contract, upon electronic receipt as sent by the delivering party through an email system such as Microsoft Outlook.

43. HEADINGS. The section or section headings in this Contract are inserted only as a matter of convenience and for reference and in no way, define, limit or describe the scope or intent of this Contract or in any way affect this Contract or its interpretation.

44. VALIDITY OF PROVISIONS. If any provision of this Contract is ever held to be invalid or unenforceable, that provision will be severed from the rest of this Contract, and all of the other provisions of this Contract will remain in effect.

45. EXECUTION/COUNTERPARTS/INTEGRATION. These Terms and Conditions may be executed as part of a "Work Ticket" "Work Order" "Crane Rental Agreement" "Equipment Rental Agreement" "Bare Crane Rental Agreement" or any similar document (all referred to as "Work Order") and with counterparts, each of which shall be an original, but all of which shall constitute one and the same, document. Field Personnel for the Customer are authorized to sign all Work Orders. In the event this Agreement has been executed by an individual on behalf of a corporation or other business entity, the person whose signature is affixed hereto and the entity for which the individual has signed this Agreement, represent to Company that the individual signing has full authority to execute this Agreement on behalf of said corporation or other business entity. By ordering or accepting the services and or lease/rental of Equipment described in any quote, bid, or "Work Order" the Customer agrees to the terms and conditions set forth herein, none of which may be added to, modified, superseded or altered. Any different or additional terms from the Customer such as in a Purchase Order are hereby rejected. Supplier reserves the right to deny service to any Customer. This denial of service is based on circumstances where any worker is subjected to any harassment or any form of abuse or misuse which is directed toward any worker. The decision to deny service based on harassment, abuse, or misuse is at the sole discretion of Supplier. This Contract and incorporated by reference provisions constitute the entire understanding of the parties, and supersedes all prior and contemporaneous Contracts or understandings, written or oral, of the parties with respect to the subject matter hereof and this Contract may be waived, amended or modified only in a writing executed by both parties, with the exception that this Contract may not be waived or modified by a Purchase Order or similar document, regardless of the language contained therein.

46. RIGHT TO CURE. If Customer fails to pay or perform any of its obligations under this Agreement, then Company may itself pay or perform such obligations and the amount of any payment plus Company's reasonable expenses and overhead (15%) in connection with such payment or performance, together with any interest due hereunder, shall be deemed additional Rent, payable by Customer on demand.

47. ADDITIONAL SPECIAL TERMS AND CONDITIONS.

- a) Supplier insurance coverages are limited to those coverages in Section 4 above. If in the event that Customer desires additional insurance or indemnification from Supplier, additional costs will be quoted to Customer.
- b) Property Insurance for the value of any customer supplied equipment or Cargo in the possession of Supplier, is limited to one Hundred Thousand Dollars (\$100,000.00). Supplier's liability for damage to Cargo is limited to \$100,000.00 unless Customer requests and purchases additional coverage.
- c) Supplier allows for 2 hours for loading and unloading, any additional time over 2 hours will be billed at detention charges separately.
- d) Any quote or bid given to customer is valid for 30 days.
- e) All quotes and bids from Supplier incorporate by reference all terms and conditions contained herein.
- f) No retention of any contract sums by Customer are allowed.
- g) Mobilizations and demobilizations are during regular work days, at straight time hours. Cranes, Equipment or the transportation of Cargo are subject to time travel constraints per Department of Transportation restrictions and may require overtime or alternate day travel. Any requests for Mobilization or Demobilization outside of regular workdays will be billed at appropriate Overtime/Double-time rates. All rates are portal-to-portal, from Phoenix/Flagstaff/Tucson/Farmington yard/terminal.
- h) All days worked are a minimum of 8-hours. Technicians are SWIR personnel; if the local union requires local or additional personnel, prevailing wages, hourly guarantee's or holiday compensations and additional charges will apply. Additional equipment, labor or other costs beyond the items specifically listed above shall be at an additional cost to the customer.
- i) Pricing does not include surcharges, escorts, police or road closures (if required), traffic control, permits, crane mats, (equipment requires a compacted level crane pad), or engineering. A diesel fuel surcharge will be added to all invoices. Utility services including wire lifting, etc., escorts, police or related services will be billed at cost plus 15%. Canceled or rescheduled projects may incur permit and/or reimbursement of any "out of pocket" charges after the fact. OCIP, CCIP and/or Certified Payroll - when required by customer, will be charged at \$150.00 per certified payroll report for the duration of the job.
- j) We require free and clear access to the work/project site and sufficient clear area for set-up and operation of equipment. Customer is responsible for providing the safe site for the mobilization, demobilization, assembly, disassembly and operation of the Equipment. Relocation or removal of all obstacles including but not limited to overhead lines, curbing, signs, fencing, or other obstructions is the responsibility of Customer or others.
- k) The quote or bid is an estimate only. The proposed scope of work, execution plan and estimated pricing have been determined by an assessment of your requirements from information provided by you and by our own knowledge or past experience. We have not taken steps to verify clearances, route obstructions, third party pricing, equipment availability, or any site-specific requirements.
- l) In the absence of a signed/accepted quotation the request for dispatch of personnel and/or equipment will serve as an acceptance of this quotation or bid, it's pricing, the terms contained herein and on any site work tickets generated.
- m) Supplier is not responsible for the movement/transportation of any hazardous cargo or material containing hazardous material as defined by any Federal or State Department of Transportation.
- n) Unless specially noted in the quote or bid, all costs for utility assistance such as power lines, telephone lines, TV/cable lines, are not included and will be billed in addition to the quote or bid plus fifteen percent overhead.
- o) Supplier reserves the right to broker or subcontract any part of the scope of work for this agreement.
- p) Any transportation work covered by a quotation or bid, is subject to all federal, state, local, or municipal rules,

regulations, or statutes.

- q) Any work for any job of the Customer may be terminated or suspended immediately if any invoice for any work of the Customer has not been paid by Customer within 30 days of the date of the invoice.

**48. ADDITIONAL LTRA OR EQUIPMENT LEASED WITHOUT AN OPERATOR TERMS AND CONDITIONS**

For all Equipment that is bare leased by Customer, without SWIR operator, including under a Long Term Equipment Rental Agreement ("LTRA" or "Lease") or Lease agreement, it is the Customer's responsibility to perform the following:

- a) All Equipment will be inspected daily in accordance with the manufacturers, Federal, State, and Local Authorities requirements by Customer before being used.
- b) Before startup, engine oil, hydraulic oil, antifreeze and all belts must be inspected by Customer.
- c) Customer's Operator will plug block heater in and use starting aids as weather requires.
- d) Tires must be inspected daily by Customer for any abnormal wear and tear, cuts, flats or other damage.
- e) Customer Required Daily Maintenance includes replacement of fuses, inflation of tires, re-wrap hoist cable, change block or ball, machine lubrication, repair minor leaks, make adjustments to brakes and clutches, and maintain all fluid levels.
- f) All hoist and boom cables must be inspected daily and per shift, and maintained by Customer to prevent damage.
- g) All inspections must have written report of inspection.

**49. TERMS AND CONDITIONS PREVAIL. IT IS THE INTENTION OF THE PARTIES THAT THESE TERMS AND CONDITIONS OF CONTRACT SHALL PREVAIL OVER ALL INCONSISTENT PROVISIONS IN ANY OTHER CONTRACT DOCUMENTS, INCLUDING ANY PURCHASE ORDER, OWNER CONTRACT, PRIME CONTRACT, OR UPPER TIER CONTRACT ISSUED AT ANY TIME RELATING TO ANY BID OR QUOTE. THE TERM BID OR QUOTE INCLUDES ANY DOCUMENT ENTITLED PROPOSAL. CUSTOMER SHALL BE CONCLUSIVELY DEEMED TO HAVE ACCEPTED THE TERMS AND CONDITION OF CONTRACT HEREIN, AND TO HAVE ENTERED INTO THIS CONTRACT WITH SUPPLIER. IF CUSTOMER REQUESTS SUPPLIER TO PERFORM ANY WORK AFTER THE CUSTOMER'S RECEIPT OF THE QUOTE, BID, PROPOSAL OR THESE TERMS AND CONDITIONS, THESE TERMS AND CONDITIONS SHALL BE DEEMED EXECUTED AND BINDING. IF CUSTOMER CALLS SUPPLIER AND REQUESTS CUSTOMER TO SUPPLY EQUIPMENT OR PERSONNEL THEN CUSTOMER AGREES TO ALL TERMS AND CONDITIONS TO THE QUOTE OR PROPOSAL AS WELL AS THESE TERMS AND CONDITIONS.**

**FOR ANY AGREEMENT OR CONTRACT ENTERED INTO BEFORE 4APR18, THE  
FOLLOWING TERMS AND CONDITIONS APPLY:**

[www.swirusa.com/Incorporations/1JUL16WorkOrder.pdf](http://www.swirusa.com/Incorporations/1JUL16WorkOrder.pdf)

**FOR ANY AGREEMENT OR CONTRACT ENTERED INTO  
BETWEEN 4APR18 AND 1SEP18,  
THE FOLLOWING TERMS AND CONDITIONS APPLY:**

[www.swirusa.com/Incorporations/4APR18WorkOrder.pdf](http://www.swirusa.com/Incorporations/4APR18WorkOrder.pdf)