

## **ADDITIONAL TERMS AND CONDITIONS OF RENTAL CONTRACT**

(These additional terms and conditions are incorporated into and made a part of the Rental Contract)

### **1. Operation, Maintenance, Care and Damage.**

**A. Operation.** CUSTOMER shall permit the use of the Rental Unit only by properly licensed drivers that are (i) over the age of eighteen (18) years, and (ii) trained and competent personnel of CUSTOMER, subject to CUSTOMER's exclusive direction and control (each, a "Driver"). CUSTOMER covenants and warrants that, during the Term, the Rental Unit shall at all times be used and operated in compliance with the laws of the jurisdiction in which it is located, and with the provisions of all applicable insurance policies and manufacturer's operation manuals (collectively, the "Manuals") and in compliance with all acts, rules, regulations, or orders of any administrative body. In addition to the above, CUSTOMER shall not operate any Rental Unit (i) in any reckless or abusive manner, or (ii) to transport any cargo, property, or hazardous material in a quantity which requires placarding by the United States Department of Transportation, or any medical, bio-hazardous, or radioactive waste (collectively "Hazardous Materials"). CUSTOMER shall not operate any Rental Unit outside of the United States. CUSTOMER is not permitted to carry passengers in any Rental Unit, except as required in the ordinary course of CUSTOMER's business. If any driver operates a Rental Unit in violation of the terms herein, and in addition to other remedies available to FYDA, CUSTOMER will immediately remove that driver from operation of the Rental Unit. Each Rental Unit will be delivered with the fuel tank full. It is the responsibility of the CUSTOMER to return the Rental Unit at the end of the Term with the tank full. If the Rental Unit is returned without a full tank, FYDA will fill the tank upon return and charge the CUSTOMER for the cost on the final invoice. CUSTOMER shall not, without the prior approval of FYDA, affix or install any accessories, replacements or other devices to the Rental Unit and all repairs, replacements, accessories, attachments and devices furnished or affixed to such Rental Unit, unless otherwise agreed to in writing, shall be the property of FYDA.

**B. Regular Maintenance.** CUSTOMER is responsible for all daily fluid level checks. CUSTOMER is also responsible for the repair and replacement of tires. Except for the responsibilities of the CUSTOMER, FYDA shall maintain the Rental Unit and make all regular maintenance and inspection called for by the Manuals (the "Regular Maintenance"). Regular Maintenance may include: (i) preventative maintenance on Rental Unit and (ii) the repair and replacement of items when needed as indicated by each inspection. With the exception of Regular Maintenance, CUSTOMER shall pay all costs and expenses of operation of the Rental Unit, including, without limitation, fuel and Required Insurance (as defined herein).

**C. Damage and Destruction.** CUSTOMER shall pay or reimburse FYDA for any loss due to damage to, or destruction of, a Rental Unit from any cause whatsoever. In the event of any damage to, or destruction of, any Rental Unit from any cause whatsoever, following proper notice from CUSTOMER to FYDA of such damage or destruction as provided herein, CUSTOMER hereby acknowledges that FYDA, at its sole discretion, shall have the right to determine where and by whom the repairs and/or maintenance to the Rental Unit will be performed. Additionally, FYDA shall retain this right even in the event CUSTOMER or CUSTOMER's insurer shall be responsible

for paying for the repairs to the Rental Unit. All Rental Payments shall continue until the termination of this Rental Contract. CUSTOMER shall promptly notify FYDA of any loss or damage to a Rental Unit which makes any item of the Rental Unit unfit for continued use. CUSTOMER hereby irrevocably appoints FYDA as CUSTOMER's attorney-in-fact to execute and endorse all checks or drafts in CUSTOMER's name to collect under any Required Insurance. FYDA may apply proceeds from Required Insurance to the obligations of CUSTOMER hereunder or any other obligation CUSTOMER may have to FYDA as FYDA deems appropriate.

## **2. Warranty and Limitation of Liability.**

**A. Fitness and Safety.** CUSTOMER acknowledges that the Rental Unit was not manufactured by FYDA and that FYDA is not in the business of manufacturing; that each piece of the Rental Unit is of a size, design, capacity, description and manufacture selected by CUSTOMER; that CUSTOMER takes sole responsibility for selecting the Rental Unit and that CUSTOMER is satisfied that the Rental Unit is suitable and fit for its purposes.

**B. No Warranty by FYDA.** The only warranty made in connection with the Rental Unit shall be the warranty, if any, of the manufacturer of such Rental Unit that is applicable to such Rental Unit. FYDA MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WHETHER OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE, WITH RESPECT TO THE RENTAL UNIT OR ANY PARTS OR LABOR FURNISHED DURING ANY SERVICING OF THE RENTAL UNIT OR WITH RESPECT TO THE CAPACITIES, PERFORMANCE CHARACTERISTICS OR OTHER OPERATIONAL ASPECTS OF THE RENTAL UNIT. FYDA does not intend, and shall not be deemed, to adopt as its own any warranty given by any manufacturer. FYDA shall in no event be liable to CUSTOMER for (a) any manufacturing defect or deficiency of the Rental Unit, (b) any liability, claim, loss, damage, or expense of any kind arising out of or in any way related to CUSTOMER's possession, use or operation of the Rental Unit, (c) any delay in providing the Rental Unit, and (d) any special, incidental, exemplary, punitive or consequential damages, including, without limitation, lost profit, howsoever caused, related to or in any way concerning the Rental Unit.

**C. Indemnification.** CUSTOMER'S indemnification specifically includes, but is not limited to, any losses, damages, costs, and expenses associated with (a) damages for injuries or death to persons or injury to or destruction of property, including claims based on strict or product liability relating to the Rental Unit (b) claims and liens for storage and/or labor and materials, (c) all damage, theft, or destruction of the Rental Unit, (d) any failure by CUSTOMER to observe, perform, and comply with the terms and conditions of the Rental Contract, (e) any failure of the Rental Unit to comply with applicable specifications (functional, design or otherwise), warranties, or certifications, (f) the negligence of FYDA or the manufacturer(s) in design, manufacture, or otherwise with respect to the Rental Unit or parts therefor, and/or (g) the failure to warn or inadequate warnings or instructions.

**3. Insurance.** All insurance required to be provided by CUSTOMER shall, by the terms of the policies or appropriate endorsements thereto: (a) be primary to, and in no respect excess or contributory to or contingent upon, any liability insurance provided by FYDA; (b) waive any right of subrogation against FYDA; (c) provide that all liability insurance shall first be applied against

any claims against FYDA; (d) provide that all insurance proceeds are to be paid directly to FYDA in respect of any damage to the Rental Unit; and (e) provide that coverage may not be changed, altered, or cancelled by the issuing insurance company without thirty (30) days prior written notice to FYDA. CUSTOMER must provide FYDA with satisfactory written evidence of Required Insurance prior to the commencement of this Rental Contract or any subsequent written request by FYDA.

**4. Compliance with Laws.** CUSTOMER agrees to comply with all applicable federal, state and local laws which may govern CUSTOMER's conduct hereunder and the use and operation of the Rental Unit. CUSTOMER will comply with all applicable federal, state, and local laws, rules, and regulations regarding safety (collectively, the "safety regulations") including, as applicable, Safety Regulations regarding the Rental Unit, drivers, drug and alcohol screening, and maximum hours of service.

**5. Title of FYDA; Recording.** Title to the Rental Unit shall at all times remain in FYDA. CUSTOMER shall at all times keep the Rental Unit free and clear from all levies, attachments, liens, encumbrances and charges, or other judicial process of every kind whatsoever. CUSTOMER shall give FYDA immediate written notice thereof and shall indemnify and save FYDA harmless from any loss or damage caused thereby.

**6. Inspection.** CUSTOMER shall, whenever requested, advise FYDA of the exact location of the Rental Unit and shall give FYDA immediate notice of any attachment or other judicial process affecting the Rental Unit and indemnify and save FYDA harmless from any loss or damage caused thereby. FYDA may, with prior notice, at all reasonable times enter upon any job, building or place, where the Rental Unit is located for the purpose of inspecting the Rental Unit.

## **7. Default and Remedies.**

**A. Events of Default.** Each of the following will constitute an "Event of Default" hereunder:

- (1) CUSTOMER fails to pay the Rental Payment, Additional Rent or any other sums payable under the Rental Contract when the same become due;
- (2) CUSTOMER defaults in or fails to perform any other term or condition hereof and the failure to perform such term or condition continues for more than five (5) days after FYDA has sent written notice to CUSTOMER specifying such failure or default;
- (3) CUSTOMER defaults under the terms of any other agreement with FYDA, or FYDA's assignees or affiliates;
- (4) a Trustee or Receiver shall be appointed for CUSTOMER or its property;
- (5) CUSTOMER shall make an assignment for the benefit of creditors;
- (6) CUSTOMER is the subject of any proceeding under the Bankruptcy Act or becomes insolvent;

Or

(7) CUSTOMER attempts to remove, sell, transfer, encumber, sublet or part with the possession of the Rental Unit or do any act or thing tending to impair the title of FYDA.

**B. Remedies upon Default.** Upon any such Event of Default, FYDA, at its option, may do any one or more of the following:

(1) Proceed by appropriate court action or actions, either at law or in equity, to enforce performance by CUSTOMER of the applicable covenants and terms of this Rental Contract or to recover damages for the breach of such covenants and terms thereof; and/or

(2) Terminate CUSTOMER's right to possession of the Rental Unit under the Rental Contract, whereupon all right, title and interest of CUSTOMER to or in the Rental Unit shall absolutely cease and thereupon FYDA may, directly or by its agent, enter upon the premises of CUSTOMER or other premises where the Rental Unit may be and take possession thereof and thenceforth hold, possess and enjoy the same, free from any right of CUSTOMER or its successors or assigns, including any receiver, trustee in bankruptcy, or creditor of CUSTOMER. FYDA shall nevertheless have a right to recover from CUSTOMER any and all amounts including rents which, under the terms of this Rental Contract, may be then due and unpaid hereunder for use of said Rental Unit together with any other remedies set forth herein or available to FYDA at law or in equity; and/or

(3) declare all sums due and to become due hereunder (collectively, the "Unpaid Rents") immediately due and payable; and/or

(4) temporarily or permanently disable the Rental Unit or otherwise discontinue CUSTOMER's access to or use of the Rental Unit through remote or direct means.

**C. Costs and Fees.** In addition to the remedies set forth above, FYDA shall be entitled to recover a reasonable sum for attorneys' fees and such expenses shall be expended or incurred in the seizure of the Rental Unit, in the collection of any amount due hereunder, in the enforcement of any other right or privilege hereunder or in any proceeding at law or in equity or arbitration in connection with any of the foregoing, including appeals.

**D. Remedies Cumulative.** The remedies by this Section shall be cumulative and shall be in addition to all other remedies in FYDA's favor existing at law or in equity.

**E. No Refund.** In the event that the CUSTOMER defaults on the Rental Contract prior to its expiration or FYDA terminates the Lease due to performance issues, then no costs under the Rental Contract other monies expended by the CUSTOMER shall be refunded.

**8. Return of Rental Unit.** Upon the Rental ending date, CUSTOMER will immediately return the Rental Unit to FYDA in good condition, freight and insurance prepaid, as directed by FYDA or its assignee. CUSTOMER shall provide FYDA with proof of shipment, such as a bill of lading or other similar document, upon delivery of the Rental Unit. A signed bill of lading, pick-up receipt,

or similar document does not constitute acknowledgment by FYDA of any condition of the Rental Unit being delivered. The condition of the Rental Unit will be determined by a final inspection by FYDA after the Rental Unit has been returned to FYDA and notice thereof shall be provided by FYDA to CUSTOMER within sixty (60) days of receipt. If any Rental Unit is returned to FYDA in a condition other than as set forth above, CUSTOMER shall pay to FYDA, in addition to all other charges, expenses, or damages payable by CUSTOMER, an amount equal to the difference between the fair market value of the Rental Unit if it had been returned in good condition, ordinary wear and tear alone excepted, and the actual fair market value of the Rental Unit in the condition in which it was returned, each as determined by FYDA in good faith.

**9. Hold Over.** Should CUSTOMER operate or possess any Rental Unit after the term of this Rental Contract has terminated for any reason, CUSTOMER agrees to pay to FYDA Rental Payments in an amount equal to 125% of the Rental Rate due hereunder until such time as CUSTOMER delivers such Rental Unit to FYDA. In addition to the payment of the increased Rental Payments as set forth above, CUSTOMER shall be liable to FYDA for all costs, losses, claims or liabilities (including attorneys' fees) which FYDA may incur as a result of CUSTOMER's failure to surrender possession of such Rental Unit to FYDA upon the expiration or earlier termination of this Rental Contract.

#### **10. Financial Requirements and Confidentiality.**

**A. Financial Statements.** At FYDA's request, CUSTOMER agrees to provide FYDA with fully-disclosed, year-end financial statements for the most recent taxable year.

**B. Confidentiality.** CUSTOMER shall maintain the confidentiality of this Rental Contract and will not disclose the terms hereof unless required by law.

#### **11. Additional Provisions.**

**A. Representations and Warranties of CUSTOMER.** CUSTOMER has the full power and authority to enter into and consummate all transactions contemplated by this Rental Contract, has duly authorized the execution, delivery and performance of this Rental Contract and has duly executed and delivered this Rental Contract, and this Rental Contract constitutes a legal, valid and binding obligation of the CUSTOMER, enforceable against CUSTOMER in accordance with its terms.

**B. Amendments.** This Rental Contract may be amended from time to time only by written agreement of FYDA and CUSTOMER. The online terms and conditions are subject to change. The terms and conditions in effect shall be those on FYDA's Web site at the time of delivery.

**C. Effect of Invalidity of Provisions.** In case any one (1) or more of the provisions contained in this Rental Contract should be or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein will in no way be affected, prejudiced or disturbed thereby.

**D. Execution.** This Rental Contract may be executed in any number of counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument. This Rental Contract is not valid until executed by a representative of FYDA. This Rental Contract may be executed by facsimile or electronic mail scan signature which upon receipt shall be deemed binding upon FYDA and CUSTOMER.

**E. Assignment.** FYDA may assign its rights and obligations under this Rental Contract upon prior written notice to CUSTOMER. CUSTOMER may not assign its rights or obligations under this Rental Contract without the express written consent of FYDA.

**F. Successors.** This Rental Contract will bind the heirs, executors, administrators, successors and permitted assigns of the parties hereto. Any assignment by the CUSTOMER will be subject to the prior written consent of FYDA, which consent will be determined in FYDA'S sole discretion.

**G. Waiver.** Any delay or failure by either party to exercise any right hereunder shall not be construed as a waiver of the right to exercise the same or any other right at any other time and from time to time thereafter.

**H. Notices.** All notices, consents, directions and other communications required by the terms of this Rental Contract to be given will be in writing; will be deemed to have been duly given upon receipt; and will be delivered (a) by personal delivery or (b) by first-class mail (postage prepaid, return receipt requested) to the parties herein at the addresses set forth in the first paragraph of the Rental Contract or such other address as either party will give in a written notice to the other party FYDA CUSTOMER

**I. Entire Agreement.** This Rental Contract and the additional terms and conditions found on FYDA'S Web site contain the entire agreement between the parties hereto with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements between the parties hereto, oral or written, of any nature whatsoever with respect to the subject matter hereof.

**J. Governing Law and Forum.** This Rental Contract shall be governed by and construed and enforced in accordance with the laws of the State of Ohio without regard to its conflict of laws principles. The parties hereto agree to submit to the personal jurisdiction of the courts of the State of Ohio or applicable federal courts sitting in Franklin County, Ohio for any dispute related to or in any way concerning this Rental Contract.