

# TERMS AND CONDITIONS OF CONTRACT

For purposes of these Terms and Conditions, NESSCAMPBELL CRANE + RIGGING is called “Rigging Company” and the Contractor referred to on the reverse side is called “Contractor”. Rigging Company and Contractor agree as follows:

**1. INDEMNIFICATION – TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS RIGGING COMPANY 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 OUT OF OR RELATING TO, DIRECTLY OR INDIRECTLY, THE CONTRACTOR’S OPERATIONS, WHETHER OR NOT THE SAME ARISES FROM DAMAGE TO PROPERTY (REAL OR PERSONAL), INJURY OR DEATH TO PERSONS (INCLUDING BUT NOT LIMITED TO CONTRACTOR’S EMPLOYEES, AGENTS AND REPRESENTATIVES), FAILURE TO COMPLY WITH APPLICABLE LAWS, REGULATIONS OR ORDINANCES, OR OTHERWISE OR ANY OTHER ACTION OR FAILURE TO ACT BY THE CONTRACTOR, SUBCONTRACTOR, AND/OR THEIR AGENTS, CONTRACTORS, AFFILIATES, OR EMPLOYEES; AND/OR ANY CLAIMS OF THIRD PARTIES AGAINST CONTRACTOR, SUBCONTRACTOR, THEIR AGENTS, CONTRACTORS, AFFILIATES. CONTRACTOR EXPRESSLY AGREES TO WAIVE ANY WORKERS’ COMPENSATION IMMUNITY IT MAY OTHERWISE HAVE. CONTRACTOR’S OBLIGATION TO INDEMNIFY THE INDEMNITEES SHALL SURVIVE THE TERMINATION OF THIS CONTRACT. 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. THIS INDEMNIFICATION PROVISION DOES NOT NEGATE, ABRIDGE OR REDUCE ANY OTHER RIGHTS.**

**2. INSURANCE – (State Specific Language Here)** Contractor shall procure the following coverages for Rigging Company: 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) commercial general liability (CGL) insurance on an occurrence basis, including bodily injury and property damage coverage with minimum limits of \$1,000,000 per occurrence and \$2,000,000, in the aggregate ; c) excess/umbrella (Excess) insurance in the amount of at least \$5,000,000; d) Contractor's CGL and Excess policies must be endorsed so that they are primary and non-contributory to all of Rigging Company's insurance policies and Rigging Company's policies are excess to Contractor's policies; e) 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, for the greater of \$1,000,000 or the valuation of the Equipment listed on the front page of this contract, and the parties agree that this is the actual value of the Equipment for the purposes of fixing the Equipment's insurable value and Rigging Company must be named as Loss Payee, g) the Rigging Company is to be named as an additional insured on all CGL and Excess insurance policies, except as mentioned above, (ISO Form CG 20 10 10 01, ISO CG 20 37 10 01, CG 20 28 07 04, and CG 20 34 03 97 must be used); and Contractor shall provide all insurance certificates to Rigging Company when requested; h) Contractor hereby agrees to waive any and all rights of subrogation and lien rights including those arising from worker's compensation/employer's liability policies, and other policies required above. To the extent that the Contractor may perform under this agreement without obtaining the above coverages, such an occurrence shall not operate, in any way, as a waiver of the Rigging Company's right to maintain any breach of contract action against the Contractor. Contractor 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 Contractor 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 agreement.

**3. CONDITIONS –GROUND/POWERLINES** —The Contractor hereby agrees that it will assume all responsibility for the ground or soil conditions in the area where the rigging is to be performed. The Contractor shall perform or have performed all necessary inspections or testing to determine the nature of the ground or soil and its ability to support all rigging operations. If the ground or soil condition is such that it cannot support the equipment, the Contractor 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. Contractor assumes all responsibility to protect the equipment and persons in or around the equipment from the danger of power lines. Contractor 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. Contractor 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, Contractor 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 Contractor 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.

**4. SITE MANAGEMENT** -- It is expressly agreed by and between the parties hereto that the equipment and all persons performing rigging operations, or operating, repairing, or maintaining and assembling/disassembling equipment are under the exclusive jurisdiction, supervision and control of Contractor. Contractor agrees that the standard of care and responsibilities will be in accordance with all American National Standards Institute (ANSI) and all applicable OSHA Regulations (as amended)., This agreement shall be binding upon and shall inure to the benefit of the parties and their successors, administrators, executors, trustees and assigns.

**5. FORCE MAJEURE** – Rigging Company shall not be liable to Contractor for any loss, cost, or damages arising out of, or resulting from, any failure to perform in accordance with the terms of this Agreement where such failures shall be beyond Rigging Company's reasonable control, which, as employed herein, shall be deemed to mean, but not limited to, acts of God, strikes, lockouts, or other industrial disturbances, wars, whether declared or undeclared, acts of piracy or other perils of the sea, blockades, insurrections, terrorism, riots, governmental actions, explosions, fire, floods or any other cause not within Rigging Company's reasonable control.

**6. DAMAGE CLAIMS** – Contractor must present any claim for loss or damage to any of the Contractor's Equipment in writing seven (7) days from the date of the Contractor Equipment's arrival at the jobsite. Payment by Contractor and Contractor's signing of the receipt for the Contractor's Equipment without immediate notification of damage shall be evidence of satisfactory delivery and satisfactory performance of Rigging Company's services.

**7. TERMS OF PAYMENT** – The Contractor agrees to pay all rigging and packaging invoices to the Rigging Company within 15 days from the date of Rigging Company's invoice per invoice submitted. The Contractor agrees to pay all transportation invoices within 10 days of date of invoice per invoice submitted. If Rigging Company does not receive payment within the specified time frame (i.e. fifteen (15) days from date of rigging and packaging invoices and ten (10) days from date of shipping invoices), Contractor agrees to pay, in addition to the amount billed, a late fee of (1.5%) per month of the total invoice amount. In addition to such late fee and any other rights the Rigging Company may have. The Rigging Company further reserves the rights in the event payment is not received within the specified timeframe to, at Rigging Company's option, suspend or refuse to perform any further services under this agreement without liability.

**8. 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 Rigging Company that the individual signing has full authority to execute this agreement on behalf of said corporation or other business entity.

**9. NO CONSEQUENTIAL DAMAGES** - Notwithstanding anything contained herein, neither party shall be liable to the other for special, indirect, punitive, exemplary or consequential damages resulting from or arising out of this Agreement, including without limitation loss of profit or business interruptions however, caused.