



**CRITICAL RENTAL**  
— SOLUTIONS —

## Rental Agreement Terms & Conditions

ICS Distribution, LLC  
Rental Agreement Terms & Conditions

### 1. DEFINITIONS

- a. "Customer Responsibilities" shall mean the Customer Responsibilities document attached to and included with the Rental Agreement.
- b. "Lessee" shall mean the party identified on the face of the Rental Agreement as the "Customer."
- c. "Lessor" shall mean ICS Distribution, LLC d/b/a Critical Rental Solutions and/or Surplus Group.
- d. "Rental Agreement" shall mean the applicable Rental Agreement between Lessor and Lessee to which the Customer Responsibilities and these Terms and Conditions apply.

2. RENTAL PERIOD: The rental period shall commence from the date of the shipment of the rental equipment, accessories and related spare parts and supplies covered by the applicable Rental Agreement (the "Equipment") from the point of shipment and shall continue until the return of the Equipment to Lessor's yard or such other point as Lessor shall in writing direct. Rental charges with respect to any rental periods beyond applicable minimum rental periods, as stated in the Rental Agreement, shall be prorated on a daily basis with respect to the rental period determined herein.

3. DETERMINATION OF RENTAL CHARGES: Each piece of Equipment (including any related accessories) listed in the Rental Agreement shall be provided to Lessee for the rental period and at the rental rate therein stipulated. The minimum rental period for any piece of Equipment is seven (7) consecutive days unless otherwise expressly stated to be longer or shorter in duration in the Rental Agreement. In the event the Rental Agreement states that the minimum rental period is one (1) month, a month is defined as a period of twenty-eight (28) consecutive days.

4. PAYMENT: All rentals and other charges due under the Rental Agreement are due and payable within thirty (30) days from delivery of invoice; provided, however, within the Rental Agreement, Lessor may demand that (a) rent shall be due and payable in advance on a weekly basis and/or (b) payment for the minimum rental period shall be due before the delivery of the Equipment to Lessee or the latter's agent or carrier. In addition, if Lessee becomes delinquent on any payments due and owing under the Rental Agreement or any other rental agreement with Lessor, in addition to any rights of Lessor set forth in Section 14 of these Terms and Conditions, Lessor, in its sole discretion, may change payment terms to advance billing and payment due upon receipt. All overdue payments, for all charges, including damages and losses, shall bear interest at the lesser of 18% per annum or the highest amount otherwise allowed by applicable law, without prejudice to Lessor's other rights hereunder or under applicable law. Any invoicing requirements of Lessee must be provided to Lessor in advance of Lessee's acceptance of the Rental Agreement or will be deemed to have been waived by Lessee.

5. LOADING, UNLOADING AND TRANSPORTATION: Lessee shall bear the expense of and responsibility for unloading and reloading the Equipment at Lessee's receiving point, including all injuries and damages resulting therefrom, and shall pay all demurrage charges incurred at the shipping or receiving points. Lessee must have an authorized agent available to sign a bill of lading upon the delivery to Lessee of the Equipment by the carrier. If no agent is provided at the time of delivery, then Lessee authorizes an employee of Lessor to execute the bill of lading as Lessee's limited agent for such purpose and such execution shall be deemed an acceptance by Lessee of the condition of the Equipment upon delivery, and for all losses occurring to the Equipment thereafter while in Lessee's possession, except as expressly set forth in Section 14 below. Lessee shall be responsible for shipping expenses from the original point of shipment to Lessee's receiving point and all return shipping expenses to Lessor's yard or such other point as Lessor shall in writing direct, regardless of whether these costs are advanced by Lessor. However, if Lessor directs Lessee in writing to return all Equipment to a place other than Lessor's yard, then Lessee shall pay the shipping expenses up to, but not beyond, the amount that would have been required to return the Equipment to Lessor's yard.



**CRITICAL RENTAL**  
— SOLUTIONS —

## Rental Agreement Terms & Conditions

6. **INSPECTION:** Before the Equipment is loaded for transit to Lessee, Lessee may require an inspection thereof by a qualified inspector. If Lessee does not inspect the Equipment before it is loaded for transit, then Lessee is conclusively deemed to have accepted that the Equipment is in good running order without broken or worn out parts and in a clean and unmarred condition. Lessor shall have the right at any time during normal business hours to enter any Equipment Location (as defined below) and shall be given free access thereto and afforded necessary facilities for the purpose of inspecting the Equipment.

7. **MAINTENANCE, OPERATION AND REPAIRS:** Lessee shall not make any alterations, additions or improvements to the Equipment without Lessor's prior written consent. Lessee shall at its own expense operate, maintain, keep and return in good repair the Equipment and return it in the same condition in which it was received, normal wear and tear excepted. Specifically Lessee must:

- a. Ensure that the Equipment is operated by qualified personnel in accordance with applicable manufacturer's guidelines and instructions.
- b. Ensure that the Equipment is used for applications within the capacity ratings of the Equipment.
- c. Comply with all applicable federal, state and local laws and regulations in connection with operating, handling and transporting the Equipment.
- d. Inspect the Equipment on a regular basis.
- e. Supply all fuel, coolants and lubricants necessary to operate the Equipment.
- f. Immediately notify Lessor of any known problems or malfunctions or suspected malfunctions or problems or those that should reasonably be known or suspected upon regular inspection that are necessary to keep the Equipment in good running order.
- g. Utilizing qualified personnel, perform all routine and minor repairs and maintenance necessary to keep the Equipment in good running order in accordance with OEM prescribed schedules, including, without limitation, the timely replacement of all consumable parts according to the procedures and requirements set forth in the applicable manufacturer's installation and operating manuals.
- h. Replace all broken or worn out parts on the Equipment, unless otherwise agreed in writing, and notify Lessor immediately of any broken or worn out parts on the Equipment.

8. **DAMAGE TO EQUIPMENT:** Lessee shall be liable to Lessor for all loss or damage to the Equipment, while it is in the possession of Lessee, regardless of the cause or origin of such loss or damage, except as limited by Section 17. In the event of partial loss or damage to the Equipment, Lessee shall immediately notify Lessor of such, and if its failure to so notify Lessor results in additional or consequential damages to Lessor, then Lessee agrees to pay for all such damages. All repairs to damaged Equipment will be subject to and governed by Section 17.

9. **INDEMNIFICATION:** LESSEE SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD LESSOR AND ITS AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS OR OTHER REPRESENTATIVES HARMLESS AGAINST ANY CLAIM, DEMAND, LOSS, DAMAGE, LIABILITY, LAWSUIT, CAUSE OF ACTION, JUDGMENT, PENALTY AND/OR EXPENSE (INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES, COURT COSTS AND OTHER COSTS OF SUIT) ON ACCOUNT OF PROPERTY DAMAGE OR LOSS, OR PERSONAL INJURIES (INCLUDING ILLNESS, DISABILITY OR DEATH) RELATED, DIRECTLY OR INDIRECTLY, TO THE RENTAL OF THE EQUIPMENT TO LESSEE, INCLUDING, WITHOUT LIMITATION, WHILE THE EQUIPMENT IS IN LESSEE'S POSSESSION OR CONTROL OR IN THE POSSESSION OR CONTROL OF ANY ASSIGNEE OR SUBLETTER, REGARDLESS OF THE NEGLIGENCE, BREACH OF REPRESENTATION, WARRANTY OR CONTRACT, STRICT LIABILITY OR FAULT OF ANY INDEMNIFIED PARTY.



**CRITICAL RENTAL**  
— SOLUTIONS —

## Rental Agreement Terms & Conditions

10. **INSURANCE:** Lessee shall at Lessee's own expense and for all relevant periods maintain: (i) commercial general liability insurance to protect Lessee and Lessor against damage to property or persons from the operation, handling and use of the Equipment during the rental period with minimum coverage of \$2,000,000 per occurrence/\$5,000,000 general aggregate, (ii) commercial auto insurance to protect Lessee and Lessor against damage to property or persons from transportation-related losses with minimum coverage of \$1,000,000 per occurrence/\$2,000,000 general aggregate; (iii) broad form property insurance covering all Equipment at the replacement value identified on the Rental Agreement or bill of lading (the "Replacement Value"), (iv) if customer is hauling the Equipment, all risk cargo insurance at the Replacement Value, (v) workers' compensation insurance for its employees in amounts required by the laws of the state in which the applicable work is performed and (vi) such other insurance as may be requested by Lessor in advance of the shipment of the Equipment to Lessee. Lessee shall cause its insurer to issue an endorsement identifying that all insurance identified in this Section 10 shall be primary to that of Lessor to the extent of Lessee's obligations herein and that Lessee and its insurer agree to waive their subrogation rights with respect thereto. Lessee shall provide thirty (30) days' advance written notice to Lessor of any change or termination of any such policy prior to change or cancellation, and Lessee shall cause Lessor (and, if requested by Lessor, Lessor's vendor) to be named as an additional insured or loss payee, as applicable, on each such policy, other than the workers' compensation policy. Failure to provide the requisite insurance shall not be deemed as a waiver of this provision.

11. **LEGAL EXPENSES:** Lessee shall pay all costs, charges and expenses (including reasonable attorney's fees) incurred in retaking possession of the Equipment and in the collection of any sums that may be due and owing to Lessor by Lessee, including, but not limited to, the defense of any action brought against Lessor for damages caused by the Equipment to any person while the Equipment is in the possession of Lessee. The Equipment shall be deemed to be in the possession of Lessee for all purposes of the Rental Agreement from the time Lessee or Lessor, as applicable, begins loading it for transit from Lessor's yard until the time that Lessee has completed unloading the Equipment at Lessor's yard or such other points as Lessor shall in writing direct, except as otherwise expressly provided herein.

12. **ENVIRONMENTAL FEES:** In addition to the rental rate with respect to all Equipment containing fuel, oil, refrigerant, or other fluids, liquids, or gases that could have an environmental impact, including, without limitation, generators, transformers, chillers, air conditioners, heaters, compressors, after coolers, fuel tanks, diesel equipment and other similar Equipment, Lessee shall pay Lessor an environmental fee of five percent (5%) of the rental rate of such Equipment. If the Equipment subject to such environmental fee is also subject to shift rates, the amount of the fee will vary in proportion to the applicable shift rate. **THE ENVIRONMENTAL FEE IS NOT A TAX OR GOVERNMENT CHARGE.** It is used to help offset expenses incurred operating in an environmentally sound manner.

13. **SUBLETTING & ASSIGNMENT:** Lessee shall not re-rent any Equipment, nor shall Lessee assign or transfer any interest in the Rental Agreement, in either case without the prior written consent of Lessor. If the Equipment is re-rent, then Lessee shall require its customer, the end user and any third party in contractual privity in between to be bound by the terms and conditions hereof and as set forth in the Rental Agreement.

14. **DEFAULT AND REMEDIES:** Lessee shall be in default under the Rental Agreement if any of the following events occur: (i) Lessee fails to make any payment in accordance with the terms of the Rental Agreement, or any other rental agreement with Lessor, and such failure continues for a period of five (5) days, (ii) Lessee fails to comply with any other term or provision of the Rental Agreement, or any other rental agreement with Lessor, and such failure continues for a period of ten (10) days after receipt of notice of such failure from Lessor, (iii) Lessee becomes bankrupt, insolvent or makes an assignment for the benefit of its creditors, (iv) involuntary bankruptcy or receivership proceedings are instituted against Lessee or its direct or indirect parent company and such petition or proceeding is not stayed or withdrawn within forty-five (45) days, (v) Lessor reasonably believes that Lessee is unable to comply with the payment terms of the Rental Agreement, or any other rental agreement with Lessor, or is likely to become bankrupt, insolvent or make an assignment for the benefit of its creditors, (vi) the Equipment is lost, damaged, stolen, destroyed or seized by a governmental agency after it had been placed in the possession of Lessee, (vii) Lessor has a reasonable belief that a material risk of damage to the Equipment exists or that Lessee cannot adequately protect the Equipment or (viii) a Force Majeure event that lasts longer than fifteen (15) days.



**CRITICAL RENTAL**  
SOLUTIONS

## Rental Agreement Terms & Conditions

Upon any such default, Lessor may at its option, upon prior notice in writing exercise any one or more of the following remedies: (a) suspend Lessee's right to use the Equipment and related services, (b) terminate the Rental Agreement, (c) during normal business hours enter any premises owned, operated or controlled by Lessee where any Equipment is used or otherwise may be found (each, an "Equipment Location") and remove the same therefrom. Except in the case of gross negligence or willful misconduct, Lessor shall not be guilty of trespass or wrong or liable for any damages because of such removal of equipment, and Lessee agrees to pay all expenses of Lessor and Lessee incidental to said removal.

15. LESSOR'S LENDERS AND LEASE SUBORDINATION: Lessor has, and may put in place from time to time, credit facilities with lenders to Lessor (collectively, "Lenders"), pursuant to which Lessor, has, and may, pledge its assets, including, without limitation, the Equipment, to the Lenders as collateral. Lessee hereby acknowledges and agrees that its lease of the Equipment pursuant to the Rental Agreement is subordinate to any security interest granted in favor of any of the Lenders with respect to the Equipment by Lessor, either before or after the date of the Rental Agreement. If Lessor defaults under any of its agreements with Lenders, then any Lender, may, at its option and upon prior notice, enter during normal business hours any Equipment Location and remove the Equipment therefrom. Except in the case of gross negligence or willful misconduct, no Lender shall not be guilty of any trespass or wrong or liable for any damages because of such removal of Equipment. Lessee waives any right to claim damages resulting from any of the above remedies exercised by any Lender. Lessee further waives any right to additional notice and opportunity to cure of any event of default by Lessor with respect to any Lender.

16. WARRANTY: Lessee has selected the Equipment for its own purposes, and Lessee expressly disclaims any reliance upon any statements or representations made by Lessor related to the Equipment. EXCEPT FOR THE SATISFACTORY RATED OPERATION OF THE EQUIPMENT, LESSOR MAKES NO EXPRESS OR IMPLIED WARRANTIES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE EQUIPMENT, AND LESSOR HEREBY DISCLAIMS SAME. Lessor's liability under this Section 16 is limited to repairing or replacing (at the option of Lessor) any Equipment not performing according to rated operation.

17. SPECIAL CONDITIONS: Notwithstanding any provisions contained herein or in the Purchase Agreement to the contrary:

- Lessee shall be fully responsible and liable for any and all damages to the Equipment caused by or otherwise resulting from (i) improper operation, maintenance and/or lubrication, (ii) improper transportation, loading and/or unloading, (iii) wind, hail, flood and/or other weather-related phenomena, (iv) fire, (v) theft, (vi) riot, insurrection, strike and/or other civil or labor unrest, (vii) explosion, (viii) collision, (ix) the willful misconduct or negligence of any person other than Lessor or (x) any other cause whatsoever (including any other Force Majeure Event not otherwise listed above), other than ordinary wear and tear.
- With respect to any maintenance or repair of the Equipment determined by Lessor to be its responsibility, any and all labor and parts required therefor will be provided by Lessor at no charge to Lessee.
- With respect to any maintenance or repair of the Equipment determined by Lessor to be the responsibility of Lessee, Lessee agrees to pay, within thirty (30) days from receipt of Lessor's invoice, all applicable transportation costs, travel time, mileage, labor and parts for the repair, even if such service is performed by Lessor following return of the Equipment.
- Lessee acknowledges that the Equipment is unique in design and manufacture, and, as to Lessor, inherently valuable as rental equipment. As a result, in the event of damage to the Equipment, regardless of whether ultimately deemed a total loss, Lessor and Lessee hereby agree that (i) the loss to Lessor includes (in addition to the Replacement Cost or cost of labor and parts to repair the Equipment, transportation costs, travel time, mileage and other such incidental costs) the loss of use of such Equipment (collectively, "Rentals") until the same is fully repaired or replaced and (ii) Lessee shall be liable for and shall pay, within thirty (30) days from receipt of Lessor's invoice, the Rentals that such damaged Equipment could have produced, in each case at Lessor's then current published rental rate, during the period of time commencing on the date upon which the Equipment was damaged and ending on the date such Equipment is fully repaired or replaced.

18. TAXES AND FEES: Lessee shall pay all license fees, registration fees, assessments, duties and taxes that may now or hereafter be imposed upon the ownership, possession, lease or use of the Equipment, excepting only those based on Lessor's net income or otherwise exempted by law. Lessee shall promptly notify Lessor of the receipt of any tax notices, tax reports or inquiries or notices from taxing or other authorities concerning taxes, fees or assessments related to the Equipment.



**CRITICAL RENTAL**  
— SOLUTIONS —

## Rental Agreement Terms & Conditions

19. COMPLIANCE WITH LAWS: Lessee shall comply with all laws, rules and regulations applicable to the use and operation of the Equipment, including, without limitation, any and all local, state or federal environmental laws.

20. OWNERSHIP OF EQUIPMENT; ENCUMBRANCES: The Equipment is, and shall at all times remain, the property of Lessor, and Lessee shall have no right, title or interest therein or thereto other than the right of possession and use of the Equipment pursuant to the terms of the Rental Agreement. Lessee shall not remove or deface any plate or marking on the Equipment identifying Lessor as the owner of the Equipment or the manufacturer's serial number. The Equipment is, and shall at all times remain, personal property of Lessor notwithstanding that the Equipment or any part thereof may now be, or hereafter become, in any manner affixed or attached to any other personal or real property. Lessee shall keep the Equipment free and clear of any and all levies, liens, security interests and encumbrances of any kind arising by, through or under Lessee, and shall give Lessor prompt notice of any lien, attachment or judicial process affecting the Equipment. Lessee shall keep Lessor informed of the location of the Equipment at all times. Failure by Lessee to inform Lessor of the location of the Equipment after written demand to do so shall immediately double the rental rate charged until the Equipment is located and Lessor is so notified. Lessee agrees to pay all expenses incurred in locating the Equipment.

21. LIMITED LIABILITY: IN NO EVENT SHALL LESSOR BE LIABLE TO LESSEE OR ANY OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, LOSS OF REVENUES, PROFITS OR ANTICIPATED PROFITS, LOST LABOR TIME, LOST OR SPOILED PRODUCT, DELAY, LIQUIDATED OR PUNITIVE DAMAGES. LESSOR'S LIABILITY AND INDEMNITY OBLIGATIONS, IF ANY, SHALL IN NO EVENT EXCEED THE TOTAL AMOUNT PAID BY LESSEE TO LESSOR PURSUANT TO THE RENTAL AGREEMENT FOR THE EQUIPMENT SUBJECT TO SUCH CLAIM OR DISPUTE.

22. NOTICE: For purposes of the Rental Agreement, notice shall be provided and deemed made by the following methods only: (i) by U.S. certified or registered Mail, return receipt requested, postage prepaid, on the date the return receipt is signed or, if not signed and/or accepted, then on the date the return receipt establishes the first attempt at delivery was made; (ii) by nationally reputable private overnight courier delivery service, twenty-four (24) hours after it is delivered to the private courier; (iii) by hand delivery, upon delivery and acknowledgement of receipt by the party to whom it is delivered; or (iv) by email, with proof of delivery receipt. Notice shall be provided to Lessor at 1314 W. Sam Houston Parkway North, Houston, Texas 77043 and to Lessee at the address identified on the front page of the Rental Agreement or at any other address subsequently provided by a party to the other party by any method provided in this Section 22.

23. ENTIRE AGREEMENT; GOVERNING LAW; VENUE: The Rental Agreement, including the Customer Responsibilities and these Terms and Conditions, constitutes the entire agreement between Lessor and Lessee, and supersedes any representations, warranties or agreements (written or oral) heretofore made or entered into between the parties relating to the Equipment and services provided hereunder. Without limiting the foregoing, no "click-through", "browse-wrap" or other terms that Lessor may be required to "accept" to access a Lessee's website or portal shall have any force or effect. The Rental Agreement, the Customer Responsibilities and these Terms and Conditions are governed by the laws of the State of Texas. Lessor and Lessee hereby irrevocably consent to the exclusive jurisdiction of the federal and state courts located in Harris County, Texas, and shall be bound by any judgments rendered thereby after all appeals have been made. If any provision of the Rental Agreement, the Customer Responsibilities or these Terms and Conditions shall otherwise contravene or be invalid under the laws of any state or other jurisdiction where it is applicable but for such contravention or invalidity, then such contravention or invalidity shall not invalidate all of the provisions of the Rental Agreement, the Customer Responsibilities or these Terms and Conditions, but rather the Rental Agreement, the Customer Responsibilities or these Terms and Conditions shall be reformed and construed as not to contain such provision or provisions, but only to the extent that they are contravening or are invalid under the laws of that state or jurisdiction. All other provisions of the Rental Agreement, the Customer Responsibilities and these Terms and Conditions shall remain in full force and effect.



**CRITICAL RENTAL**  
— SOLUTIONS —

## Rental Agreement Terms & Conditions

24. **CHANGES, MODIFICATIONS, WAIVERS, ETC:** Changes, modifications, waivers, additions or amendments to the Rental Agreement or these Terms and Conditions shall be binding on Lessor and Lessee only if such are in writing and signed by a duly authorized representative of both Lessor and Lessee. The failure of Lessor to enforce, at any time or for any period of time, any of the provisions of the Rental Agreement or these Terms and Conditions shall not constitute a waiver of such provisions or of the right of Lessor to enforce thereafter each and every provision.

25. **FORCE MAJEURE:** Subject to the provisions of Section 14, if the performance by either party of any of its obligations (other than the obligation to pay amounts due) shall in any way be prevented, interrupted or hindered as a consequence of a Force Majeure Event, then the obligations of the party concerned shall be wholly or partially suspended during the continuance and to the extent of such prevention of interruption or hindrance. For purposes of these Terms and Conditions, a "Force Majeure Event" includes any Act of God, war, civil disturbance, riot, strike, lockout, fire, earthquake or other natural calamities, legislation or restriction of any government or other authority, or any other circumstances beyond the reasonable control of such party,

26. **INTELLECTUAL PROPERTY.** All copyrights, patents, trade secrets, or other intellectual property rights associated with any ideas, concepts, techniques, inventions, processes, designs, works of authorship or other know how developed or created by Lessor prior to or during the course of performing its obligations pursuant to any Purchase Agreement, or developed jointly with Lessee, shall belong exclusively to Lessor. Lessor shall have the exclusive right to, and shall bear all of the costs of, acquiring intellectual property rights, such as patents and copyrights, for any inventions or developments associated with the Rental Agreement and the work or derivative work developed as a result thereof.

27. **APPLICABILITY OF TERMS & CONDITIONS:** These Terms and Conditions shall be deemed accepted and binding upon Lessee upon transfer of custody of the Equipment to the carrier for delivery to Lessee's receiving point, regardless of whether the Rental Agreement is signed by Lessee. If any of these provisions of the Rental Agreement conflict with these Terms and Conditions, the provisions of these Terms and Conditions shall apply. Notwithstanding any provision therein to the contrary, unless otherwise expressly agreed to in writing by Lessor, any terms attached to any purchase order or other customer-provided document are expressly rejected and shall have no force or effect.

Terms and Conditions