

**Toyota Material Handling South**  
**RENTAL AGREEMENT TERMS AND CONDITIONS**

1. The owner, Toyota Material Handling South (TMH South, formerly Kenco Toyota Lift) hereinafter referred to as "TMH South") rents to Customer named on the reverse side hereof, and the Customer rents from TMH South the equipment described on the reverse side hereof. The equipment is rented f.o.b. TMH South's warehouse, and Customer agrees that all equipment rented hereunder shall be used at the location set forth on the reverse side hereof, and Customer shall not remove any of the equipment to any other location without prior written consent of Toyota Material Handling South.
2. Customer agrees to pay TMH South the rental charges specified on the reverse side hereof in full and in advance during the term of this Agreement, without deduction or any right of setoff. Customer shall be liable for, and reimburse TMH South for any sales or use taxes, license or registration fees levied or assessed on the rental equipment, use or operation thereof.
3. Customer agrees at the expiration of this Rental Agreement to return the equipment at its expense to TMH South's warehouse in the same condition as when received, less normal wear and tear.
4. Customer is responsible for taking good care of the equipment in the use, maintenance and storage thereof, and without limiting the foregoing shall: (i) keep the equipment in a covered area when not in use, (ii) keep the equipment clean, (iii) operate and permit operation of the equipment only within its rated capacity, (iv) refrain from altering the equipment without TMH South's written consent, and (v) prohibit and prevent anyone who is not properly trained or authorized from operating or making any repairs or adjustments to the equipment. No alterations, modifications, attachments or repairs to equipment will be made without prior notice to and the consent of TMH South. In the event TMH South approves an alteration, modification or attachment, Customer shall remove such at Customer's expense at the end of the rental period. Customer shall notify TMH South immediately of any physical damage that may occur to the equipment and shall promptly furnish TMH South, in writing, all information required by TMH South in connection therewith. Customer shall take care of normal needs of the equipment; including supplying fuel; oil and coolant, daily checking of general condition, including oil level, cooling system, water and batteries, recharging batteries, etc. TMH South will provide general routine maintenance service for the equipment from time to time at its expense, and Customer agrees to make the equipment available for servicing during the TMH South's normal business hours. In the event that Customer requires service at other than TMH South's normal business hours, Customer agrees to pay the difference between straight time and overtime rates for mechanics' time.
5. Customer agrees that the TMH South shall not be liable to Customer, nor this Contract be impugned for TMH South's failure to repair the equipment if disabled or furnish substitute equipment for any reason whatsoever and that the TMH South in no event is or shall be liable for loss of profit, special indirect, or consequential damages of any nature whatsoever or however caused.
6. Customer assumes all risk and liability arising from its rental, possession and use of the equipment and agrees to indemnify and hold TMH South, its officers, directors, employees, affiliated entities, insurers and assignees harmless for any and all loss, damage, claims, suits, liens, penalties, liability and expenses (including attorney's fees) howsoever arising or incurred because of such rental, possession and use of the equipment including, but not limited to, damages for injuries to or death of persons or injuries to or destruction of property, loss of and damage to the equipment, third party claims, and/or loss resulting from any inability to use and operate the equipment for any reason. Under no circumstance will TMH South be liable for loss of profit, special, indirect or consequential damages of any kind.
7. Except as otherwise identified herein this Agreement, Customer will be responsible and liable for the equipment from the time that TMH South delivers the equipment to the Customer facility until TMH South picks up the equipment. Customer shall maintain Property insurance at replacement value of the equipment and Commercial General Liability insurance covering all Customer operations and actions of Customer, its employees and agents with limits of no less than \$1,000,000 per occurrence (\$2,000,000 Products, Completed Operations and Aggregate). The overlying Umbrella or Excess policy limits shall be in an amount of no less than \$2,000,000. Insurance shall be written by an insurance company or companies authorized to transact business in all states in which Customer operates and rated at least A- by AM Best and Company. Customer shall add TMH South and its affiliates as Additional Insureds under

its Commercial General Liability policy and Loss Payees under its Property policy. In addition, Customer will maintain Workers Compensation coverage within statutory limits as required in the respective state(s) in which service is provided and Employers Liability coverage in the amount of not less than \$1,000,000 each accident/disease. The Property, Commercial General Liability and Workers Compensation coverages shall all contain a waiver of subrogation in favor of TMH South and its affiliates.

8. Customer acknowledges that the equipment is of the type, design and manufacture selected by Customer and that TMH South is not the manufacturer of the equipment. CUSTOMER AGREES TO TAKE THE EQUIPMENT "AS-IS". Furthermore, it is acknowledged that TMH South has not made and does not hereby make any agreement, representation or warranty with respect to the merchantability, condition, quality, suitability or fitness of the equipment for a particular purpose.

9. It is understood that the equipment shall remain the property of TMH South at all times. Customer shall not encumber the equipment or represent the equipment as belonging to Customer or pledge the equipment as collateral under any circumstance. In the event of default by Customer in complying with or performing any of the provisions of this Rental Agreement, or if any execution or other writ or process shall be issued in any action or proceeding against Customer whereby rented equipment may be seized or taken or detained, or if a proceeding in bankruptcy, receivership or insolvency shall be instituted by or against Customer or its property, or if Customer shall enter into any arrangement or composition with its creditors, then and in such event, TMH South shall have the right to take immediate possession of all rented equipment, and for such purpose TMH South may enter upon any premises where said rental equipment may be located without being liable to any suit or action or proceeding by Customer. Upon TMH South's retaking possession of said rental equipment pursuant to the provisions of this paragraph, this rental shall thenceforth terminate. In the event of default and this account is turned over to an attorney for collection, Customer agrees to pay all reasonable charges (attorney's fee and court cost) for collection in addition to charges in full for services rendered and listed hereon. Customer shall nevertheless remain liable for all sums due and unpaid, plus a reasonable amount for attorney's fees and such expenses as shall be expended or incurred in the seizure of said equipment or in the enforcement of any right hereunder.

10. Miscellaneous - (i) **Nonwaiver**. Failure of TMH South to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a waiver of such term, condition, right or privilege in the future; (ii) **Severability**. In the event any term, condition, provision or clause of this Agreement is held invalid or unenforceable for whatever reason, such provision shall be deemed deleted from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect; (iii) **Tennessee Law and Jurisdiction**. The terms and provisions of this Agreement shall be interpreted and construed pursuant to and in accordance with the laws of the State of Tennessee without regard to conflict of law principles. In the event of litigation, the parties shall be subject to the venue and jurisdiction of Hamilton County, Tennessee; (iv) **Entire Agreement**. This Agreement, including the rate quote, shall constitute the entire agreement between the parties. The Agreement may be supplemented or amended only by a written agreement signed by authorized representatives of each party and the parties expressly exclude any general terms and conditions contained in a purchase order or like document issued by Customer, whether issued prior to or after the date of this Agreement.

11. This Agreement is a contract of rental only, and Customer does not acquire title to any equipment rented hereunder.

12. Notices hereunder shall be in writing and shall be mailed by registered or certified mail, return receipt requested, or sent via nationally recognized overnight courier to TMH South or Customer at its address stated on the reverse side hereof.

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*Customer's Authorized Signature / Date*

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**Addendum for Aerial Equipment**

\_\_\_\_\_ has (accepted/declined the instruction regarding the use of the equipment offered by TMH South. TMH South has instructed Customer regarding the manufacturer's recommendations concerning pre-operation inspection, functional test of equipment, workplace inspection and shut down activities.

TMH South has delivered the Operators Manual along with the equipment, and the manufacturer has affixed important safety warnings to the equipment. The Operators Manual and the safety warnings affixed to the equipment are an integral part of the equipment and must be strictly observed at all times in order to avoid possible serious injury. **THE EQUIPMENT SHOULD NOT BE OPERATED BY ANYONE WHO HAS NOT RECEIVED AND IS NOT THOROUGHLY FAMILIAR WITH THE OPERATOR'S MANUAL AND SAFETY WARNINGS AFFIXED TO THE EQUIPMENT.** The limited demonstration offered by TMH South is no substitute for thorough review and understanding of the Operation Manual and the safety warnings affixed to the equipment.

Customer assumes all responsibility for ensuring that all persons operating the equipment have sufficient knowledge, training, and experience to do so. The limited demonstration offered by TMH South is no substitute for such training, knowledge, and experience. Customer also assumes all responsibility for ensuring all the manufacturer's safety recommendations are followed, including the use of personal protection devices, and the equipment is operated in safe working environment. **CUSTOMER HEREBY ASSUMES ALL RISK AND LIABILITY FOR ALL PERSONAL INJURY AND PROPERTY DAMAGE RESULTING FROM THE USE OR OPERATION OF THE EQUIPMENT.**

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*Customer's Authorized Initials*

