



# IRVING EQUIPMENT LIMITED

45 Gifford Road, PO Box 3400  
925 Champlain Street  
119 King George Highway, PO Box 128  
43 Atlantic Street  
330 Sherwood Road, PO Box 22068  
1 Hilltop Drive, PO Box 404

Saint John, NB  
Dieppe, NB  
Miramichi, NB  
Dartmouth, NS  
Charlottetown, PE  
Argentia, NL

E2M 4X9 PH: (506) 635-5555  
E1A 5T6 PH: (506) 859-5879  
E1V 3M3 PH: (506) 622-0920  
B2Y 4P4 PH: (902) 429-7000  
C1A 9J2 PH: (902) 569-1668  
A0B 1W0 PH: (709) 227-3027

FX: (506) 635-5608  
FX: (506) 857-7421  
FX: (506) 622-0978  
FX: (902) 455-9335  
FX: (902) 569-4094  
FX: (709) 227-2880

## GENERAL TERMS AND CONDITIONS

**1. Complete Agreement** - These general terms and conditions and the provisions of either the proposal, quotation or order confirmation provided by Irving Equipment Limited (the "Company"), which incorporate these general terms and conditions by reference (referred to below as the "Contract"), shall govern the supply of the goods and services set out in the Contract (the "Good and Services", collectively the "Work") to be performed by the Company for the customer referred to in the Contract (the "Customer"). The Contract shall govern the Work and shall constitute the sole and entire agreement between the Company and the Customer in respect of the Work. Any terms and conditions of the Customer which may be communicated by the Customer to Irving at any time are excluded and of no force and effect unless accepted by the Company in writing.

### 2. Price and Payment -

(a) The price governing the Work shall be as set out in the Contract. Payment terms are net 30 days from date of invoicing for the Work.

(b) All other amounts specified in the Contract to be payable by the Customer shall be payable as provided therein, or if not provided for therein, shall be payable on demand.

(c) All provincial, federal or other taxes, duties or levies applicable with respect to the Work (excluding income taxes payable by the Company) shall be for the Customer's account and shall be payable as provided in the Contract.

(d) Interest at the prime rate of the Royal Bank of Canada from time to time plus five percent (5%) per annum, compounded monthly, will be charged on all amounts not paid when due and shall be payable on demand.

**3. Cancellation of Work** - The Company reserves the right to charge a cancellation fee, along with any out of pocket expenses incurred to the time of cancellation, if any Work is cancelled or if work scope is reduced with less than forty-eight (48) hours notice.

**4. Weather Bound Work** - In the event the Work is prevented by weather, there shall be a minimum daily charge of four (4) hours at the applicable regular hourly rate for the equipment plus a charge for each operator equal to the respective hourly rate in effect from time to time for such personnel for eight (8) hours less the number of hours for which the equipment was charged on such weather-bound day.

**5. Ground Conditions/Customer Data** - Customer hereby agrees that it will assume all responsibility for the ground or soil conditions in the area where the Company's equipment is to be stored, parked or operated. The Customer shall perform or have performed all necessary inspections or testing to determine the nature of the ground or soil and its ability to support the equipment while in operation or otherwise. If the ground or soil condition is such that it cannot support the equipment, the Customer shall take all necessary measures to insure that these conditions are remedied prior to the equipment being placed on that ground or soil. These measures included, but are not limited to the provision of proper shoring or cribbing or other measures. The Customer is responsible for the accuracy of all information it supplies to The Company including, without limitation, measurements engineering data and drawing and shall indemnify and hold the Company harmless from any claims or damages caused by the use of such data.

**6. Term** - The term of the Contract shall commence from the time the equipment leaves the Company's yard (or equivalent if such equipment does not come from the Company's yard) and shall cease

upon return of the equipment to the Company's yard (or equivalent if such equipment is not to be returned to the Company's yard).

**7. Permits** - The Customer is required to obtain any and all permits, approvals and consents required in connection with the Work.

**8. Delay** - The Company shall have the right to stop the operation of the Work at any time and/or remove its equipment, if the Company deems it advisable for the safety of the equipment, any other property, the operator of the equipment or any other person. The Customer hereby grants permission to the Company to enter its property in order to remove its equipment without becoming liable for damages for trespass, breach of contract or otherwise.

### 9. Insurance -

(a) In the event that the work involves the movement of goods, cargo or other property (collectively, "cargo"), the risk of loss for such cargo will at all times remain with the Customer. Any insurance which the Customer deems necessary to protect its interests in, and risk of loss to, such cargo must contain a waiver of subrogation in favour of the Company. All insurance required hereunder must be in such form and with such companies acceptable to the Company and certificates of all such insurance coverage must be furnished to the Company prior to the mobilization of the equipment, which certificates will provide that the policies may not be cancelled except after thirty (30) days prior notice to the company.

(b) In the event that the Customer does not secure coverage as noted in (a) above, the Company will maintain hook liability insurance, covering direct loss or physical damage to cargo in the care, custody and control of the Company for purpose of rigging, lifting, moving or erection resulting from the Company's negligence, to a maximum amount of CAD \$1,000,000 in the aggregate.

### 10. Warranty -

(a) The Company warrants that it shall carry out the Services in a good and workmanlike manner using qualified personnel, and in the performance of the Services shall meet the standards of care, skill and diligence normally met by qualified service providers providing similar services in Canada at the time the Services are performed. The liability and obligation of the Company to the Customer in respect of any breach of warranty set out above shall be limited, at the Company's option, to the re-performance of the Services or refund of the fees for the Services to which the breach of warranty relate; provided that the Company will have no liability for breach of warranty unless it is notified in writing by the Customer within thirty (30) days after the Services are completed.

(b) The Company does not warrant or provide any other type of representation with respect to the Goods provided under this Contract. The Customer's sole warranty with respect to the Goods, if any, is that provided by the manufacturer of the Goods.

**11. Indemnity** - The Customer agrees to indemnify, defend and hold the Company, its directors, officers, employees and agents (each an "indemnitee") harmless to the fullest extent permitted by law from and against any and all costs, expenses, damages (including damage to the equipment or cargo and personal injury), fees (including any legal, professional or advisory fees or disbursements), and amounts paid to settle or satisfy any civil, criminal or other proceeding, judgment, fines, penalties or liabilities ("Claims"), including any third party Claims which any indemnitee may reasonably suffer, sustain, incur or be required to pay in connection with the performance of the Work under the Contract or the Customer's breach of the Contract. The Customer shall not be required to indemnify an indemnitee to the



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extent that there has been gross negligence, fraud or wilful misconduct on the part of such indemnitee in connection with the performance by the Company of the Contract.

**12. Limitation of Liability** - The Company's liability to the Customer under or arising in connection with this Contract is limited to the following:

(i) with respect to claims for breach of warranty, re-performance of the Services or refund of fees as set out in the warranty section; and (ii) with respect to any other liability, direct damages up to a maximum amount equal to the value of the Services to which the claim relates. In no event shall the Company be liable for loss of use of equipment or facilities, downtime costs, lost profits, lost business revenue or failure to realize expected savings or liability of the Customer to third parties for breach of contract, or for any special, indirect or consequential damages, even if the Company has been advised of the possibility of such damages. The limitations of and exclusions from liability contained in this Section shall apply regardless of the basis upon which the claim is made, including but not limited to breach of contract, even if a fundamental breach, or tort, including but not limited to negligence or misrepresentation, and shall also apply for the benefit of the Company's directors, officers, employees, agents and subcontractors.

**13. Termination** - The Company may terminate the Contract by giving notice to the Customer to such effect (which notice shall be immediately effective):

(a) if the Customer fails to pay, when due, any amount payable to the Company under the Contract;

(b) if the Customer fails to observe or comply with anything required to be done by the Customer under the Contract; or

(c) if the Customer becomes bankrupt, insolvent or makes an assignment for the benefit of creditors or the Customer is unable to meet its obligations as they become due.

In the event that the Contract is terminated, the Customer hereby grants permission to the Company to, without notice, remove its equipment from the Customer's possession or from its property without becoming liable for damages for trespass or otherwise.

**14. Force Majeure** - The Company shall not be liable for any nonperformance or delay in performance that is due wholly or partly and directly or indirectly to fire, flood, any Act of God or public enemy, riot, act of war (whether or not declared), terrorism, labour dispute, transportation contingencies or shortages, inadequate supply of labour or materials, accident, fortuitous event or other cause beyond the reasonable control of the Company.

**15. Notices** - Any notice, instruction or document to be given by either the Customer or the Company in connection with the Contract shall be given in writing and may be delivered personally, by fax, by prepaid courier or registered mail addressed, in the case of the Company, to Irving Equipment Limited, 300 Union Street, P. O. Box 5777, Saint John, New Brunswick E2L 4M3, Attention: General Manager, with a copy to J. D. Irving, Limited, 300 Union Street, P. O. Box 5888, Saint John, New Brunswick E2L 4L4, Attention: The Secretary, and in the case of the Customer, to the place of business set out in the Contract. Any notice shall be deemed (in the absence of evidence of prior receipt) to be received the same day if personally served, the next business day if sent by fax and the fifth business day following where sent by courier or registered mail.

**16. Assignment and Subletting** - All rights and obligations of the Company and the Customer set out in the Contract shall inure to

the benefit of and be binding upon their successors and permitted assigns. Neither party shall have the right to assign the benefits or obligations under the Contract without obtaining the prior written consent of the other, except that the Company shall be permitted to assign its benefits and obligations to any parent, subsidiary or affiliated corporation and in the event of such assignment by the Company, the Company shall be automatically released from all liability and obligations under the Contract. The Company shall have the right to subcontract all or any part of the Work to third parties provided that the Company shall at all times be responsible to the Customer for the performance of any such subcontractor.

**17. Amendment** - All amendments to the Contract shall be in writing and signed by both the Customer and the Company.

**18. Independent Contractors** - Neither party shall be or be deemed an agent of the other for any purpose and their relationship to each other shall be that of independent contractors. Neither party shall have the right to incur expenses or liabilities on behalf of the other party.

**19. Waivers** - Any waiver of or consent to depart from the requirements of any provision of this Contract shall be effective only if it is in writing and signed by the party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of either party to exercise, and no delay in exercising, any right under this Contract shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

**20. Interpretation** - The headings in this Contract are for convenience of reference only and shall not be considered part or affect the interpretation thereof. Words expressed in the singular include the plural and vice-versa and words of one gender include all genders.

**21. Governing Law** - This Contract is subject to and shall be construed in accordance with the laws of New Brunswick and the federal laws of Canada applicable therein. Each of the Company and the Customer consents to the non-exclusive jurisdiction of the courts of New Brunswick with respect to all disputes or claims originating in respect of the Contract.

**22. Order of Precedence** - In the event of any conflict or inconsistency between the proposal, quotation or order confirmation and these general terms and conditions, the proposal, quotation or order confirmation shall take precedence and govern.