



## CONTRACT TERMS

### TERMS AND CONDITIONS

For the purpose of this Rental Agreement, "Rental Center" shall mean Rental Center, its owners, officers, directors, shareholders, and employees. And "Customer" shall mean Customer, its agents and/or employees. In consideration of hiring of the equipment (herein "the equipment") described on the front of this Rental Agreement it is agreed as follows:

#### **1. INDEMNITY/HOLD HARMLESS.**

CUSTOMERS WILL TAKE ALL NECESSARY PRECAUTIONS REGARDING THE EQUIPMENT RENTED, AND PROTECT ALL PERSONS AND PROPERTY FROM INJURY OR DAMAGE. CUSTOMER AGREES TO HOLD HARMLESS RENTAL CENTER FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, JUDGEMENTS, ATTORNEYS' FEES AND COSTS, OF EVERY KIND AND NATURE INCLUDING, BUT NOT LIMITED TO, INJURIES OR DEATH TO PERSONS AND DAMAGE TO PROPERTY, ARISING OUT OF THE USE, MAINTENANCE, INSTRUCTION, OPERATION, POSSESSION, OWNERSHIP, OR RENTAL OF THE EQUIPMENT RENTED, HOWEVER CAUSED, EXCEPT CLAIMS OR LITIGATION ARISING THROUGH THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF RENTAL CENTER.

#### **2. ASSUMPTION OF RISK/RELEASE – DISCHARGE OF LIABILITY.**

CUSTOMER IS FULLY AWARE AND ACKNOWLEDGES THERE IS A RISK OF INJURY OR DAMAGE ARISING OUT OF THE USE OR OPERATION OF THE EQUIPMENT RENTED HEREUNDER AND HEREBY ELECTS TO VOLUNTARILY ENTER INTO THIS RENTAL AGREEMENT AND ASSUME ALL OF THE ABOVE RISKS OF INJURY OR DAMAGE. CUSTOMER AGREES TO RELEASE AND DISCHARGE RENTAL CENTER FROM ANY AND ALL RESPONSIBILITY OR LIABILITY FROM SUCH INJURY OR DAMAGE ARISING OUT OF THE USE OR OPERATION OF THE EQUIPMENT OR ACTS OF NATURE; AND CUSTOMER FURTHER AGREES TO WAIVE, RELEASE AND DISCHARGE ANY AND ALL CLAIMS FOR INJURY OR DAMAGE AGAINST RENTAL CENTER WHICH CUSTOMER OTHERWISE MAY BE ENTITLED TO ASSERT.

#### **3. OPERATORS.**

No operators are furnished, directly or indirectly with our equipment or vehicles.

#### **4. RECEIPT/INSPECTION OF EQUIPMENT.**

Customer hires the equipment on an "as is" basis. Customer acknowledges that he has, or will, personally inspect the equipment prior to its leaving Rental Center (regardless of point of delivery) and finds it suitable for his needs. Customer acknowledges receipt of all items listed in this Rental Agreement and that the equipment is in good working order and repair and that he understands (without further instructions) its proper operation and use.

#### **5. WARNING.**

The use of false or fictitious identification to obtain the equipment or the failure to return the equipment upon the Agreed Return Date of this rental Agreement may, be considered a theft, resulting in criminal prosecution. Your attention is directed to the New Mexico Penal code (relating to bad checks) and Vehicle code (relating to failure to return leased or rented equipment upon rental agreement termination.)

#### **6. POSSESSION/TITLE**

Customer's right to possession of the equipment terminates on the Agreed Return Date indicated on the front of this Rental Agreement. Retention of possession after this date constitutes a material breach of this Rental Agreement.

#### **7. RENTAL PERIOD/RATE/PAYMENT.**

Rental period is for a maximum of twenty-four (24) hours unless a longer term is specified in the Rental Agreement Agreed Return Date on the front of this Rental Agreement. Rental charges begin immediately upon delivery of the equipment to the location directed by the Customer or upon equipment leaving Rental Center, whichever happens first. Rental charges end upon return of the equipment to the Rental Center in an acceptable condition. No allowance will be made for Saturdays, Sundays, Holidays, or time in transit nor for any period of time the equipment may be in actual use while in Customer's possession. If the equipment is returned prior to the end of the minimum rental period, the rental due shall be for the entire minimum rental period. Rental Center may terminate rental at any time and retake the equipment without further notice in case of violation by Customer of any terms or conditions of this Rental Agreement. Customer agrees to pay any collection costs and attorney's fees incurred in collection of this account or any dispute arising under this Rental Agreement. Customer agrees to pay a monthly service charge on all unpaid balances. Rental rates are based upon single shift usage (8 hours per day, 5 days per week). If Customer makes greater use of the equipment it is agreed that additional usage will be charged.

#### **8. ORDINARY WEAR AND TEAR.**

Customer shall be responsible for all damage not caused from ordinary wear and tear. "Ordinary wear and tear" shall mean only the normal deterioration of the equipment caused by ordinary, and reasonable proper use of the equipment on a one-shift basis. Damage which is not "ordinary wear and tear" includes, but is not limited to: damage resulting from lack of

fuel or lubrication; failure to maintain proper oil, water, hydraulic or air pressure levels; damage due to overturning, overloading, or exceeding rated capacities; improper use; abuse; lack of cleaning; tire damages; dirtying of equipment by paint, mud, plaster, concrete, rosin, or any other material. Any damage resulting from customer negligence or lack of knowledge on how to properly operate, load and unload, and maintain the equipment will be the full responsibility of the customer.

## **9. COMPLIANCE WITH LAWS/USE OF EQUIPMENT.**

Customer agrees not to use or allow anyone to use the equipment for any illegal purpose or in any illegal manner or in an unsafe manner. Customer agrees at his sole cost and expense to comply with all municipal, county, state and federal laws, ordinances and regulations which may apply to the use of the equipment during the rental period. Customer further agrees to pay all licenses, fines, fees, permits or taxes arising from his use of the equipment, including any subsequently determined to be due.

Customer shall not allow any person who is not qualified and who has not received and understands safety and operating instructions and who does not utilize all safety equipment required to operate the equipment or use the equipment. Customer shall not allow any person to use or operate the equipment when it is in need of repair or when it is in an unsafe condition or situation; modify, misuse, or harm or abuse the equipment; permit any repairs to the equipment without Rental Center's prior written permission; or, allow a lien to be placed on the equipment.

Customer agrees to check filters, oil, fluid levels, air pressure, clean and visually inspect the equipment at least daily and to immediately discontinue use and notify Rental Center when equipment is found to need repair or maintenance or is not properly functioning. Customer acknowledges that Rental Center has no responsibility to inspect the equipment while it is in Customer's possession.

## **10. RETURN OF EQUIPMENT.**

Customer agrees to return to Rental center, upon or before Rental Agreement Agreed Return Date, the equipment is as good condition as when received, ordinary wear and tear excepted. Customer shall be liable for all damages to or loss of the equipment occurring because it was not returned during Rental Center's regular business hours. Customer shall be responsible for all costs incurred by Rental Center recovering and returning damaged equipment to Rental Center's premises.

Customer agrees to fill the gas tank with the appropriate fuel; they will be fully responsible for damages and down time of equipment resulting in filling the tank with improper fuel or allowing the tank to run empty. Customer agrees to pay for the filling of the tank at the current market rates set by the Company upon return if not filled to completion upon return.

## **11. DISCLAIMER OF WARRANTIES.**

Rental Center makes no warranty of merchantability or fitness for any particular use or purpose, either expressed or implied. There is no warranty or representation that the equipment is fit for Customer's particular intended use, or that it is free of latent defects. Rental center shall not be responsible to Customer or any third party for any loss, damage or injury resulting from, or in any way attributable to the operation of, use of, or any failure of the equipment. Rental Center shall not be responsible for any defect or failure unknown to the Rental center. Customer's sole remedy for any failure of or defect in the equipment shall be termination of the rental charges at the time of failure provided that Customer notifies Rental center immediately of such failure and returns the equipment to Rental Center within twenty-four hours of such failure.

## **12. PURCHASE ORDERS.**

The use of Customer's purchase order number on this Rental Agreement is for Customer's convenience and identification only.

## **13. SUBLetting/LOCATION OF EQUIPMENT.**

Customer agrees not to sublet, loan or assign the equipment. Customer shall not move the equipment from the address at which customer represented it was to be used.

## **14. DEFAULT.**

Should Customer in any way fail to observe or comply with any provision of this Rental Agreement, Rental Center may, at its sole option, terminate this Rental Agreement, retake the equipment, declare any charges due and payable and initiate legal process to recover monies owed, and/or, pursue any other legal rights and remedies available to Rental Center. Exercise of any remedy available to Rental Center shall not constitute an election of remedies or waiver of any additional remedies to which Rental Center may be entitled.

## **15. RETAKING OF EQUIPMENT.**

If for any reason it becomes necessary for Rental Center to retake the equipment, Customer authorizes rental Center to retake the equipment without further notice or further legal process and agrees that Rental center shall not be liable for any claims for damage or trespass arising out of the removal of the equipment. Customer will be responsible for any additional charges or fees associated with the need to retake the equipment.

## **16. LEGAL FEES.**

In the event an attorney is retained to enforce any provision of this Rental Agreement, the prevailing party in the dispute shall be entitled to recover reasonable attorney's fees and court costs in such action, or proceeding, in an amount to be determined by the court.

## **17. ACCIDENTAL DAMAGE WAIVER.**

Accidental damage waiver is not insurance.

By Customer accepting the Accidental Damage Waiver on this Rental Agreement and with immediate notification in the event of any accident and the prompt submission of applicable police reports, Retail Center and Customer agree that Rental Center will waive any claim against Customer for direct physical damage to the equipment while in use by the Customer. If Customer has insurance covering such loss or damage, the Accidental Damage Waiver becomes secondary and Customer shall exercise all rights available to him under said insurance and take all action necessary to process said claim. Customer further agrees to assign said claim and any and all proceeds from such insurance to Rental center. Upon request of Rental center, Customer shall fully cooperate with Rental Center and furnish the name of his insurance agent, insurance company, and complete information concerning insurance coverage carried. Notwithstanding the foregoing, the following conditions are not covered under the Accidental Damage Waiver:

- A. Any item of equipment or part thereof which is not returned for whatever reason, including theft; B. Damage resulting from improper use, overloading or exceeding the rated capacity of the equipment; C. Damage to motors or other electrical appliances or devices caused by artificial current; D. Damage to tires, tubes, wheels caused by blowout, bruises, cuts and other causes inherent in the use of the equipment;
- E. Damage as a result of vandalism or malicious mischief or intentional abuse;
- F. Damage resulting from misuse, abuse, failure to maintain, cleanliness, proper oil, fuel, hydraulic oil, coolant or pressure levels, lack of lubrication or other normal servicing of equipment;
- G. All damage resulting from overturning;
- H. All damage resulting from use of the equipment in violation of any provision of this Rental Agreement, violation of any law, ordinance or regulation.

**18. NOTICE OF NON-WAIVER/SEVERABILITY.**

Any failure of Rental Center to insist upon strict performance by Customer as regards any provision of this Rental Agreement shall not be interpreted as a waiver of Rental Center's right to demand strict compliance with all other provisions of this Rental Agreement against customer or any other person. The provisions of this Rental Agreement shall be severable so that the unenforceability, invalidity or waiver of any provision shall not affect any other provision.

I certify that I have read and agree to all terms of this contract.