

RENTAL AGREEMENT ADDITIONAL TERMS AND CONDITIONS

- 1. DEFINITIONS** "Rental Agreement" means the Rental Agreement, including the front and back pages of the Rental Agreement, as well as any Addendum attached hereto. Somers & Watson Leasing, LLC referred to as "SWM" identified on the first page of the Rental Agreement from whom the Customer has rented the Equipment. "Equipment" means any one or more of the items identified as such on the first page of this Rental Agreement and any accessories, attachments or other similar items delivered to the Customer, including but not limited to air hoses, electric cords, blades, welding cables, liquid fuel tanks and nozzles. "Customer" means the person or entity identified as such on the first page of this Rental Agreement or any representative, agent, officer or employee of Customer. "Store Location" means the SWM address in the center of the first page of this Rental Agreement. "Rental Period" means the period of time between the "Date Out" and "Date In", set forth on the first page of this Rental Agreement, except that the Rental Period may terminate earlier as provided in Sections 17 and 22 hereof.
- 2. AUTHORITY TO SIGN.** Any individual signing this Rental Agreement represents and warrants that he or she is of legal age, and has the authority and power to sign this Rental Agreement on their own behalf for the Customer.
- 3. INDEMNITY/HOLD HARMLESS.** TO THE FULLEST EXTENT PERMITTED BY LAW, CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD SWM AND ANY OF ITS RESPECTIVE OFFICERS, AGENTS, SERVANTS OR EMPLOYEES AND AFFILIATES, PARENTS AND SUBSIDIARIES, HARMLESS FROM AND AGAINST ANY AND ALL LIABILITY CLAIMS, LOSS, DAMAGE OR COSTS (INCLUDING, BUT NOT LIMITED TO, ATTORNEYS FEES, LOSS OF PROFIT, BUSINESS INTERRUPTION OR OTHER SPECIAL OR CONSEQUENTIAL DAMAGES. DAMAGES RELATING TO PROPERTY DAMAGE, BODILY INJURY, OR DAMAGES RELATING TO WRONGFUL DEATH) ARISING OUT OF OR RELATED TO THE OPERATION, USE, POSSESSION OR RENTAL OF THE EQUIPMENT. THIS INDEMNITY PROVISION ALSO APPLIES TO ANY CLAIMS ASSERTED AGAINST SWM BASED UPON STRICT OR PRODUCT LIABILITY CAUSES OF ACTION. HOWEVER, CUSTOMER SHALL NOT BE OBLIGATED TO INDEMNIFY SWM FOR THAT PART OF ANY LOSS, DAMAGE OR LIABILITY CAUSED SOLELY BY THE INTENTIONAL MISCONDUCT OR SOLE NEGLIGENCE OF SWM IN FURTHERANCE OF, BUT NOT IN LIMITATION OF THE INDEMNITY PROVISIONS IN THIS AGREEMENT, CUSTOMER EXPRESSLY AND SPECIFICALLY AGREES THAT THE FORGOING OBLIGATION TO INDEMNIFY SHALL NOT IN ANY WAY BE AFFECTED OR DIMINISHED BY ANY STATUTORY OR CONSTITUTIONAL LIMITATION OF LIABILITY OR IMMUNITY CUSTOMER ENJOYS FROM SUITS BY ITS OWN EMPLOYEES. THE DUTY TO INDEMNIFY WILL CONTINUE IN FULL FORCE AND AFFECT NOT WITHSTANDING THE EXPIRATION OR EARLY TERMINATION OF THE CONTRACT.
- 4. INSPECTION OF EQUIPMENT.** Customer acknowledges the Customer has inspected the Equipment prior to taking possession thereof, finds it in good working order and repair, and suitable for Customer's needs. Customer further acknowledges that Customer has inspected the propulsion tank of vehicles registered and licensed, or required to be registered and licensed, for use on any highway or public road use, prior to taking possession thereof, and such propulsion tank contained no dyed fuel. Customer is familiar with the proper operation and use of each item of Equipment. Customer has inspected or will inspect all hitch, bolts, safety chains, hauling tongues and other devices and materials used to connect the Equipment to Customer's towing vehicle, if any, Customer acknowledges SWM is not responsible for any damage to Customer's towing vehicle caused by detachable hitches or mirrors.
- 5. LIMITATION OF LIABILITY.** In no event shall SWM be responsible to Customer or any other party for any loss, damage or injury caused by resulting from, or in any way connected with the Equipment, its operation or its use, SWM's failure to deliver the Equipment as required hereunder, or SWM's failure to repair or replace non-working Equipment. Customer acknowledges and assumes all risks inherent in the operation, use and possession of the Equipment from the time the Equipment is delivered to Customer until the Equipment is returned to SWM and will take all necessary precautions to protect all persons and property from injury or damage from the Equipment.
- 6. USE OF EQUIPMENT.** Customer will not use or allow anyone to use the Equipment: (a) for an illegal purpose or in an illegal manner, (b) without a license, if required under any applicable law, or (c) who is not qualified to operate it. Customer agrees, at Customer's sole expense, to comply with all applicable municipal, state and federal laws, ordinances and regulations (including OSHA and the Internal Revenue Code) which may apply to the use of the Equipment. Customer shall not insert, or permit to be inserted, any dyed fuel into the propulsion tank of vehicles registered and licensed, or required to be registered and licensed, for use on any highway or other public road. CUSTOMER AGREES TO DEFEND, INDEMNIFY AND HOLD SWM HARMLESS FROM ALL FINES, PENALTIES AND COSTS INCURRED BY SWM DUE TO DYED FUEL BEING INTRODUCED INTO THE PROPULSION TANK OF SUCH VEHICLES. Customer acknowledges that SWM has no responsibility to inspect the Equipment while it is in Customer's possession. SWM shall have the right to replace the Equipment with other similar equipment at any time and for any reason.
- 7. DISCLAIMER OF WARRANTIES.** SWM MAKES NO WARRANTIES, EXPRESS OR IMPLIED AS TO THE MERCHANTABILITY OF THE EQUIPMENT OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. THERE IS NO WARRANTY THAT THE EQUIPMENT IS SUITED FOR CUSTOMER'S INTENDED USE, OR THAT IT IS FREE FROM DEFECTS, EXCEPT AS MAY BE SPECIFICALLY SET FORTH IN THIS RENTAL AGREEMENT. SWM DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, MADE IN CONNECTION WITH THIS RENTAL TRANSACTION.
- 8. MALFUNCTIONING EQUIPMENT.** Should the Equipment be involved in an accident, become unsafe, malfunction or require repair, Customer shall immediately cease using the Equipment and immediately notify SWM. If such condition is the result of normal operation, SWM will repair or replace the Equipment with similar Equipment in working order, if such replacement Equipment is available. SWM has no obligation to repair or replace Equipment rendered inoperable by misuse, abuse, or neglect. Customer's sole remedy for failure or defect in Equipment shall be the termination of any rental charges accruing after the time of failure. Customer must return the Equipment to the Store Location within 24 hours from the time of defect in order to terminate the rental charges.
- 9. RETURN OF EQUIPMENT/DAMAGED & LOST EQUIPMENT.** At the expiration of the Rental Period, Customer will return the Equipment to the Store Location during SWM regular business hours, such Equipment to be in the condition and repair as when delivered to Customer, subject to reasonable wear and tear, as defined below. In the event that SWM has agreed to pick up the Equipment from Customer, Customer shall notify SWM in writing that the Equipment is "off rent" and shall obtain an "off rent" confirmation number from SWM. SWM shall endeavor to pick up the Equipment within a commercially reasonable period of time after the Equipment is called "off rent". Customer shall be liable for all damages to or loss of the Equipment from the time the Equipment leaves the Store Location until the Equipment is returned to the Store Location including any damage during transit to or from Customer. In the case of the loss or destruction of any Equipment, or inability or failure to return same to SWM for any reason whatsoever, Customer will pay SWM the then full replacement list value together with the full rental rate as specified until such Equipment is replaced. If the Equipment is returned in a damaged or excessively worn condition, Customer shall pay SWM the reasonable cost of repair and pay rental on the Equipment at the regular rental rate until all repairs have been completed. SWM shall be under no obligation to commence repair work until Customer has paid to SWM the estimate cost thereof.
- 10. REASONABLE WEAR AND TEAR.** Reasonable wear and tear of the Equipment shall mean only the normal deterioration of the Equipment caused by ordinary and reasonable use on a one shift (8 hours per day, 40 hours per week) basis. The following shall not be deemed reasonable wear and tear: (a) damage resulting from lack of lubrication, insertion of improper fuel, or maintenance of necessary oil, water and air pressure levels; (b) damage resulting from any collision, overturning, or improper operation, including overloading or exceeding the rated capacity of the Equipment; (c) damage in the nature of dents, bending, tearing, staining, corrosion or misalignment to or of the Equipment or any part thereof; (d) wear resulting from use in excess of shifts for which rented; and any other damage to the Equipment which is not considered ordinary and reasonable in the equipment rental industry.
- 11. LATE RETURN.** Customer agrees that if the Equipment is not returned by the end of the Rental Period, SWM, in its sole discretion, may require Customer to do any of the following: (a) continue to pay the rental rate(s) applicable to the Equipment as specified on the front page of the Rental Agreement, (b) for periods less than 24 hours pay the full daily rental rate applicable to the Equipment, or (c) pay any increased rental rate(s) in effect at the time of, or after, the expiration of the Rental Period.
- 12. RENTAL PERIOD / CALCULATION OF CHARGES.** Rental charges commence when the Equipment leaves the Store Location and end when the Equipment is returned to the Store Location during SWM regular business hours. Rental charges do not include the cost of fuel, delivery/pick up fees, licenses, taxes and government charges. Customer may acquire additional charges provided herein: (i) a cleaning fee if required; (ii) fees for lost keys; (iii) preventative maintenance fees; (iv) an environmental fee; (v) an emissions fee. When a rental unit is returned not completely full of fuel, SWM will fill up the unit with fuel and the Customer will be charged a per gallon rate for this fuel. In the event that SWM has agreed to pick up the Equipment from Customer, Customer shall notify SWM in writing that the Equipment is "off rent", at which time rental charges shall no longer be assessed, unless otherwise provided herein. Rental charges accrue during Saturdays, Sundays and Holidays. Rental rates are for normal use based on an 8 hour day, 40 hours per week and 160 hours per 4 week period. On power equipment, operations in excess of one shift will be at SWM's standard premium rental rates. Customer will truthfully and accurately certify to SWM the number of shifts the Equipment was operated. Customer's right to possess the Equipment terminates on the expiration of the Rental Period and retention of possession after this time is a material breach of the Rental Agreement. TIME IS OF THE ESSENCE.
- 13. DEPOSIT.** In addition to securing the payment of rental charges hereunder, Customer agrees that any rental deposit shall be deemed to be a guarantee by Customer of the full and complete performance of each and all of the items, covenants, and agreements to be performed by Customer hereunder, and in the event of any breach by Customer, the deposit will be credited against any damages, cost or expense incurred by SWM as a result of the breach.
- 14. PAYMENT.** All amounts due hereunder shall be payable in full upon the end of the rental Period, return of the Equipment to SWM or 30 days following SWM's invoice to Customer, whichever comes first. Customer acknowledges that timely payment of rental charges is essential to SWM's business operations and it would be impractical and extremely difficult to fix the actual damages caused by late payment. Customer and SWM agree that there shall be added to all past due rental charges a late payment fee equal to the lesser of 2% per month (24% per annum) on any such past due amounts, or the maximum amount allowed by applicable law.
- 15. TITLE/NO PURCHASE OPTION/NO LIENS.** This Rental Agreement is not a contract of sale, and title to the Equipment shall at all times remain with SWM. Unless covered by a specific supplemental agreement signed by SWM, Customer has no option or right to purchase the Equipment. Customer shall keep the Equipment free and clear of all mechanics and other liens and encumbrances.
- 16. TIRE AND TUBE REPAIR OR REPLACEMENT.** Repair or replacement of tires and tubes is the responsibility of Customer, and is not included in the rental rate.
- 17. DEFAULT.** Customer shall be deemed to be in default should Customer in any way fail to pay any amount when due hereunder, or to perform, observe or keep any provision of the Rental Agreement, or should Customer become "insolvent" (as defined herein), or should SWM anticipate that Customer may become insolvent or that Customer may otherwise become in default. If Customer is in default, SWM may do any or more of the following: (a) terminate the Rental Period; (b) declare the entire amounts due hereunder immediately due and payable and commence legal action therefor; (c) cause SWM's employees or agents, without notice or legal process, to enter upon Customer's property and take all action necessary to retake and repossess the Equipment, in which event Customer waives all claims for damages and losses, physical and pecuniary, caused thereby and shall pay all costs and expenses incurred by SWM in retaking and repossessing or (d) pursue any other remedies available by law. Customer shall be considered "insolvent" if Customer: (i) shall generally not pay, or shall be unable to pay, or shall admit its inability or anticipated inability to pay its debts as such debts become due, or (ii) shall make an assignment for the benefit of creditors, or petition or apply to any tribunal for the appointment of a custodian, receiver, or trustee for it or a substantial part of its assets; or (iii) shall commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, or (iv) shall have had any such petition or application filed or any such proceeding commenced against it in which an order for relief is entered or an adjudication or appointment is made, or (v) shall take any action indicating its consent to, approval of, or acquiescence in an such petition, application, proceeding, or order for relief or the appointment of a custodian, receiver, or trustee for all or any substantial part of its properties.
- 18. CUSTOMER'S INSURANCE COVERAGE.** Customer agrees to maintain and carry, at Customer's sole cost, the following insurance: (a) property (renter's) insurance for the full replacement cost of the Equipment; (b) commercial auto liability insurance with at least a per occurrence limit of \$2 million; and (c) commercial general liability insurance (CGL) (providing coverage equal to or greater than the standard ISO CG 00 01 (12 04 form) for any property damage, bodily injury or personal and advertising injury arising out of the maintenance, operation, possession or use of the Equipment with combined single limits of insurance not less than \$2 million per occurrence and \$4 million in the aggregate. Customer shall obtain insurance policies that provide, or are endorsed to provide, that all insurance required hereunder is primary and non-contributory to any other insurance maintained by SWM. SWM shall be named as an additional insured for liability insurance and additional loss payee for property insurance. Any deductibles or self-insured retentions shall be the sole responsibility of the Customer. All insurance required by this agreement shall include a waiver of rights and recovery against SWM or its insurers by the Customer and its insurers, as well as a waiver of subrogation against SWM or its insurers. The policies required hereunder shall provide that SWM must receive not less than 90 days' notice prior to any cancellation.
- 19. NO ASSIGNMENT, LENDING OR SUBLETTING.** Customer shall not sublease, subrent, assign or loan the Equipment without first obtaining the written consent of SWM, and any such actions by Customer without SWM's written consent, shall be void. Customer agrees to use and keep the Equipment at the job site set forth on the first page of this Rental Agreement unless SWM approves otherwise in writing. SWM may at any time, without notice to Customer, transfer or assign this Rental Agreement or any Equipment or any monies or other benefits due or to become due hereunder.
- 20. THIS ENTIRE AGREEMENT/ONLY AGREEMENT.** This Rental Agreement, including the front and back pages of the Rental Agreement, and any Addendum attached hereto, represent the entire agreement between Customer and SWM with respect to the Equipment and the rental of the Equipment. There are no oral or other representations or agreements not included herein. None of SWM's rights or Customer's rights may be changed and no extension of the terms of this Rental Agreement may be made except in writing, signed by both SWM and Customer. Any use of Customer's purchase order number on its Rental Agreement is for Customer's convenience only.
- 21. ORDER OF PRECEDENCE.** The terms and conditions of this Rental Agreement shall control over any conflicting reprinted terms and conditions contained in Customer's purchase order or similar documents.
- 22. OTHER PROVISIONS.** (a) Any failure of SWM to insist upon strict performance by Customer of any terms and conditions of this Rental Agreement shall not be construed as a waiver of SWM's right to demand strict compliance. Customer has carefully reviewed this Rental Agreement and waives any principle of law which would construe any provisions hereof against SWM as the draftsman of this Rental Agreement. (B) Customer agrees to pay all reasonable costs of collection, court, attorney's fees and other expenses incurred by SWM in the collection of any charges due under this Rental Agreement or in connection with the enforcement of its terms. Customer shall pay the rental charge(s) without any offsets, deductions or claims. (D) The federal and state courts in the county in which the Store Location is located shall have exclusive jurisdiction over all matters relating to this Rental Agreement. TRIAL BY JURY IS WAIVED. In order to effect service of process on SWM, please contact the Secretary of State Corporations Division or the equivalent office in your state to obtain the name of the registered agent and the registered office address that is on file with the Secretary of State for SWM. SWM shall be entitled to decrees of specific performance (without posting bond or other security) in addition to other remedies as may be available. SWM shall have the right to immediately repossess the Equipment without any liability to Customer. In the event of (i) permanent closure of the SWM Store Location or (ii) declaration of any emergency, disaster or similar situation by any federal, state or local government.
- CRIMINAL WARNING:** The use of false identification to obtain Equipment or the failure to return the Equipment by the end of the Rental Period may be considered a theft subject to criminal prosecution pursuant to applicable criminal or penal code provisions.
- 23. PHYSICAL DAMAGE WAIVER TERMS & CONDITIONS:** Lessee agrees to carry bodily injury and property damage insurance covering the equipment in the combined amounts of not less than \$2,000,000 for each occurrence and which shall insure both Lessor and Lessee be written by companies reasonably satisfactory to Lessor. Lessee shall furnish certificates to Lessor naming Lessor as an "Additional Insured" and "Loss Payee" and stating coverage includes "Boom Overload" and "Boom Collapse". If Lessee pays Damage Waiver Fee (DWF), Lessee will be liable for all unpaid rent and a deductible equal to one month's rental rate. Lessor will waive the cost to repair equipment except: (1) when damage results from overloading or exceeding manufacturer's rated capacity or other improper use of the equipment; (2) damage to hydraulic cylinders that necessitate replacement because of nicks, scores, dents, or bends; (3) any damage to tires or tubes including blowouts, flats, bruises, cuts, punctures or tears; (4) damage resulting from a lack of proper lubrication or other improper servicing of the equipment included abuse or failure to maintain cleanliness, proper fuel, hydraulic coolant, oil, or pressure levels; (5) when equipment or accessories are not returned for any reason including theft or mysterious disappearance; (6) damage to licensed vehicles or cranes, including wire rope; (7) damage from wars, riots, strikes, civil commotion or acts of God; (8) damage from striking an overhead object; (9) damage from loading, unloading or transporting of equipment; (10) damage from nuclear reaction or nuclear radioactive contamination; (11) damage or collapse of boom from overloading or from collision, including with a boom in motion; (12) damage from or associated with rollover, upset or any type of submersion; (13) damage caused by a person other than an Authorized Operator, or where required, a trained or Certified Operator; (14) damage caused by vandalism, fire or malicious mischief; (15) damage caused by overspray from paint or any substance that adheres to the equipment and cannot be removed by high pressure water. Lessee shall assume liability at all times for all damage to or destruction of equipment caused by exposure to highly corrosive or destructive environmental elements. If the equipment is determined by the Lessor to be lost, stolen, destroyed, or damaged beyond repair, the Lessee shall pay the Lessor therefore in cash the Agreed Value, herein set forth. On such payments this Rental Agreement shall terminate with respect to such item of equipment so paid for and the Lessee shall become entitled to such item of equipment as-is-where-is with all faults without warranty, express or implied, with respect to any matter whatsoever.