

## **RENTAL AGREEMENT TERMS AND CONDITIONS (COLORADO, NEW MEXICO OR TEXAS)**

**Purchase Order Terms Excluded.** The issuance of a purchase order or other document against this Rental Agreement and not a counter-offer, and no provision of such purchase order or any other document which varies from the terms hereof shall become a part of the Rental Agreement unless separately and specifically agreed to in writing by Lessor.

**INDEMNIFICATION.** LESSEE AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS, THE COMPANY AGAINST ALL CLAIMS, POTENTIAL CLAIMS, DEMANDS, AND SUITS AND AGAINST ALL INJURIES (INCLUDING DEATH), DAMAGES, LOSSES, PENALTIES, EXPENSES, INSURANCE DEDUCTIBLE AND EXPENSE. ATTORNEY FEES (INCLUDING ATTORNEY FEES AND EXPENSES TO ENFORCE THIS AGREEMENT), OR OTHER LOSS OF ANY KIND WHETHER CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT OR ALLEGED NEGLIGENT ACTS OR OMISSIONS OF THE LESSEE (INCLUDING INJURY OR DEATH TO LESSEE EMPLOYEES) THE COMPANY MAY INCUR ARISING DIRECTLY OR INDIRECTLY FROM THE PICK-UP, USE, POSSESSION, OPERATION, TRANSPORT, REPAIR, OR RETURN BY LESSEE, SUB-LESSEE OR ANYONE FOR WHOSE ACTS LESSEE MAY BE HELD LIABLE, AND ANY USER OF THE EQUIPMENT WHICH IS THE SUBJECT OF THIS RENTAL AGREEMENT. TO THE EXTENT, IF AT ALL, SECTION 56-7-1 NMSA IS APPLICABLE TO THIS AGREEMENT, NO INDEMNIFICATION SHALL EXTEND TO LIABILITY, CLAIMS, DAMAGES, LOSSES OR EXPENSES, INCLUDING ATTORNEY'S FEES, ARISING OUT OF (i) THE PREPARATION OR APPROVAL OF MAPS, DRAWINGS, OPINIONS, REPORTS, SURVEYS, CHANGE ORDERS, DESIGNS OR SPECIFICATIONS BY AN INDEMNIFIED EMPLOYEE OF AN INDEMNIFIED PERSON; (ii) THE GIVING OF OR FAILURE TO GIVE DIRECTIONS OR INSTRUCTIONS BY AN INDEMNIFIED PERSON, OR THE AGENTS OR THE EMPLOYEES OF AN INDEMNIFIED PERSON, WHERE SUCH GIVING OR FAILURE TO GIVE DIRECTIONS OR INSTRUCTIONS IS THE PRIMARY CAUSE OF BODILY INJURY TO PERSONS OR DAMAGE TO PROPERTY.

**Rental Term.** The term of this Rental Agreement shall include the Rental Term specified above plus all additional time spent transporting the Equipment to and from Lessee, any renewals or extensions of the specified Rental Term, and any additional time required for Lessor to regain the full possession or control of, to make repairs to, or to discharge liens or encumbrances upon the Equipment.

**Acceptance of Equipment.** Unless Lessee gives written notice to Lessor specifying any defect in or other valid objection to the Equipment within 24 hours after receiving the same, it shall be conclusively presumed that such Equipment was in good operating condition when received and that Lessee accepted and approved the same as the Equipment described in this Rental Agreement. Lessor represents that rented Equipment has been inspected for safe and proper operation prior to each rental. Copies of the completed Safety Damage Sheet (SDS) inspection forms from Wagner Rents are available upon request.

**Transportation.** Unless otherwise specifically provided herein, Lessee shall pay all charges and expenses relating to transportation of the Equipment in connection herewith.

**Renewal.** Any failure to return the Equipment to Lessor upon the expiration of the Rental Term or a renewal period shall, at the option of Lessor, constitute a renewal hereof. The provisions of the Rental Agreement shall apply to every renewal period.

**Disclaimer of Warranties.** It is understood that Lessor is not the manufacturer of the Equipment and that Lessor makes no warranties against defects in material or workmanship, or relating to the capability or performance of the Equipment, or the profitability of its use. THERE ARE NO EXPRESS WARRANTIES BY LESSOR OF ANY KIND WITH RESPECT TO THE EQUIPMENT AND LESSOR DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE. UNDER NO CIRCUMSTANCES SHALL LESSOR BE LIABLE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES. Lessor hereby assigns to Lessee for the Rental Term all manufacturer's warranties applicable to the Equipment.

**Rental Payments.** Lessee agrees to pay the payment amount as set forth in this agreement. Lessee's payment is due in full upon receipt of invoice unless different terms are stated on the first page of this Contract. All payments shall be made to Lessor at its address set forth herein or at such other address as Lessor may from time to time specify in writing. Lessee waives all existing and future claims and offsets against any rent or other payments due

under this Rental Agreement and agrees to pay all rent and perform all other obligations to Lessor hereunder when due regardless of any claim or offset that may be asserted by Lessee or on Lessee's behalf. Lessee's obligations hereunder shall not be suspended or discharged on account of Lessee's inability to use the Equipment due to any cause other than a breach of this Rental Agreement by Lessor. If Lessee fails to pay any part of the rental or any other sum required to be paid to Lessor within 30 days after the due date, Lessee shall pay as additional rent to Lessor interest of 1.75 percent per month on the delinquent amount. Such monthly interest charges shall be cumulative and all payments made by Lessee shall be applied to any accrued interest before to base rent.

**Use of Equipment.** Lessee represents and agrees that the Equipment is rented for commercial use and not for personal, family or household use. To minimize the possibility of personal injury or property damage; Lessee agrees to have the Equipment operated only by employees of Lessee properly trained and qualified in its operation and to take all other reasonable precautions to ensure that the equipment is transported and operated only in a safe and lawful manner. Lessee shall pay all expenses relating to operating the Equipment.

**Location and Inspection.** Lessee shall operate and when not in operation, store the Equipment at the location(s) specified above and shall not remove the same from such location(s) without the prior consent of Lessor. Lessee agrees that Lessor shall have the right to enter any premises where the Equipment may be located at any reasonable time for purposes of inspecting the same and without notice or liability to Lessee remove or disable the Equipment if, in the opinion of Lessor, it is being used or kept in violation of this Rental Agreement.

**Maintenance and Care.** Unless otherwise specified in this agreement. Lessee agrees at its own expense to maintain the Equipment in good working order, properly serviced and garaged, including performing all necessary repairs and replacements, and to return the Equipment to Lessor upon the expiration or termination hereof in the same condition as when received except for ordinary wear and tear. ALL REPLACEMENT PARTS SHALL BE ORIGINAL EQUIPMENT MANUFACTURERS' PARTS. Lessee shall pay for all labor, material and parts required for the proper operation and protection of the Equipment, including expendable items such as lubrication, cable, end bits, cutting edges, anti-freeze, belts and filters. Lessee shall be responsible for any tire damage or wear beyond ordinary wear and tear. The determination of ordinary or excessive wear and tear shall be made solely by Lessor in its reasonable discretion. If the Equipment is returned to Lessor in any condition inferior to the required hereby, Lessee shall pay Lessor upon receipt of invoice, as additional rent, all charges for cleaning, servicing, repairs and replacements necessary to restore the Equipment to the required condition.

**Additions and Alterations.** Lessee shall not make any additions or alterations to the Equipment without the prior written consent of Lessor. All additions or improvements made by Lessee shall belong to and become the property of Lessor and shall be included in the Equipment returned to Lessor upon the expiration or termination of this Rental Agreement; provided, however, that Lessor reserves the right to require Lessee to remove any such additions or alterations and to restore the Equipment to its condition as of the beginning of the Rental Term.

**Rental Equipment Protection (REP).** We offer Optional REP on select items of equipment. Rental Equipment Protection IS NOT INSURANCE; it is merely a waiver of certain claims of the Lessor for loss of or damage to the Lessor's equipment. If you have purchased our Rental Equipment Protection, you will have no liability to Lessor for physical damage to the applicable Rented Item(s), except that you will remain liable to the Lessor in all events for: (a) damage or loss caused in whole or in part by: (i) your breach of any provision of this Contract; (ii) failure to return Rented Item(s); (iii) misuse and/or abuse; (iv) malicious mischief or illegal acts; (v) damage that occurs while the equipment is being operated on a roadway or while it is being transported; (vi) damage to tires; (vii) rental payments due under this agreement; and (viii) use of any item in violation of any policy of insurance. A minimum deductible of \$1,000 applies on equipment valued \$25,000 or less and a \$2,500 deductible applies on equipment values greater than \$25,000.

**Insurance.** Lessee agrees to obtain and maintain property insurance coverage, at its own expense, on the Equipment against all risks in an amount not less than the total actual cash value thereof in all cases. Lessee shall maintain automobile insurance for not less than \$1,000,000 for bodily injury and property damage, or in such other amount(s) as Owner may from time to time require, naming the Owner as additional insured in all instances where an automobile exposure exists (water truck rentals, towing equipment, etc.). Lessee shall also maintain comprehensive general liability insurance for not less than \$1,000,000 combined single limit coverage for bodily

injury and property damage, or in such other amount(s) as Owner may from time to time require. Owner retains the right to approve or disapprove the insurance carrier and the form and contents of the policy. The insurance shall specify Owner as a named insured, shall be primary, without right of contribution from any other insurance carried by Owner, and shall provide that such insurance may not be cancelled or altered so as to affect the interest of Owner without at least thirty days prior written notice to Owner. All insurance covering loss or damage to the Equipment shall name Owner as sole loss payee. Lessee agrees: (i) to promptly notify Owner of any occurrence that may become the basis of an insurance claim hereunder, and (ii) to not make any adjustments with insurers without Owner's prior written consent. Lessee hereby irrevocably appoints Owner as its attorney in fact to receive and endorse all checks and other documents and to take any other actions necessary to pursue insurance claims. At or prior to the delivery of the Equipment Lessee shall deliver to Owner satisfactory evidence of such insurance coverage and shall thereafter deliver to Owner satisfactory evidence of continued coverage however, Owner's failure to insist upon such evidence of insurance of such time shall not relieve Lessee from its obligations hereunder. Additionally, Lessee shall maintain full worker's compensation insurance coverage in compliance with the applicable statutes and regulations of the jurisdiction(s) in which the Equipment is located. If the Lessee does not have adequate insurance covering the Equipment, Owner may insure the equipment at Lessee's expense, which expense Lessee agrees to pay as additional rent immediately upon receipt of invoice.

**RISK OF LOSS.** EXCEPT AS OTHERWISE PROVIDED HEREIN RELATING TO THE OPTIONAL RENTAL EQUIPMENT PROTECTION, THE ENTIRE RISK OF LOSS OR DAMAGE TO THE EQUIPMENT DURING RENTAL TERM SHALL BE UPON LESSEE AND LESSEE AGREES TO INDEMNIFY AND HOLD OWNER HARMLESS FROM AND AGAINST ANY AND ALL LOSS OR DAMAGE TO THE EQUIPMENT FROM ANY AND ALL CAUSES. LESSEE SHALL PROMPTLY NOTIFY OWNER OF ANY LOSS OR DAMAGE TO THE EQUIPMENT.

**RETURN OF EQUIPMENT.** Upon the expiration or termination of this Rental Agreement Lessee shall at its own expense immediately return the Equipment to Lessor's Equipment yard or to such other destination as Lessor may specify within the same distance from Lessee's location.

**Identification.** Lessor may place decals or other markings on the Equipment identifying the same as property of Lessor. Lessee shall not remove or impair the function of any such markings.

**Agreement of Rental Only.** This agreement is one of rental only and Lessee shall not have, or acquire, any right title or interest, legal or equitable, in the Equipment or any part thereof except the right to use the same during the term and subject to the provisions of this Rental Agreement. Title to and Lessorship of the Equipment shall remain in Lessor, Lessee shall keep the Equipment free from levy, legal or equitable, tax and other claims, liens and encumbrances and upon request shall provide Lessor proof of payment of any taxes the nonpayment of which may result in a lien upon the Equipment. Lessee shall promptly pay as additional rent all expenses, including attorney fees Lessor may incur in defending or removing any claim, lien or encumbrance upon the Equipment. The Equipment shall remain personal property even though the Equipment or any part thereof may become attached to real property.

**Default.** Lessor shall be in default under this Rental Agreement upon the happening of any of the following events or conditions; (a) Lessee fails to pay any sum required to be paid hereunder by the due date; (b) Lessee fails at any time to obtain or maintain any insurance coverage required hereunder; (c) Lessee fails to perform or comply with any other obligations or condition hereunder; or (d) Lessee files for, or is subject to, any action of bankruptcy, reorganization, insolvency or receivership.

**Remedies on Default.** Upon any default by Lessee as provided in this Rental Agreement, (a) all rentals due or to become due under this agreement and all other sums owing by Lessee hereunder shall immediately become due and payable at the option of Lessor without notice or demand; (b) Lessor may retake possession of the Equipment where located and remove the same without legal process; (c) If this Lease contains a purchase option exercised by Lessee, Lessor may dispose of the Equipment or any part thereof at Lessee's expense as provided or permitted by law; and (d) Lessor may exercise any and all rights or remedies under the Uniform Commercial Code, Leases or other applicable laws or agreements. All remedies of Lessor shall be cumulative and not exclusive and may be exercised simultaneously or separately. It is further agreed that if Lessor shall dispose of the Equipment as provided herein, Lessor may immediately recover from Lessee as Liquidated

damages, and not as a penalty, a sum equal to the aggregate of the following: all unpaid rentals and other sums due and payable hereunder; all accelerated future rentals for the balance of the Rental Term, discounted to present value at the rate of eight percent per annum; Lessor's estimated residual interest in the equipment, less the net proceeds of the disposition of the Equipment. Lessee shall pay upon demand all costs and expenses, including reasonable attorneys' fees, incurred by Lessor in exercising any of its rights or remedies hereunder or enforcing any of the terms hereof, regardless of whether litigation is actually commenced or continued to final judgment.

**Registration and Taxes.** Lessee shall pay all registration fees, license fees, assessments, charges and taxes, together with any penalties or interest that may now or later be imposed by any taxing authority with respect to the Lessorship, possession, use, rental or value of the Equipment during the Rental Term, whether assessed against Lessor or Lessee and upon request shall provide to Lessor proof of payment of the same.

**Entire Agreement; Modification and Waiver.** This Rental Agreement contains the complete and exclusive statement of the agreement between the parties relating to its subject matter and shall not be amended or modified except in writing signed by the parties. No inconsistent or contrary terms contained in any existing or future purchase order issued by or for Lessee relating to the Equipment shall act to vary any term hereof unless separately and specifically agreed to by Lessor in writing. Time is of the essence hereof Lessor's failure to require strict performance by Lessee of any provision hereof shall not waive Lessor's right thereafter to require strict performance thereof or of any other provision.

**Financing Statements.** Lessee appoints Lessor its true and lawful attorney to prepare and execute in Lessee's name and on Lessor's behalf any financing statement in order to protect Lessor's interest in the Equipment.

**Assignment.** Lessee may not assign, delegate, sublet, or otherwise transfer any of its rights or duties hereunder or with respect to the Equipment without the prior written consent of Lessor. Lessor may freely assign the sums due or to become due hereunder and Lessee agrees to recognize such assignment.

**Force Majeure.** Lessor shall not be liable for any failure or delay of delivery or in performing any obligation hereunder due to any casualty, cause or circumstance beyond its control.

**Exposure to Hazardous Material or Waste.** Lessees shall not expose the Equipment to any hazardous material or waste, in the event the Equipment is exposed to any hazardous material or waste, Lessee shall immediately (1) notify Lessor, and (2) completely clean and decontaminate the Equipment. If the Equipment cannot be completely clean, decontaminated and otherwise discharged from all adverse effects of such exposure, Lessee shall pay Lessor the full value of the Equipment, together with interest thereon at the rate of 1.5% per month from that date until the said Equipment sum is paid in full. Lessee indemnifies and holds Lessor harmless from any and all claims, actions, expenses, damages, costs and liabilities arising from any such exposure of the Equipment to hazardous material or waste. This indemnification survives and continues after the term of this lease.

**Miscellaneous.** This Rental Agreement shall be binding upon the respective heirs, personal representatives, successors, and assigns of the parties. If any provision of this instrument is held invalid by a court of competent jurisdiction it shall be considered deleted from this instrument but the remaining provisions shall be given effect. Lessee's obligations arising hereunder during the Rental Term shall survive the Rental Term and any termination hereof. Lessee represents and warrants to Lessor that Lessee has the power to make, enter, deliver and perform this Rental Agreement and that each person signing and delivering this instrument is duly authorized to do so on its behalf.

**Governing Law; Venue.** This Rental Agreement shall be governed by and construed under the substantive laws of the State of Colorado, New Mexico or Texas, as applicable. Lessee agrees that any and all suits arising from the performance or any breach of the Rental Agreement may be commenced and maintained in the courts of Adams County, Colorado; Bernalillo County, New Mexico; or El Paso County, Texas, as applicable, and Lessee irrevocably consents to such venue.