

TERMS AND CONDITIONS OF RENTAL CONTRACT

Large Print Version

For good and valuable consideration, you, and ABC EQUIPMENT RENTAL LLC a Missouri limited liability company (also referred to herein as "Lessor," "ABC," "we," "us," and "our") agree as follows:

1. DEFINITIONS: As used herein, "P.1" refers to the first page or "face" of this Contract; "Contract" refers to P.1 together with these Terms and Conditions; "Rented Item(s)" or "Item(s)" means the item(s) rented to you, as identified on P.1 (including any "Instructions" and/or safety devices provided per Section [or "\$"] 5 below); "Site" means the address set forth on P.1 where the Item(s) is/are to be delivered and/or used; and "Customer," "Lessee," "you" and "your" mean the "Renter," "Customer," "Lessee" and/or "Guarantor" (as applicable) identified on P.1.

2. TERMS: You agree to rent from ABC the Rented Item(s) for the period(s) specified on P.1 (the "Term"), to pay us our stated rental rate(s) (the "Rent") together with all other charges accruing hereunder, without proration, reduction or setoff, and to remain liable for all loss, theft, injuries, and damages of, to, or associated with such Item(s), until all Rented Item(s) is/are returned to and accepted by ABC in the return condition required under this Contract (including § 6). Unless otherwise specifically agreed by ABC in writing, all rental rates are for normal use of the Rented Item(s) on a single-shift basis during the Term, not exceeding 8 hours per 24-hour period for which Rent is charged hereunder (each, a "Rental Day"), 40 hours per 7-Rental Day period, or 120 hours per 28-Rental Day period (zero hours are permitted for any and all uncharged-for periods). Additional Rent at our highest incremental rate will be charged for late returns and overuse. You will not be entitled to any cancellation right or reduction of Rent or other amounts coming due hereunder to account for time in transit, Act(s) of God, event(s) of *force majeure*, or any other period(s) of nonuse. We have estimated the Rent based on your estimate of the length of the Term (the "Estimated Rent"). Unless otherwise agreed by ABC in writing, you agree: (a) to pay us the Rent specified on P.1 together with any deposit specified on P.1 in advance of the Term (together, the "Prepayment"); and all other amounts coming due hereunder upon demand; and (b) that: (i) we may deduct any amount(s) you owe us from any Prepayment; (ii) no interest will accrue on any Prepayment; (iii) no Prepayment will be deemed a limit of your liability to us; and (iv) all Prepayments are **NON-REFUNDABLE**. You agree to fully and timely pay all taxes (including all sales, use and other taxes), tolls, fines, fees, assessments, and other charges related to each Item and/or the transactions contemplated in this Contract allowable under Missouri law, including without limitation all local sales tax(es) levied by the political subdivision where our business is located. See Mo. Ann. Stat. § 144.020, Mo. Code Regs. Ann. tit. 12, § 10-117.100 and its/their successor provision(s), if any, for details. All amounts due hereunder but not timely paid will bear interest at the lesser of 18% per annum or the highest rate permitted under applicable law. You authorize us to charge all amounts coming due hereunder to any debit and/or credit card(s) you provide (up to 150% of the new replacement cost of the Item(s)). You agree to pay us the maximum lawful charge for any check you write which is returned unpaid.

3. DELIVERY/RETRIEVAL: You will ensure that the Site is reasonably clean, safe, secure, and fit for delivery and use of the Item(s). If we agree to provide any services (including delivery), you will: (a) pay our regular charge(s) therefor, and for all waiting time; (b) be present at the Site at the agreed time(s); and (c) ensure our personnel have full access to the Site at all times. We will not be responsible for delay(s) caused by any acts or omissions of/by you, your agents, employees or contractors, or any other parties, including providers of other equipment or services ("Other Providers") for which you agree to indemnify, defend, and hold harmless ABC, its agents, employees, and contractors. If you are not present upon delivery or retrieval of any Item(s), you agree to accept the statements of our personnel regarding the same (including status, condition, quality, utility, defects, and quantities of or with respect to the Item(s) and the Site).

4. TITLE/OWNERSHIP: ABC owns and will retain title to all Rented Item(s) at all times. **You will have exclusive control over the Rented Item(s) during the Term;** subject to your obligation to always fully and timely comply with this Contract. You **SHALL NOT (nor shall you allow anyone else to)** permit the taking or existence of any lien, claim, security interest, or encumbrance on any Rented Item(s); have any title or ownership interest in or with respect to any Rented Item(s), or loan, share, transfer, sublease, store, surrender or assign any Rented Item(s) or this Contract, without our prior written consent (in our sole and absolute discretion). ABC may, from time to time, substitute Rented Item(s) and/or sell or assign all or any part of its interests in one or more Rented Item(s) and/or this Contract, in which event, you will attorn to the assignee, who will not be responsible for any pre-existing obligations or liabilities of ABC.

5. INSTRUCTIONS: Upon the earlier of your receipt or the delivery to the Site of the Rented Item(s), unless you immediately reject it/them, you represent, warrant, acknowledge and agree that: (a) each Item: (i) is complete and in good order, condition and repair, fully charged and/or fueled (as applicable); (ii) is appropriate for your purposes and in all ways acceptable to you; and (iii) was selected not based on any recommendation by us, carefully

TERMS AND CONDITIONS OF RENTAL CONTRACT

Large Print Version

examined, counted and tested by you and/or your agent(s); and (b) you: (i) have carefully reviewed and fully understand all laws, rules, regulations, training, instructions, user manuals, maintenance requirements, and other information, if any, including all EPA, OSHA, MSHA, ASME, IBC, IFC, IEEE, UL, ASSP, DOT, FMCSA, IFTA, ANSI and other standards, applicable to the Item(s) (collectively, "instructions"); (ii) will fully comply therewith (including Tier 4, Silica Dust, Ventilation, AWP/MEWP training and familiarization, charging, fueling, cleaning, voltage, and site assessment requirements); (iii) have been made aware of the need to use all applicable personal protective equipment and safety devices (including, but not limited to, FALL AND RESPIRATORY PROTECTION DEVICES); (iv) will use each Item only for its intended purpose, in a reasonable and safe manner; (v) will timely give all applicable notices to, and obtain all applicable licenses, authorizations, permits and approvals from, all affected parties, including governmental authorities, utilities, cable companies and the owner(s) of the Site, and ensure that all underground lines, cables and conduits are clearly and properly marked before using any Item(s) to disturb the ground surface (Call 811 and go to <https://call811.com> at least 3 full business days in advance, excluding state and federal holidays); (vi) will promptly notify the authorities and ABC in the event of any theft or accident involving the Rented Item(s); (vii) will comply and ensure that all others fully comply, with this Contract at all times, and (viii) agree to notify ABC if any of the above requirements is/are breached, incorrect, or misleading.

6. CARE OF RENTED ITEMS: You agree to protect, properly maintain and care for all Rented Item(s) at all times, keep Items safely stored and locked when not in use, and return the Item(s) to us on time at the end of the Term, complete (with all original batteries, cords, attachments and peripherals), clean, free of contamination (including without limitation, asbestos, beryllium, silica and pathogens), in good order, condition, and repair, properly serviced and maintained, and if applicable, fully charged and/or full of the appropriate fuel, fluids, and lubricants. If you fail to comply, you will promptly pay ABC, in addition to the amounts specified on P.1: (a) Rent at our highest incremental rate(s) until all such Rented Item(s) have been returned or replaced as required; and (b) all costs and expenses we incur in connection with such failure. You shall not, nor shall you permit anyone else to: (i) text, email or otherwise use any handheld communication device while operating any Rented Item; (ii) use any Rented Item while under the influence of any intoxicant(s) (including, without limitation, CANNABIS, CANNABINOIDS, AND ALCOHOL, WHETHER OR NOT LEGAL OR MEDICINAL); (iii) abuse, misuse, overuse, conceal, store with any third party, repair, modify or damage any Rented Item(s); (iv) violate any law, Instruction, insurance policy, or warranty; (v) expose any Rented Item(s) to any flammable, explosive, harmful or hazardous substance(s) or circumstance(s); (vi) disable, misuse or circumvent any safety equipment or device(s) in, on or with any Item(s); or (vii) take possession of or exercise control over any Rented Item(s), without our prior consent.

7. MALFUNCTIONS: You agree (and shall cause all others using the Items) to immediately cease using any Item that is damaged, breaks down, or proves defective (a "Malfunction"). In the event of a Malfunction, you will immediately notify and return the Malfunctioning Item(s) to ABC. Provided that the Malfunction did not result from or in connection with any wrongful or negligent act or omission of/by you or anyone you permit to use or otherwise deal with any Rented Item, or your breach of any provision of this Contract, ABC will, at its option: (i) repair the Malfunctioning Item; (ii) provide you with a comparable item; or (iii) solely with respect to the Malfunctioning Item, return the unused portion of the Rent and cancel this Contract. The foregoing remedies are EXCLUSIVE. ABC shall not have any other obligation(s) regarding Malfunctions, all of which YOU WAIVE, TOGETHER WITH ALL INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, AND PUNITIVE DAMAGES.

8. SAFETY WARNINGS: The Item(s) can be **DANGEROUS** and should be fueled, charged, maintained, and used with **EXTREME CARE, ONLY FOR THEIR INTENDED PURPOSE(S), AND ONLY BY PROPERLY QUALIFIED, INSTRUCTED, TRAINED, FAMILIARIZED, AND (IF APPLICABLE) LICENSED, ADULT USERS AND OPERATORS.** YOU AGREE TO PROVIDE ALL APPLICABLE FAMILIARIZATION, TRAINING, INSTRUCTIONS, AND WARNINGS TO ALL SUCH PARTIES and ensure that each such Item is fueled, charged, used, operated and occupied safely and only: (a) for its intended purpose(s); (b) within its rated capacity; (c) at the Site (unless otherwise specifically agreed by ABC); (d) by properly trained, familiarized, qualified, certified and licensed adults; and (e) in full compliance with this Contract, the Instructions, and all applicable warranties and insurance policies, at all times.

9. NO WARRANTIES: ABC IS NOT THE MANUFACTURER OR DESIGNER OF ANY ITEM(S), ALL OF WHICH ARE PROVIDED "AS-IS." ABC DOES NOT MAKE ANY WARRANTY(IES), EXPRESS OR IMPLIED (INCLUDING ANY AND ALL WARRANTY(IES) OF MERCHANTABILITY, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, FUNCTION, DESIGN, QUALITY, CAPACITY, FREEDOM FROM DEFECTS AND GOOD AND WORKMANLIKE PERFORMANCE, AS WELL AS ANY WARRANTY(IES) ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE AND/OR USAGE OF TRADE) regarding any Item(s) or service(s)

TERMS AND CONDITIONS OF RENTAL CONTRACT

Large Print Version

provided by or at the direction of ABC, nor does ABC make any warranty against **INTERFERENCE OR INFRINGEMENT, ALL OF WHICH WARRANTIES YOU HEREBY WAIVE.** NO DESCRIPTIONS, SPECIFICATIONS OR ADVERTISEMENTS CONSTITUTE REPRESENTATIONS OR WARRANTIES BY ABC. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF.

10. ASSUMPTION OF RISK / INDEMNITY: TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, YOU: (A) **ASSUME ALL RISK** OF PERSONAL AND BODILY INJURY, ELECTRIC SHOCK, ILLNESS, PRODUCTS LIABILITY, LOSS, THEFT, DAMAGE, AND CONTAMINATION OF, TO, AND/OR ARISING IN CONNECTION WITH, THE ITEM(S) AND/OR SERVICE(S) REFERENCED IN THIS CONTRACT, INCLUDING ALL LIABILITIES, CLAIMS, DAMAGES, LOSSES, COSTS AND EXPENSES ARISING FROM AND/OR IN CONNECTION WITH THE SELECTION, PROVISION, INSPECTION, DESIGN, MANUFACTURE, FUELING, CHARGING, USE, LOADING, UNLOADING, TRANSPORTATION, DEMONSTRATION, INSTALLATION, CLEANING, STORAGE, SERVICING, MAINTENANCE, REPAIR, DELIVERY AND/OR RETRIEVAL OF SUCH ITEM(S) AND/OR SERVICE(S), WHETHER OR NOT YOUR FAULT (COLLECTIVELY, "RISKS"); (B) **RELEASE AND DISCHARGE, AND AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS, ABC,** its respective parents, affiliates, subsidiaries, owners, shareholders, members, managers, officers, directors, agents, employees, insurers, subrogees, representatives, successors and assigns (each, an "Indemnatee"), for, from and against all such RISKS, as well as all other liabilities, claims, damages, losses, costs and expenses arising from and/or in connection with the Item(s), this Contract, our negligence, and/or your breach of any one or more of the terms hereof; and (C) except only to the extent provided in § 7, **WAIVE** all rights, remedies and defenses available under the Uniform Commercial Code, as well as all **DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, GENERAL, SPECIAL, EXEMPLARY AND PUNITIVE DAMAGES**, against each Indemnatee. Our maximum liability in connection with this Contract is limited to the amount(s) actually paid by you and received by us hereunder for the Rented Item(s) identified on P.1.

11. INSURANCE: You agree to maintain all insurance we may require, including: (a) liability insurance with minimum limits of \$1,000,000 per occurrence and \$2,000,000 in aggregate; (b) property damage/inland marine insurance covering all Items for the full (new) replacement cost thereof; (c) workers' compensation insurance; and (d) for all vehicles and trailers included with or in the Item(s): (i) hired auto liability insurance with minimum limits of \$1,000,000; (ii) hired auto physical damage insurance for actual cash value; and (iii) replacement cost contents insurance for all contents thereof. Such policies shall, whenever possible: (A) name ABC as an additional insured and loss payee; (B) waive subrogation against us; (C) be primary and non-contributory; and (D) include a severability of interests clause and such other provisions (including deductibles) as we may require. You irrevocably appoint ABC as your agent and attorney-in-fact to submit, negotiate, and settle claims on such policies.

12. DAMAGE WAIVER: If and only if, we have offered, and you have paid for our **OPTIONAL LIMITED DAMAGE WAIVER ("LDW")** (set forth on P.1, if available) in advance of the Term, you will have no liability to us for the first \$5,000 of repair/replacement costs for physical damage to Item(s) covered by LDW ("Covered Item(s)"); provided that you will, remain fully liable for: (a) all loss of and damage to: (i) Item(s) not covered by LDW; (ii) Covered Item(s) lost or damaged during transportation and/or as a result of: (a) any breach of this Contract by you or your agents, employees, sublessees, transferees, borrowers, successors and/or assigns; (b) theft or other failure to timely return Covered Item(s) to us; (c) negligence, misuse and/or abuse of Rented Item(s) (including submerging, overturning and overloading); (iii) GPS and telematics systems, data, batteries, keys, glass, tires, tubes, tracks, booms, belts, chains, knobs and hoses; and (b) all repair/replacement costs exceeding \$5,000 in the aggregate across all Covered Item(s). You may decline LDW if you provide the property damage/inland marine insurance referenced in § 11. Your insurance will continue to apply and remain primary. You agree to assist us in recovering thereunder for all losses covered by LDW. **LDW IS NOT INSURANCE, NOR IS IT A WARRANTY.**

13. FORCE MAJEURE/LIENS: To the maximum extent permitted under applicable law, you grant to ABC a lien on all real and personal property: (a) placed in or on; and/or (b) improved with, any Rented Item(s). We may, without notice or liability to you, monitor and/or inspect, in person and/or electronically (including via Telematics/GPS systems), the Rented Item(s) at any time. You consent thereto and agree that all information thereby obtained will be ABC's property. If any performance required of ABC shall be delayed, impaired or made more costly as a result of any act or omission of/by you, any Other Provider(s) or any "Act of God," event of *force majeure* (including fire, flood, storm, earthquake, tsunami, slide, subsidence, collapse, riot, war, violence, threat, theft, terrorism, cyber-attack, supplier delay, strike, shutdown, power surge or outage, epidemic, pandemic, and governmental and regulatory actions) or other events, facts or circumstances beyond our reasonable control, we will be excused from such performance.

TERMS AND CONDITIONS OF RENTAL CONTRACT

Large Print Version

14. RIGHTS/REMEDIES: This is a "net" rental. Accordingly, your duties hereunder are unconditional and shall not be subject to any reduction, setoff, or counterclaim. If you or any Guarantor shall: (a) fail to fully and timely honor, pay, perform or comply with this Contract and/or any of your obligations arising hereunder or in connection herewith; (b) provide any incorrect or misleading information to us; (c) become insolvent; or (d) die or cease conducting business, or if any Rented Item(s) shall be lost or, except to the extent covered by LDW per § 12, damaged, you will be in **DEFAULT** under this Contract, whereupon, ABC may with or without legal process or notice (and without liability to you or any Guarantor), to the maximum extent permitted under applicable law: (i) cancel the Term and/or the subject Contract(s) (and/or your rights to use and possess the Rented Item(s)); (ii) seek relief from stay; (iii) recover, empty, lock, restrict and/or disable any Item(s) without being guilty of breach, trespass or wrongful interference, or liable for any injuries or property damage, including without limitation, any and all damage to crops, flora and/or fauna (for which you will indemnify, defend and hold harmless each Indemnitee); (iv) perform your obligations hereunder on your behalf, without being obligated to do so; (v) purchase replacement Item(s); (vi) recover from you and/or any Guarantor our associated damages, losses, costs and expenses **FOR WHICH YOU WILL BE PERSONALLY LIABLE** (including without limitation, Rent for the entire scheduled Term, overtime, loss of use, interest, attorneys' fees, repossession costs and collection costs; and if civil fraud has maliciously occurred, punitive damages for civil fraud); and/or (vii) pursue any one or more other rights and/or remedies available in connection (t)herewith, all of which shall be cumulative. You acknowledge that in the event of default, the damages provided in this Contract are reasonable in light of the anticipated harm that would result from your breach. You waive all statutes of limitations regarding our rights and remedies. Neither our exercise, nor our failure or delay in the exercise, of any rights or remedies available in connection herewith will constitute an election of remedies or a waiver of any of our rights or remedies.

15. LAW/VENUE: This Contract shall be governed by and enforceable under Missouri law (unless waived by ABC). At ABC's option, disputes arising hereunder shall be submitted to binding **ARBITRATION** in accordance with the Rules of the American Arbitration Association before a single arbitrator and in a location selected by ABC. Judgment on the arbitrator's award shall be final and binding and may be entered in any court of competent jurisdiction. Proper venue for all other civil legal actions commenced in connection herewith shall lie solely and exclusively in the federal, state, and local courts located in or nearest to Taney County, MO. You consent and submit thereto and waive all claims that such venue lies in an inconvenient forum. The terms of this Contract are severable. If any provision (or part thereof) is deemed invalid or unenforceable by any court or arbitrator of competent jurisdiction, such provision (or part thereof) will be deleted, and the remainder of this Contract will remain valid and enforceable. **If legal action is commenced in connection herewith, we will be entitled to recover our associated costs and expenses (including, without limitation, attorneys' fees) from you if we prevail. YOU HEREBY WAIVE: (A) YOUR RIGHT(S), IF ANY, TO PARTICIPATE IN ANY CLASS, COLLECTIVE, OR OTHER JOINT ACTION AGAINST ABC; AND (B) YOUR RIGHT TO TRIAL BY JURY.**

16. MISCELLANEOUS: There are no third-party beneficiaries hereto other than the applicable Indemnitees. These Terms and Conditions apply to all Item(s) identified on P.1 and to all other Items you obtain from us at any time (except only as we may otherwise agree). This Contract, and any pictures, videos and/or addenda we provide, each of which is incorporated herein, represent(s) the entire agreement between you and ABC, superseding all other agreements and representations (including our website and advertising) and cannot otherwise be amended or extended except in a writing signed by ABC. Time is of the essence. This Contract: (i) is a true operating lease, and not a financing; (ii) is fair and reasonable; and (iii) shall bind and be enforceable by you, ABC, the other Indemnitees, and their respective insurers, subrogees, successors and permitted assigns. Digital, electronic, photocopied, and facsimiled signatures and initials appearing on this Contract will be deemed originals.

17. THEFT WARNING: Failing to timely return the Rented Item(s), obtaining or exercising control over the property of another with the intent to deprive the other person of the property and/or obtaining services by deception, threat, force, or any other means designed to avoid the due payment for services may be deemed STEALING, resulting in CRIMINAL PROSECUTION AND/OR CIVIL PENALTY(IES). See Mo. Ann. Stat. § 570.030; Mo. Ann. Stat. § 570.057 and its/their successor(s), if any, for details.