

## 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 rental equipment or equipment") described on the front of this Rental Agreement it is agreed as follows:

**1. INDEMNITY/HOLD HARMLESS.** CUSTOMER 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, JUDGMENTS, 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 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 use and finds it suitable for Customer 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 Customer understands (without further instructions) its proper operation and use.

**5. POSSESSION/TITLE.** Customers right to possession of the equipment begins upon equipment leaving Rental Center and 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.

Time is of the essence of this Rental Agreement. Any extension of this Rental Agreement must be agreed upon in writing. Title to the equipment is and shall remain in Rental Center. If the equipment is not returned and/or levied upon for any reason whatsoever, Rental Center may retake said equipment without further notice or legal process and use whatever force is reasonably necessary to do so. Customer hereby agrees to indemnify, defend and hold Rental Center harmless from any and all claims and costs arising from such retaking and/or levy. If equipment is levied upon, Customer shall notify Rental Center immediately.

**6. 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 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 the additional usage will be charged. Rental charges begin immediately upon equipment leaving Rental Center. Rental charges end upon return of the equipment to 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 not 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 attorneys fees incurred in collection of this account or any dispute arising out of this Rental Agreement. Customer agrees to pay a monthly service charge on all unpaid balances. Customer agrees to pay to Rental Center a fee for environmental compliance.

**7. ORDINARY WEAR AND TEAR.** Customer shall be responsible for all damage not caused by ordinary wear and tear. "Ordinary wear and tear" shall mean only the normal deterioration of the equipment caused by ordinary, reasonable and proper use of the equipment. Damage which is not "ordinary wear and tear" includes, but not limited to: damage due to overturning, overloading or exceeding rated capacities; breakage; improper use; abuse; lack of cleaning, lubrications; dirtying of equipment by paint, mud, plaster, concrete, resin, or any other material.

**8. COMPLIANCE WITH LAWS/USE OF EQUIPMENT.** Customer agrees not to use or allow anyone to use the equipment for any illegal purposes 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, 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 upon the equipment.

Customer agrees to check filters, oil, fluid levels, air pressure, clean, lubricate 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.

**9. RETURN OF EQUIPMENT.** Customer agrees to return to Rental Center the equipment in as good condition as when received, ordinary wear and tear excepted by Rental Agreement Agreed Return Date. Customer shall be liable for all damages bo or loss of the equipment and liability incurred prior to equipment's return to Rental Center. Customer shall be responsible for all costs incurred by Rental Center recovering and returning damaged equipment to Rental Center's premises. If equipment is to be "picked-up" by Rental Center, Customer agrees to provide a secure storage location and Customer accepts all risk including damage to and liability relative to equipment for a reasonable period of time until the equipment is picked up by Rental Center.

**10. DISCLAIMER OF WARRANTIES.** Rental Center makes no warranty of merchantability or fitness for any particular use or purpose, either express 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. Customers 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 (24) hours of such failure.

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

**12. 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.

**13. 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 a waiver of any additional remedies to which Rental Center may be entitled.

**14. 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.

**15. 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.

**16. 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 rights 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 effect any other provision.

**17. Customer agrees to all costs of hauling said equipment from Rental Center's place of business and to return same at end of agreement upon rental period. Customer agrees to have described equipment insured against any and all causes of physical damage and to provide public liability insurance while equipment is in Customer's possession. Customer agrees to pay any applicable use, sales, personal property, or any other tax arising from operation of said equipment. Customer agrees to return equipment in same condition as received, including serviceable tires, less normal wear and tear. Customer is responsible for abuse to unit and to repair any flat tires or blowouts. Flat tires must be repaired with a patch inside the tire; tires returning with plugs will result in additional charges to Customer. If applicable, Customer is responsible for checking engine oil, water, fuel and all other fluids on a daily basis, as specified in the operator's manual. Customer is also responsible for all required maintenance including but not limited to lubrication. Customer is responsible for returning equipment clean of all toxic or hazardous material. Customer is responsible for replacing wear parts, if applicable (cutting edges, bits, bucket teeth, ripper teeth, etc.). Although HBE Rentals promises to perform under this contract to the best of its abilities and resources, Customer agrees and understands that HBE Rentals is hereby excused from any and all responsibility for causes beyond its control, including but not limited to acts of God, fire, weather conditions, labor disputes, delays of suppliers, and vandalism. In no event shall HBE Rentals be responsible nor the Customer entitled to damages for loss of use of equipment, productivity, or any other consequential damages. In the event a party is in default of any of the terms and conditions of this Agreement, the non-defaulting party is entitled to any and all attorney's fees and court costs that may be incurred.**

**18. This equipment contains or produces one or more chemicals known to the state of California to cause cancer, birth defects or other reproductive harm.**