

**EQUIPMENT PROS LLC**  
**TERMS AND CONDITIONS OF RENTAL CONTRACT**

This Agreement ("Agreement") is for the rental of the equipment described on the other side of this page ("Front"), including all parts of and accessories to such equipment ("Equipment"). This Agreement is between the customer identified on the Front ("Customer") and Equipment Pros LLC ("EP"). Both parties acknowledge that this Agreement consists of the terms written or printed on both sides of this page.

**1. NATURE OF THIS AGREEMENT.**

This Agreement is solely for the purpose of creating a rental transaction, which allows Customer to use the Equipment as permitted by this Agreement. The Equipment is owned by EP. Customer acknowledges that no one other than EP may transfer or assign the Equipment or any rights or obligations under this Agreement. Neither the Customer nor any Additional Operators (as defined below) are agents of EP. No one may repair or alter the Equipment without EP's prior written approval. Customer will not suffer any liens or encumbrances to attach to the Equipment and will defend, indemnify, and hold EP harmless from any and all loss, liability, and expense by reason thereof.

**2. DEPOSIT.**

If EP requires Customer to make a deposit in connection with Customer's rental of the Equipment, Customer acknowledges and agrees that one of the purposes and intent of the deposit is to secure and guarantee the complete performance of Customer's obligations under this Agreement.

**3. WHO MAY OPERATE THE EQUIPMENT.**

Only Customer and the following persons with Customer's permission ("Authorized Operators") may operate the Equipment: Customer's employer, employees, fellow employees during such employee's regular employment, or persons approved by EP in writing. Customer and all Authorized Operators must be properly qualified to operate the Equipment and have a valid operator's license or certification with respect to the Equipment where required by law. Customer is responsible for any person who operates, uses, stores, or moves the Equipment regardless of whether that person is an Authorized Operator.

**4. USE OF EQUIPMENT**

Customer is familiar with the proper operation and use of each item of Equipment. Customer has selected the Equipment based on its requirements and will not use or allow anyone to use the Equipment for an illegal purpose or in an illegal manner; without a license, if required under any applicable law; or who is not a Qualified Operator. 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. In addition, Customer shall only use ultra-low-sulfur diesel fuel ("USLD") in equipment with tier 5 engines.

**CUSTOMER AGREES TO DEFEND, INDEMNIFY AND HOLD EP HARMLESS FROM ALL FINES, PENALTIES, DAMAGE TO EQUIPMENT AND ANY OTHER COSTS INCURRED BY EP DUE TO DYED FUEL BEING INTRODUCED INTO THE PROPULSION TANK OF SUCH VEHICLES.** Customer agrees to: (i) check filters, oil, fluid levels and tire air pressure; (ii) clean and visually inspect the Equipment daily; and (iii) immediately cease using the Equipment and immediately notify EP if Equipment needs repair or maintenance.

Customer acknowledges that EP has no responsibility to inspect the Equipment while it is in Customer's possession. EP shall have the right to replace the Equipment with other reasonably similar equipment at any time and for any reason of each item of Equipment. Customer has selected the Equipment based on its requirements and will not use or allow anyone to use the Equipment for an illegal purpose or in an illegal manner; without a license, if required under any applicable law; or who is not a Qualified Operator. 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. In addition, Customer shall only use ultra-low-sulfur diesel fuel ("USLD") in equipment with tier 5 engines. **CUSTOMER AGREES TO DEFEND, INDEMNIFY AND HOLD EP HARMLESS FROM ALL FINES, PENALTIES, DAMAGE TO EQUIPMENT AND ANY OTHER COSTS INCURRED BY EP DUE TO DYED FUEL BEING INTRODUCED INTO THE PROPULSION TANK OF SUCH VEHICLES.** Customer agrees to: (i) check filters, oil, fluid levels and tire air pressure; (ii) clean and visually inspect the Equipment daily; and (iii) immediately cease using the Equipment and immediately notify EP if Equipment needs repair or maintenance. Customer acknowledges that EP has no

responsibility to inspect the Equipment while it is in Customer's possession. EP shall have the right to replace the Equipment with other reasonably similar equipment at any time and for any reason.

## **5. RENTAL CHARGES.**

Customer will pay EP on demand by the date specified in the applicable invoice, all rental, time, mileage, service, transportation, refueling service (at EP's then current prevailing rate), waiting time, set up fees, delivery/pickup fees, environmental fees, surcharges and other charges and sums in accordance with this Agreement, all sales and use taxes or tax reimbursement imposed with respect to the Equipment and this Agreement, and all expenses, including reasonable attorney's fees incurred in collecting same. EP reserves the right to charge a 3% credit card fee. The basic daily, weekly, and 4-week rental rates will entitle Customer to a maximum of one-shift use (i.e., a maximum of 8 hours per day; 40 hours per week; 160 hours per 4 weeks). Use in excess of one shift will be charged at the applicable rate, plus applicable taxes; provided, however, that, in the event that you do not obtain EP's prior approval of such overuse, EP has the option to increase the additional rent by up to 15% (as a premium and not as a penalty) for the applicable period of overuse. All charges are subject to final audit by EP. Rentals are F.O.B. EP's premises unless otherwise specified. Credit card rental payments shall be made in advance, by way of example, rentals lasting more than 3 to 4 days shall be charged the weekly rate, and rentals lasting more than approximately 17 days shall be charged at the monthly rate, as determined by EP. Shipping charges from EP's premises to the Customer's destination and return and all loading, unloading, assembling, and dismantling will be paid by Customer. All rates for rentals in excess of 4 weeks are subject to change on thirty (30) days' notice in writing to the Customer with respect to any portion of the rental period remaining. By accepting the Equipment pursuant to Section 14 hereof the Customer accepts and agrees to pay all rental and other charges specified herein and, on the Front, hereof. Charges not paid on time, as required by this Agreement, may be subject to a late payment fee as provided in this Agreement. Customer may also be charged a reasonable fee for any check used for payment hereunder that is returned unpaid. EP may require Customer's obligations under this Agreement to be personally guaranteed by a representative of Customer, in which case EP shall provide a form of personal guarantee to be executed if not set forth on the Front hereof.

## **6. LIEN GRANTS.**

To the extent permitted under applicable law, in order to secure payment and performance of Customer's obligations arising hereunder, Customer hereby grants EP (a) a continuing security interest in (i) any and all personal property owned by Customer and located at the job site or place of business in which the equipment is being used by Customer, and (ii) all personal property placed in any and all vehicle(s) and trailer(s) rented from EP (and this agreement shall operate as a security agreement for such purposes, vesting in EP all rights available under the Uniform Commercial Code, as adopted in the state(s) in which EP's business operations are conducted), and (b) a mechanic's lien on the job site or place of business in which the equipment is being used by Customer and all improvements constructed therein or thereon. You further (i) authorize EP to file this agreement of public record, as a financing statement (with respect to any and all goods that are or are to become fixtures) or otherwise, in EP's sole discretion and, if elected by EP, (ii) to reimburse EP for all costs and expenses incurred by EP in connection with the registration or enforcement of the security interest granted pursuant to this Section, including, without limitation, in connection with the filing of any such financing statement or the retaking or repossession of the Equipment.

## **7. CUSTOMER RESPONSIBILITIES.**

Customer is responsible to EP for all loss or damage to the Equipment and for its return in the same condition it was received, except for ordinary wear and tear resulting from the proper intended use of the Equipment in accordance with the terms hereof. Damage to the equipment which is not "ordinary wear and tear" (and for which Customer will be solely responsible) includes without limitation, theft, mysterious disappearance, damage due to overloading or exceeding rated capacities, nonstandard use, overturning, tire damage and transportation or operation without required or recommended coolants, lubricants, hydraulic fluid, air pressure levels, supports and/or safety equipment, improper use, misuse, abuse, neglect, accidents and intentional damage. Customer's responsibility to EP for loss or damage to the equipment shall be limited to an amount (the "Full Value") equal to the greater of (x) the cost incurred by EP to replace the Equipment and (y) the full value of the Equipment as of the start of the Rental Term (as set forth on the Front), less, in each case, its salvage value (to the extent EP is able to recover such salvage value), plus any fees or expenses (including administrative fees and EP's related expenses, such as loss of use, appraisal fees and/or recovery costs) incurred by EP in connection with any loss or damage to, or replacement by EP of, the Equipment. The Equipment must be returned to EP at the renting EP's premises by the Due Date specified on the Front, or sooner if demanded by EP, and must be accepted by one of EP's representatives. Customer acknowledges that it must confirm return receipt of the Equipment by EP at the expiration or earlier termination of the rental. Until such time as EP receives actual possession of the Equipment,

Customer agrees to hold said Equipment in a safe and secure manner. Additional rent at EP's applicable rate (plus applicable taxes) will be charged for late returns; provided, however, that, in the event that you do not obtain EP's prior approval of a late return, EP has the option to increase the additional rent by up to 15% (as a premium and not as a penalty) for the applicable late period. Customer will not be entitled to any cancellation right or reduction of rent for time in transit, event(s) of force majeure, or any other period(s) of nonuse. The Equipment will be used solely in Customer's business and kept only at Customer's place of business or the job site at which the Equipment is used, and will not be moved without the prior written consent of EP. The Equipment will be used only in accordance with the manufacturer's instructions within its rated capacity. Customer will perform or cause to be performed and pay for all normal periodic and other basic service, adjustments, and lubrication of the Equipment, including but not limited to the following: checking of the Equipment before each shift; checking and maintaining crankcase, transmission, cooling, and fluid systems daily; and checking tire pressures and battery fluid and charge levels weekly. If the Equipment fails to operate properly or becomes in need of repair, Customer will immediately cease using Equipment and will immediately notify EP. Customer will record and supply to EP at expiration or earlier termination of this Agreement, fuel receipts and driver trip records containing mileage breakdown by state. Customer acknowledges that EP shall only be obligated to pick up the Equipment once Customer has notified EP of the date and time that Customer requests that the Equipment be picked up and obtains a valid pick-up number from EP. EP shall use commercially reasonable efforts to pick up the Equipment on the date and time requested by Customer but shall have no liability if, in good faith, it is unable to do so. Customer acknowledges and agrees that the Equipment may be delivered or picked up to or at locations where there is no agent of Customer available for signature. In such case, Customer agrees that EP may deliver the Equipment to a location deemed acceptable by EP. Customer agrees to ensure the site on which the Equipment is located is reasonably safe, secure, and fit for use of the Equipment, to protect, always maintain and care for the Equipment, to keep the Equipment safely and securely stored and locked when not in use. Customer acknowledges and agrees that the use of false or fictitious identification to obtain the Equipment or the failure to return the Equipment upon the expiration of this Agreement may be considered a theft, resulting in criminal prosecution.

#### **8. RISK OF LOSS.**

All loss of or damage to the Equipment from any cause whatsoever while on rental or in Customer's or Authorized Operator's care, custody, or control, whether exclusive or not, and whether or not due to the fault of Customer, including, but not limited to, fire, flood, theft, comprehensive losses, collision and rollover, and Acts of God, will be the sole responsibility of Customer and will be paid to EP promptly upon Customer's receipt of an invoice therefor. Such responsibility is limited to the Full Value of the Equipment. The cost of labor for repairs will be either EP's then prevailing hourly rate for labor, or the repairer's hourly rate for labor charged to EP for repairs as the case may be. Parts will be charged at EP's cost plus a retail markup. Use of the Equipment by persons other than Customer or Authorized Operators will be at Customer's sole risk.

#### **9. EVENTS OF DEFAULT.**

Customer shall be in default of this Agreement if Customer fails to pay any rent when due or if Customer breaches any of the other terms of this Agreement, or if Customer becomes insolvent or ceases to do business as a going concern, or if a petition in bankruptcy is filed by or against Customer, or if Customer is in default pursuant to the provisions of any other agreement by and between Customer and EP. Customer will further be deemed to be in default if the Equipment is obtained from EP through fraud or misrepresentation or is used: (A) in violation of any law or ordinance; (B) in a reckless, negligent or abusive manner, or is intentionally damaged by Customer or with Customer's permission; (C) in violation of Paragraph 4 above, or (D) in any fashion or manner for which the Equipment was not designed or beyond the manufacture's rated capacity for the Equipment.

#### **10. REMEDIES OF EP.**

In case of default by Customer, or if EP deems itself insecure in its sole discretion, EP may but is not required to, peaceably enter the premises where the Equipment is located and render it inoperative or remove same with or without process of law and without any notice or liability to Customer. Customer hereby waives any right to any hearing or to receive any notice of legal process, as a pre-condition for EP recovering the Equipment. Customer agrees to permit such entry and action by EP. In such case, EP may also terminate this Agreement without notice to Customer or prejudice to any remedies or claims which EP might otherwise have for rent, expense of retaking, court costs, and reasonable attorneys' fees. Customer will remain liable for the Equipment or for any loss or damage to the Equipment, notwithstanding such termination. EP shall have the right to issue and circulate theft notices, cause warrants to be issued, and take any other steps that EP may reasonably deem necessary to recover the Equipment if the Equipment is not returned on the date specified on the Front (unless such date is extended by mutual written agreement) or sooner as permitted by the terms of this Agreement. The remedies provided herein in favor of EP are not exclusive but shall be cumulative and in addition to all other remedies existing at law or in

equity, any one or more of which may be exercised simultaneously or successively.

#### **11. EQUIPMENT PROTECTION PLAN. NOTE:**

The "Equipment Protection Plan" option ("EPP") is not insurance and is only offered for equipment or damages valued at less than \$2,500. EPP is an option that EP offers Customer to limit Customer's liability for loss or damage to the Equipment that Customer has rented from EP for equipment or damages valued below \$2,500. Purchasing EPP is not required. To the extent the Customer does not accept EPP, the customer takes full responsibility to bring back the item(s) in their original condition or pay the total cost to return them to their original condition required by paragraph 9(b) and pay to EP the Full Value of the Equipment at the time it is lost or damaged. If Customer elects to maintain insurance coverage and the certificate of insurance Customer provides to EP to evidence Customer's insurance coverage is unacceptable to EP or the applicable policies expire, Customer agrees that EP may charge EPP for Customer's rentals until such time as Customer provides an acceptable and valid certificate of insurance and such matters are corrected to EP's reasonable satisfaction. The benefit from this EPP excludes the specific conditions or events referred to in subparagraph (b).

(a) If Customer complies with this Agreement, including the provisions of paragraphs 2 and 3, and if EP in its discretion has offered to Customer, and Customer has accepted, EPP, then EP agrees to waive, to the extent specified in this paragraph 8, Customer's responsibility for damages to the Equipment valued up to a maximum of \$2,500. Equipment valued above \$2,500 requires the customer's supplied insurance coverage to reimburse EP for the remainder of all costs of repairs or replacement up to the actual cost value of the equipment. Customer can only accept EPP at or prior to the beginning of the Rental Term.

(b) NOTWITHSTANDING CUSTOMER'S ACCEPTANCE OF EPP, CUSTOMER'S RESPONSIBILITY FOR LOSS OR DAMAGE WILL NOT BE LIMITED BY SUBPARAGRAPH (a) TO THE EXTENT SUCH LOSS OR DAMAGE RESULTS FROM AN AUTHORIZED OPERATOR'S OR ANY PERSON'S NEGLIGENCE OR FROM ANY OF THE SPECIFIC CONDITIONS OR EVENTS REFERRED TO IN THE TERMS AND CONDITIONS SET FORTH ON EP'S WEBSITE

(c) In the event of loss or damage to the Equipment, Customer is required to cooperate with EP's investigation of any incident involving the Equipment and complete an EPP Incident Report.

#### **12. INSURANCE REQUIREMENTS.**

(a) **Liability Insurance for Injury/Damage to Third Parties** - Customer will, at its own expense and at all times during the term of this Agreement, maintain in force applicable liability insurance policies as described below, which shall include, at a minimum, limits of liability written on a combined single limit basis of not less than \$1,000,000 per occurrence for Equipment on a Commercial General Liability Insurance Policy which must include contractual liability coverage. EP shall be named as an Additional Insured with respect to the Customer's General Liability policy.

(b) **Property Insurance/Physical Damage Insurance (EP Equipment)** - Customer will, at their own expense and at all times during the term of this Agreement, maintain in force Property Insurance/Physical Damage Insurance in an amount adequate to cover at least up to the Full Value in connection with any damage to, or loss of, the Equipment being rented under this Agreement. Customer policies must expressly provide coverage for non-owned Equipment, including motor vehicles (if applicable), while in their care, custody, and control. Such insurance shall cover all operations and contractual obligations hereunder, as well as any and all damage or liability arising in connection with the handling, transportation, maintenance, operation, use, or possession of the Equipment during the rental term, and shall name EP as an additional insured and loss payee on a "closed clause" basis. All such insurance shall be primary, without any self-insured retention, and shall waive subrogation against EP.

(c) **Evidence of Coverage** – Proof of adequate Rental Insurance is required prior to the start of rental. Customer will, on demand, furnish EP with a Certificate of Insurance evidencing the applicable coverages more fully described in subparagraphs (a) and (b) just above. Such certificate(s) shall be endorsed to provide that the applicable insurance policies may not be canceled or materially modified except on thirty (30) days prior written notice to EP. Customer may elect to use their insurance on file in lieu of purchasing short-term rental insurance if their policy on file provides adequate coverage for rental equipment. The customer is responsible for maintaining submissions of updated insurance renewals and or changes of their policy insurance coverage. The customer is required to update or extend policy dates if using short-term rental coverage options and is solely responsible for ensuring the equipment is properly covered in the event the rental term is extended. EP will not be responsible for lack of proper coverage if the customer fails to extend their coverage along with rental extensions.

### **13. INDEMNIFICATION.**

For and in additional consideration of providing the Equipment herein, CUSTOMER WILL DEFEND, INDEMNIFY AND HOLD HARMLESS EP, ITS SUBSIDIARIES, PARENT COMPANY AND ITS AND THEIR OFFICERS, AGENTS AND EMPLOYEES, FROM AND AGAINST ALL LOSS, LIABILITY, CLAIM, ACTION OR EXPENSE, INCLUDING REASONABLE ATTORNEYS' FEES, BY REASON OF BODILY INJURY, INCLUDING DEATH, AND PROPERTY DAMAGE, SUSTAINED BY ANY PERSON OR PERSONS, INCLUDING BUT NOT LIMITED TO EMPLOYEES OF CUSTOMER, AS A RESULT OF THE MAINTENANCE, USE, POSSESSION, OPERATION, ERECTION, DISMANTLING, SERVICING OR TRANSPORTATION OF THE EQUIPMENT OR MOTOR VEHICLE OR CUSTOMER'S FAILURE TO COMPLY WITH THE TERMS OF THIS AGREEMENT, EVEN IF SUCH LIABILITY RESULTS IN ANY PART FROM THE ORDINARY NEGLIGENCE OF EP, ITS OFFICERS, AGENTS OR EMPLOYEES. CUSTOMER WILL, AT ITS EXPENSE, COMPLY WITH ALL FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS AFFECTING THE EQUIPMENT AND ITS USE, OPERATION, ERECTION, DESIGN AND TRANSPORTATION, INCLUDING WITHOUT LIMITATION, LICENSING AND BUILDING CODE REQUIREMENTS AND WILL DEFEND, INDEMNIFY AND HOLD EP HARMLESS FROM ALL LOSS, LIABILITY OR EXPENSE RESULTING FROM ACTUAL OR ALLEGED VIOLATIONS OF ANY SUCH LAWS, REGULATIONS OR REQUIREMENTS.

### **14. NOTICE OF LOSS OR ACCIDENT.**

In the event of an accident, loss of, theft of, or damage to the Equipment, Customer agrees to notify EP as soon as possible by telephone and, thereafter, to immediately report in writing to EP and to the public authorities (where required by law or by EP) all necessary information relating to the loss or accident. In no event shall Accrued rent or other fees or amounts payable hereunder be applied against the purchase or replacement by EP of lost, stolen, damaged, or destroyed Equipment.

### **15. CONDITION OF THE EQUIPMENT.**

Customer acknowledges having inspected, examined, and accepted the Equipment upon its delivery to Customer and that, as delivered to Customer, the Equipment is safe and in good operating condition and repair and is otherwise acceptable to Customer. Customer acknowledges and agrees that Customer has selected the Equipment based on Customer's determination that the Equipment is appropriate for the Customer's purposes, use, application, and environment, and not based on any recommendation by EP. The Equipment is provided to Customer by EP AS IS, WHERE IS, and without any warranty by EP as to its condition or appropriateness for the Customer's purpose. The Equipment shall be deemed to be accepted by Customer upon delivery and subject to the terms and conditions of this Agreement if Customer does not notify EP in writing within 48 hours of delivery of the Equipment of any problem with the Equipment. If during Customer's possession of the Equipment, it is found by Customer not to be in good mechanical condition, as a result of conditions not the responsibility of Customer, nor caused by the fault or negligence of Customer or Customer's employees or agents, Customer will so notify EP, whereupon EP will then, at its option and without any other liability or responsibility by EP to Customer: (a) repair or suitably replace the Equipment within a reasonable time during EP's normal working hours, with the commencement or running of the terms of this Agreement to be tolled for the period the Equipment is "down"; or (b) remove the Equipment and terminate this Agreement and refund payments of rental charges, if any, for the unexpired term of the Agreement, less whatever is due EP for damage to or maintenance of Equipment which is the responsibility of Customer. Should the Equipment be involved in an accident, become unsafe, malfunction or require repair, Customer shall immediately cease using the Equipment and immediately notify EP. EP has no obligation to refund payments of rental charges, repair or replace Equipment rendered inoperable by misuse, abuse or neglect. Customer agrees to provide full access to the Equipment to EP's representatives so as to enable EP to meet its responsibilities hereunder.

THE FOREGOING IS IN LIEU OF (i) ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; AND OF (ii) ALL OBLIGATIONS OR LIABILITIES ON THE PART OF EP TO CUSTOMER FOR DAMAGES, INCLUDING BUT NOT LIMITED TO, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE RENTING, MAINTENANCE, USE, OPERATION, STORAGE, ERECTION, DISMANTLING OR TRANSPORTATION OF THE EQUIPMENT.

#### **16. REASONABLE WEAR & TEAR DEFINED.**

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 basis (as defined in Section 4 above). The following shall not be considered 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; cavitation; or freezing; (B) damage resulting from lack of servicing or preventative maintenance suggested in the manufacturer's operation and maintenance manual; (C) damage resulting from any collision, overturning or improper operation, including overloading or exceeding the rated capacity of the Equipment; (D) damage in the nature of dents, bending, tearing, staining, corrosion or misalignment to or of the Equipment or any part thereof; (E) wear resulting from use in excess of shifts for which rented; and (F) any other damage to the Equipment which is not considered ordinary and reasonable in the equipment rental industry.

#### **17. LIMITATION OF LIABILITY.**

Notwithstanding anything set forth herein to the contrary, in no event shall EP's aggregate liability with respect to this Agreement exceed the amount of rent paid by Customer to EP hereunder. In no event shall EP be liable for any lost profits or other incidental, special, or consequential damages for any of its acts or omissions whatsoever, whether or not apprised of the possibility or likelihood of such damages or lost profits. Customer agrees that Customer may not assert any claim in connection with this Agreement unless Customer has given EP written notice of the claim within one (1) year after it first knew, or in the exercise of reasonable prudence should have known, of the facts giving rise to such claim.

#### **18. LATE PAYMENT FEE.**

Should Customer fail to pay any invoice to EP in accordance with the terms of such invoice, Customer will pay a late payment fee to EP on such delinquent payment until fully paid, at the maximum rate allowed by the laws of the jurisdiction in which the EP location specified on the Front is located. Customer authorizes EP to charge all amounts coming due hereunder to any debit and/or credit card(s) Customer provides up to 100% of the new replacement cost of the Equipment plus all transaction and administrative costs.

#### **19. FUELING SERVICE CHARGE.**

EP agrees to provide the Equipment to Customer with full fuel tanks. Customer agrees to return the Equipment with full fuel tank(s), properly serviced and maintained, and if applicable, full of the appropriate fluids and lubricants. If Customer returns the Equipment with the fuel tank(s) less than full, Customer will pay to EP a sum equal to EP's then applicable refueling service charge posted at EP's location where the Equipment is returned for the number of gallons required to refill the tank(s) at the time of return.

#### **20. NO ASSIGNMENT, LENDING OR SUBLETTING.**

Customer shall not sublease, subrent, assign or loan the Equipment without first obtaining the written consent of EP, and any such action by Customer, without EP's written consent, shall be void. Customer agrees to use and keep the Equipment at the job site set forth in the Agreement unless EP approves otherwise in writing. EP may at any time, without notice to Customer, transfer or assign the Agreement or any Equipment or any moneys or other benefits due or to become due hereunder.

#### **21. 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.

## **22. MISCELLANEOUS.**

This Agreement expresses the entire agreement between the parties with respect to the subject matter hereof. No modification or alteration of the terms hereof will be effective as against EP unless same is in writing and signed by a duly authorized officer of EP. Customer's acceptance of the Equipment in accordance with Section 14 hereof shall constitute Customer's acceptance of all of the terms and conditions contained herein, and the exclusion of any terms and conditions otherwise stated by Customer or contained in any of Customer's documents that conflict with or limit in any way any of the terms and conditions contained herein. The paragraph headings contained in this Agreement are for convenience only and will not be used to expand or limit the actual terms and conditions hereof. In the event that EP takes any action to enforce the terms of this Agreement and prevails, EP shall be entitled to recover from Customer all of its related costs and expenses, including, without limitation, reasonable attorneys' fees. If any provision, or any part of any provision of this Agreement or the application thereof is thereafter held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and to this end the provisions of this Agreement are declared severable.