

TERMS AND CONDITIONS OF RENTAL CONTRACT

- A. **Term** West Texas Augers (hereinafter called "Renter") hereby leases the Equipment described on page 1 of this Agreement to Renter for a Rental Term, which Commences at the time of commencement, specified on page 1, and terminates at the time of termination, specified on page 1. If no Time of termination is specified, the rental term shall terminate when the equipment is received at the Rentors premises.
- B. **Termination Upon Recall**. If no time of termination is specified on page 1, Renter may recall the equipment from the Renter within 5 days of written notice to the Renter, and the date therein specified for return shall become the Time of termination. Renter shall deliver the equipment to the Rentors premises at the time of termination specified.
- C. **Payment**. Renter shall pay the following charges (1) Rental and Extra Shift Charges at the rules specified on page 1 for the duration of the Rental Term defined in paragraph A above; (2) all Charges incurred in transporting the equipment from Rentors premises to Renter, and in returning the equipment to Rentors premises; (3) All charges for repairs, as specified in paragraph H below; (4) All charges for insurance as Specified in paragraph J below; (5) All charges for taxes and license fees applicable to the equipment. Renter shall pay the full amount of rental and extra shift charges and such other charges properly payable to Renter. Delinquent charges payable to Renter shall bear interest until paid at a rate of 1 ½% per month (18% per annum), or highest legal rate, whichever is less. The aggregate rental is the minimum rental guaranteed by the Renter
- D. **Title**. The equipment shall remain personal property, title shall remain in Renter exclusively; and Renter shall keep the equipment free of any and all liens, encumbrances and claims. Renter shall do or permit no act or thing whereby Rentors title may be encumbered or impaired, and shall give Renter immediate due notice of any attachment or other judicial processes affecting the equipment.
- E. **Possession**. Renter warrants that it is the lawful owner of the equipment, and covenants to and with Renter that, upon condition that Renter perform the conditions required of it under this agreement, Renter shall peaceably and quietly hold, possess and use the equipment during the rental term.
- F. **Use**. (1) Renter shall keep the equipment only at the job location specified on page 1, or at other such job location to which the equipment shall have been removed with Rentors prior written consent. (2) Renter shall use the equipment only in the conduct of the Renters business at such job location. (3) Renter shall cause the equipment to be operated only by competent employees. (4) Renter shall prevent the equipment from being subjected to careless usage or abuse; (5) Renter shall take all reasonable steps to prevent the equipment from being used for any unlawful purpose, or in violation of any law federal, state, or municipal law, ordinance or regulation; (6) Renter shall ensure all persons operating equipment will have read the equipment operators manual. If unable to locate, please contact the Renter to request a copy.
- G. **Condition And Maintenance Of Equipment**. (1) Renter has inspected the equipment and acknowledges that the equipment is in good condition and working order, except for those specified defects, if any listed by Renter on page 1 or listed in a written notice to Renter mailed within 48 hours after receipt of the equipment by the Renter. (2) Renter shall keep and maintain the equipment in good condition and working order, and (3) Renter shall return the equipment to the Renter in the same condition as when received, reasonable wear and tear and depreciation from proper use excepted.
- H. **Repairs And Other Expenses**. (1) Renter shall not be obligated to make any repairs to or replacements of the equipment; and (2) Renter shall bear the expense of, and pay all costs of every character occasioned by or arising out of the use and the maintenance of the equipment, including, but not limited to, repairs, replacements, cleaning, taxes, fines, penalties, licenses, and charges for transportation.
- I. **Indemnification**. Renter is responsible for, assumes all of risk, and shall indemnify and save Renter harmless from: (1) any and all loss, damage or destruction to the equipment, (2) any and all fines, forfeitures or penalties assessed against the equipment or Renter as the result of or arising from the Renters use of the equipment, and any and all expense, loss or damage resulting from the Renter use of the equipment in actual or asserted violation of any federal, state, or municipal law, ordinance or regulation, (3) any and all loss, liability, or expense, including damages for loss of service or consequence thereof, arising out of, resulting from, or in any way connected with any acts or omissions of Renter or its agents, or the use or operation of the equipment, whether such act, omissions, use or operation results in or is claimed to have resulted in, injuries or death to persons including but not limited to, Renter, its employees, servants or agents, or loss, destruction or other damage to property. It is the responsibility of the Renter and its designated trucking company to ensure that the dimensions of the equipment, after loading, meet all road and bridge height requirements of its haul; (4) Any and all damage or claims of damage caused by or resulting from the non-operability for whatever cause, of the equipment. Renter shall defend at its sole expense or, at Rentors option, shall pay the cost of the defense (including attorney's fees, costs and disbursements) of all foregoing risks, to the extent that such defense is not undertaken or paid for by the insurers.
- J. **Insurance**. Renter agrees to provide and maintain, at its own expense, for the duration of the rental term defined in paragraph A above, policies of insurance protecting against (1) Liability for injury to or death of persons and for property damage, in the amounts specified on page 1, or if no amounts are specified \$1,000,000 per occurrence; (2) All risk of physical loss to the equipment, for the full insurable value of the equipment with a deductible amount not to exceed \$1,000 per loss. All such policies shall contain an endorsement, in form satisfactory to Renter, naming Renter as an additional assured loss and loss payee. Renter shall be timely provided with copies of all such policies (or certificate of the insurance) and duplicate premium receipts.
- K. **Events Of Default**. The following shall be deemed to be events of default; (1) any failure to pay, within ten days after the same is due and payable, any rentals or other charges to be paid by the Renter, (2) Any failure of the Renter to observe, keep or perform any provision of this agreement required to be observed, kept or performed by the Renter (3) Any cessation of the Renters business as a going concern; (4) the insolvency of the Renter, any assignment by Renter for the benefit of creditors; any filing of any petition by or against Renter under any bankruptcy, reorganization, trusteeship, receivership or similar proceeding; (5) Any assignment or purported assignment by Renter, whether voluntarily or by operation of law, of this agreement of interest in the equipment without written consent of Renter; (6) any purported levy upon or purported attachment of the equipment through judicial process; (7) the occurrence of any unusual or unreasonable depreciation in the value of the equipment arising out of its possession or use by Renter.
- L. **Remedies**. At any time after the occurrence of any event of default, Renter shall have the right to exercise, concurrently or separately, the following remedies, which are cumulative; (1) To terminate this agreement; (2) To require immediate surrender of the equipment; to take possession of the equipment with or without process of law and without notice to the Renter, and to enter upon any premises of Renter for the purpose of repossession of the equipment or of rendering the equipment inoperative; (3) To declare the entire amount of hereunder immediately and payable and to recover from Renter (a) such amount of rent and (b) all other sums payable to Renter under any provision of this rental contract; (4) In the event the Renter is unable, for any reason, to secure possession of the equipment, Renter may recover the reasonable market value of the equipment. (5) To recover from Renter all costs and expenses (including reasonable attorney fees not less than \$500), incurred by Renter in the enforcement of its rights and pursuit of its remedies; and (6) To pursue any other remedy available at law or in equity.
- M. **Performance Of Renters Obligations**. If Renter shall fail or refuse, for any reason, to perform any provision of this agreement required by Renter, Renter may, at its option, perform the required provisions and, upon demand, shall be reimbursed by Renter for the costs thereby incurred by Renter.
- N. **No Waiver**. No waiver by Renter of any condition of this agreement shall be effective unless in writing and signed by an authorized agent of Renter. Neither the failure by Renter in any one or more instances to insist upon the performance of any term or provision of this agreement, nor the failure of the Renter to exercise any right or privilege conferred by this agreement, nor the waiver by Renter of any breach of any term or provision herein, shall be construed as waiving any such term, provision, or privilege thereafter.
- O. **Inspection By Renter**. Renter shall (1) permit Renter to enter upon Renters property at all reasonable times and (2) obtain permission for Renter to enter upon any other property where the equipment may be located, for the purpose of inspection maintenance or repossession.
- P. **No Warranties**. Renter acknowledges that it has selected both the type and capacity of the equipment leased hereunder. Renter agrees to assist Renter in obtaining all benefits (if any parentheses available to Renter under any manufacturer's warranty pertaining to the equipment. Such agreement by Renter is expressly in lieu of all warranties (except for the warranties of title and quiet possession specified in paragraph E), including any implied or statutory warranties of merchant ability and fitness for a general or specific purpose, and Renter accepts the equipment "as is" and waives all warranties whether implied or statutory.
- Q. **No Abatement Or Damages**. There shall be no abatements of rental for any period during which the equipment is inoperable, regardless of the cause of inoperability, and Renter assumes no responsibility and shall not be liable for any loss or damages, direct or consequential, alleged to have been caused by or resulting from the operation or non operability of the equipment.
- R. **No Assignment By Renter**. Renter shall not, without the written consent of Renter, assign this agreement or any interest therein or sublease the equipment
- S. **Assignment By Renter**. Renter may assign this agreement or any and all rentals or other sums by Renter here under without the consent of Renter.
- T. **Notice**. Any notice required hereunder shall be sufficient only if in writing, and sent by registered or certified mail to the business address of the other party. The business address from the parties shall be that address as specified on page 1 for such different addresses as may from time to time be specified by either party in a written notice to the other.

- U. **Entire Agreement.** This agreement, together with the Renter purchase option, if any, specified on page one, embodies the entire agreement between Rentor and Renter and there are not other agreements, representations or warranties, either oral or written, relating to the equipment.

- V. **Applicable Law.** If it should appear that any provision hereof is in conflict with any state or rule of law of any jurisdiction wherein it may be sought to be enforced, then such provisions shall be deemed null and void to the extent it is in conflict therewith but without invalidating the remaining provisions hereof. This agreement shall be construed according to the laws of the state of Texas and shall be binding upon the heirs, administrators, legal representatives, successors and assigns of Renter and shall ensure to the benefit of Rentor, its successors and assigns.