

RENTAL AGREEMENT ADDITIONAL TERMS AND CONDITIONS

1. **DEFINITIONS.** Elite Construction Equipment, Inc. identified on the first page of this Rental Agreement is the entity from whom the Customer has rented the equipment. "Equipment" means any one or more of the items identified as such on the first page of this Rental Agreement, and shall include any accessories, attachments or other similar items delivered to Customer, such as air hoses, electric cords, blades, welding cables, liquid fuel tanks and nozzles. "Customer" means the person or entity identified as such on the first page of this Rental Agreement, including any representative, agent or employee of Customer. "Store Location" means the Elite address in the upper part of the first page of this Rental Agreement. "Rental Period" means the period of time between the "Date Out" and "Date Due in," set forth on the first page of this Rental Agreement, except that the Rental Period may terminate earlier as provided in paragraph 17 hereof.

2. **AUTHORITY TO SIGN.** Any individual signing this Rental Agreement represents and warrants that he or she is of legal age, and has the authority and power to sign this Rental Agreement on their own behalf or for the Customer.

3. **INDEMNITY 1 HOLD HARMLESS. TO THE FULLEST EXTENT PERMITTED BY LAW, CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD ELITE HARMLESS FROM AND AGAINST ANY AND ALL**

LIABILITY, CLAIM, LOSS, DAMAGE OR COSTS (INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES, LOSS OF PROFIT, BUSINESS INTERRUPTION OR OTHER SPECIAL OR CONSEQUENTIAL DAMAGES, DAMAGES RELATING TO BODILY INJURY OR WRONGFUL DEATH) CAUSED IN WHOLE OR IN PART BY, OR IN ANYWAY ARISING OUT OF OR RELATED TO THE OPERATION, USE, MAINTENANCE, INSTRUCTION, POSSESSION, TRANSPORTATION, OR RENTAL OF THE EQUIPMENT, REGARDLESS OF WHETHER SUCH LIABILITY, CLAIM, LOSS, DAMAGE OR COST IS FOUNDED UPON ANY NEGLIGENT ACT OR OMISSION OF ELITE OR THE PROVISION OF ANY ALLEGEDLY DEFECTIVE PRODUCT BY ELITE. THIS INDEMNITY PROVISION APPLIES TO ANY CLAIMS ASSERTED AGAINST ELITE BASED UPON STRICT OR PRODUCT LIABILITY CAUSES OR ACTION OR BREACH OF WARRANTY.

4. **INSPECTION OF EQUIPMENT.** Customer acknowledges that Customer has inspected the Equipment prior to taking possession thereof, finds it in good working order and repair, and suitable for Customer's needs. Customer further acknowledges that Customer has inspected the propulsion tank of vehicles registered and licensed, or required to be registered and licensed, for use on any highway or public road use, prior to taking possession thereof, and such propulsion tank contained no dyed Fuel. Customer is familiar with the proper operation and use of each item of Equipment. Customer has inspected or will inspect all hitches, bolts, safety chains, hauling tongues and other devices and materials used to connect the equipment to Customer's towing vehicle, if any; Elite is not responsible for any damage to Customer's towing vehicle during transportation of the Equipment, regardless of the cause.

5. **LIMITATION OF LIABILITY.** In no event shall Elite be responsible to Customer or any other party for any loss, damage or injury caused by, resulting from or in any way connected with the Equipment, its Operation or its use, Elite's delay or failure to deliver the Equipment as required hereunder, or Elite's delay or failure to repair or replace non-working Equipment. Customer acknowledges and assumes all risks inherent in the operation, use and possession of the Equipment from the time the Equipment is delivered to the Customer until the Equipment is returned to Elite and will take all necessary precautions to protect all persons and property from injury or damage from the Equipment.

6. USE OF EQUIPMENT.

A. Customer will not use or allow anyone to use the Equipment: (a) for an illegal purpose or an illegal manner; (b) without a license, if required under any applicable law, or (c) who is not qualified to operate it. Customer agrees, at Customer's sole expense, to comply with all applicable municipal, state, and federal laws, ordinances and regulations (including O.S.H.A. applicable environmental laws and regulations, and the Internal Revenue Code) which may apply to the use of the Equipment. Customer shall not insert, or permit to be inserted, any dyed fuel into the propulsion tank of vehicles registered and licensed for use on any highway or other public road. CUSTOMER AGREES TO DEFEND, INDEMNIFY AND HOLD ELITE HARMLESS FROM ANY AND ALL FINES, PENALTIES AND COSTS INCURRED BY ELITE DUE TO ALLEGED VIOLATIONS OF APPLICABLE ENVIRONMENTAL REGULATIONS BY CUSTOMER IN ITS USE, TRANSPORT OR STORAGE OF THE EQUIPMENT, OR VIOLATIONS OF APPLICABLE TAX LAWS ASSOCIATED WITH THE INTRODUCTION OF DYED FUEL INTO THE PROPULSION TANK OF SUCH VEHICLES. Customer agrees to check filters, oil, fluid levels and tire air pressure, to clean and visually inspect the Equipment daily and to immediately notify Elite when equipment needs repair or maintenance. Customer acknowledges that Elite has no responsibility to inspect the Equipment while it is in Customer's possession. Elite shall have the right to replace the Equipment with other similar equipment at any time and for any reason.

B. **IN CALIFORNIA ONLY:** If any of the Equipment is power operated or power-driven excavating or boring equipment, it is the sole responsibility of customer to follow the requirements of the regional notification center law pursuant to Article 2 (Commencing with Section 4216) of chapter 3.1 of Division 5 of the Government Code. By signing this Rental Agreement, Customer accepts all liabilities and responsibilities contained in the California regional notification center law.

7. **DISCLAIMER OF WARRANTIES. ELITE MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY OF THE EQUIPMENT OR ITS FITNESS FOR ANY PARTICULAR PURPOSE THAT THE EQUIPMENT IS SUITED FOR CUSTOMER'S INTENDED USE, OR THAT THE EQUIPMENT IS FREE FROM DEFECTS. EXCEPT AS MAY BE SPECIFICALLY SET FORTH IN THIS RENTAL AGREEMENT, ELITE DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, MADE IN CONNECTION WITH THIS RENTAL TRANSACTION.**

8. **MALFUNCTIONING EQUIPMENT.** Should the Equipment become unsafe, malfunction or require repair, Customer shall immediately cease using the Equipment and immediately notify Elite. If such condition is the result of normal operation, Elite will repair or replace the Equipment with similar Equipment in working order, if such replacement equipment is available. Elite has no obligation to repair or replace Equipment rendered inoperable by misuse, or neglect. Customer's sole remedy for any failure or defect in Equipment shall be the termination of any rental charges accruing after the time of failure. Customer must return the Equipment to the Store Location within 24 hours from the time of defect in order to terminate rental charges.

9. **RETURN OF EQUIPMENT 1 DAMAGED & LOST EQUIPMENT.** At the expiration of the Rental Period, Customer will return the Equipment to the Store Location during Elite's regular business hours, such Equipment to be in the same condition and repair as when delivered to Customer, subject to reasonable wear and tear, as defined below. Customer shall be liable for all damages to or loss of the Equipment from the time the Equipment leaves the Store Location until the Equipment is returned to the Store Location, including any damage during transit to or from Customer. In the case of the loss or destruction of any Equipment, or inability or failure to return same to Elite for any reason whatsoever, Customer will pay Elite the then full replacement list value of the Equipment together with the full rental rate as specified until such Equipment is replaced. If the Equipment is returned in a damaged or excessively worn condition, Customer shall pay, at the sole option of Elite, the diminution in value of the equipment as determined by Elite, or the reasonable cost of repair plus rental charges on the Equipment at the regular rental rate until all repairs have been completed. Elite shall be under no obligation to commence repair work until Customer has paid to Elite the estimated cost therefore.

10. **REASONABLE WEAR AND TEAR.** 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 (8 hours per day, 40 hours per week) basis. The following shall not be deemed 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; (b) except where Elite expressly assumes the obligation to service or maintain the Equipment, any damage resulting from lack of servicing or preventive maintenance suggested in the manufacturer's operation and maintenance manual; (c) damage resulting from any collision, overturning, or operation of the Equipment, including overloading or exceeding the rated capacity of the Equipment; (d) damage in the nature of dents, bending, tearing, staining, corrosion and 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. Repairs to the Equipment shall be made to the reasonable satisfaction of Elite and in a manner which will not adversely affect the operation, manufacturer's design or value of the Equipment.

11. **LATE RETURN.** Customer agrees that if the Equipment is not returned by the end of the Rental Period, Elite in its sole discretion, may require Customer to do any of the following: (a) continue to pay the rate(s) applicable to the Equipment as specified on the front page of this Rental Agreement, (b) for periods less than 24 hours, pay the full daily rental rate applicable to the Equipment, or (c) pay any increased rental rate(s) in effect at the time of, or after, the expiration of the Rental Period.

12. **RENTAL PERIOD 1 CALCULATION OF CHARGES.** Rental charges commence when the Equipment leaves the Store Location and end when the Equipment is returned to the Store Location during Elite's regular business hours. Rental charges accrue during Saturdays, Sundays and Holidays. Rental rates are for normal usage based on an 8 hour day, 40 hours per week and 160 hours per 4 week period. On power equipment, operations in excess of one shift will be at Elite's standard premium rental rates. Customer will truthfully and accurately certify to Elite the number of shifts the Equipment was operated. Customer's right to possess the Equipment terminates on the expiration of the Rental Period and retention of possession after this time is a material breach of this Rental Agreement. TIME IS OF THE ESSENCE.

13. **DEPOSIT.** In addition to securing the payment of the rental charges hereunder, Customer agrees that any rental deposit shall be deemed to be a guarantee by Customer of the full and complete performance of each and all the terms, covenants to be performed by Customer hereunder, and in the event of any breach by Customer, the deposit will be credited against any damages, cost or expense incurred by Elite as a result of the breach.

14. **PAYMENT.** All amounts due hereunder shall be payable in full upon the end of the Rental Period, upon return of the Equipment to Elite, or 30 days following Elite's invoice to Customer, whichever comes first. Customer acknowledges that timely payment of rental charges is essential to Elite's business operation and it would be impractical and extremely difficult to fix the actual damages caused by late payment. Customer and Elite agree that there shall be added to all past due rental charges a late payment fee equal to the lesser of 2% per month (24% per annum) or any such past due amounts, or the maximum amount allowed by applicable law, whichever is lower.

15. **TITLE 1 NO PURCHASE OPTION 1 NO LIENS.** This Rental Agreement is not a contract of sale, and title to the Equipment shall at all times remain with Elite. Unless covered by a specific supplemental agreement signed by Elite, the Customer has no option or right to purchase the Equipment. Customer shall keep the Equipment free and clear of all mechanics and other liens and encumbrances.

16. **TIRE AND TUBE REPAIR OR REPLACEMENT.** Repair or replacement of tires and tubes is the responsibility of the Customer, and is not included in the rental rate.

17. **DEFAULT.** Customer shall be deemed to be in default should Customer in any way fail to pay any amount when due hereunder, or to comply with any provision of this Rental Agreement, or should the Customer become "insolvent" (as defined herein), or should Elite anticipate that Customer may become insolvent. If Customer is in default, Elite may do any one or more of the following: (a) terminate the Rental Period; (b) declare the entire amounts due hereunder immediately due and payable and commence legal action therefore; (c) cause Elite's employees or agents, without notice or legal process, to enter upon Customer's property and take all action necessary to retake and repossess the Equipment, in which event Customer waives all claims for damages and losses, physical and pecuniary, caused thereby and shall pay all costs and expenses incurred by Elite in retaking and repossessing; or (d) pursue any other remedies available by law. The Customer shall be deemed Insolvent if it (i) shall generally not pay, or shall be unable to pay, or shall admit its inability or anticipate inability to pay its debts as such debts become due; or (ii) shall make an assignment for the benefit of creditors, or petition or apply to any tribunal for the appointment of a custodian, receiver, or trustee for it or a substantial part of its assets; or (iii) shall commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or (iv) shall have had any such petition or application filed or any such proceeding commenced against it in which an order for relief is entered or an adjudication or appointment is made; or (v) shall take any action indicating its consent to, approval of, or acquiescence in any such petition, application, proceeding, or order for relief or the appointment of a custodian, receiver, or trustee for all or any substantial part of its properties.

18. **CUSTOMER'S INSURANCE COVERAGE.** Customer agrees to maintain and carry, at its sole cost, adequate liability, physical damage, public liability, property damage and casualty insurance for the full replacement cost of the Equipment. The insurance shall provide coverage for any damage or liability arising from the handling, transportation, maintenance, operation, possession or use of the Equipment during the entire Rental Period. Upon renting the Equipment Customer shall supply to Elite proof of such insurance by Certificate of Insurance clearly setting forth the coverage for the Equipment and naming Elite as loss payee and additional insured; such insurance and evidence thereof to be in amounts and form satisfactory to Elite. The Certificate of Insurance and policy shall provide that Elite shall receive not less than 30 days' notice prior to any cancellation of the insurance required hereunder.

19. **NO ASSIGNMENT, LENDING OR SUBLETTING.** Customer shall not sublease, sub-rent, assign or loan the Equipment without first obtaining the written consent of Elite, and any such action by Customer, without Elite's written consent, shall be void. Customer agrees to use and keep the Equipment at the job site set forth on the first page of its Rental Agreement unless Elite approves otherwise in writing. Elite may at any time, without notice to Customer, transfer or assign this Rental Agreement or any Equipment or any moneys or other benefits due or to become due hereunder.

20. **RENTAL PROTECTION PLAN PROVISIONS.** The Plan is not insurance.

A. If Customer elects to accept and pay for the Rental Protection Plan (the "Plan") on the first page of this Rental Agreement, Customer will not be responsible for more than 10% of replacement value, not to exceed \$500 plus applicable state and local taxes, from losses arising from theft or direct physical damage to Elite or the Equipment; provided, however, that the Equipment is not used in violation of any terms of this Rental Agreement or any Statute or regulation regarding its use.

B. Customer agrees that Customer, or a permissive user of a Customer, will be the only driver of any vehicle used to tow any Elite trailer, and that Customer will not use the trailer in violation of any terms of the Rental Agreement or law. Elite will reimburse Customer for accidental loss or damage to Customer's goods from any collision, overturn, landslide, flood, hail, explosion, fire, windstorm or lightning which occurs while an Elite trailer is towed by Customer's vehicle. This reimbursement is limited to actual cash value up to a total of \$10,000 for private passenger vehicles and Customer's owned equipment; and to actual cash value up to a total of \$3,000 for Customer's personal belongings.

C. Notwithstanding the foregoing, Elite will not waive a claim for loss or damage; (i) to Equipment as a result of overloading or exceeding its rated capacity; (ii) to motors, generators, drills or other electrical appliances or devices caused by portable electric current; unless the source is a generator supplied by Elite; (iii) to hydraulic cylinders; (iv) to tires and tubes caused by blow out, bruises, cuts, punctures or other causes inherent in the use of the Equipment; (v) resulting from a lack of, or improper lubrication or servicing of the Equipment, or damage resulting from misuse, abuse, failure to maintain, cleanliness, proper fuel, hydraulic fluid, coolant or pressure levels; (vi) due to mysterious disappearance, or any Equipment that is not returned for whatever reason, including theft, unless from break and entry substantiated by a police report. Break and entry includes forced entry into a building, enclosed area, or fencing at which the Equipment is located, or forced entry into the Equipment itself; (vii) due to theft of any accessories, such as, but not limited to air hoses, electric cords, blades, welding cable, liquid fuel tanks, harnesses and lanyards and other similar items; and (viii) due to use of Equipment in violation of any terms of the Rental Agreement or any illegal use.

21. **ENTIRE AGREEMENT 1 ONLY AGREEMENT.** The terms and conditions on the first page of this Rental Agreement, together with the additional Terms and Conditions hereof, represent the entire agreement between the Customer and Elite with respect to the Equipment and the rental of the Equipment. There are no oral or other representations or agreements not included herein. None of Elite's rights or Customer's rights may be changed and

no extension of the terms of this Rental Agreement may be made except in writing, signed by both Elite and Customer. Any use of Customer's purchase order number on this Rental Agreement for Customer's convenience only.

22. ORDER OF PRECEDENCE. The terms and conditions of this Rental Agreement shall control over any conflicting preprinted terms and conditions contained in Customer's purchase order or similar documents.

23. OTHER PROVISIONS.

A. Any failure to Elite to insist upon strict performance by Customer of any terms and conditions of this Rental Agreement shall not be construed as a waiver of Elite's right to demand strict compliance. Customer has carefully reviewed this Rental Agreement and waives any principle of law which would construe any provision hereof against Elite as the draftsman of this Rental Agreement.

B. Customer agrees to pay all reasonable costs of collection, court, attorney's fees and other expenses incurred by Elite in the collection of any charges due under this Rental Agreement or in connection with the enforcement of these terms.

C. Customer shall pay the rental charge(s) without any offsets, deductions or claims.

D. The state courts in the County in which the Store Location is located shall have exclusive jurisdiction over all matters relating to this Rental Agreement. TRIAL BY JURY IS WAIVED. In order to effect service of process on Elite, please contact the California Secretary of State to obtain the name of the registered agent and the registered office address that is on file with the Secretary of State for Elite. Elite shall be entitled to decrees of specific performance (without posting bond or other security) in addition to such other remedies as may be available.

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.