

## TERMS AND CONDITIONS

THIS AGREEMENT IS FOR THE RENTAL OF ALL ITEMS, EQUIPMENT AND/OR VEHICLES SHOWN ON THE OTHER SIDE OF THIS PAGE, INCLUDING ALL PARTS OF AND ACCESSORIES TO SUCH ("EQUIPMENT").

1. **RENTAL PERIOD:** M. W. Bryan Equipment Rental LLC ("Lessor") hereby rents the Equipment to Customer ("Lessee") for the period commencing when the Equipment leaves Lessor's premises and ending upon its return to Lessor's premises, subject to charge for minimum rental period. Lessor may terminate rental at any time by written notice to Lessee and/or by retaking the Equipment. Unless otherwise specified, rental is for one day period. No allowance will be made for Sundays, holidays, or time in transit nor for any period of time the Equipment may not be in actual use while in Lessee's possession.
2. **EXCESS USAGE CHARGE:** Rental Rates are for normal and reasonable use of Equipment not exceeding 8 hours per day, five days per week (one-shift basis). Excess usage rates are prorated: 2 shifts charged at 1 ½ times normal rate, 3 shifts charged at 2 times normal rate.
3. **RECEIPT AND USE OF EQUIPMENT:** By accepting delivery, Lessee acknowledges that he has received the Equipment, all devices and materials used to connect the Equipment to Lessee's towing motor vehicles in good working and secure condition. Lessee shall not abuse, harm, or improperly operate the Equipment, and shall possess and operate it in conformance with all applicable laws and regulations. Lessee shall be solely responsible for the operation of the Equipment, and allow only a licensed and experienced operator to operate the Equipment in accordance with all Equipment specifications and customary safety practices.
4. **FAILURE OF EQUIPMENT:** In the event of any failure of the Equipment, of any nature whatsoever, Lessee at its expense shall immediately return it to Lessor's premises. Without Lessor's written authorization, Lessee shall not incur any expenses for Lessor's account for the repair of the Equipment.
5. **TIRE REPAIR OR REPLACEMENT:** Customer acknowledges that repair and replacement of tires are not included in the rental rate and agrees to pay for the repair or replacement (allowances for reasonable depreciation) of any tires returned to the Lessor in a damaged condition, regardless of the cause of the damage, reasonable wear and tear excepted.
6. **RETURN OF EQUIPMENT:** At the termination of this agreement, Lessee shall return all of the Equipment to Lessor's premises during Lessor's regular business hours, in the condition and repair as when delivered to Lessee, subject only to reasonable wear and tear. Lessee shall be liable for all damages to or loss of the Equipment occurring because it was not returned within Lessor's regular business hours. If Lessor has agreed to deliver the Equipment to Lessee or to pick up the Equipment from Lessee, Lessee shall be responsible for all loss or damage to the Equipment from time of delivery to Lessee and until picked up by Lessor.
7. **HAZARDOUS MATERIALS:** Lessee represents and warrants that it shall return all Equipment, including any and all attachments, tools and machinery leased from Lessor free of all regulated substances including, but not limited to, hazardous substances, hazardous materials, hazardous wastes, toxic substances, or pesticides, as those terms are defined in applicable federal, state, and local environmental laws, regulations, and rules. Lessee shall indemnify and hold Lessor harmless from and against any and all liabilities, of whatsoever kind or nature, imposed on, incurred by, or served against Lessor in any way relating to Lessee's breach of the above warranty.
8. **LOST OR DAMAGED EQUIPMENT:** Lessee is responsible for any and all damage, loss, or theft of equipment at fair market value. If the Equipment is returned in a damaged or excessively worn condition, Lessee shall pay Lessor the reasonable cost of repair and pay rental on the Equipment at all regular rental rate until repairs have been completed. Lessor shall be under no obligation to commence repair work until Lessee has paid therefore. Reasonable wear and tear shall mean only the normal deterioration of the Equipment caused by ordinary and reasonable use on a one-shift (eight hours per day, five days per week) basis. The following shall not be deemed reasonable wear and tear: damage resulting from lack of lubrication or maintenance such as water and air pressures, damage resulting from any collision, overturning, or improper operation of the Equipment, including overloading or exceeding the rated capacity of the Equipment; damage in the nature of dents, bending, tearing, staining, and misalignment to the Equipment or any part thereof; and wear resulting from use in excess of a one-shift basis. Repairs to Equipment shall be made to the reasonable satisfaction of Lessor and in a manner which will not adversely affect the operation or value of the Equipment, such as welding instead of replacing a part.
9. **LESSOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE EQUIPMENT'S MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. LESSEE'S SOLE REMEDY FOR ANY FAILURE OF OR DEFECT IN THE EQUIPMENT SHALL BE THE TERMINATION OF THE RENTAL CHARGES AT THE TIME OF FAILURE, PROVIDED THE EQUIPMENT IS RETURNED TO LESSOR WITHIN 24 HOURS. LESSOR SHALL NOT BE RESPONSIBLE FOR ANY LOSS, DAMAGE, OR INJURY TO LESSEE AND LESSEE'S PROPERTY, INCLUDING LOST PROFITS, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, IN ANY WAY CONNECTED WITH THE OPERATION OF, USE OF, DEFECT IN, OR FAILURE OF EQUIPMENT, REGARDLESS OF CAUSE OR OF THE SOLE, JOINT COMPARATIVE OR CONCURRENT NEGLIGENCE OR GROSS NEGLIGENCE OF LESSOR. BODILY INJURY/PROPERTY DAMAGE RESPONSIBILITY TO THIRD PARTIES FROM RENTED**
10. **VEHICLE OPERATION:** Lessor does not provide, extend or afford any insurance coverage to Lessee, authorized operator(s) or passengers. Lessee assumes full responsibility for any and all injuries or damage to others from the possession or use of the rented vehicle. If there is other valid and collectible automobile liability protection or insurance on any basis available to Lessee or any other person and such protection satisfies the financial responsibility laws, then no liability protection is afforded by Lessor. However, if Lessee is in compliance with the terms and conditions of this agreement, and if Lessor is determined by law to provide liability protection, such liability protection shall be limited to the minimum financial responsibility limits of the state in which the vehicle is operated. Lessor's financial responsibility is expressly limited to those applicable provisions of the motor vehicle financial responsible laws of the state in which the vehicle is operated.
11. **LESSEE, ITS OFFICERS, DIRECTORS, MEMBERS, MANAGERS, EMPLOYEES, SHAREHOLDERS AND AFFILIATES SHALL INDEMNIFY AND HOLD LESSOR, ITS OFFICERS, DIRECTORS, MEMBERS, MANAGERS, EMPLOYEES, SHAREHOLDERS AND AFFILIATES HARMLESS FROM ANY CLAIMS INCLUDING THIRD PARTIES, FOR LOSS, INJURY AND DAMAGE TO THEIR PERSONS AND PROPERTY ARISING OUT OF LESSEE'S POSSESSION, USE, MAINTENANCE OR RETURN OF EQUIPMENT, REGARDLESS OF CAUSE OR OF THE SOLE, JOINT COMPARATIVE OR CONCURRENT NEGLIGENCE OR GROSS NEGLIGENCE OF LESSOR, INCLUDING LEGAL COSTS INCURRED IN DEFENSE OF SUCH CLAIMS.** Lessee shall furnish Lessor with a complete report of any accident involving Equipment including names and addresses of all persons involved and all witnesses. **LESSEE IS RESPONSIBLE FOR ALL DAMAGE, INJURIES OR LOSS ARISING FROM ANY ACCIDENT OR ACT OF ANY AND EVERY NATURE WHATSOEVER, RELATING TO THE POSSESSION OR USE OF THE RENTED EQUIPMENT REGARDLESS OF CAUSE OR OF THE SOLE, JOINT COMPARATIVE OR CONCURRENT NEGLIGENCE OR GROSS NEGLIGENCE OF LESSOR, INCLUDING BUT NOT LIMITED TO ANY DAMAGE CAUSED BY THE FAILURE OF ANY DEVICE OR MATERIAL USED IN HITCHING THE EQUIPMENT TO A TOWING VEHICLE, REGARDLESS OF WHOM FURNISHED AND REGARDLESS OF WHO SHALL HITCH THE EQUIPMENT.** In the event any covenant in this Section 11 is deemed to be unreasonable, arbitrary or against public policy, such covenant will be considered to be divisible with respect to the scope of Lessee's indemnification obligations, and such lesser scope, as a court of competent jurisdiction may determine to be reasonable, not arbitrary, and not against public policy, will be affective, binding and enforceable against Lessee.
12. **FAILURE TO DELIVER:** Customer releases and discharges Lessor from any and all liability or damages (including consequential and special damage) which might be caused by Lessor's failure or inability to deliver any Equipment by any specified date or time.
13. **DAMAGE AND THEFT WAIVER (THIS IS NOT INSURANCE):**
  - A. If Customer elects to accept and pay for the DTW on the first page of this agreement, Customer will not be responsible for more than 20% of replacement value not to exceed \$34,000 plus applicable state and local taxes, from losses arising from theft or direct physical damage to Lessor or the Equipment; provided, however, that the Equipment is not used in any violation of any terms of this Agreement or any statute or regulation regarding its use.
  - B. Customer agrees that Customer, or a permissive user of the Customer, will be the only driver of any vehicle used to tow any Lessor trailer, and that Customer will not use the trailer in violation of any terms of the Agreement or law.
  - C. Notwithstanding the foregoing, Lessor 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, or other electrical appliances or devices caused by portable electrical current; unless the source is a generator supplied by Lessor; (iii) to hydraulic cylinders; (iv) to tires and tubes caused by blowout, bruises, cuts, punctures or other causes inherent in the use of the Equipment; (v) resulting from lack of, or improper lubrication or servicing of the Equipment, or damage resulting from 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 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 all accessories; including but not limited to air hoses, electric cords, electrical cables, fuel tanks or similar items; and (viii) due to use of Equipment in violation of any terms of the Agreement or any illegal use.
14. Lessee shall maintain Commercial General Liability insurance covering all operations and contractual obligations (including but not limited to personal injury liability, physical damage, public liability, property damage and casualty insurance for the full replacement cost of the Equipment, including all risks of loss or damage covered by the standard extended coverage endorsement, to cover any damage or liability arising from the handling, transportation, maintenance, operations, possession or use of the Equipment during the entire Rental Period) with minimum limits of \$1,000,000 per occurrence and shall name Lessor, its officers, directors, members, managers, employees, shareholders, and affiliates as additional insured's with a waiver of subrogation against Lessor, Lessee's insurance shall be primary insurance with respect to Lessor.

Lessee shall maintain Commercial Automobile Liability Insurance with limits of at least \$1,000,000 per occurrence and shall include coverage for hired and non owned vehicle liability and physical damage when renting a licensed, registered (over the road) vehicle. Lessee's insurance shall be primary and shall include a waiver of subrogation against Lessor.

Lessee will be charged Damage Waiver for the damage or theft of Equipment unless Lessee provides evidence of insurance for rented Equipment with the per item limit specified and naming Lessor as loss payee.

Lessee shall provide a certificate of insurance to Lessor evidencing above insurance coverages and specifying that coverage will not be cancelled without 30 days prior written notice to Lessor. Any insurance maintained by Lessor shall be excess of Lessee's insurance.
15. **SUBLETTING AND LOCATION:** No item of leased Equipment shall be sublet, assigned, removed from the location at which Lessee represented it was intended to be used or removed from the State of Lessor's premises, except by written consent of Lessor. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their heirs, successors and assigns.
16. **RETAKE OF EQUIPMENT:** If the Equipment is not returned at the termination of the rental or for any reason it becomes necessary for the Lessor to retake the Equipment to protect it from loss or damage, Lessor and its agents may go upon Lessee's property and retake the Equipment, without notice and legal process, and Lessee waives all rights to a prior judicial hearing. Lessor and its agents may take all action reasonably necessary to retake the Equipment and Lessee waives for himself, agents, and employees all claims for damages and losses, physical and pecuniary, caused by retaking by the Lessor. Lessee agrees to pay all costs and expenses incurred by Lessor in retaking the Equipment.
17. **COMPLIANCE WITH LAW AND SAFETY REGULATIONS:** As Lessor has no control over the use of the Equipment by Lessee, Lessee agrees at its sole expense to comply with all laws and regulations, including Occupational Safety and Health Administration Act of 1970 (OSHA) and all other Federal, State, and Local laws, regulations, and ordinances, which may affect the Equipment while it is in the possession of the Lessee. Lessee shall indemnify and hold Lessor harmless from any liability or expense, including attorney fees, resulting from any actual or asserted violations of such laws, regulations and ordinances.
18. **LEGAL FEES AND VENUE:** Lessee shall pay Lessor's reasonable legal fees and court costs incurred in enforcing the terms and conditions hereof. Lessee agrees that this agreement is to be construed under the laws of the State of Texas, and that if legal action is brought to enforce this agreement, that Tarrant County, Texas, shall be the jurisdiction and legal venue for said action, unless otherwise agreed by Lessee and Lessor at a later time.
19. **TAXES AND FEES:** Lessee shall reimburse Lessor for any additional fees, charges, or taxes sought to be imposed against Lessor by any municipal or local subdivision relating to the use of the Equipment by Lessee or rental as provided herein.
20. **ENTIRE AGREEMENT:** This Agreement and the instruments to be delivered by the parties constitutes the full and entire agreement with respect to the subject matter thereof. It may not be amended except by a written agreement signed by both parties.