

TOOLCO SPECIALTY RENTALS, LLC

14701 Park Almeda Drive
Houston, TX 77047
Phone: 713.433.3700 Fax 713.433.3717

RENTAL AGREEMENT

RENTAL AGREEMENT by and between TOOLCO SPECIALTY RENTALS, LLC (“Toolco”) Lessor, and

 (“Customer”) Lessee, concerning the rental of _____

Customer agrees to the following terms and conditions concerning the rental of the equipment described herein and the terms and conditions stated herein and within the Customer’s credit application, all of which are part of this Agreement:

- 1. Payment of Rental:** Customer will pay Toolco rental at the rate shown for the period stated, or period of possession by Customer, whichever is greater, promptly in advance regardless of any claimed defense or offset Customer may assert. Rental rates provided in this Agreement are single shift straight rates based on: 1 day = 24 hours based on 8 hours allowed on the equipment; 3 days = 1 week; 3 weeks = 1 month. If used longer than the specified periods, in any specific period the customer agrees to pay the applicable additional daily charges. All metered equipment will be charged overtime fee of 1-1/2 x rental rate.
- 2. Transportation and Return of Equipment:** Customer shall pay for transportation of equipment to and from the office of Toolco on demand. Customer shall return equipment to the office of Toolco at the end of the rental period at the expense of Customer and in as good of condition as when received, ordinary wear and tear only excepted, and to pay for any loss or damage to the equipment. The Customer agrees that the value of the equipment is the sales price stated in the most recently published Sales Price List, and said value will be provided to customer upon request.
- 3. Operation of Equipment:** While operating the equipment, Customer will at all times apply sound principles of safety, training, inspection, maintenance, application & operation and will comply with all manufacturer’s operations & safety guidelines. Customer shall: (i) operate the equipment within its capacity; (ii) utilize the equipment in a careful and proper manner and permit the equipment to be operated only by persons trained in its operation; (iii) cause oil, water, lubricants and mechanical matters to be carefully checked and maintained in proper amounts; (iv) furnish at Customer’s own expense all fuel, oil, lubricants and other operation supplies as well as perform or have performed, at Customer’s expense, all daily preventative maintenance services as

prescribed in the equipment maintenance manual; (v) cause the operation of the equipment to be immediately stopped and Toolco notified whenever any mechanical trouble or difficulty develops or the equipment is believed unsuitable for the particular use.

4. ***Sub-renting and Location of Equipment:*** Unless written consent is first given by Toolco, the equipment will not be sub-rented or used by any party other than Customer. The equipment will remain at the location stated in this agreement. If the equipment is removed from the stated location, hidden from Toolco, not made available to Toolco for inspection at any and all times during business hours, or if Toolco is for any reason unable to locate the equipment, Toolco may cancel and terminate this agreement by written notice to the Customer; and, Customer waives all claims for loss, expense or damage caused by such termination. After Toolco gives notice of termination, Toolco will have the sole right to possession of the equipment and Customer agrees to peacefully surrender possession to Toolco; and, any possession of the equipment by Customer subsequent to such termination will require Customer to pay to Toolco an amount equal to the rents being charged for the use of the equipment under this agreement. Notice of termination will be deemed delivered to the Customer if delivered personally to Customer or mailed to Customer at the address stated in this agreement.

5. ***Default:*** Customer will be in default under this agreement if (a) Customer fails to pay rent or any other amount when due under the term of this agreement. (b) Customer fails to perform, observe or keep any provision of this agreement, (c) Customer becomes "insolvent" (as defined in this agreement), or Toolco anticipates that Customer may become insolvent or that Customer may otherwise become in default, or (d) any execution or any other writ of process is issued in any action or proceeding against the Customer whereby the equipment may be seized, taken or detained. If Customer is in default, Toolco may do any one or more of the following: (1) terminate the rental period, (2) declare the entire amount of rent and other charges owing under this agreement to be immediately due and payable and commence legal action for the amounts claimed due. (3) take possession of any or all of Toolco's equipment then rented to Customer, without demand or notice except as may be required by law, wherever the same may be located, without any Court Order or other process of law; and, Customer waives any and all damages and losses, physical and pecuniary, occasioned by such taking of possession; or (4) pursue any other remedies available at law or in equity. Customer may be considered "insolvent" if Customer (i) is generally not paying, or is unable to pay, or admits its inability or anticipated inability to pay its debts as such debts become due; or (ii) makes an assignment for the benefit of creditors, or petitions or applies to any tribunal for the appointment of a custodian, receiver or trustee for it or a substantial part of its assets; or (iii) commences 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) has 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. Any repossession of the equipment or any other action which the Lessor may take will not negate nor diminish the Customer's liability for the full performance of all obligations to be performed by the Customer under this agreement. Toolco's remedies are cumulative, and may be exercised concurrently or separately. Termination of this agreement will not release the Customer from any rents that are past due, any damages that have been sustained by the equipment, or any other obligation of the Customer. Customer agrees to pay all reasonable collection, attorney fees, court costs and other expenses involved in the collection of any of the charges or indebtedness due hereunder or in enforcement of the provisions of this agreement or Toolco's rights hereunder. **Exclusive jurisdiction and venue for any litigation between Customer and Toolco is in any district court or county court of law in Harris County, Texas.**

6. ***Interest on Delinquent Amounts:*** If Customer fails to pay any part of the rent or any other sum owing under this agreement within ten (10) days after the due date thereof, Customer will pay to Toolco interest on such delinquent payment from the expiration of said ten (10) days until paid at rate of 18% per annum or the highest lawful contract rate applicable to this transaction, whichever is less.

7. ***Insurance:*** Customer will carry a commercial general liability policy issued on an occurrence basis (which includes coverage of the equipment rented herein and the operation thereof) and having limits of coverage of not less than \$1,000,000.00 per occurrence, \$1,000,000 general aggregate and \$1,000,000 personal and advertising injury. Such insurance will insure both Toolco and Customer and be written by companies reasonably satisfactory to Toolco. Customer will furnish certificates to Toolco naming Toolco as an "Additional Insured" and "Loss Payee" and stating coverage includes "Boom overload" and "Boom Collapse." Customer will also maintain a Business Auto Policy having a limit of coverage of not less than \$1,000,000, and worker's compensation and employment liability insurance meeting the statutory limits.

8. **NOTICE:** The Customer shall be responsible for and promptly pay for (a) loss of or damage to the equipment that is caused by an unexplained disappearance or abandonment of the equipment; (b) damage that is intentionally caused by the customer; or (c) damage that results from the customer's willful or wanton misconduct. Toolco interprets "damage that is intentionally caused by Customer" and "damage that results from Customer's willful or wanton misconduct" to include the following: (1) Damage resulting from overloading or exceeding manufacturer's rated capacity or other such improper use of the equipment; (2) damage to tires or tubes including blowouts, flats, bruises, cuts, punctures or tears; (3) Damage resulting from a lack of or improper daily basic lubrication or servicing of the equipment including failure to maintain air filter cleanliness and proper hydraulic, cooling, oil and pressure levels; (4) Damage from wars, riots, strikes, civil commotion, radioactive or other hazardous material contamination or acts of God; (5) Damage from striking an overhead object; (6) Damage from loading, unloading or transporting of the equipment; (7) Damage or collapse of boom from overloading or from collision, including with a boom in motion; (8) Damage from or associated with rollover, upset or any type of submersion; (9) Damage caused by a person other than an authorized, trained or certified operator; (10) Damage caused by vandalism, fire, or malicious mischief; or (11) Damage caused by overspray from paint or any other substance that adheres to the equipment and cannot be removed by high pressure water. In the event that under applicable Texas law any one or more of the exclusions described above are determined to be not within the authorized exclusions permitted by law (including but not limited to section 93.006 of the Texas Business and Commerce Code) then this agreement will be deemed to be automatically reformed to delete such prohibited exclusion, without the necessity of the execution of any new documents, so as to comply with the applicable law. If the equipment is determined by Toolco to be lost, stolen, destroyed or damaged beyond repair, Customer will promptly pay to Toolco in cash the value of such equipment at the time that it was received by Customer (as "value" is defined above in Paragraph 2); and, upon such payment this rental agreement will terminate with respect to such item of equipment so paid and Customer will be entitled to possession of such item of equipment as-is, where-is with all faults without warranty, express or implied.

9. **Markings and Alterations:** If Toolco supplies Customer with labels, plates or other markings indicating the ownership or manufacture of the equipment, Customer will affix and keep the same in the location required by Toolco. Without the prior written consent of the Toolco, Customer will not make any alterations, additions, or improvements to the equipment. All additions and improvements of whatsoever kind or nature made to the equipment will belong to and become the property of Toolco on the termination of this agreement.

10. **No Liens; Compliance with Laws:** Customer will keep the equipment free and clear of all levies, liens and encumbrances and will pay all license fees, registration fees, assessments, charges, and taxes which may be imposed on ownership, leasing, renting, sale, possession, or use of the equipment excluding however all taxes on or measured by the Toolco's income. Customer will pay any sales, property, or use tax to Toolco on demand. Customer will comply with all laws, ordinances, and regulations relating to the possession, use, or maintenance of the equipment.

11. **Acceptance of Equipment:** Customer accepts the equipment in its present "as is" condition and agrees that it has inspected it to Customer's own satisfaction, and such equipment is in proper operating order. Customer acknowledges that the equipment has been selected by Customer for the purpose it is to be used without reliance on Toolco, and that Toolco has not selected the equipment rented and is not responsible for the suitability of the equipment for the use Customer intends. **Customer agrees that Toolco is not liable for and makes no warranties, either express, implied, or by operation of law, as to any matter whatsoever including, without limitation, the condition of the equipment, its merchantability, or its fitness for any particular purpose, and Customer Releases Toolco to the fullest extent allowed by law from any warranties, express, implied or arising by operation of law.** There are NO warranties which extend beyond the description of the equipment on the front of this agreement.

12. **Indemnity: CUSTOMER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS TOOLCO, ITS MEMBERS, OFFICERS, EMPLOYEES, SUCCESSORS, HEIRS, AGENTS AND REPRESENTATIVES ("INDEMNITEE(S)") FROM AND AGAINST ALL CLAIMS ARISING OUT OF OR RELATING TO THE WORK, OR THE FAULT, BREACH OF CONTRACT OR WARRANTY, VIOLATION OF LAWS, WILLFUL MISCONDUCT, STRICT LIABILITY OR NEGLIGENT ACTS OR OMISSIONS OF TOOLCO OR ANY OF ITS MEMBERS, AGENTS OR EMPLOYEES, INCLUDING CLAIMS FOR BODILY AND PERSONAL INJURY, DEATH OR PROPERTY DAMAGE TO ANY PROPERTY INCLUDING ANY ENVIRONMENTAL CONTAMINATION AND COSTS OF CLEAN-UP, TO THE FULLEST EXTENT ALLOWED BY LAW. WITHOUT LIMITING THE FOREGOING, WITH RESPECT TO CLAIMS FOR BODILY INJURY OR DEATH OF A PERSON, THIS INDEMNITY SHALL BE WITHOUT LIMIT AND WITHOUT REGARD TO WHETHER THE INDEMNIFIED CLAIMS WERE CAUSED OR CONTRIBUTED TO BY THE NEGLIGENCE OF ANY INDEMNITEE, AND CUSTOMER SPECIFICALLY**

ACKNOWLEDGES THAT IT IS UNDERTAKING THE OBLIGATION TO INDEMNIFY AND DEFEND THE INDEMNITEES WITH RESPECT TO THE CONSEQUENCES OF THE NEGLIGENCE, STRICT LIABILITY, STATUTORY LIABILITY, BREACH OF CONTRACT, OR FAULT OF AN INDEMNEE.

The parties agree that the capitalized provisions in bold meet the express negligence and conspicuousness requirements of Texas Law.

CUSTOMER HEREBY AGREES TO BE LIABLE FOR AND TO DEFEND, INDEMNIFY AND HOLD HARMLESS TOOLCO, ITS AFFILIATED COMPANIES, AND THEIR RESPECTIVE MEMBERS, OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES (COLLECTIVELY, "INDEMNITEES"), FROM AND AGAINST ALL INJURY, LOSS, DAMAGE, LIABILITY, CLAIM, ACTION, OR EXPENSE (INCLUDING LEGAL FEES AND COSTS), WHETHER IN RELATION TO THE RENTED EQUIPMENT OR ANY PERSON OR PROPERTY, OR WHETHER CAUSED BY THE NEGLIGENCE OR FAULT OF INDEMNITEES (COLLECTIVELY, "CLAIMS"), ARISING OUT OF ANY OF THE FOLLOWING: (A) ANY LIENS OR ENCUMBRANCES PERMITTED BY TOOLCO TO BE ATTACHED TO THE RENTED EQUIPMENT; (B) ANY ACTUAL OR ALLEGED VIOLATION BY CUSTOMER OR ANY AUTHORIZED OPERATOR OR ANY PERSON FOR WHOM CUSTOMER IS RESPONSIBLE AT LAW, REGULATION OR REQUIREMENT AFFECTING THE RENTAL EQUIPMENT OR ITS USE, OPERATION, OR TRANSPORTATION; (C) THE MAINTENANCE, USE, POSSESSION, OPERATION, DISMANTLING, SERVICING OR TRANSPORTATION OF THE RENTED EQUIPMENT, INCLUDING WITHOUT LIMITATION ANY BODILY OR PERSONAL INJURY, DEATH OR PROPERTY DAMAGE SUSTAINED BY ANY PERSON AS A RESULT OF ANY OF THE FOREGOING; (D) ANY FAILURE BY CUSTOMER OR ANY AUTHORIZED OPERATOR OR ANY PERSON FOR WHOM CUSTOMER IS RESPONSIBLE AT LAW TO COMPLY WITH THE TERMS OF THIS AGREEMENT; (E) ANY PROPERTY LEFT, STORED, LOADED OR TRANSPORTED BY CUSTOMER OR ANY OTHER PERSON IN OR UPON THE RENTED EQUIPMENT; (F) TAXES IMPOSED OR ASSESSED AGAINST TOOLCO THAT ARE PAYABLE HEREUNDER BY CUSTOMER; OR (G) ANY ACT, OMISSION OR NEGLIGENCE OF CUSTOMER (OR ITS EMPLOYEES, CONTRACTORS, AGENTS OR REPRESENTATIVES), ANY AUTHORIZED OPERATOR, ANY PERSON FOR WHOM CUSTOMER IS RESPONSIBLE AT LAW OR ANY PERSON OR ENTITY COMING INTO CONTACT WITH THE RENTAL EQUIPMENT WHILE UNDER THE USE, POSSESSION OR CONTROL OF THE CUSTOMER. CUSTOMER AND ALL AUTHORIZED OPERATORS HEREBY ASSUME ALL RISK OF LOSS OR DAMAGE AND WAIVE ALL CLAIMS AGAINST TOOLCO FOR ANY REASON WHATSOEVER, INCLUDING WITHOUT LIMITATION ANY CLAIMS SOUNDING IN STRICT OR ENVIRONMENTAL LIABILITY, CLAIMS THAT CUSTOMER MAY SUFFER OR INCUR AS A RESULT OF THIS AGREEMENT OR ITS USE OF THE RENTAL EQUIPMENT, AND CLAIMS THAT CUSTOMER HAS OR MAY IN THE FUTURE HAVE AGAINST INDEMNITEES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR USE OF THE RENTAL EQUIPMENT.

13. **Attorney's Fees:** Any signatory to this agreement who is the prevailing party in any legal proceeding against any other signatory brought under or with relation to this agreement or this transaction shall be additionally entitled to recover reasonable attorney fees, court costs and all other out-of-pocket costs of litigation, including deposition, travel and witness costs, from the non-prevailing party.

14. **Miscellaneous:** No covenant or condition of this agreement may be waived except by the written consent of Toolco. Any failure of Toolco to insist upon the strict performance by Customer of any terms and conditions of this agreement will **not** be construed as a waiver of Toolco's right to demand strict compliance. This agreement constitutes the entire agreement between parties and supersedes any prior understandings or written or oral agreements between the parties relating to this transaction. This agreement may not be amended, altered, or changed except by a written agreement signed by the parties hereto. Service of all notices under this agreement will be sufficient if given personally or mailed to the party involved at its respective address shown on the front of this agreement. This agreement will be construed under and in accordance with the laws of the State of Texas, if any one or more of the provisions contained in this agreement is for any reason held to be invalid, illegal, or unenforceable, in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this agreement will be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

15. **Integration:** The entire agreement between Customer and Toolco and all negotiations, proposals, and representations have been integrated into and superseded by this Agreement. This Agreement may be amended only by a document in writing executed with equal formality.

16. **Severability:** If any one, or more, of the provisions of this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision.

17. **Governing Law:** The terms and provisions of this Agreement and associated exhibit(s) shall be construed under and governed by the laws of the State of Texas, without giving effect to any laws that would refer the construction of such terms and provisions to the laws of another jurisdiction. In the event of litigation, the Parties agree that venue for any such lawsuit shall be Houston, Harris County, Texas. Non-binding mediation may be utilized.

Customer represents and warrants to Toolco that the person signing this contract on behalf of Customer is authorized to do so. Each person signing this contract will be presumed by Toolco to have authority to execute this contract

SIGNED on the _____ day of _____, 20____, in duplicate originals.

CUSTOMER

TOOLCO SPECIALTY RENTALS, LLC

(Signature)

By:_____

(Printed Name)

(Printed Name)

(Company)

(Title)