



LEASING TERMS AND CONDITIONS – EQUIPMENT RENTALS – Form #ACTEL08-23-10

1. **RECEIPT OF EQUIPMENT.** By signing this Agreement the Customer warrants that it has inspected the Equipment and it is conclusively presumed, as between Lessor and Customer that Customer acknowledges the Equipment is in good condition and repair and that Customer is satisfied with and has accepted the Equipment in such good condition and repair. Customer further agrees that the Equipment shall be returned to Lessor in the same condition as it was received, and that Customer shall be responsible for any and all loss or damage to the Equipment or any part thereof from the time it is delivered until it is returned to Lessor.
2. **LOCATION OF EQUIPMENT.** Customer shall not move rental Equipment to another location without prior written consent of the Lessor.
3. **PAYMENT OF CHARGES.** Customer shall pay in advance the stipulated rental charges on the Equipment rented payable in Pittston, PA.
4. **F.O.B.** The Equipment is rented F.O.B. Lessor's Warehouse.
5. **CUSTOMER RESPONSIBILITIES.** Customer shall furnish the operator, gas, oil, water and other normal needs required in connection with the daily operation of the Equipment rented.
6. **USE OF EQUIPMENT.** Customer agrees to hold the rented Equipment as the sole property of the Lessor and not to encumber the Equipment by mortgage or otherwise, or to sublease or pledge the Equipment in any manner. Customer further agrees to use the Equipment in a careful and proper manner and comply with all laws, ordinances, instructions, warnings and regulations, including but not limited to OSHA regulations, relating to the possession use or maintenance of such Equipment. By signing this Agreement, Customer warrants that all persons who shall operate the Equipment have been properly trained and instructed by the Customer, and that the Equipment shall only be used under the Customer's direct supervision. Rental is based on a maximum use for each Unit of 160 hours per four-week period, 40 hours per week or 8 hours per day. If Lessee's use of any Unit exceeds these hours for any given time period as determined by the Unit's hour meter, lessee shall pay for each excess hour an Excess Usage Charge. There will be no credits given on 4-week rentals after the 2nd rental week.
7. **MAINTENANCE OF EQUIPMENT.** Unless otherwise agreed by the Parties on the Leased Equipment Transfer Agreement, Customer agrees to maintain the Equipment in the same condition as when received. Customer shall be required to provide normal maintenance to the Equipment, including supplying fuel, oil and water and conducting daily inspections and maintenance of the Equipment as set forth in the Daily Operator's Check List.
8. **LIMITATION OF WARRANTIES.** Customer hereby acknowledges that the Equipment is of a size, design, capacity and manufacture selected by the Customer. THE EQUIPMENT IS LEASED 'AS IS'. LESSOR IS NOT A MANUFACTURER OF THE PROPERTY AND HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION, WARRANTY OR CONVENANT, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION, MATERIAL, EQUIPMENT OR WORKMANSHIP IN THE EQUIPMENT, IT BEING AGREED THAT ALL SUCH RISKS ARE TO BE BORNE BY THE CUSTOMER AT ITS SOLE RISK AND EXPENSE. No oral agreement, guaranty, promise, condition, representation or warranty shall be binding; all prior conversations, agreement or representation related to this Agreement or to the Equipment are integrated in the Agreement and no modification hereof shall be binding unless in writing signed by Lessor and Customer.
9. **INSURANCE.** Customer hereby assumes all risk of loss of and damage to the Equipment from any cause while the Equipment is in the Customer's care, custody or control. No loss or damage to the Equipment shall impair any obligation of the Customer under this Agreement, which shall continue in full force and effect. Customer agrees that it will, at its own expense, maintain insurance on the Equipment against all physical loss or damage thereto in an amount equal to the full insurable value of the Equipment. Such insurance shall name the Lessor as an additional insured and loss payee. Customer further agrees that it shall provide comprehensive general liability insurance, including contractual liability coverage, with limits of no less than One Million Dollars (\$1,000,000) per occurrence/One Million Dollars (\$1,000,000) aggregate, for any and all claims, accidents, liability, damages, loss and expenses arising out of or in any way resulting from the lease, operation, maintenance, use, manufacture or selection of the Equipment that results in bodily injury, sickness, disease, death or injury to or destruction of property, including the loss of use resulting there from. The aforementioned first and third-party insurance coverage shall be primary for the Customer and the Lessor and shall not be cancelled or modified at any time without at least thirty (30) days written notice to the Lessor. Customer shall provide satisfactory evidence of the existence of such insurance in the form of a Certificate of Insurance from an insurer licensed to conduct business in the Commonwealth of Pennsylvania prior to the delivery of the Equipment.
10. **INDEMNIFICATION.** Customer hereby agrees that it is solely responsible for the Equipment while it is in the Customer's care, custody or control. Customer shall, to the fullest extent permitted by law, indemnify, hold harmless and defend Lessor, its officers, agents and employees from and against any and all liabilities, damages, losses, causes of action, suits, claims, judgments, costs and expenses, including attorneys' fees arising out of or in connection with the Equipment and its actual or alleged use, lease, operation, maintenance, manufacture, selection, delivery or possession, including but not limited to claims for personal injury to any person(s), including Customer's employees, and property damage to the Equipment or other property, including but not limited to loss of use arising directly or indirectly out of or in connection with the use or operation of the Equipment, whether such loss is caused, in whole or in part, by the negligent acts of the Seller, Buyer or anyone directly or indirectly employed by them or anyone for whose acts such person(s) may be liable, and whether Seller's liability shall be attributable to its status as a Lessor, distributor or servicer of such Equipment. In the event Lessor shall be required to take any legal action to recover possession of the Equipment, or to enforce any of the terms of this Agreement, Customer hereby agrees to indemnify Lessor for all costs, expenses and fees associated with such action.
11. **TITLE.** This is a Lease Agreement only and nothing herein conveys to Lessee any right, title or interest in or to any of the Equipment except as a Lessee.
12. **TAXES AND PUBLIC LAWS.** Customer agrees to comply with and conform to all municipal, state and federal laws relating to the use and operation of the Equipment and to pay all legal assessments, taxes or public charges that may be levied upon the Equipment while in the Customer's possession. In the event Lessor is required to pay such charges, Customer shall reimburse Lessor such amounts to the Lessor upon satisfactory proof of same.
13. **DEPOSIT.** The deposit paid by the Customer as indicated on the leased Equipment Transfer Agreement shall be credited upon the rental and other charges accruing under this Agreement only in the event the Customer shall fully and faithfully perform all of the terms and conditions hereof. In the event the Customer shall breach any terms of this Agreement, such deposit shall be retained by the Lessor as additional consideration for this Agreement subject to all other remedies provided by this Agreement or by law.
14. **DEFAULT.** Customer agrees to pay all rentals when they are due and to otherwise comply with all terms and conditions of this Agreement. Should the Customer violate any terms of this Agreement, the rental for the entire period herein specified shall become immediately due and payable and the Lessor may, without notice, enter the Customer's premises and take possession of the Equipment and Customer agrees that it shall reimburse Lessor for all costs, expenses, fees and charges related to the recovery of the Equipment. In addition to any and all other obligations created hereunder.
15. **ENTIRE AGREEMENT.** This Agreement shall constitute the entire agreement between the parties hereto with regard to the subject matter hereof. No course of prior dealings between the Parties and no usage of trade shall be relevant or admissible to supplement, explain or vary any of the terms set forth herein. This Agreement may only be modified in a writing signed by the Parties or their duly authorized agents.
16. **TIME FOR BRINGING ACTION.** Any action for the breach of this Agreement must be commenced within one (1) year after such cause of action has accrued.

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17. **APPLICABLE LAW/FORUM.** This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania regardless of any conflicts of law provision requiring reference to the Rules of Decision in and/or laws of another state or sovereign nation.

The Parties agree that any action to enforce the terms of this Agreement, or any action arising from either party's performance hereunder, must be initiated in the Court of Common Pleas of Luzerne County, Pennsylvania.