

TERMS AND CONDITIONS

COMMON TERMS AND CONDITIONS: The following terms and conditions apply to both **rentals and sales** under this agreement. The failure by lessor at any time to insist upon performance by lessee of any conditions and/or terms of this agreement shall not be construed as a waiver of lessor's right to thereafter demand strict compliance with all terms and conditions hereunder. The terms and conditions set forth herein constitute the entire agreement between the parties hereto, and shall prevail over and be binding upon the parties regardless of any provisions contained in any purchase order, invoice or other comparable document which lessor may subsequently sign for the accommodation or convenience or at the request of lessee. No representations or statements by any representative or employee of lessor which are not stated herein shall be binding. Lessor may assign this agreement, and lessee hereby waives the right to assert against any assignee of lessor, or any subsequent assignee, any defense, counter-claim, set-off or claim, known or unknown, which lessee could assert against lessor in an action brought by lessor against lessee. Lessee agrees to pay all costs and expenses, including reasonable attorneys fees, incurred by lessor in enforcing or interpreting its rights hereunder. No waiver, alteration or amendment of any provisions hereof shall be binding on lessor unless made in writing and agreed to by a duly authorized representative of lessor. Time is expressly made of the essence of this agreement. This agreement shall be governed by and construed according to the laws of California.

TERM OF AGREEMENT: Where equipment leaves the lessor's premises in the morning, rental commences on that day and where equipment leaves the lessor's premises in the afternoon, rental commences on the day thereafter. Where equipment is returned to lessor's premises in the morning, rental terminates on the day before such return and where equipment is returned to lessor's premises in the afternoon, rental terminates on that day. No allowance will be made for Sundays, Holidays or time in transit, or any period of time the equipment may not be in actual use while in lessee's possession. Equipment ordered to be picked up by lessor from lessee's jobsite or premises remains the responsibility of the lessee until such time as lessor can dispatch an employee to make said pickup during regular business hours.

USAGE OF EQUIPMENT: Lessee's use of equipment shall be normal and reasonable, and lessee shall not abuse or harm the equipment in any way while it is in his possession. Lessee represents and declares that he fully understands the properties and operation of the equipment, that only qualified operators will operate the equipment and that such operators are experienced and knowledgeable of the processes, procedures and techniques necessary to use the equipment in a safe and workmanlike manner. Lessor is relying on lessee's representation. The Equipment is and at all times shall remain, personal property. Lessee shall not permit any part of it to become affixed or in any manner situated to, or imbedded in, or permanently on real property or improvements.

CONDITION OF EQUIPMENT: Lessee hereby acknowledges receipt of the equipment in good working order. Lessee further acknowledges that he has examined the equipment and declares that he has received all of such equipment in secure and good working condition. Lessee's failure to object in writing to the condition of the equipment within 6 hours after receipt thereof shall be deemed conclusive that all of the equipment was in good working order when delivered.

SHIPPING AND RETURN OF EQUIPMENT: Lessee is responsible for all transportation of equipment including pick-up and freight charges. Where Lessor ships equipment to lessee, lessor shall bill all freight charges incurred for shipping of equipment to Lessee at cost plus 10%. Lessee agrees to return all equipment to the location from which each such equipment was picked up or shipped from or as otherwise instructed by lessor. Lessee shall at its own cost return the equipment to lessor's premises during lessor's regular business hours in as good a working condition and state of repair as when delivered, subject to reasonable wear and use. Any equipment returned to Lessor without freight prepaid will be billed to lessee at cost plus 10%, or \$25.00, whichever is greater. In addition to any other liability arising hereunder, lessee shall be liable for all damage to or loss of the equipment occurring because it was not so returned within lessor's regular business hours.

DIRTY, DAMAGED, CONTAMINATED OR LOST EQUIPMENT: Lessee agrees to pay for any damage to, contamination of or loss of the equipment, regardless of cause, except reasonable wear and tear, but including acts of God, while the equipment is out of the possession of lessor. Lessee also agrees to pay a reasonable cleaning or decontamination charge for equipment returned dirty or contaminated. Accrued rental charges

cannot be applied against the purchase or cost of repair or decontamination of damaged, contaminated or lost equipment; rental charges for the equipment will continue until written notification of loss is received at lessor's premises. Equipment lost, damaged or contaminated beyond repair will be paid for by lessee at its replacement cost. The cost of repairs or decontamination will be borne by lessee, whether performed by lessor, or, at lessor's option, by others. In case of the mechanical or electrical failure of the equipment for any cause, lessee at lessee's expense shall return it to lessor's premises. Any mechanical or electrical failures of equipment occurring after equipment has been accepted by lessee must be reported to lessor at once and the equipment not used by lessee until such repairs are made. Lessee understands and agrees that without lessor's specific written authorization lessee may not make any mechanical or electrical adjustments or repairs or incur any expense for lessor's account.

LIABILITY: Lessee shall be liable for all damage to the equipment arising from any use, misuse or negligence of lessee or from any accident however arising. Lessee shall possess and operate the equipment in strict conformity with all applicable laws and regulations. Lessee covenants and agrees to indemnify and hold the lessor harmless and free from any and all claims, loss, damage or liability (including attorney's fees) arising out of the use, maintenance and return of the equipment, including without limitation any harm to third persons and/or their property caused by the negligence of lessee in possessing or operating the equipment, and lessee's failure to promptly notify lessor or to cooperate with lessor's representative in connection with any accident resulting in personal injury to lessee or any third party.

INDEMNITY: Lessee shall indemnify against, and hold lessor harmless from, any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including reasonable attorneys' fees arising out of, connected with, or resulting from the machinery and equipment, including without limitation the manufacture, selection, delivery, possession, use, operation or return of the equipment, whether or not they arise out of lessor's negligence. Each party agrees that it will give the other prompt notice of the assertion of any such claim or the institution of any such action, suit or proceeding.

SUBLETTING: NO PART OF THE EQUIPMENT SHALL BE SUBLET, TRANSFERRED OR ASSIGNED BY LESSEE OR REMOVED FROM THE LOCATION AT WHICH IT WAS INTENDED BY LESSOR TO BE USED, AS REPRESENTED BY LESSEE EXCEPT WITH THE PRIOR WRITTEN CONSENT OF LESSOR.

TITLE: Title to the equipment is now and at all times hereafter shall remain and be vested only in lessor. Lessee shall keep the lessee's interest in this agreement and the equipment free from all liens and encumbrances.

INSURANCE: Lessee shall acquire comprehensive, all-risk insurance against loss, theft, damage or destruction of the equipment in an amount no less than the full insurable value of the equipment. Lessor shall be named insured on lessee's insurance policy and all proceeds for such loss shall be payable solely to lessor. Lessee shall also provide comprehensive general liability insurance (including products liability) in an amount not less than \$1,000,000.00. Such insurance certificate shall provide lessor with ten (10) days notice of any cancellation. A certificate of insurance must be received by lessor before any equipment is shipped or allowed to be picked up.

DEFAULT: In the event of lessee's default or breach of any term or condition of this agreement, lessor may terminate this agreement and declare the entire unpaid balance immediately due and payable, and in addition to any remedy provided by law, at lessor's request lessee shall immediately: (a) assemble the equipment and make it available to the lessor at lessee's premises, or at such other place as lessor may designate; (b) permit lessor to enter upon lessee's premises and remove the equipment or render it unusable; or (c) permit lessor to dispose of the equipment on lessee's premises in such manner as lessor may determine.

TERMINATION OF AGREEMENT: This rental agreement may be immediately terminated by lessor for default or breach by lessee of any terms or conditions contained herein or upon the filing of any bankruptcy or insolvency petition by or against lessee or in the event the equipment is levied upon by any marshall, sheriff or constable by reason of execution, garnishment, attachment or for any reason whatsoever. Upon termination of this rental agreement for any reason whatsoever lessee shall immediately return the equipment to lessor as provided herein. If not so returned, lessor shall have the right to enter upon lessee's premises and remove and return the equipment at lessee's expense.

ACCIDENT, NOTICE AND INSPECTION: In the event the equipment is involved in an accident resulting in personal injury, lessee shall notify lessor of the particulars as soon as the injured person has been provided

for, but in no event more than four hours after the accident. Lessee shall maintain the equipment and preserve the site of the accident until lessor's representative has inspected the site, which inspection shall be conducted promptly after notification. Lessee shall cooperate with lessor's representative and shall provide access to such places, persons and reports as lessor's representative may reasonably request in the conduct of its investigation.

PURCHASE OPTION: The parties shall agree if lessee is to have an option to purchase any item of equipment at any time during the rental period. If lessee so elects to purchase equipment, lessor will apply a percentage of the preceding lease payments towards the purchase of such item of equipment as follows:

<u>If purchased</u>	<u>Percentage of previous month's rental payment applied to purchase price</u>
0-30 days after start of rental	100%
31-60 days after start of rental	70%
61-90 days after start of rental	60%
91 or more days after start of rental	50%,

provided, however, that in no event shall such rental credit exceed 50% of the list or replacement purchase price of such item of equipment.

CONSUMABLES: Tool bits and inserts are to be considered consumable items and are required to be purchased. Lessor may at its sole discretion accept unused standard tool bits from lessee with full credit. Non standard tool bits or used tooling cannot be returned for credit.

RENTAL PERIOD: The rental periods shall be as agreed between lessor and lessee. For equipment for machinery of up to but not including 12 inch pipe size, the equipment may be rented for daily, weekly or monthly periods. For equipment for machinery of 12 inch pipe size or more, the equipment may be rented for three day, weekly or monthly periods.

CANCELLATIONS: Rental orders that are canceled less than 12 hours prior to shipment or pick up will be charged one day's rental rate as a cancellation fee.

WARRANTY INFORMATION: EXCEPT INSOFAR AS THE ITEMS SOLD PURSUANT TO THIS AGREEMENT BEAR SUCH WARRANTIES AS THEIR MANUFACTURERS ALLOW THERE IS NO WARRANTY OF MERCHANTABILITY OR THAT THE EQUIPMENT (OR ITEMS SOLD) IS FIT FOR A PARTICULAR PURPOSE, NOR DOES LESSOR MAKE ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, THAT EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF OR TO ANYONE OTHER THAN LESSEE. ALL USED, REPAIRED, MODIFIED OR ALTERED ITEMS ARE PURCHASED "AS-IS" AND WITH ALL FAULTS. LESSOR SHALL NOT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, AND LESSEE'S SOLE AND EXCLUSIVE REMEDY SHALL BE THE RETURN OR REPLACEMENT OF THE EQUIPMENT AND REFUND OF THE CHARGES PAID FOR TIME WHEN INOPERABLE.