

## **EQUIPMENT LEASE AGREEMENT**

This Equipment Lease Agreement is made on the date listed above, between B & D Equipment Rental, LLC of 2150 McKay Road, Corunna, MI 48817 ("Lessor"), and customer listed above whose address is listed above ("Lessee"), collectively the "Parties".

This is a rental agreement related to the Equipment described below for the timeframe set forth herein. All Equipment is to be used by Lessee at Lessee's risk. Lessee has inspected the Equipment, agrees it is in proper functional condition and will be returned in like condition, on time with reasonable wear and tear allowed.

### **AGREEMENT**

In consideration of the mutual acts and promises, the Parties agree as follows:

1. *Lease.* Lessor leases to Lessee, and Lessee leases from Lessor the equipment listed on the invoice above.
2. *Rent and Term.* This Lease shall commence upon execution and shall continue at the agreed upon rate above for the term described in the invoice. Accordingly, Lessee shall return the Equipment on or before lease end date (listed above). Lessee agrees to pay the full rent for the Term stated irrespective of whether Lessee returns the Equipment prior to conclusion of the Term. Lessor may nonetheless provide a credit for early return in its discretion. The Rent price shall be paid to Lessor in full prior to rental. Any Rent which may be due and unpaid at the time the Equipment is returned shall be paid upon return of the Equipment. To the extent that Lessee retains the Equipment beyond the Term set forth above, Lessee agrees to pay a daily rate equal to 120% of the rate set forth above computed on a daily basis. Any Rent remaining unpaid or costs of repair for excessive wear or damage to the Equipment may be paid at the address set forth above, or at any other address that Lessor shall specify in writing. The sums payable under this Lease shall not entitle Lessee to any equity interest in the Equipment.
- Lessor and Lessee understand and agree that certain Equipment may have meters on it that measures use in time. In the event the Equipment rented is metered, Lessee agrees that it has reviewed the terms and conditions and understands the daily limits on use of metered Equipment.
3. *Security Deposit.* Lessee hereby provides a security deposit, which will be returned to Lessee upon return of the Equipment in proper functioning condition with reasonable wear allowed. Lessee hereby agrees to the application of the Deposit to pay any Rent which may remain due and for repairs necessary to restore the Equipment to the appropriate condition.
4. *Insurance.* Lessee agrees to procure and maintain liability insurance, covering both damage to persons and property incurred during the use of the Equipment in commercially appropriate sums. The insurance policy shall cover liability for any loss, damage, injury or other casualty to persons or property caused or occasioned by or arising from any use of the Equipment by or negligence of Lessee or any of Lessee's agents, servants, visitors, licensees or employees during the Lease term. The insurance policy also shall provide for full standard extended risk insurance covering damage to the Equipment by fire, wind, storm, or other insurable casualties, in an amount equal to the full insurable replacement value of the Equipment. A copy of the insurance policy or a certificate of coverage shall be provided to Lessor and

shall name Lessor as an additional insured where appropriate. Lessee further agrees to indemnify and hold Lessor harmless from any and all liability that may result to Lessor as a result of this Agreement or Lessee's use of the Equipment rented herein.

*5. Responsibility for Care, Use, and Maintenance of Equipment.*

a. Lessee shall maintain the Equipment in good condition and repair and shall make all necessary repairs and adjustments at Lessee's expense.

b. Lessee agrees that the Equipment will be operated in a competent manner.

c. Lessee agrees to locate the Equipment and use it only at the location Lessee provided above. Lessee agrees not to remove the Equipment from this location without first obtaining the written consent of Lessor unless such location is also listed above.

d. Lessee agrees not to change, alter, or remove, or permit to be changed, altered, or removed, any insignia, lettering, serial number, or model name on the Equipment. If requested by Lessor, Lessee shall identify the Equipment conspicuously with a sign or lettering indicating Lessor's ownership.

e. In the event of any loss, theft, or destruction of all or any part of the Equipment, or damage of it beyond repair, Lessee shall notify Lessor promptly and hold the Equipment or any wreckage available for disposal.

f. Lessee agrees not to permit others to use the Equipment, for hire or otherwise, without first obtaining the written consent of Lessor.

*6. Ownership.* The Equipment is, and shall at all times remain, the sole and exclusive property of Lessor; Lessee shall have no right, title or interest in it except as expressly set forth in this Lease.

*7. Personal Property.* The Equipment is, and shall at all times remain, personal property and shall not become a fixture or become a part of the real estate upon which it is located.

*8. Assignment; Subletting.* Lessee agrees not to assign, sublease, or transfer the leasehold interest in the Equipment granted under this Lease without first receiving the prior written consent of Lessor.

*9. Quiet Enjoyment.* Lessor covenants and agrees with Lessee that if Lessee performs all of the conditions and covenants in this Lease, Lessee shall peaceably and quietly hold, possess and use the Equipment.

*10. Security Interest.* Although the Parties specifically intend that the Equipment is being leased only and do not intend to sell or purchase the Equipment now or later, if there is any claim that the Lease actually is a sale, then Lessee grants Lessor a security interest in the Equipment.

*11. Default.* If Lessee (1) defaults in making any payment under this Lease or violates or fails to perform any of the terms and provisions contained in this Lease, or (2) becomes insolvent, files a petition in bankruptcy, has a receiver appointed, executes an assignment for the benefit of creditors, ceases doing business as a going concern, has a writ of attachment, garnishment, execution or other legal process issued against Lessee, the Equipment, or any of Lessee's other property, or attempts to remove, sell, transfer, encumber, sublet or part with possession of the Equipment, then Lessor or its agents may, without demand or notice, terminate this Lease Agreement and enter, with or without process of law, into any premises of or under the control or jurisdiction of Lessee or any agent of Lessee where the

Equipment may be and take possession of the Equipment, and may disconnect and separate the Equipment from any other property using all necessary force permitted by law. Lessee expressly waives all further rights to possession of the Equipment and all claims for injury suffered through or loss caused by the repossession.

12. *Notices.* Any notice specified in this Lease shall be deemed properly given if delivered in writing personally or by certified mail to the Parties at their addresses listed above, or at any other addresses that may be communicated by the Parties to each other in writing.

13. *Severability.* If any provisions of this Lease are determined to be illegal or unenforceable, then the remaining provisions shall nevertheless be binding with the same force and effect as if the illegal or unenforceable parts were deleted.

14. *Headings.* The headings contained in this Lease are for convenience only and are not to define, explain, modify or aid in interpreting the contents of this Lease.

15. *Binding Effect.* This Lease shall be binding upon and shall inure to the benefit of Lessor and Lessee and their respective heirs, administrators, successors and assigns.

16. *Governing Law.* This Lease Agreement shall be subject to and governed by the laws of the State of Michigan, and the Parties consent to jurisdiction of the Michigan courts over this Agreement and over the Parties in any proceeding to enforce this Agreement.

17. *Counterparts.* This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

18. *Gender and Number.* As used in this Lease, unless the context clearly indicates the contrary, the singular number shall include the plural, the plural the singular, and the use of any gender or neuter shall be applicable to all genders and neuters.

19. *Enforcement Costs.* In the event of default by Lessee, including retention of the Equipment beyond the Term, Lessee agrees that, in addition to any and all rental or other sums due and owing Lessor from Lessee, Lessee shall be responsible for payment of any and all costs incurred by Lessor to enforce the terms of this Agreement, including reasonable attorney fees. Lessor does not have to prevail on every claim in order to be entitled to the grant of attorney fees. The fees associated with enforcement of the default shall be payable nonetheless.

**20. Reservations.** Reservations are only valid after the initial deposit has been made. Lessee may cancel the reservation anytime free of charge prior to being within 24 hours of the rental reservation. Lessee may reschedule rental one (1) time free of charge rather than canceling the reservation. If Lessee needs to reschedule a second time, the reservation will be treated as a cancellation.

**21. Cancellations.** Cancellations are free of charge prior to being within 24 hours of the rental reservation. If cancellation is within 24 hours of rental, a cancellation fee of 50% of the deposit will be charged to Lessee.

**22. *Express Waiver of Liability.* BY SIGNING ABOVE AND IN CONSIDERATION OF LESSOR'S WILLINGNESS TO RENT THE EQUIPMENT TO LESSEE, LESSEE HEREBY WAIVES ANY AND ALL RIGHTS TO CLAIM**

**LIABILITY IN RELATION TO THE USE OF THE EQUIPMENT AND EXPRESSLY ASSUMES ANY AND ALL RISK ASSOCIATED WITH THE USE OF SAID EQUIPMENT IN ITS CONDITION AT THE TIME OF RENTAL.**

**Terms and Conditions:**

**Responsibility** - Responsibility for rental items remains with the customer from the time of possession to return. All items should be properly cared for and kept clean. Additional charges for repair or cleaning fees may be charged.

**Past Due Rent or Charges** – Lessee agrees to pay all charges within 30 days of notice of any funds due and owing. Any funds which may remain due and owing beyond 30 days shall bear interest at the rate of 12% per annum compounded daily.

**Metered Items** - Rates for rental items equipped with hour meters are based on 8 hours per day, 40 hours per week, and 160 hours per month. Additional usage will be charged accordingly.

**Damage Waiver** – To the extent that loss or damage to a piece of Equipment exceeds \$5,000, B&D Equipment Rental agrees to waive rights to recover from the Lessee amounts for any loss or damage to the Equipment, including, but not limited to theft, vandalism, fire, and most collisions. The following exceptions apply:

- Loss or damage to tires and/or tubes unless such loss or damage coincides with other waived loss or damage.
- Order of any civil authority or enforcement of any ordinance or law.
- War, nuclear reaction, nuclear radiation or radioactive contamination.
- Mysterious disappearance, or shortage of property, where there is no physical evidence to show what happened to the Equipment.
- Mechanical breakdown, temperature/humidity, wear and tear, or any quality, fault, or weakness in the equipment that causes it to damage itself. But, warranty or other agreements may apply
- Pollutants; solid, chemical, gaseous, thermal or waste contamination.
- Reckless (including willful neglect, misuse, or abuse), criminal, fraudulent, dishonest, or illegal acts by the Customer
- Weight of load exceeding the rated capacity of the Equipment
- Submersion in water above the height of the Equipment's tracks or wheels. Transportation or use on water.
- Equipment while leased or loaned to other than the Customer
- Theft or vandalism of the Equipment NOT documented by the Customer's filing for a police report (a formal written sworn statement) within 48 hours of the Customer's knowledge of the theft or vandalism.
- Any peril or risk covered by any other insurance coverage that Customer may have in place and is required to be maintained by the Agreement.
- Use or operation of Equipment in violation of the Agreement or in the absence of an Agreement.

**Availability/Reservations** - Please call for item availability. We cannot control return times of rental items or when customers request additional rental time. You as a Lessee understand and agree to the additional rent for Equipment retained past the contemplated return date due to this consideration.

**Pricing** - Prices are subject to change. Please call for price quotes. All rental charges are for time out, whether used or not. Meters on items are only considered for excessive use and based upon the timeframes alluded to above.

**Delivery and Pick-up** – Lessee is responsible for the Equipment at all times it is not located at Lessor's location unless specifically agreed to the contrary in writing. Lessor may agree in writing to deliver the Equipment to a specific location at an additional charge. If Lessor agrees to pick up, Lessee shall schedule a time and place convenient for Lessor for pickup of the Equipment during the Rental Term.

**Cleaning Fee** - Equipment is to be returned in the same condition or better than when it was rented. In the event Lessee returns equipment that requires cleaning service, Lessee will be charged a minimum cleaning fee of \$200. This includes the interior and exterior of equipment as well as the trailer and attachments.

**Fuel Fee** - Lessee agrees to refuel equipment to the equivalent amount as when Lessee took possession. In the event the Lessor refuels the equipment, Lessee agrees to pay the fuel service fee. Fees vary based on the price of fuel.