

TERMS AND CONDITIONS ©

THIS IS A RENTAL AGREEMENT. IT SHALL NOT BE CONSTRUED AS A PURCHASE AND SALE AGREEMENT FOR THE RENTAL EQUIPMENT OR PROVIDE CUSTOMER WITH ANY OPTION TO PURCHASE THE RENTAL EQUIPMENT. FOR THE PURPOSE OF THIS RENTAL AGREEMENT, "PETERSON" SHALL MEAN PETERSON TRACTOR CO., ITS OWNERS, OFFICERS, DIRECTORS, SHAREHOLDERS, AND EMPLOYEES, AND "CUSTOMER" SHALL MEAN CUSTOMER, ITS AGENTS AND/OR EMPLOYEES. IN CONSIDERATION OF HIRING OF THE EQUIPMENT (HEREIN "THE RENTAL EQUIPMENT OR EQUIPMENT") DESCRIBED ON THE FRONT OF THIS RENTAL AGREEMENT IT IS AGREED AS FOLLOWS:

1. INDEMNITY/HOLD HARMLESS. CUSTOMER WILL TAKE ALL NECESSARY PRECAUTIONS REGARDING THE EQUIPMENT RENTED, AND PROTECT ALL PERSONS AND PROPERTY FROM INJURY OR DAMAGE. CUSTOMER AGREES TO HOLD HARMLESS PETERSON FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, JUDGMENTS, ATTORNEYS' FEES AND COSTS, OF EVERY KIND AND NATURE, INCLUDING, BUT NOT LIMITED TO INJURIES OR DEATH TO PERSONS AND DAMAGE TO PROPERTY, ARISING OUT OF THE USE, MAINTENANCE, INSTRUCTION, OPERATION, POSSESSION, OWNERSHIP OR RENTAL OF THE EQUIPMENT RENTED, HOWEVER CAUSED, EXCEPT CLAIMS OR LITIGATION ARISING THROUGH THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF PETERSON.

2. ASSUMPTION OF RISK/RELEASE-DISCHARGE OF LIABILITY. CUSTOMER IS FULLY AWARE AND ACKNOWLEDGES THERE IS A RISK OF INJURY OR DAMAGE ARISING OUT OF THE USE OR OPERATION OF THE EQUIPMENT RENTED HEREUNDER AND HEREBY ELECTS TO VOLUNTARILY ENTER INTO THIS RENTAL AGREEMENT AND ASSUME ALL OF THE ABOVE RISKS OF INJURY OR DAMAGE. CUSTOMER AGREES TO RELEASE AND DISCHARGE PETERSON FROM ANY AND ALL RESPONSIBILITY OR LIABILITY FOR SUCH INJURY OR DAMAGE ARISING OUT OF THE USE OR OPERATION OF THE EQUIPMENT; AND CUSTOMER FURTHER AGREES TO WAIVE, RELEASE AND DISCHARGE ANY AND ALL CLAIMS FOR INJURY OR DAMAGE AGAINST PETERSON WHICH CUSTOMER OTHERWISE MAY BE ENTITLED TO ASSERT.

3. OPERATORS. No operators are furnished, directly or indirectly with our equipment.

4. ACCIDENT REPORTING. In the event of an occurrence in connection with the equipment which causes damage to the equipment, or any other property damage or personal injury, Customer shall immediately stop using said equipment, secure it to maintain its condition as it was at the time of occurrence, and shall immediately inform Peterson of the occurrence. Customer shall cooperate with Peterson in obtaining names of witnesses of the occurrence and such other information pertinent therein.

5. RECEIPT/INSPECTION OF EQUIPMENT. Customer hires the equipment on an "as is" basis. Customer acknowledges that he has, or will, personally inspect the equipment prior to its use and finds it suitable for the Customer's needs. Customer acknowledges receipt of all items listed in this Rental Agreement and that the equipment is in good working order and repair and that Customer understands (without further instructions) its proper operation and use.

6. POSSESSION/TITLE. Customer's right to possession of the equipment begins upon equipment leaving Peterson and terminates on the return of the equipment to Peterson as provided for herein. Customer shall provide adequate, customary security for said equipment while in Customer's possession. Time is of the essence of this Rental Agreement. Title to the equipment is and shall remain at Peterson. If the equipment is not returned and/or is levied upon for any reason whatsoever, Peterson may retake said equipment without further notice or legal process and use whatever force is reasonably necessary to do so. Customer hereby agrees to indemnify, defend and hold Peterson harmless from any and all claims and costs arising from such retaking and/or levy. If equipment is levied upon, Customer shall notify Peterson immediately.

7. RENTAL PERIOD/RATE/PAYMENT. The Rental Period is for a minimum of twenty-four (24) hours unless a shorter term is specified in the Rental Agreement Agreed Return Date on the front of this Rental Agreement. Rental rates are based upon single shift usage (eight hours per day, five days per week). If Customer makes greater use of the equipment, it is agreed that the additional usage will be charged. Rental charges begin immediately upon equipment leaving Peterson. Rental charges end upon return of the equipment to Peterson in an acceptable condition. No allowance will be made for Saturdays, Sundays, Holidays, or time in transit, for any period of time the equipment may not be in actual use while in Customer's possession. If the equipment is returned prior to the end of the minimum rental period, the rental due shall be for the entire minimum rental period. Peterson may terminate this rental at anytime and retake the equipment without further notice in case of violation by Customer of any terms or conditions of this Rental Agreement, including failure to pay any sum due under this Rental Agreement. When due, Customer agrees to pay any collection costs and attorney fees incurred in collection of this account or any dispute arising out of this Rental Agreement. Customer agrees to pay a monthly service charge on all unpaid balances of one and one half percent (1.5%) per month, eighteen percent (18%) per year on overdue balances until paid. Customer agrees to pay Peterson a fee for environmental compliance.

8. WHO MAY OPERATE THE EQUIPMENT. Only Customer and the following persons, with Customer's permission ("Authorized Operators"), may operate the equipment: members of the Customer's immediate family who permanently reside with Customer, Customer's employer, employees, fellow employees in the course of such employee's regular employment; or persons approved by Peterson in writing. All additional operators must be at least 21 years of age; receive and understand safety and operating instructions; utilize all safety equipment required to operate and/or use the equipment; be properly qualified to operate the equipment; and have a valid operator's license with respect to the equipment required by law.

9. CUSTOMER HAS RISK OF LOSS/ORDINARY WEAR AND TEAR. From the date and time Customer shall take possession of each item of equipment, such date and time being entered by Peterson on the front of the Rental Agreement, and until such item shall be returned to Peterson, Customer shall bear all risk of loss of the item resulting from all causes except the gross negligence or willful misconduct of Peterson. Customer shall be responsible for all damage not caused from ordinary wear and tear. "Ordinary wear and tear" shall mean only the normal deterioration of the equipment caused by ordinary, reasonable and proper use of the equipment. Damage which is not "ordinary wear and tear" includes, but is not limited to: damage due to overturning, overloading or exceeding rated capacities; breakage, improper use, abuse; lack of cleaning, dirtying of equipment by paint, mud, plaster, concrete, rosin or any other material. An item of equipment shall be "lost" when the cost of repair equals or exceeds the amount necessary to replace the item with a new item of equipment equivalent in the discretion of Peterson, with the item which was lost (the "Replacement Cost"). "Lost" shall also mean total loss, either by destruction, theft, misplacement, or other means. If an item of equipment is lost, Customer shall, on demand, pay to Peterson funds equivalent to the replacement cost of the item which

was lost. If an item is damaged to an extent that the item has not been "lost", Customer shall on demand, pay to Peterson all repair charges, including parts and labor, at Peterson's standard rates or the rates charged by any other repair shop selected by Peterson, should Peterson elect to have the item repaired elsewhere. In either event, whether an item be lost or damaged, Customer shall notify Peterson within twenty-four (24) hours after such loss or damage. In the case of a lost item, the rental charges shall continue to accrue until full payment as required herein is made by Customer, where equipment has been damaged, the rental charges shall continue to accrue until all repairs have been completed by Peterson or by another repair shop selected by Peterson. Customer is responsible for any repair or replacement of tires or tracks due to loss or damage beyond normal wear inherent in the use of the equipment. This will include up to the full replacement cost of said tires, tubes, or tracks.

10. INSURANCE REQUIREMENTS. Customer shall cause each item of equipment rented from Peterson to be covered by a property casualty insurance policy issued by an insurance company with a rating of AA or better in Best's Insurance Guide. Said policy shall be sufficient to fund the obligations of Customer under Section 9 to pay for damage to any item should an item be damaged and to pay for the replacement cost of the item should an item be lost. Customer shall also maintain a Commercial General Liability Policy in an amount not less than \$1,000,000.00 per occurrence/\$2,000,000.00 general aggregate against claims for bodily injury, death or property damage arising in connection with the equipment rented by Peterson to Customer. Peterson must be named as Additional Insured on a form equivalent to CG2028 11/85 and it must state the insurance is primary and non-contributory with any insurance carried by Peterson. Customer shall also provide certificates or other evidence showing an Equipment Floater including coverage for Equipment Rented From Others with Peterson named as Loss Payee with respect to equipment rented. Customer is required to carry physical damage insurance on a replacement cost basis for the equipment being rented.

11. COMPLIANCE WITH LAWS/USE OF EQUIPMENT. Customer specifically acknowledges its obligations under Section 4216 et seq. of the California Government Code which requires persons conducting excavations to contact the appropriate regional notification centers regarding such excavations. It is the sole responsibility of the lessee or renter to follow the requirements of the regional notification center law pursuant to Article 2 (commencing with Section 4216) of Chapter 3.1 of Division 5 of Title 1 of the Government Code. By signing this contract, the lessee, or renter accepts all liabilities and responsibilities contained in the regional notification center law. Customer agrees not to use or allow anyone to use the equipment for any illegal purpose for any illegal manner or in an unsafe manner. Customer agrees at his sole cost and expense to comply with all municipal, county, state and federal laws, ordinances and regulations which may apply to the use of the equipment during the rental period. Customer further agrees to pay all licenses, fines, fees, permits, or taxes arising from his/her use of the equipment, including any subsequently determined to be due. Customer shall not: allow any person to use or operate the equipment when it is in need of repair or when it is in an unsafe condition or situation; modify, misuse, harm or abuse the equipment; permit any repairs to the equipment without Peterson's prior permission; or allow a lien to be placed upon the equipment. Customer at his own expense agrees to check filters, oil, fluid levels, air pressure, clean and visually inspect the equipment at least daily and to immediately discontinue use and notify Peterson when equipment is found to need repair or maintenance or when it is not properly functioning. Customer acknowledges that Peterson has no responsibility to inspect the equipment while it is in Customer's possession.

12. RETURN OF EQUIPMENT. Customer agrees to return to Peterson the equipment in as good a condition as when received, ordinary wear and tear excepted by the Rental Agreement Agreed Return Date. Customer agrees to pay to have the fuel tanks be returned to full at the conclusion of the rental. Customer shall be liable for all damages to or loss of the equipment and liability incurred prior to equipment's return to Peterson. Customer shall be responsible for all costs incurred by Peterson recovering and returning damaged equipment to Peterson's premises. If equipment is to be "picked-up" by Peterson, Customer agrees to provide a secure storage location and Customer accepts all risk including damage to and liability relative to equipment until the equipment is picked-up by Peterson.

13. DISCLAIMER OF WARRANTIES. Peterson makes no warranty of merchantability or fitness for any particular use or purpose, either expressed or implied. There is no warranty or representation that the equipment is fit for Customer's particular intended use, or that it is free of latent defects. Peterson shall not be responsible to Customer or any third party for any loss, damage or injury resulting from, or in any way attributable to the operation of, use of, or any failure of the equipment. Peterson shall not be responsible for any defect or failure unknown to Peterson. Customer's sole remedy for any failure of or defect in the equipment shall be termination of the rental charges at the time of failure provided that Customer notifies Peterson immediately of such failure and returns the equipment to Peterson within twenty-four (24) hours of such failure.

14. PURCHASE ORDERS. The use of Customer's purchase order number on this Rental Agreement is for Customer's convenience and identification only.

15. RETAKING OF EQUIPMENT. If, for any reason, it becomes necessary for Peterson to retake the equipment, Customer authorizes Peterson to retake the equipment without further notice or further legal process and agrees that Peterson shall not be liable for any claims for damage or trespass arising out of the removal of the equipment.

16. LEGAL FEES. In the event an attorney is retained to enforce any provision of this Rental Agreement, the prevailing party in the dispute shall be entitled to recover reasonable attorney's fees and court costs in such action, or proceeding, in an amount to be determined by the court.

17. NOTICE OF NON-WAIVER/SEVERABILITY. Any failure of Peterson to insist upon strict performance by Customer as regards to any provision of this Rental Agreement shall not be interpreted as a waiver of Peterson's right to demand strict compliance with all other provisions of this Rental Agreement against Customer or any other person. The provisions of this Rental Agreement shall be severable so that the enforceability, invalidity or waiver of any provision shall not reflect any other provision.

18. GENERAL PROVISIONS. This Agreement shall be binding on, and inure to the benefit of Peterson and Customer and their respective successors and assigns (it being understood, however, that Customer shall not assign its rights under this Agreement without the prior express written consent of Peterson). The indemnities and assumptions of liabilities and obligations by Customer under this Agreement shall continue in full force and effect notwithstanding the return of the equipment. Neither Peterson nor Customer is bound by any understanding with regard to the rental of said equipment not expressly set forth in this Agreement. The failure of Peterson to enforce any of its rights hereunder shall not constitute a waiver of those rights. If any provision of this Agreement shall be unenforceable, for any reason whatsoever, this Agreement shall remain in full force and effect and shall be enforceable in accordance with its terms as if the unenforceable provision were not included herein.

19. MISCELLANEOUS. This Rental Agreement may be executed or delivered by facsimile. If specific contract is not signed, payment of invoice and/or use of equipment will be deemed as acceptance of all terms and conditions herein.