

## EQUIPMENT RENTAL AGREEMENT

### Basic Rental Information

Date: \_\_\_\_\_

#### Customer Information:

Name: \_\_\_\_\_ (“Lessee”)

Driver’s License No: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

Security Deposit Amount: \$ \_\_\_\_\_

#### Equipment:

Make: \_\_\_\_\_ Model: \_\_\_\_\_ Year: \_\_\_\_\_

Serial Number: \_\_\_\_\_ Hours: \_\_\_\_\_

Rental Start Date: \_\_\_\_\_ Time: \_\_\_\_\_

Rental End Date: \_\_\_\_\_ Time: \_\_\_\_\_

Rental Rate: \$ \_\_\_\_\_

Delivery/Pickup Rate: \$ \_\_\_\_\_

Delivery/Pickup Location: \_\_\_\_\_

Prepaid fuel option price: \$ \_\_\_\_\_

By initialing here, Lessee elects the prepaid fuel option: \_\_\_\_\_

**Total:** \$ \_\_\_\_\_

The Parties hereby acknowledge that they have read and agree to this Equipment Rental Agreement (“Agreement”) which includes the following terms and conditions and have executed this Agreement as of the date first above written.

Lessor: The Yard Equipment Rentals, LLC

Lessee: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## Terms and Conditions

The Yard Equipment Rentals, LLC, a California limited liability company ("**Lessor**"), and Lessee may be referred to herein individually as a "**Party**" or collectively as the "**Parties**". The Basic Rental Information set forth on Page 1 and these terms and conditions are and shall be construed as a single instrument. In the event of any conflict between any of the Basic Rental Information and the balance of this Agreement, the latter shall control.

1. **Lease.** Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, the equipment described more fully in the Basic Rental Information (the "**Equipment**").

2. **Operation.** Lessee shall at its expense keep and maintain the Equipment in a good state of repair, normal wear and tear excepted, and shall use the Equipment only for its intended purpose and follow Lessor's instructions regarding the use and maintenance of the Equipment. For Equipment installed with an hour meter, Lessee's actual use of the Equipment shall not exceed eight (8) hours per 24-hour rental period, and Lessee agrees to pay Twenty-Five Dollars (\$25) per hour for usage in excess of this amount, in addition to the Rent described in Section 3.

3. **Rent.** In consideration of Lessee's right to possess and use the Equipment during the Term (as defined in Section 11), Lessee shall pay the rent at the rate specified in the Basic Rental Information ("**Rent**") in advance. No credit shall be due or payable for Equipment returned early.

If by the expiration of the Term, Lessee does not return possession of the Equipment to Lessor in the condition and on the terms and conditions of Section 7, Lessee shall continue to comply with all the terms and conditions of this Agreement, including the obligation to pay 110% of the prorated daily Rent for each day from the expiration of the Term until the date on which Lessee returns such Equipment to Lessor in the manner required under Section 7 ("**Holdover Rent**"). Lessee shall not construe anything contained in this Section, including Lessee's payment of Holdover Rent, as Lessor's (a) waiver of Lessee's failure to perform any obligation under this Agreement; or (b) assent to any renewal of this Agreement. Lessee agrees that Lessor may from time to time charge Lessee's credit card account listed herein for unpaid Holdover Rent.

In the event Lessor is unable to charge Lessee's credit card on file, Lessee shall pay interest on all unpaid sums due at the lesser of the rate of ten percent (10%) per annum and the highest rate permissible under applicable law. Lessee shall reimburse Lessor for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. Payment of any late charge does not excuse Lessee of any default under this Agreement.

4. **Limited Warranty.** Lessor shall replace the Equipment with identical or similar Equipment if the Equipment fails to operate in accordance with the manufacturer's specifications and operation instructions. Such replacement shall be made as soon as practicable after Lessee returns the non-conforming Equipment. Lessee shall return all non-conforming Equipment at its expense and risk of loss to Lessor to the destination specified by Lessor.

The limited warranty above does not apply where the Equipment has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions, or use contrary to any instructions issued by Lessor, or used with any hardware, software, or product that has not been previously approved in writing by Lessor.

OTHER THAN AS SET FORTH ABOVE, LESSOR MAKES NO WARRANTY WHATSOEVER, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY AGAINST INTERFERENCE; OR (d) WARRANTY AGAINST INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET, OR OTHER PROPRIETARY RIGHTS OF A THIRD PARTY; WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

THE REMEDIES SET FORTH IN THIS SECTION 4 ARE LESSEE'S SOLE AND EXCLUSIVE REMEDIES AND LESSOR'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH HEREIN.

5. **Title and Risk of Loss.** Title to the Equipment remains with Lessor throughout the Term, and Lessee shall acquire no right, title, or interest in the Equipment. Lessee shall not pledge or encumber the Equipment in any way. Lessee shall bear all risk of loss, damage, destruction, theft, and condemnation to or of the Equipment from any cause whatsoever ("**Loss**") until the Equipment has been returned to Lessor to the destination specified in Section 7.1. Lessee shall notify Lessor within twenty-four (24) hours of any such Loss.

6. **Security Deposit.** Prior to taking possession of the Equipment, Lessee shall deposit with Lessor a security deposit, as specified in the Basic Rental Information, as security for the performance of Lessee of the terms under this Agreement and for any damages caused by Lessee or Lessee's agents to the Equipment during the Term. Lessor may use part of all of the security deposit to repair any damage to Equipment caused by Lessee or Lessee's agents. However, Lessor is not limited to the security deposit amount and Lessee remains liable for any balance. Lessee shall not use or deduct any portion of any security deposit from last or any month's rent. Lessee shall not use or apply any such security deposit at

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any time in lieu of payment of rent. If Lessee breaches any terms or conditions of this Agreement, Lessee shall forfeit any deposit, as permitted by law.

### 7. Return of Equipment.

7.1 Obligation to Return Equipment. Lessee shall, at its risk and expense, no later than the expiration of the Term (a) clean and inspect the Equipment; and (b) return the Equipment to Lessor at the location in the Basic Rental Information.

7.2 Condition of Equipment Upon Return. Lessee shall cause the Equipment returned for any reason under this Agreement to (a) be free and clear of all liens (other than liens of Lessor) and rights of third parties; (b) be in the same condition as when delivered to Lessee, ordinary wear and tear excepted; (c) be returned with a full fuel tank, subject to Section 7.3; and (d) be in compliance with applicable law. Lessee shall be responsible for the cost to repair the Equipment beyond ordinary wear and tear. If, in Lessor's reasonable discretion, the returned Equipment is not repairable, Lessee will be charged the fair market value of the Equipment.

7.3 Fuel Option. Lessee may elect a prepaid fuel option for all Equipment that runs on gasoline or diesel fuel. The amount of this fee varies by machine and is dependent on the size of the fuel tank. If Lessee elects the prepaid fuel option, then Lessee is not responsible for returning the Equipment full of fuel. If Lessee does not elect the prepaid fuel option and fails to return the Equipment full of fuel, Lessee will be charged the full amount of the prepaid fuel option.

8. Compliance with Law. Lessee shall (a) comply with all applicable laws, regulations, and ordinances and (b) maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement.

9. Indemnification. Lessee shall indemnify, defend, and hold harmless Lessor and its officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, arising out of or occurring in connection with Lessee's use or possession of the Equipment, or Lessee's negligence, willful misconduct, or breach of this Agreement. Lessee shall not enter into any settlement without Lessor's or Indemnified Party's prior written consent.

10. Term and Termination. The lease will start and end on the dates listed in the Basic Rental Information (the "**Term**"). In addition to any remedies that may be provided in this Agreement, either Party may terminate this Agreement

with immediate effect upon notice to the other Party, if the other Party: (i) fails to pay any amount when due under this Agreement and such failure continues for three (3) business days after the other Party's receipt of notice of nonpayment; (ii) has not otherwise performed or complied with any of the terms of this Agreement, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy, or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors. If Lessee is in default of any of the terms and conditions of this Agreement, Lessor, and its agents, at Lessee's risk, cost, and expense may enter Lessee's premises where the Equipment is stored or used and recover the Equipment.

11. Entire Agreement. This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter. No amendment to or modification of this Agreement is effective unless it is in writing and signed by each Party.

12. Notices. Any notice required or otherwise given pursuant to this Agreement shall be in writing and: (a) personally delivered; (b) sent by certified, registered, or overnight mail or courier, or (c) delivered by electronic mail with a copy by US Mail, to the addresses on page 1.

13. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

14. Waiver. No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

15. Cumulative Remedies. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties, or otherwise. Notwithstanding the previous sentence, the Parties

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intend that Lessee's rights under Section 4 are Lessee's exclusive remedies for the events specified therein.

16. Assignment; Successors and Assigns. Lessee shall not assign, transfer, delegate, or subcontract any of its rights or obligations under this Agreement without the prior written consent of Lessor. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve Lessee of any of its obligations hereunder. Lessor may at any time assign, transfer, or subcontract any or all of its rights or obligations under this Agreement without Lessee's prior written consent. This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.

17. No Third-Party Beneficiaries. This Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

18. Choice of Law and Choice of Forum. This Agreement and all matters arising out of or relating to this Agreement are governed by, and construed in accordance with, the laws of the State of California, without regard to the conflict of laws provisions of such State. Any legal suit, action, or proceeding arising out of or relating to this Agreement must be instituted in the federal courts of the United States of America or the courts of the State of California, in each case located County of Alameda, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

19. Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT, INCLUDING EXHIBITS, SCHEDULES, ATTACHMENTS, AND APPENDICES ATTACHED TO THIS AGREEMENT, IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS, SCHEDULES, ATTACHMENTS, OR APPENDICES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

20. Limitation of Liability. IN NO EVENT SHALL LESSOR BE RESPONSIBLE OR LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, OR LOST PROFITS, ARISING OUT OF OR RELATING

TO ANY BREACH OF ANY PROVISION OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT LESSOR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL LESSOR'S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE TOTAL OF THE AMOUNTS PAID TO LESSOR HEREUNDER.

21. Assumption of Risk. LESSEE HEREBY ASSUMES ALL RISKS, SEEN AND UNFORESEEN, AND ANY HARM, INJURY, OR LOSS THAT MAY OCCUR TO LESSEE OR LESSEE'S PROPERTY AS A RESULT OF LESSEE'S USE OF THE EQUIPMENT. LESSEE HEREBY RELEASES LESSOR AND INDEMNIFIED PARTY FROM ALL LIABILITIES, CAUSES OF ACTION, CLAIMS, AND DEMANDS THAT ARISE IN ANY WAY FROM ANY INJURY, DEATH, LOSS, OR HARM THAT OCCUR TO LESSEE OR TO ANY OTHER PERSON OR PROPERTY AS A RESULT OF OPERATION OF THE EQUIPMENT.

22. Force Majeure. Lessor shall not be liable or responsible to Lessee, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Lessor including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown, or power outage.

23. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

24. Headings. Headings in this Agreement are for convenience of reference only, and are not to be used in any interpretation of the agreement between the parties.

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