

EQUIPMENT RENTAL AGREEMENT

1. Inspections. Customer acknowledges a duty to inspect the Equipment prior to use and notify Dealer of any defects. Customer has inspected the Equipment and finds it suitable and in good condition and understands its proper use.
2. Replacement Equipment. If the Equipment should malfunction, Customer shall discontinue use and notify Dealer immediately of the malfunction. If Dealer has a similar item of Equipment in stock, Dealer may replace the Equipment. Dealer shall not be responsible for any incidental or consequential damages or lost profits suffered by Customer as a result of malfunctioned Equipment.
3. Disclaimer of Warranties. Dealer, not being the manufacturer of the Equipment, nor the manufacturer's agent, makes no warranty, either express or implied. Customer acknowledges that the Equipment is being leased from Dealer on an "AS IS" and "WITH ALL THE FAULTS" basis and that all such risks, as between Dealer and Customer are to be borne by Customer at its sole risk and expense. Customer acknowledges that (1) Dealer has made **NO EXPRESS WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE**; (2) Dealer **HAS NOT MADE ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE** regarding the Equipment, and (3) Dealer has made no warranties that the Equipment is suited for Customer's intended use or that the Equipment is free from defects, nor has Dealer made any other implied or express warranties. Customer accordingly agrees not to assert any claim whatsoever against Dealer based thereon. There are no warranties which extend beyond the face hereof.
4. Indemnification/Hold Harmless. Customer shall assume the risk of all property damage or damages for personal injuries caused by the Equipment or arising out of Customer's use of the Equipment and shall hold Dealer harmless from any property damage or damages for personal injuries caused by or arising out of Customer's use of the Equipment.
5. Prohibited Uses. Use of the Equipment in any one of the following circumstances is prohibited: (a) illegal purpose or in an illegal manner; (b) when the Equipment is in bad repair or in an unsafe condition; (c) improper unintended use or misuse; (d) by anyone other than Customer or Customer's employees; (e) at any location other than the address provided by Customer to Dealer.
6. Non-Assignment/Subletting/Lending. Customer may not sublease, lend, or loan the Equipment to another party without Dealer's written permission.
7. Return of Equipment. **TIME IS OF THE ESSENCE FOR THIS AGREEMENT**. Customer's right to possession of the Equipment terminates upon the expiration of the rental term. Should Customer retain possession of the Equipment beyond the term of the rental period, Customer shall be responsible for all of the charges set forth in this Agreement until the Equipment is returned to Dealer. Any extension to the rental term must be agreed to between Customer and Dealer in writing. If the Equipment is not returned to Dealer during the regular business hours, Customer shall pay for any damages or losses to the Equipment occurring between the time the Equipment is surrendered and the time the Dealer determines the Equipment to be returned. Rental charges set forth in the Agreement for the Equipment shall be prorated for each day the Equipment is kept beyond the rental term through the date the Equipment is returned.
8. Return of Equipment Condition. Customer shall pay a cleaning fee if the Equipment is returned in a condition Dealer deems to be unacceptable.
9. Damaged or Lost Equipment. Customer shall pay for any damage to or loss of the Equipment, outside of reasonable wear and tear, as an insurer, regardless of the cause of the damage to the Equipment, in addition to any unpaid rent. Equipment damaged beyond repair shall be paid for by Customer at its replacement cost determined as of the date of this Agreement.
10. Damage Waiver. **THE DAMAGE WAIVER DEALER OFFERS IS NOT INSURANCE NOR IS IT A WARRANTY**. If Customer has accepted Dealer's Damage Waiver Dealer shall assume the risk of damage to the Equipment and Dealer shall waive its right to recover from Customer Dealer's direct cost to repair or replace the Equipment which was damaged or destroyed while in the possession of Customer; however, if Customer has insurance covering such damage or destruction to the Equipment, Customer agrees to promptly exercise all rights under Customer's insurance policy to make a claim for any amounts available thereunder with respect to such damage and/or destruction of Equipment, and/or at Dealer's option assign the claim, or the proceeds thereof (as applicable) to Dealer as soon after the occurrence of the event giving rise to such claim as reasonably practical, subject to the following: **Exceptions and Exclusions**: The following are not covered under Dealer's Damage Waiver and Customer will remain liable for failure to return any item of Equipment for any reason including without limitation: a) loss, mysterious disappearance, conversion, theft, or destruction of the Equipment; b) damage to the Equipment due to improper use, misuse, abuse, negligence, neglect, including failure to protect during periods of inclement weather; c) damage to the Equipment due to overloading, exceeding the rate of capacity of the Equipment; (e) damages to tires, tubes and wheels of the Equipment and on the trailer upon which the Equipment is transported; (f) damage resulting from failure to properly clean, service, or maintain the Equipment, including without limitation, failure to maintain proper pressure levels or proper levels of oil, fuel, lubricants, hydraulic fluids, brake fluid and/or coolants; (g) damage resulting from the loading or unloading or transportation of the Equipment; (h) damage arising from the use of the Equipment in a manner which violates the terms of this agreement or applicable law.
11. Decline of Damage Waiver. If Customer fails to participate in the Damage Waiver then Customer shall be responsible for all loss of or damage to the Equipment. If Customer has insurance covering any loss or damage to the Equipment Customer shall exercise all rights available to Customer under said insurance coverage and shall take all actions necessary to process a claim under the insurance policy. Customer agrees to assign said claim and all proceeds arising from said insurance claim to Dealer to cover Dealer's loss, damage or destruction of the Equipment. Upon request of Dealer, Customer shall furnish Dealer the name of Customer's insurance agent, insurance company, and other information concerning Customer's insurance carrier.
12. Qualified Operators. Only Customer or those individuals who are set forth in this Agreement are authorized to use the Equipment. Customer will not permit the Equipment to be used by any other person or at any other location other than the location designated on this Agreement without obtaining the written consent of Dealer.
13. Late Payment Fee. All payments are due as stated on the invoice(s). Late payments will accrue interest at a rate of 1.5% per month (or the highest lawful rate, if less).
14. Attorney Fees/Collection Fees. Customer shall pay all collection costs, attorney fees, costs and other expenses incurred by Dealer to enforce Dealer's rights under this Agreement to collect all sums required to be paid by Customer to Dealer under this Agreement.
15. Purchase Option. Customer must exercise the option to purchase the Equipment at the start of the rental term by informing Dealer in writing. This Agreement is not a finance lease. Title to the Equipment shall pass to Customer when Customer has paid for the Equipment and all sales taxes and other costs associated with the purchase and all sums required to be paid under this Agreement in full. Customer may not purchase the Equipment until all of the accrued unpaid rent and other sums required to be paid by Customer under this Agreement have been paid in full. Rent accrues under this Agreement until Customer has completed the purchase of the Equipment and the unpaid rent and all charges under this agreement have been paid in full. Rent credits available to Customer arising from the rental of Equipment subject to this Agreement, if any, may only be applied to the purchase of the particular Equipment subject to this Agreement.
16. Title and Ownership. Title to the Equipment and ownership of the Equipment shall at all times remain with Dealer.
17. Use of Equipment. Customer agrees that (a) the Equipment shall only be used by persons competent to operate the Equipment; (b) Customer is solely responsible for providing competent operators of the Equipment; (c) the Equipment shall not be operated in a careless or negligent manner; (d) the Equipment shall not be used in any manner that violates the terms of this Agreement.
18. Assumption of Risk. Customer acknowledges and accepts the risk inherent with and attendant to the use of the Equipment. Customer voluntarily assumes the risk of injury, loss, damage, personal injury, or damage to persons and property which may arise from the use of the Equipment.
19. Dealer Not Responsible for Damages to Transport Equipment. Customer has inspected the trailer coupling and mechanism and safety chain on the trailer which is being used to transport the Equipment before Customer left the premises of Dealer. Dealer is not liable for damages to Customer's vehicle arising out of Customer's transportation of the Equipment.
20. Notification of Accident or Damage. Customer will immediately notify Dealer in the event of any accident involving the Equipment or any damage to the Equipment.
21. Dealer Charges. Customer shall pay to Dealer all charges for rental, delivery, installation of or use of the Equipment, mileage incurred by Dealer's employees to service or maintain the Equipment or any other charges or costs, which Customer agreed to pay herein at the rates, schedules and charges maintained by Dealer.
22. Dealer Inspection. Dealer shall have the right to enter upon the premises of Customer, or elsewhere, for the purpose of confirming the existence, condition, and proper maintenance of the Equipment. Dealer shall be entitled, without notice to Customer, to remove Equipment if, in the opinion of Dealer, it is being used contrary to any term of this Agreement.
23. Default. An Event of Default shall occur if (i) Dealer fails to receive when due any installment of Rent, (ii) Customer fails to perform or observe any representation, warranty, covenant, condition, or agreement to be performed or observed by it hereunder, (iii) Customer attempts to remove, sell, transfer, encumber, part with possession, or sublet the Equipment or any part thereof. Upon the occurrence of an Event of Default, Dealer, at its option, may (i) collect all accrued and unpaid Rent (ii) terminate the Rental Contract and declare all unpaid Rent and other sums due and to become due hereunder immediately due and payable, (iii) proceed by appropriate court action or other proceeding to enforce performance by Customer, and/or to recover damages for the breach thereof, (iv) demand that Customer deliver the Equipment forthwith to Dealer at Customer's expense at such place as Dealer may designate, (v) without notice, liability, or legal process, enter by itself and/or by its agents onto the Premises or any other premises where the Equipment may be and repossess all or any part of the Equipment. Customer hereby expressly waives all further rights to possession of the Equipment and all claims for injuries suffered through or loss caused by such repossession, and/or (vi) proceed to enforce any and all other rights and remedies provided hereby and by applicable law, including, but not limited to, the Uniform Commercial Code as adopted by and for the State of North Dakota.
24. Grant of Security. If this Rental Contract is deemed to be a security agreement under the UCC, to the extent so deemed and otherwise as a precautionary measure only, Customer hereby grants Dealer a first priority security interest in and to the Equipment and all replacement parts, additions, attachments, repairs, and accessories incorporated therein and/or affixed thereto, whether now or hereafter acquired, and all proceeds thereof and receivables therefrom and Dealer shall have all rights of a secured party under the UCC Article 9 as adopted by North Dakota.
25. Applicable Law and Consent. Customer consents to the jurisdiction of the State of North Dakota and agrees to be bound by the laws of the State of North Dakota and the Federal law of the United States of America.