



a division of SMS Construction and Mining Systems Inc.

Store:

www.smsrents.com

CUSTOMER: _____

PHONE #: _____

PO #: _____

DRIVER'S LICENCE _____

SHIP TO: _____

SHIP DATE: _____ MONTH / DAY / YEAR

SHIP TIME: _____ MONTH / DAY / YEAR

DRIVER: _____

RETURN DATE: _____ MONTH / DAY / YEAR

RETURN TIME: _____ MONTH / DAY / YEAR

DUE BACK: _____ MONTH / DAY / YEAR

| PRODUCT # | DESCRIPTION | QTY | HRS. OUT/IN | DAY | RATE WEEK | MONTH | RET'D | EXTENSION |
|-----------|-------------|-----|-------------|-----|-----------|-------|-------|-----------|
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SPECIAL CONDITIONS:

EQUIPMENT PROTECTION PLAN. This is not insurance. By initialling acceptance of the Equipment Protection Plan, the customer agrees to pay SMS Rents a surcharge equal to fourteen percent (14%) of the total rental charge in order to be exonerated from payment for losses and damages, as per section 28 on the reverse of this contract. Note that if the customer has previously accepted the Equipment Protection Plan, that acceptance will supersede this contract unless otherwise indicated in writing by the customer. If the customer chooses to decline the Equipment Protection Plan, the customer must provide a Certificate of Insurance to SMS Rents. **This Equipment Protection Plan does not replace comprehensive insurance coverage, which the customer must maintain and carry at its sole expense.**

I accept this Plan: _____ I reject this Plan: _____

THIS IS YOUR CONTRACT - READ BOTH SIDES CAREFULLY: With my signature I acknowledge as the customer or his authorized representative, having read, understood and accepted the terms and conditions mentioned on this page, as well as all terms and conditions defined on the back of this contract. I also acknowledge that the front and back of this contract constitute the whole agreement between the parties and that no representations or warranties have been made except as contained herein. In addition, I acknowledge having received and understood operating instructions on the use of the equipment.

Customer or authorized representative: _____ SMS Rents: _____

X _____ X _____

Name in print _____ Title _____ Name in print _____ Title _____

Please remit payment to:

SMS Rents
 a division of SMS Construction and Mining Systems Inc.
 6335 Edwards Blvd.
 Mississauga, Ontario L5T 2W7

Tel.: (289) 247-2770
 Fax: (289) 247-2771
 www.smsrents.com

RENTAL CONTRACT

By virtue of the present rental contract (the "contract"), and in consideration of the stipulations, agreements, restrictions and conditions following hereunder and on the front page of the contract, SMS Rents (the "Lessor"), a division of SMS Construction and mining Systems Inc., shall rent to the entity (the "lessee") who has duly signed at the space provided on the front page of this contract, items of equipment, including, without limiting, machineries and accessories, all of which are hereafter referred as the "equipment", duly described on the front page of the contract.

- CONTRACT DURATION:** This contract is for the period indicated on the front page of the document and, unless a different date has been stipulated on the contract, will commence once the equipment has left the Lessor's premises or other location designated by the Lessor for delivery to the lessee.
- DEFINITION OF RENTAL PERIOD:** (a) One (1) day is equal to twenty-four (24) hours, with equipment utilisation not to exceed a maximum of eight (8) hours. (b) One (1) week is equal to seven (7) consecutive days for a total of one hundred and sixty eight (168) hours, with equipment utilisation not to exceed a maximum of forty (40) hours. (c) One (1) month is equal to twenty-eight (28) consecutive days for a total of six hundred seventy two (672) hours, with equipment utilisation not to exceed a maximum of one hundred and sixty (160) hours. The lessee is expected to have had full use of the equipment from the time it was delivered, as per section 1 above, until such time that the equipment is returned to the Lessor. The lessee agrees to advise the Lessor of any extensions to the rental period and understands that any such extension, if authorized by the Lessor, will be charged accordingly.
- RENTAL RATE:** The lessee agrees to pay the Lessor the rental rates as stipulated on the front page of the contract for each item of equipment, and this for the duration of the rental period, regardless of whether the equipment was utilised to its maximum hourly limit as defined in section 2 and 4. If upon expiration of the contract the lessee elects, with the expressed and written consent of the Lessor, to keep the equipment, the contract will be extended with the same terms and conditions until the equipment is returned to the Lessor. The Lessor retains the right to cancel any such contract extension, subject to providing a twenty-four (24) hour notification period, and to take possession of the equipment and to that end enter all premises to remove the equipment without prejudicing its rights and privileges under this contract or the law.
- UTILISATION IN EXCESS OF THE RENTAL PERIOD:** If equipment utilisation exceeds the maximum hourly utilisation as defined in section 1, 2 and 3 of this contract, the lessee will be invoiced for all excess utilisation as follows: (a) If the equipment is rented for one (1) day, all hours in excess of eight (8) hours will be invoiced at one eighth (1/8) of the daily rate. (b) If the equipment is rented for one (1) week, all hours in excess of forty (40) hours will be invoiced at one fortieth (1/40) of the weekly rate. (c) If the equipment is rented for one (1) month, all hours in excess of one hundred and sixty (160) hours will be invoiced at one one hundred and sixtieth (1/160) of the monthly rate for all consecutive 28 day periods. Rental rates will not be reduced for partial utilisation, non-utilisation or return of the equipment prior to expiration of the contract duration as stipulated on the front page of the contract document. Furthermore, any delay or inability, not attributed to the Lessor, that impairs the lessee's use of the equipment, does not release the lessee from payment of all rental charges as outlined on the front page of the contract and that the lessee acknowledges and agrees that it shall not claim for compensation from the Lessor.
- PAYMENT:** The lessee commits to paying all rental charges without delay upon receipt of invoice. Payments in arrears will be subject to interest, as outlined in section 26, relative to the outstanding balance, without prejudicing the Lessor's rights including the right to cancel the contract for reasons of non payment of rental charges due and payable.
- EQUIPMENT INSPECTION:** The lessee declares having had the opportunity to personally inspect the equipment or to have an authorised representative inspect the equipment on the lessee's behalf. The lessee acknowledges that, from all standpoints, the equipment is in good operating condition and meets the needs of the intended application. The lessee also acknowledges having received and understood operating instructions on the use of the equipment and commits to immediately informing the Lessor of any mechanical problems.
- PROPERTY:** The equipment will remain at all times the exclusive property of the Lessor and the lessee's rights will be limited to the utilisation of the equipment subject to the terms and conditions of this contract. Transfer of the equipment from the job site indicated on the front page of this contract, to any other site, will require the prior written approval of the Lessor. Under no circumstance will the lessee be allowed to temporarily or permanently camouflage, hide or remove any of the identification decals on the equipment.
- EXPIRATION OF THE CONTRACT:** Upon expiration or early cancellation of the contract, the lessee must return the equipment in good condition, normal wear and tear excepted, to the Lessor at the address indicated on the front page of the contract, unless the lessee plans on keeping the equipment with consent of the Lessor as per section 3, the Lessor or its authorized representative can without notice take possession of the equipment and, to that end, enter all premises to remove the equipment. It is incumbent on the lessee to establish if the equipment has been returned and the date it has been returned.
- USAGE, MAINTENANCE AND REPAIRS:** The lessee guarantee's that the equipment will be properly utilised in accordance with the laws and safety regulations of the region or province by persons having the required competence to operate the equipment. The lessee will, at its expense, keep the equipment in good operation condition. In addition, the lessee will be responsible for all damages to the equipment. The Lessor will become the owner of all parts and components added to the equipment. The lessee commits to providing the Lessor or its authorised representative with full access to the equipment to conduct inspections. The lessee must endure all repairs, whatever their nature, without expectations of any reduction in rental rate. The lessee must pay all fees, taxes, penalties or other charges relating to the possession or usage of the equipment, including but not limited to, permitting fees, fuel, oil, lube, filters etc.

- LOADING, UNLOADING AND TRANSPORT:** The lessee, at its expense, will load equipment in preparation for transport and will unload the equipment upon its return. The lessee will pay all expediting charges between the point of origin and the point of reception, as well as all the expediting charges relating to the return of the equipment to the Lessor. The Lessor is not responsible for tow attachments or unloading of equipment.
- INSURANCE:** The lessee shall maintain and carry, at its own expense adequate liability, theft, fire and all other insurance coverage for not less than the replacement value of the equipment acceptable by the Lessor and mandatory to hold the Lessor harmless from all losses. This insurance coverage will be valid from the time the equipment is rented by the lessee or expedited by the Lessor, until the equipment is returned. When requested, the lessee will provide proof of such insurance by Certificate clearly setting forth the coverage for the equipment.
- DESTRUCTION, LOSS, THEFT AND FIRE:** The total loss, theft, fire or destruction of the equipment will not terminate the contract and the lessee must pay all rental charges until such time as the equipment is returned to the Lessor or that the Lessor receives payment for the value of the equipment. In addition, the lessee commits to immediately advising the Lessor and the authorities (police) in writing, of all losses, theft or destruction of the equipment.
- INDEMNITY:** The lessee shall indemnify and hold the Lessor harmless against any and all claims, demands, liabilities, losses, damages and injuries of whatsoever kind or nature to all employees, agents and third parties, and any and all legal suits, due to the presence of the equipment as well as its absence.
- WAIVER:** Under no circumstances shall the lessee hold the Lessor responsible or liable for damages, losses or injuries of any kind as a consequence of the equipment while being utilised even when due to faults or ignorance of third parties other than the lessee, in the case of Force Majeure and even in the case of fortuitous events. The lessee shall indemnify and hold the Lessor harmless in the event of damages or injuries caused by hidden defects or deficiencies of the systems or components and also for all demands, claims or legal actions for all losses due to, including, without limitation, injuries, direct or indirect damages and loss of revenue, by one individual or an entity, against the lessee. Under no circumstances will the Lessor be held responsible or liable for injuries, delays or damages due to the use, the condition of the equipment, or for any other cause or reason beyond its control. The lessee is solely responsible and liable for the usage of the equipment and damages caused to the equipment. The lessee shall assume all the risk that inure from the operation and usage of the equipment. Furthermore the lessee accepts to follow all municipal and provincial regulations while utilising tanks and reservoirs containing compressed gases and to close them after usage.
- FORCE MAJEURE:** The Lessor will not be responsible to the lessee for any failure or delay in delivery of the equipment, or failure to comply with any of Lessor's obligations hereunder where, in either case such failure or delay arises from causes beyond the reasonable control of the Lessor, including, without limiting, inability to acquire the equipment from its suppliers, strikes, lock-outs, threats of strikes or lock-outs, fires, floods, fortuitous events, wars, political unrests, civil or martial commotion, severe weather, acts of God, shortage of transportation, or quotas, currency restrictions or other governmental regulations or embargos, acts of terrorism and for all other reasons known or unknown to the Lessor at the execution of the rental contract.
- SUB RENTAL AND ASSIGNMENT:** The lessee shall not sublet the equipment or part of it, nor shall the lessee assign this rental contract without the written consent of the Lessor who can refuse such assignment.
- LIEN, HYPOTHEC AND TITLE:** The equipment shall remain personal property at all times, notwithstanding the manner it may be affixed to realty and title shall at all times continue with the Lessor. The lessee shall maintain the equipment, or cause the equipment to be free of all liens, hypothecs or privileges, and all Provincial, Federal and Municipal taxes hereafter referred to as encumbrances. The lessee shall reimburse the Lessor upon demand and immediately, for all expenditures incurred by the Lessor to liberate the equipment from all encumbrances.
- RETURN CONDITIONS:** At the expiry of the rental period or as per the provision of section 3, 8 and 19, the lessee shall return the equipment in good working condition and properly cleaned and maintained. In the event the lessee fails to return the equipment as stipulated, the Lessor will charge the lessee and the lessee will pay on presentation, all invoices submitted by the Lessor for the repairs, maintenance and cleaning of the equipment to render it in good working condition clean and maintained.
- TERMINATION FOR CAUSE:** The Lessor shall, without any prejudice to his rights and recourse by virtue on this contract and the law, terminate this contract without any notice to the lessee; (a) if this latter delays the payments of the rent or is delinquent in the payment of any other amounts due as per this contract, or does, or causes, the equipment to be encumbered as per section 17, (b) the lessee makes an assignment to the benefit of its creditors; (c) the lessee declares itself or is declared insolvent; or (d) a petition or other voluntary or involuntary proceedings are commenced by or against the lessee under any bankruptcy or other insolvency laws or for the appointment of a receiver or interim receiver for the lessee or any part of its assets or undertaking, or if any steps are taken or commenced for or seeking the corporate reorganisation or dissolution of the lessee, and (e) the lessee would lose possession of the equipment whether or not with the consent of the Lessor. Notwithstanding this section, the lessee shall advise the Lessor in writing of the occurrence of any of the foregoing events. The Lessor or any other person duly authorised by the Lessor, will consequently without any prior notice to the lessee enter the premises or any where else the equipment is located to retrieve it. Furthermore the lessee will pay the Lessor immediately for all rentals or all amounts due now or to be due by reason of the present contract, and for all damages suffered by the Lessor due to the above and for all reasonable expenses and fees that the Lessor had to pay to enforce its rights on this contract.

- PAYMENT OF EXPENSES:** The lessee shall pay the Lessor all court, collection and recovery costs, legal fees, and all other expenses related to the terms and conditions of the rental contract, or the rightful repossession of the equipment, and all claims. In addition, the Lessor shall claim all indemnity provided in the article 1618 of the Civil Code of Quebec, when the contract is executed in the Province of Quebec.
- HAZARDOUS EQUIPMENT:** All equipment generating heat and where there is combustion, explosion or friction and operation requires the use of combustible materials, explosives or others, must be constantly under the adequate supervision of the lessee or a qualified and responsible operator.
- INVALIDITY:** The invalidity or unenforceability of any portion of this rental contract shall not affect the force and effect of the remaining valid and enforceable portions thereof. Any provision which is unenforceable in any jurisdiction shall as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provision hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- RENUNCIATION OF THE LESSOR:** Exemptions and leniencies granted to the lessee by the Lessor in the exercise of its right by virtue of this contract shall not affect, diminish or cause prejudice to the rights of the Lessor by virtue of this rental contract.
- NOTICE:** Every notice required or contemplated shall be in writing and may be delivered by registered mail or by courier, or by fax ad the co-ordinates appearing on the front page of the contract. All notices mailed or sent by courier shall be deemed to have been received when delivered and any fax shall be deemed to have been given and received on the second business day following such transmission.
- INTERPRETATION:** Unless otherwise stated or intended in this contract, wherever the terms Lessor and lessee are used shall respectively designate the Lessor, its administrators, executors, successors and assigns, and the lessee, its administrators executors, successors and assigns. If there is more than one Lessor or lessee all obligations will be jointly and severally.
- INTEREST:** On all accounts in arrears there will be interest charged and payable at the rate of two (2%) per month (24 % annually). A fee of thirty-five (35) dollars, in addition to interests, will be charged on all returned cheques.
- SECURITY:** As a guarantee and assurance for the execution of all of its obligations by virtue of this contract, the lessee would pay an amount for deposit, as shown on the front page of the contract. In the event of the breach of any of the lessee's obligations and duties hereby, the lessee shall authorise the Lessor to utilise this deposit in the manner that the Lessor will find fit, according to the circumstances. The Lessor can return the deposit to the lessee, in its entirety or partially, at its own discretion and if, judging reasonably, that the lessee has totally or partially abided by the terms and conditions of this contract.
- EQUIPMENT PROTECTION PLAN** This is not insurance.: By indicating its acceptance on the front page of the contract, the lessee agrees to pay to the Lessor a surcharge of fourteen percent (14%) of the rental charge, to be exonerated from payment, subject to a fee as per (A) and (B) below, for losses, such as theft, loss due to fire and other damages to the equipment when the lessee will justify that it has used the equipment reasonably and adequately during the rental period (except as set forth in section 28 below). If the lessee accepts the Equipment Protection Plan, the Lessor agrees to waive its rights to recover payment for such losses and damages from the lessee for any amount in excess of the following:
 - For theft: Ten percent (10%) of the retail purchase price of replacement equipment. The lessee will be required to provide the Lessor with a police report within 48 hours of the occurrence.
 - For damage: Ten percent (10%) of the cost of repairs to the damaged equipment.The lessee will be deemed to have not used the equipment reasonably and adequately in the following cases:
 - The loads and the stresses subjected to the equipment have surpassed the capacity rating of the equipment, including without limiting, the tilting of the equipment due to an uneven spread of the load.
 - Tires are punctured or damaged, wheels, cables or hydraulic hoses are damaged.
 - The equipment is left unattended, whether outside or sheltered, without supervision, unlocked and also accessible to all.
 - Damages caused by lack of oils, lubricants, inappropriate fuel grades, cold weather and the use of the equipment without the required accessories such as filters, etc....
 - When the equipment is transported and is not properly secured to avoid its fall or displacement.
 - Taking possession of the equipment without authorisation, abusive usage intentionally or unintentionally, and all losses or damages due to the negligence of the lessee.
- LANGUAGE:** The parties hereto declare that they have expressly requested that the present contract and its acceptance, as well as all other documents related thereto, be drawn up in the English language only. Les parties aux présentes déclarent qu'elles ont expressément demandé que cette offre et son acceptation, ainsi que tous les autres documents qui y sont reliés, soient rédigés en anglais seulement.