

TERMS AND CONDITIONS

For the purpose of this Rental Agreement, "Rental Center" shall mean Excel Sales & Services, Inc., its owners, officers, directors, shareholders, and employees, and "Customer" shall mean Customer, its agents and/or employees. In consideration of hiring of the rental items (herein "the rental item or items") 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 ITEMS RENTED, AND PROTECT ALL PERSONS AND PROPERTY FROM INJURY OR DAMAGE. CUSTOMER AGREES TO HOLD HARMLESS RENTAL CENTER FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, JUDGEMENTS, 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 ITEMS RENTED, HOWEVER CAUSED, EXCEPT CLAIMS OR LITIGATION ARISING THROUGH THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF RENTAL CENTER.

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 ITEMS 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 RENTAL CENTER FROM ANY AND ALL RESPONSIBILITY OR LIABILITY FROM SUCH INJURY OR DAMAGE ARISING OUT OF THE USE OR OPERATION OF THE RENTAL ITEMS; AND CUSTOMER FURTHER AGREES TO WAIVE, RELEASE AND DISCHARGE ANY AND ALL CLAIMS FOR INJURY OR DAMAGE AGAINST RENTAL CENTER WHICH CUSTOMER OTHERWISE MAY BE ENTITLED TO ASSERT.

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

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

5. WARNING. The use of false or fictitious identification to obtain the equipment or the failure to return the equipment upon the Agreed Return Date of this Rental Agreement may be considered a theft, resulting in criminal prosecution. Your attention is directed to California Penal Code Section 484, California Penal Code Section 476A (relating to bad checks) and Vehicle Code Section 10855 (relating to failure to return leased or rented vehicles upon rental agreement termination).

6. POSSESSION/TITLE. Customers right to possession of the rental items begins upon rental items leaving Rental Center and terminates on the Agreed Return Date indicated on the front of this Rental Agreement. Retention of possession after this date constitutes a material breach of this Rental Agreement. Title to the rental items is and shall remain in Rental Center. If the rental items are not returned and/or levied upon for any reason whatsoever, Rental Center may retake said items without further notice or legal process and use whatever force is reasonably necessary to do so. Customer hereby agrees to indemnify, defend and hold Rental Center harmless from any and all claims and costs arising from such retaking and/or levy. If rental items are levied upon, Customer shall notify Rental Center immediately.

7. RENTAL PERIOD/RATE/PAYMENT. Rental rates are based upon single shift usage (8 hours per day, 5 days per week). If Customer makes greater use of the rental items it is agreed that the additional usage will be charged. Rental equals time out not time used. Rental charges begin immediately upon rental items leaving Rental Center. Rental charges end upon return of the rental items to Rental Center in an acceptable condition. No allowance will be made for Saturdays, Sundays, holidays, or time in transit nor for any period of time the rental items may not be in actual use while in Customer's possession. If the rental items are returned prior to the end of the minimum rental period, the rental due shall be for the entire minimum rental period. Rental Center may terminate rental at any time and retake the rental items without further notice in case of violation by Customer of any terms or conditions of this Rental Agreement. Customer agrees to pay any collection costs and attorneys 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. Customer agrees to pay Rental Center a fee for environmental compliance.

8. CONTINUOUS BILLING. If the rental exceeds 4 weeks, Lessee agrees to pay for each four-week rental period within ten (10) days of receipt of invoice and agrees that this rental contract shall continue in full force and effect.

9. JOB INFORMATION. Rentee shall provide the correct information necessary to file a Preliminary Notice as provided for in the California Civil Code Sections 3097, 3098. Rentee also grants Renter permission to contact owners, prime contractors, financial institutions, and any person necessary to obtain this information.

10. ORDINARY WEAR AND TEAR. 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 rental items caused by ordinary, reasonable and proper use of the rental items. 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 rental items by paint, mud, plaster, concrete, rosin, or any other material.

11. COMPLIANCE WITH LAWS/USE OF RENTAL ITEMS. Customer agrees not to use or allow anyone to use the rental items for any illegal purpose or in 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 that may apply to the use of the rental items during the rental period. Customer further agrees to pay all licenses, fines, fees, permits or taxes arising from his use of the rental items, including any subsequently determined to be due. Customer is responsible for obtaining all permits and/or licenses from the appropriate government agencies. Rental Center may at the Customer's request, act as an agent to obtain permits and/or licenses from the appropriate government agencies. If these agencies should require additional rental items, the expense of these rental items will be the sole responsibility of the Customer. If permits or

licenses are denied for any reason, Customer is still responsible for all financial and other obligations pursuant to this Agreement to Rental Center or its sub-contractors. Customer shall not allow any person who is not qualified and who has not received and understands safety and operating instructions and who does not utilize all safety equipment required, operating the rental items or using the rental items.

Customer shall not allow any person to use or operate the rental items when it is in need of repair or when it is in an unsafe condition or situation; modify, misuse, harm or abuse the rental items; permit any repairs to the rental items without Rental Center's prior written permission; or allow a lien to be placed upon the rental items.

Customer agrees to clean and visually inspect the rental items at least daily and to immediately discontinue use and notify Rental Center when rental items are found to need repair or maintenance or is not properly functioning. Customer acknowledges that Rental Center has no responsibility to inspect the rental items while it is in Customer's possession.

12. RETURN OF EQUIPMENT. Customer agrees to return to Rental Center the rental items in as good condition as when received, ordinary wear and tear excepted, by Rental Agreement Agreed Return Date. Customer shall be liable for all damages to or loss to the rental items and liability incurred prior to rental item's return to Rental Center. Customer shall be responsible for all costs incurred by Rental Center recovering and returning damaged rental items to Rental Center's premises. If the rental items are to be "picked-up" by Rental Center, Customer agrees to provide a secure storage location and Customer accepts all risk including damage to and liability relative to rental items for a **72 hour pick-up grace** period until the rental items are picked-up by Rental Center. Rental Center shall not be responsible for any defect or failure unknown to the Rental Center. Customer's sole remedy for any failure of or defect in the rental items shall be termination of the rental charges at the time of failure provided that Customer notifies Rental Center immediately of such failure and returns the rental items to Rental Center within twenty-four (24) hours of such failure.

13. DISCLAIMER OF WARRANTIES. Rental Center makes no warranty of merchantability or fitness for any particular use or purpose, either express or implied. There is no warranty or representation that the rental items are fit for Customer's particular intended use, or that it is free of latent defects. Rental Center 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 rental items

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

15. SUBLETTING/LOCATION OF RENTAL ITEMS. Customer agrees not to sublet, loan or assign the rental items. Customer shall not move the rental items from the address at which Customer represented it was to be used.

16. DEFAULT. Should Customer in any way fail to observe or comply with any provision of this Rental Agreement, Rental Center may, at its sole option, terminate this Rental Agreement, retake the rental items, declare any charges due and payable and initiate legal process to recover monies owed, and/or pursue any other legal rights and remedies available to Rental Center. Exercise of any remedy available to Rental Center shall not constitute an election of remedies or a waiver of any additional remedies to which Rental Center may be entitled.

17. RETAKING OF RENTAL ITEMS. If for any reason it becomes necessary for Rental Center to retake the rental items, Customer authorizes Rental Center to retake the rental items without further notice or further legal process and agrees that Rental Center shall not be liable for any claims for damage or trespass arising out of the removal of the rental items.

18. LEGAL FEES. In the event an attorney is retained to enforce any provision of his 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.

19. ACCIDENTAL DAMAGE WAIVER. Accidental Damage Waiver is not insurance. By Customer accepting the Accidental Damage Waiver on the front of this Rental Agreement and with immediate notification in the event of any accident and the prompt submission of applicable police reports, Rental Center and Customer agree that Rental Center will waive claims against Customer for direct physical damage to the rental items while in use or in transit by the Customer. If Customer has insurance covering such loss or damage, the Accidental Damage Waiver becomes secondary and Customer shall exercise all rights available to him under said insurance and take all action necessary to process said claim. Customer further agrees to assign said claim and any and all proceeds from such insurance to Rental Center. Upon request of Rental Center, Customer shall fully cooperate with Rental Center and furnish the name of his insurance agent, insurance company, and complete information concerning insurance coverage carried. Notwithstanding the foregoing, **the following conditions are not covered under the Accidental Damage Waiver.**

- A. Any item of equipment or part thereof which is not returned for whatever reason, including theft;
- B. Damage resulting from improper use, overloading or exceeding the rated capacity of the equipment;
- C. Damage to motors or other electrical appliances or devices caused by artificial current;
- D. Damage to tires, tubes and wheels caused by blowout, bruises, cuts and other causes inherent in the use of the equipment;
- E. Damage as a result of vandalism or malicious mischief or intentional abuse;
- F. Damage resulting from misuse, abuse, failure to maintain, cleanliness, proper oil, fuel, hydraulic, coolant or pressure levels, lack of lubrication or other normal servicing of equipment;
- G. All damage resulting from overturning;
- H. All damage resulting from use of the equipment in violation of any provision of this Rental Agreement, violation of any law, ordinance or regulation.

20. NOTICE OF NON-WAIVER/SEVERABILITY. Any failure of Rental Center to insist upon strict performance by Customer as regards any provision of this Rental Agreement shall not be interpreted as a waiver of Rental Center's rights 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 unenforceability, invalidity or waiver of any provision shall not effect any other provision.