

TERMS AND CONDITIONS OF RENTAL

In consideration of the renting of the Equipment described herein, without operator, by the undersigned (hereafter referred to as the "Renter") from Down to Earth Equipment Rentals, a division of Mike's Heavy Equipment & Trailer Sales, Inc. (hereinafter referred to as the "Dealer") upon the terms and conditions and for the price herein specified as well as the follow up invoices with the same invoice number containing additional fees for extra hours, days, fuel, repairs, etc., it is agreed as follows:

- 1. RENTAL AND TERM** begin on the date & time specified as "Date Out & Time Out" and terminate on the "Return Date & Time" unless amended in writing on the reverse of this contract by the Dealer. Additional invoices bearing the same contract number will be used to cover costs not known at the beginning of rental such as fuel, additional hours, additional days, repairs, etc. The Renter's signature on this contract will be considered legal and binding on all additional invoices bearing the same contract number. Rental charges commence on delivery of Equipment to Renter or pickup by Renter and end upon return of Equipment to Dealer's premises. Dealer may terminate Rental at any time and take possession of the Equipment. Renter agrees to pay, on return of Equipment to Dealer's premises, all charges and costs for the use thereof. Renter's right to use the Equipment terminates on the Return Date and Time set forth above unless extended in writing by the Dealer.
- 2. CONDITIONS OF HIRING, INSPECTION PRIVILEGE AND WAIVER OF DEFECTS.** Renter accepts and rents the Equipment on an "as is" basis. Renter acknowledges receipt of all of the Equipment in good working condition and repair and declares that Renter fully understands its proper operation and use. Renter acknowledges and declares that Renter has examined the Equipment and all hitches, bolts, safety chains, hauling tongues, together with all devices and materials used to connect the Equipment to Renter's towing motor vehicle, if any, and Renter declares that he has received all such Equipment in a secure and operative condition. Renter is responsible for loading and unloading the goods. If the Dealer's employees assist in loading or unloading the goods, the Renter agrees to assume the risk of damages & personal injury to the employees, and hold the Dealer harmless for any property damage or personal injuries, including damage or injuries attributable to the negligence of the Dealer or his employees. Renter agrees to return the Equipment to Dealer's premises upon the Return Date & Time in the same condition as when received by Renter, ordinary wear and tear excepted. "Ordinary wear and tear" shall mean only the normal deterioration of the Equipment caused by ordinary and reasonable use on a one shift (eight hours per day, five days per week) basis. Renter agrees to pay immediately all charges and costs incurred in excess of normal wear & tear.
- 3. EQUIPMENT BECOMES UNSAFE OR IN DISREPAIR.** Renter will immediately discontinue use of the Rental Equipment should it at anytime, following the execution of this agreement or any subsequent agreement, become unsafe or in a state of disrepair. Furthermore, the Renter will immediately notify the Dealer that the Equipment is unsafe or in disrepair. Until such time as Dealer has regained possession of the equipment, the Renter agrees to take all steps necessary to prevent injuries to any person and all property from the Rental Equipment or product. Renter agrees not to attempt repair of any Rental Equipment.
- 4. COMPLIANCE WITH LAWS.** Renter acknowledges that Dealer has no control over the use of Equipment by Renter, and Renter agrees at his sole expense, to comply with all municipal, county, state and federal laws, ordinances and regulations, including the Occupational Safety and Health Act of 1970 (OSHA) which may affect the Equipment while it is in the possession of and use by the Renter. Renter shall not permit any unqualified person to use Equipment.
- 5. PERMITTED AREA OF USE OF EQUIPMENT.** Without Dealer's written consent, Renter shall not remove the Equipment from the original location of use listed on the front of this contract..
- 6. RIGHT TO ENTER PROPERTY.** Renter agrees to Dealer's rights to enter premises or job site of Renter at any time to repossess equipment. Renter hereby waives any rights of action against Dealer by reason of such taking or entry and agrees to reimburse Dealer's cost of repossession if any.
- 7. RENTER'S LIABILITY FOR MISUSE OF EQUIPMENT.** Renter shall not abuse, harm or misuse the Equipment. Renter shall not permit any repairs to be made or lien to be placed upon the Equipment without Dealer's written consent. In the event of any accident or casualty resulting in bodily injury or property damages arising out of Renter's use or renting of said Equipment, Renter agrees to accept all responsibility therefore and shall hold Dealer harmless from any claims or action arising there from. Renter shall furnish Dealer with a complete report of any accident involving said Equipment, including names and addresses of all persons involved and all witnesses. Unless otherwise specified herein, in case of loss or destruction of any part of the Equipment, or of loss of possession thereof, or inability to return the same to Dealer, on the expiration and due date, for any reason whatsoever, Renter shall pay Dealer the actual replacement cost thereof, and in addition thereto Dealer's loss of use of said Equipment calculated by daily rate multiplied by the number of days equipment is out of service.
- 8. INSURANCE.** Renter agrees to provide liability and physical damage insurance naming Down to Earth Equipment Rentals as loss payee & additional insured for the value of the rented Equipment. Renter assumes all responsibility for injuries to persons or damages to property, and agrees to hold Dealer harmless for any and all claims, of whatsoever nature, arising out of the rental of equipment while in renter's custody.
- 9. DISCLAIMER WARRANTIES. DEALER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE EQUIPMENT'S MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.** Renter's sole remedy for any failure of or defect in the Equipment shall be the termination of the rental charges at the time of failure, provided the Equipment is returned to Dealer within 24 hours after such failure. Dealer shall not be responsible for any loss, damage or injury to Renter or Renter's property, including incidental, special or consequential damages, in any way connected with the operation, use, defect in or failure of the Equipment.
- 10. USE OF DEPOSIT, AND LIABILITY FOR LATE PAYMENT, UPON BREACH BY RENTER.** Renter acknowledges that the purpose and intent of the deposit paid by Renter hereunder is to secure the payment of rental charges hereunder and to guarantee the full and complete performance of each of all of the terms, covenants and agreements to be performed by Renter hereunder. Renter agrees to pay a late payment penalty at the rate of one and one half (1 ½%) percent per month on all delinquent accounts.
- 11. INDEMNIFICATION OF DEALER BY RENTER** Renter shall indemnify, defend, and hold harmless the Dealer, its officers, agents, employees and owners from and against any and all claims, actions, causes of action, liabilities, damages, losses or expenses (including court costs, attorneys' fees, costs of investigation and litigation) for bodily injury or personal injury, including death, or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Renter, or any of its agents, employees or subcontractors due to or in connection with the use or misuse of the rented equipment, machine or product. It is the specific intention of the parties that the Dealer and its officers, agents, employees and owners shall, in all instances be indemnified by the Renter from and against any and all claims.
- 12. THEFT WARNING.** Failure to return Equipment on the expiration and due date in certain circumstances, will be considered a theft, resulting in a criminal prosecution.
- 13. TAXES.** Renter agrees to pay any and all taxes, license fees, or permit fees arising out of the renting and use of the Equipment. Renter agrees to pay said taxes whether said taxes appear as part of the face of this contract or whether said taxes are later claimed by the governmental authority. In the event of a claim by any governmental authority for taxes arising out of this transaction, Renter agrees to pay to Dealer said taxes upon demand.
- 14. TITLE.** Title to the Equipment is and shall remain in Dealer's name. If the Equipment is levied upon for any reason whatsoever, Dealer may retake the Equipment without notice or legal process, and may take all action reasonably necessary to do so.
- 15. SAFETY.** Renter shall be responsible for supplying any and all personal protective equipment and/or safety equipment that is necessary, required or recommended in the use of the rented equipment, machine or product.

Signature X _____

TERMS AND CONDITIONS OF SALE (APPLIES ONLY TO ITEMS SOLD, NOT RENTED)

In consideration of the purchase of the Equipment described, by the undersigned (herein after referred to as the "Buyer") from the company named on reverse side (hereinafter referred to as the "Dealer"), upon the terms and conditions, and for the price herein specified, it is agreed as follows:

USED PRODUCTS: The Buyer hereby acknowledges that the product(s) described on the reverse side hereof which is the subject of this sale is a "used product" and is being sold on an "as is" and "with all faults" basis. The Dealer as the seller, makes NO expressed warranties of MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE and the DEALER does NOT make any implied warranties of MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE or any other warranties unless the DEALER has so provided in writing and the writing is signed by an Authorized Representative of the DEALER. I, the buyer, hereby acknowledge that I have read all of the above terms and conditions of sales and that I understand that this is an "as is" sale of used goods.

X _____

NEW PRODUCTS: Buyer acknowledges that the ONLY warranties provided with this product(s) are those provided by the manufacturer and that the DEALER makes NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, either expressed or implied.