

No operators are furnished, directly or indirectly with our equipment, or vehicles.

In consideration of hiring of the vehicles and/or equipment (herein 'the equipment') described on the front of this contract it is agreed as follows:

**1. DEPOSIT.** Renter acknowledges that one of the purposes and intent of the deposit is to secure and guarantee complete performance of renter's obligations under the contract.

**2. WARNING.** The use of false or fictitious identification to obtain the equipment or the failure to return the equipment upon the expiration of this contract may be considered a theft, resulting in criminal prosecution.

**3. POSSESSION/TITLE.** Renter's right to possession of the equipment terminates on the return date indicated on the front of this contract. Retention of Possession after this date constitutes a material breach of this agreement. Time is of the essence of this agreement. Any extension of this agreement must be agreed upon in writing. Title to the equipment is and shall remain in rental center. If the equipment is 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. Renter hereby agrees to indemnify, defend and hold rental center harmless from any and all claims and costs arising from such retaking. If equipment is levied upon, renter shall notify rental center immediately.

**4. RECEIPT/INSPECTION OF EQUIPMENT.** Renter hires the equipment on an "as is" basis. Renter acknowledges that he has personally inspected the equipment prior to its leaving rental center (regardless of point of delivery) and finds it suitable for his needs. Renter acknowledges receipt of all items listed in this agreement in good working order and repair and that he understands its proper operation and use without further instructions regarding operation and use from rental center. Renter acknowledges that he has had an opportunity to inspect all hitches, bolts, safety chains, hauling tongues and other devices and materials used to connect the equipment to renter's vehicle, if any, and renter declares that he has received the equipment in a secure and operative condition.

**5. SOLVENCY.** Renter represents to rental center that he is not insolvent and should he become insolvent, that, he will return all equipment to rental center immediately.

**6. RENTAL PERIOD/RATE/PAYMENT.** Rental period is for a maximum of twenty four (24) hours unless a longer term is specified in the "return date". Rental charges begin immediately upon delivery of the equipment to the location directed by the renter or upon equipment leaving rental center, whichever happens first. Rental charges end upon return of the equipment to rental center in an acceptable condition. If the equipment is 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 equipment without further notice in case of violation by renter of any terms or conditions of this agreement. Renter agrees to pay any collection costs and attorney's fees incurred in collection of this account or any dispute arising under this agreement. Rental rates are based upon single shift usage (8 hours per day, 5 days per week). If renter makes greater use of the equipment it is agreed that the additional usage will be charged.

**7. ORDINARY WEAR AND TEAR.** "Ordinary wear and tear" shall mean only the normal deterioration of the equipment caused by ordinary, reasonable and proper use of the equipment on a one-shift basis. Damage which is not "ordinary wear and tear" includes but is not limited to: damage resulting from lack of fuel or lubrication; failure to maintain proper oil, water, hydraulic or air pressure levels; damage due to overturning, overloading or exceeding rated capacities; improper use; abuse; lack of cleaning; tire damages. Renter shall be responsible for all damage not caused from ordinary wear and tear.

**8. COMPLIANCE WITH LAWS/USE OF EQUIPMENT.** Renter agrees not to use or allow anyone to use the equipment for any illegal purpose or in any illegal manner. Renter acknowledges that rental center has no physical control over the use of the equipment. Renter agrees at his sole cost and expense to comply with all municipal, county, state and federal laws, ordinances and regulations (including O.S.H.A.) which may apply to the use of the equipment during the rental period. Renter further agrees to pay all licenses, fees, permits or taxes arising from his use of the equipment, including any subsequently determined to be due as a result of an audit. Renter shall not allow any person who is not qualified to operate the equipment or use the equipment. Renter shall not allow any person to use or operate the equipment when it is in need of repair or when it is in an unsafe condition, or situation; modify, misuse, harm or abuse the equipment; permit any repairs to the equipment without rental center's written permission; or, allow a lien to be placed upon the equipment. Renter agrees to check filters, oil, fluid levels, air pressure, clean and visually inspect the equipment at least daily, and to discontinue, use and immediately notify rental center when equipment is found to need repair or maintenance. Renter acknowledges that rental center has no responsibility to inspect the equipment while it is in renter's possession. If the equipment becomes unsafe or requires repair, renter shall discontinue using it and notify rental center immediately.

**9. RETURN OF EQUIPMENT.** Renter agrees to return the equipment to rental center during regular business hours upon 'return date' in as good condition as when received, ordinary wear and tear accepted. If the equipment is not returned in such condition, additional usage will be charged for the period during which the equipment cannot be rented because of necessary repairs.

**10. PURCHASE ORDERS.** The use of renters purchase order number on this agreement is for renter's convenience and identification only.

**11. SUBLETTING/LOCATION OF EQUIPMENT.** Renter agrees not to sublet, loan or assign the equipment. Renter shall not move the equipment from the address at which renter represented it was to be used.

**12. 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 equipment is fit for renter's particular intended use, or that it is free of latent defects. Rental center shall not be responsible to renter or any third party for any loss, damage or injury caused by, resulting from, or in any way attributable to the operation of, use of, or any failure of the equipment. Rental center shall not be responsible for any defect or failure unknown to rental center. Renter's sole remedy for any failure of or defect in the equipment shall be termination of the rental charges at the time of failure provided that renter notifies rental center immediately of such failure and returns the equipment to rental center within twenty four (24) hours of such failure.

**13. DEFAULT.** Should renter in any way fail to observe or comply with any provision of this agreement, rental center may, at his sole option exercise any and all of the following remedies:

- (a) Termination of this agreement.
- (b) Retake the equipment.
- (c) Declare any outstanding rent and charges due and payable and initiate legal process to recover tile monies.
- (d) Pursue any of the 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).

**14. RETAKING OF EQUIPMENT.** If for any reason it becomes necessary for rental center to retake the equipment, rental center may retake the equipment without further notice or further legal process.

**15. ACCIDENTS, REPORTING AND INDEMNIFICATION.** IN THE EVENT OF ANY ACCIDENT RESULTING IN PROPERTY DAMAGE OR BODILY INJURY ARISING FROM USE OF THE EQUIPMENT WHILE IT IS IN RENTER'S POSSESSION, RENTER HEREBY EXPRESSLY AGREES TO ASSUME RESPONSIBILITY FOR HIMSELF, HIS OWN EMPLOYEES, AGENTS AND ASSIGNS NEGLIGENCE AND AGREES TO INDEMNIFY, DEFEND AND HOLD RENTAL CENTER HARMLESS FROM ANY CLAIM OR ACTION ARISING THEREFROM, INCLUDING ANY COSTS AND ATTORNEYS FEES INCURRED IN CONNECTION THEREWITH. **RENTER AGREES TO NOTIFY RENTAL CENTER IMMEDIATELY IN CASE OF ANY ACCIDENT AND TO OBTAIN THE NAMES, ADDRESSES, PHONE NUMBERS AND OTHER PERTINENT INFORMATION FROM ALL PARTIES INVOLVED AND ALL WITNESSES.**

**16. NOTICE OF NON-WAIVER/SEVERABILITY.** Any failure of rental center to insist upon strict performance by renter as regards any provision of this agreement shall not be interpreted as a waiver of rental center's right to demand strict compliance with all other provisions of this agreement against renter or any other person. The provisions of this agreement shall be severable so that the unenforceability, invalidity or waiver of any provision shall not affect any other provision.

**17. INSURANCE AND INSURANCE CERTIFICATE.** Rental center does not supply insurance for the equipment. Renter shall insure the equipment for its full replacement value. A copy of the insurance certificate or other proof of insurance shall be provided to rental center prior to the commencement of the rental period. Failure of the insurance company to honor a claim in no way changes the obligation of the Renter to compensate rental center for the full new replacement value of the equipment.

**18. DIESEL EXHAUST FLUID (DEF)**

Lessee agrees to return equipment full of (DEF) or be subject to pay rental center to fill tank(s).

## PARTS RETURN POLICY

### NEW PARTS (Stock Items)

- (1) Returned within 30 days: 10% restocking fee will be charged
- (2) Returned after 30 days: 20% restocking fee will be charged
- (3) After 60 days: parts will NOT be accepted for return

### NON-RETURNABLE PARTS INCLUDE BUT ARE NOT LIMITED TO:

- (1) Items not new or not in new condition
- (2) Items not in original packaging or opened sealed packages
- (3) Items replaced or discontinued by manufacturer
- (4) Expendable items, including, but not limited to, gaskets, belts, o-rings, hoses, electrical parts and any part with a list price of less than \$10.00
- (5) Any part that has been installed, cut to length or manufactured to customer's specifications
- (6) Any fluids or greases either in bulk or containers

Any and all returns must be accompanied by a receipt and must be approved by Parts Manager. The foregoing policy notwithstanding, Wakarusa Heavy Equipment, LLC ("WHE") reserves the right to reject any and all part returns and to revoke acceptance of any parts found to be unacceptable after their acceptance for return. To the extent WHE revokes its acceptance of any part accepted for return, said part will be held for a period not exceeding 30 days to allow sufficient time for customer to advise WHE, in writing, as to the disposition to be made of the part and, in the absence of such written advise, WHE will assume that the part is to be discarded and will assume no further responsibility for the part.