

## TERMS AND CONDITIONS

THIS AGREEMENT IS FOR THE RENTAL OF ALL ITEMS, EQUIPMENT AND/OR VEHICLES SHOWN ON THE OTHER SIDE THIS PAGE, INCLUDING ALL PARTS OF AND ACCESSORIES TO SUCH ("EQUIPMENT").

1. **RENTAL PERIOD AND ACCOUNTS:** Sunstate Equipment Co., LLC ("Sunstate") hereby rents the Equipment to Customer for the period commencing when the Equipment leaves Sunstate's premises and ending upon its return to Sunstate's premises, subject to charge for minimum rental period. Sunstate may terminate rental at any time by written notice to Customer and/or by retaking the Equipment. Unless otherwise specified, rental is for one day period. No allowance will be made for Sundays, holidays, or time in transit, nor for any period of time the Equipment is not actually in use while in Customer's possession.

Any disputed invoices must be brought to the attention of the Sunstate within fifteen (15) days of the receipt or the invoices/contracts are deemed correct and undisputed. At Sunstate's discretion, any account with a delinquent balance may be placed on a cash basis, deposits may be required and the rental equipment picked up without notice. Customer agrees that if Sunstate refers this Agreement to an agency or attorney for enforcement, Customer will pay Sunstate's reasonable agency's and attorney's fees and costs, including but not limited to lien preparations costs, incurred to the enforcement hereof, whether or not a lawsuit is actually filed.

Customer authorizes Sunstate to make whatever credit inquiries it deems necessary in connection with this Agreement. Bank and trade reference(s) can accept this authorization to disclose to Sunstate and/or their respective designees (and any assignee or potential assignee thereof), Customer information normally released to a prospective creditor including: length of time account has been active, average monthly balances, how the account has been handled, and details of any lending relationship. Customer represents and warrants that customer is not a "Consumer" as defined in the Federal Consumer Credit Protection Act, or any acts there under, and they waive any rights granted to them under those acts, their successors, or under other Federal or State Laws pertaining to "Consumer" rights. Customer further represents and warrants that all rentals or purchases made or any credit extended hereunder will be used solely for business and commercial purposes.

The individual who is either a principal of the credit applicant or a sole proprietorship of the credit applicant, recognizing that his or her individual credit history may be a factor in the evaluation of the credit history of the applicant, hereby consents to and authorizes the use of a consumer credit report on the applicant by Sunstate, from time to time as may be needed, in the credit evaluation process.

2. **TERMS:** NET 30 upon issuance of invoice (invoice date). Service Charges at the Lesser rate of 1.5% per month or the maximum rate permitted by Law on past due accounts.

3. **EXCESS USAGE CHARGE:** Rental Rates are for normal and reasonable use of Equipment not exceeding 8 hours per day, five days per week (one-shift basis). Excess usage

rates are prorated: 2 shifts charged at 1 1/2 times normal rate, 3 shifts charged at 2 times normal rate.

4. **RECEIPT AND USE OF EQUIPMENT**: By accepting delivery, Customer acknowledges that he has received the Equipment, all devices and materials used to connect the Equipment to Customer's towing motor vehicles in good working and secure condition. Customer shall not abuse, harm, or improperly operate the Equipment, and shall possess and operate it in conformance with all applicable laws and regulations. Customer shall be solely responsible for the operation of the Equipment, and allow only a licensed and experienced operator to operate the Equipment in accordance with all Equipment specifications and customary safety practices.

5. **FAILURE OF EQUIPMENT**: In the event of any failure of the Equipment, of any nature whatsoever, Customer at its expense shall immediately notify Sunstate and/or return it to Sunstate's premises. Without Sunstate's written authorization, Customer shall not incur any expenses for Sunstate's account for the repair of the Equipment.

6. **TIRE REPAIR OR REPLACEMENT**: Customer acknowledges that repair and replacement of tires are not included in the rental rate and agrees to pay for the repair or replacement of any tires returned to the Sunstate in a damaged condition, regardless of the cause of the damage, reasonable wear and tear excepted.

7. **RETURN OF EQUIPMENT**: At the termination of this agreement, Customer shall return all of the Equipment to Sunstate's premises during Sunstate's regular business hours, in the condition and repair as when delivered to Customer, subject only to reasonable wear and tear. Customer shall be liable for all damages to or loss of the Equipment occurring because it was not returned within Sunstate's regular business hours. If Sunstate has agreed to deliver the Equipment to Customer or to pick up the Equipment from Customer, Customer shall be responsible for all loss or damage to the Equipment from time of delivery to Customer and until picked up by Sunstate.

8. **HAZARDOUS MATERIALS**: Customer represents and warrants that it shall return all Equipment, including any and all attachments, tools and machinery leased from Sunstate free of all regulated substances including, but not limited to, hazardous substances, hazardous materials, hazardous wastes, toxic substances, or pesticides, as those terms are defined in applicable federal, state, and local environmental laws, regulations, and rules. Customer shall indemnify and hold Sunstate harmless from and against any and all liabilities, of whatsoever kind or nature, imposed on, incurred by, or served against Sunstate in any way relating to Customer's breach of the above warranty.

9. **LOST OR DAMAGED EQUIPMENT**: Customer is responsible for any and all damage, loss, or theft of equipment up to the fair market value of the Equipment or repair. If the Equipment is returned in a damaged or excessively worn condition, Customer shall pay Sunstate the reasonable cost of repair and pay rental on the Equipment at the regular rental rate until repairs have been completed. Sunstate shall be under no obligation to commence repair work until Customer has paid therefore. Reasonable 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. The following shall not be deemed reasonable wear and tear:

damage resulting from lack of lubrication or maintenance such as water and air pressures, damage resulting from any collision, overturning, or improper operation of the Equipment, including overloading or exceeding the rated capacity of the Equipment; damage in the nature of dents, bending, tearing, staining, and misalignment to the Equipment or any part thereof; and wear resulting from use in excess of a one-shift basis. Repairs to Equipment shall be made to the reasonable satisfaction of Sunstate and in a manner which will not adversely affect the operation or value of the Equipment, such as welding instead of replacing a part.

**10. DISCLAIMER OR WARRANTIES AND WAIVER OF DAMAGES:** Sunstate makes no warranties, express or implied, as to the Equipment's merchantability or fitness for any particular purpose. Customer'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 Sunstate is notified immediately and the Equipment is returned to Sunstate within 24 hours or Sunstate is requested to perform the return. Sunstate shall not be responsible for any loss, damage, or injury to Customer and Customer's property, including lost profits, incidental, special or consequential damages, in any way connected with the operation of, use of, defect in, or failure of Equipment.

**11. BODILY INJURY/PROPERTY DAMAGE RESPONSIBILITY TO THIRD PARTIES FROM RENTED VEHICLE OPERATION:** Sunstate does not provide, extend or afford any insurance coverage to Customer, authorized operator(s) or passengers. Customer assumes full responsibility for any and all injuries or damage to others from the possession or use of the rented vehicle. If there is other valid and collectible automobile liability protection or insurance on any basis available to Customer or any other person and such protection satisfies the financial responsibility laws, then no liability protection is afforded by Sunstate. However, if Customer is in compliance with the terms and conditions of this agreement, and if Sunstate is determined by law to provide liability protection, such liability protection shall be limited to the minimum financial responsibility limits of the state in which the vehicle is operated. Sunstate's financial responsibility is expressly limited to those applicable provisions of the motor vehicle financial responsible laws of the state in which the vehicle is operated.

**12. INDEMNITY AND HOLD HARMLESS:** Customer, its officers, directors, members, managers, employees, shareholders and affiliates shall indemnify and hold Sunstate, its officers, directors, members, managers, employees, shareholders and affiliates harmless from any claims including third parties, for loss, injury and damage to their persons and property arising out of Customer's possession, use, maintenance or return of Equipment, including legal costs incurred in defense of such claims. Customer notify Sunstate immediately if the Equipment is involved in, or a part of, an accident, and shall furnish Sunstate with a complete report of any accident involving Equipment including names and addresses of all persons involved and all witnesses. Customer is responsible for all damage, injuries or loss arising from any accident or act of any and every nature whatsoever, relating to the possession or use of the rented Equipment, including particularly any damage caused by the failure of any device or material used in hitching the Equipment to a towing vehicle, regardless of whom furnished and regardless of who shall hitch the Equipment. In the event any covenant in this Section 11 is deemed to be unreasonable, arbitrary, or against public policy, such covenant will be considered to be divisible with respect to the scope of Customer's indemnification obligations, and such lesser scope, as a court of competent jurisdiction may determine to be reasonable, not arbitrary, and not against public policy, will be effective, binding, and enforceable against Customer.

13. **FAILURE TO DELIVER**: Customer releases and discharges Sunstate from any and all liability or damages (including consequential and special damages) which might be caused by Sunstate's failure or inability to delivery any Equipment by any specified date or time.

14. **DAMAGE AND THEFT WAIVER (WHICH IS NOT INSURANCE)**: By Customer accepting DAMAGE AND THEFT WAIVER, provided Customer takes reasonable precautions to protect Equipment, Sunstate assumes, on a deductible basis, the risk of direct physical loss of, or accidental damage to, the leased Equipment, except the following risks assumed by Customer:

A. A deductible of:

- \$250 for accidental damage of each piece of Equipment with a fair market value of less than \$5,000.
- \$1,000 or 20% of the repair cost of each piece of Equipment, whichever is higher, for accidental damage to each piece of Equipment, with a fair market value of \$5000 or greater.
- \$1,000 or 20% of the fair market value of each piece of Equipment, whichever is higher, for loss of any piece of Equipment as a result of theft, vandalism, or malicious mischief.

B. Loss or damage from improper use, abuse, or negligence.

C. Loss or damage resulting from overloading or exceeding the rated capacity of Equipment.

D. Damage to tires or tubes caused by blowout, bruises, cuts, road hazards, or other causes inherent in the use of Equipment.

E. Loss or damage resulting from improper fuel, lack of lubrication or other normal servicing of Equipment.

F. Loss due to disappearance or shortage disclosed on inventory,

G. Loss or damage by conversion of Customer, his employees, or persons to whom the Equipment is entrusted.

H. Use of the Equipment in violation of any the terms of this agreement.

I. Failure to file police report.

J. Any theft loss when Equipment is not in a locked enclosure or guarded when not in use.

15. **INSURANCE**: Customer shall maintain Commercial General Liability insurance covering all operations and contractual obligations with minimum limits of \$1,000,000 per occurrence and shall name Sunstate, its officers, directors, members, managers, employees, shareholders, and affiliates as additional insureds with a waiver of subrogation against Sunstate. Customer's insurance shall be primary insurance with respect to Sunstate.

Customer shall maintain Commercial Automobile Liability Insurance with limits of at least \$1,000,000 per occurrence and shall include coverage for hired and non owned vehicle liability and physical damage when renting a licensed, registered (over the road) vehicle. Customer's insurance shall be primary and shall include a waiver of subrogation against Sunstate.

Customer will be charged Damage Waiver for damage or theft of equipment unless Customer provides evidence of insurance for rented Equipment, with the per item limit specified, and naming Sunstate as loss payee.

Customer shall provide a certificate of insurance to Sunstate evidencing above insurance coverages and specifying that coverage will not be cancelled without 30 days prior written notice to Sunstate. Any insurance maintained by Sunstate shall be excess of Customer's insurance.

16. **SUBLETTING AND LOCATION**: No Item of leased Equipment shall be sublet, assigned, removed from the location at which Customer represented it was intended to be used, or removed from the State of Sunstate's premises, except by written consent of Sunstate. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their heirs, successors and assigns.

17. **RETAKING OF EQUIPMENT**: If the Equipment is not returned at the termination of the rental or for any reason it becomes necessary for the Sunstate to retake the Equipment to protect it from loss or damage, Sunstate and its agents may go upon Customer's property and retake the Equipment, without notice and legal process, and Customer waives all rights to a prior judicial hearing. Sunstate and its agents may take all action reasonably necessary to retake the Equipment and Customer waives for himself, agents, and employees all claims for damages and losses, physical and pecuniary, caused by retaking by the Sunstate. Customer agrees to pay all costs and expenses incurred by Sunstate in retaking the Equipment.

18. **COMPLIANCE WITH LAW AND SAFETY REGULATIONS**: As Sunstate has no control over the use of the Equipment by Customer, Customer agrees at its sole expense to comply with all laws and regulations, including Occupational Safety and Health Administration Act of 1970 (OSHA) and all other Federal, State and Local laws, regulations, and ordinances, which may affect the Equipment while it is in the possession of Customer. Customer shall indemnify and hold Sunstate harmless from any liability or expense, including attorney fees, resulting from any actual or asserted violations of such laws, regulations and ordinances.

19. **LEGAL FEES AND VENUE**: Customer shall pay Sunstate's reasonable legal fees and court costs incurred in enforcing the terms and conditions hereof. Customer agrees that this agreement is to be construed under the laws of the State of Arizona, and that if legal action is brought to enforce this agreement, that Maricopa County, Arizona, shall be the jurisdiction and legal venue for said action, provided that Sunstate reserves and Customer agrees to Sunstate's right to bring legal action in whatever jurisdiction from which the Equipment was rented, whose laws, at the option of Sunstate, shall govern this Agreement. Customer waives the right to a jury trial of any or all claims or disputes which may arise from this Agreement.

20. **TAXES AND FEES**: Customer shall reimburse Sunstate for any additional fees, charges, or taxes sought to be imposed against Sunstate by any municipal or local subdivision relating to the use of the Equipment by Customer or rental as provided herein. All rentals of equipment with a replacement value equal to or greater than \$1,000 will be subject to an environmental fee per billing cycle. This fee is subject to change at any time.

21. **ENTIRE AGREEMENT**: This Agreement and the instruments to be delivered by the parties constitutes the full and entire agreement with respect to the subject matter thereof. It may not be amended except by a written agreement signed by both parties.