

TERMS AND CONDITIONS OF RENTAL CONTRACT – DOT'S RENTALS & SALES

For good and valuable consideration, you and Dot's Rentals & Sales (also referred to in this Contract as "DRS" "Lessor," "we," "us," and "our") agree as follows:

1. As used herein, "P.1" refers to the first page or "face" of this Contract; "Contract" refers to P.1 together with these Terms and Conditions of Rental Contract; "Rented Item(s)" or "Item(s)" means the Item(s) provided by DRS to you, as identified on P.1 (including any "Instructions" and/or safety device(s) provided per Section [or "§"] 4 below); "Site" means the address where the Item(s) will be delivered and/or used, as set forth on P.1; and "Customer," "Lessee," "you" and "your" mean the "Customer/Lessee" identified on P.1.

2. You agree to rent the Rented Item(s) from DRS for the period(s) specified on P.1 (the "Term"), at the end of which, you agree to return such Item(s) to us as required hereunder. You agree to pay us our stated rental rate(s) (the "Rent"), together with all other charges accruing hereunder, without proration, reduction or setoff, and remain liable for all loss of, damage to and/or destruction of the Rented Item(s) for the duration of the Term and until all such Rented Item(s) is/are returned to and accepted by DRS in the return condition required under this Contract including § 11 (even if the rental is called off before our acceptance of return). Rent is charged for all time out on the following basis: 8 Hours = 1 Day; 7 Days = 1 Week; and 28 Days = 1 Month. Unless otherwise agreed in writing by DRS, all rental rates are for normal use of the Rented Item(s) on a single-shift basis during the Term, not exceeding 8 hours per 24-hour period for which Rent is charged hereunder (each, a "Rental Day"), 40 hours per 7-Rental Day period, 160 hours per 28-Rental Day period (zero hours for any/all uncharged-for periods), and otherwise in accordance with the terms hereof and the "Instructions" described in § 4. Additional amounts will be charged for late returns and overuse as provided in § 11. You will not be entitled to any cancellation right or reduction of Rent or other amounts coming due hereunder in order to account for time in transit, Act(s) of God, event(s) of *force majeure* or any other period(s) of nonuse. We have estimated the Rent based on your estimate of the length of the Term (the "Estimated Rent"). Unless we otherwise agree in writing: (a) you shall pay us: (i) any deposit(s) and the Estimated Rent specified on P.1 in advance of the Term (the "Prepayment"); and (ii) all other amounts coming due hereunder upon demand; and (b)(i) we may deduct any amount you owe us from any Prepayment; (ii) no interest will accrue on any Prepayment; (iii) no Prepayment will be deemed a limit of your liability to us; (iv) all Prepayments are **NON-REFUNDABLE** except only as provided in § 6; and (v) anything remaining with, in or on any Item(s) upon return to us will be deemed surrendered and abandoned.

3. Except with respect to Items we rent from one or more third parties (each, a "TPO") and then re-rent to you ("Re-Rented Item(s)"), DRS owns and will retain title to all Rented Items at all times, and **you will have no ownership interest therein**. You will, however, have exclusive control over the Rented Item(s) during the Term; subject however, to your obligation to use it/them in compliance with this Contract at all times. You **SHALL NOT**: (a) permit the taking or existence of any lien, claim, security interest or encumbrance on any such Item; or (b) **loan, transfer, sublease, repair, surrender or assign any Rented Item or this Contract without our prior written consent (granted, conditioned or withheld in our sole discretion)**. We may sell and/or assign all or any part of our interests in the Rented Item(s) and/or this Contract, in which event, you will attend to the assignee, who will not be responsible for any pre-existing obligations or liabilities of DRS.

4. Upon the earlier of your receipt, or the delivery to the Site, of the Rented Item(s) unless you immediately reject it/them, you represent, warrant, acknowledge and agree that: (a) each Item: (i) is complete and in good order, condition and repair; (ii) is appropriate for your purposes and in all ways acceptable to you; and (iii) was selected (not based on any recommendation by us), carefully examined and tested by you or your agent(s); and (b) you: (i) have carefully reviewed and understand all laws, rules, regulations, training, instructions, user manuals, maintenance requirements, and other information, if any, including all applicable EPA, OSHA, MSHA, ASME, IBC, IFC, IEEE, ASSP, DOT, FMCSA, IFTA, ANSI and other applicable standards (collectively, "Instructions"); (ii) will fully comply therewith (including Tier 4, Silica Dust, Ventilation and Electronic Logging Device requirements); (iii) have been made aware of the need to use all applicable personal protective equipment and safety devices (including RESPIRATORY and FALL PROTECTION); (iv) will use each Item only for its intended purpose, in a reasonable and safe manner in accordance with the Instructions; (v) will timely give all applicable notice(s) to, and obtain all applicable licenses, authorizations, permits and approvals from, all affected parties, including governmental authorities, utilities, cable companies and the owner(s) of the Site, and ensure that all underground lines, cables and conduits are clearly and properly marked before using any Item(s) to disturb the ground surface (call 811 and go to texas811.org at least 2 full working days prior to excavation); (vi) will immediately cease using any Item that is damaged, breaks down, or proves defective (a "Malfunction"); and (vii) will ensure that all others comply with this Contract. You agree to immediately notify: (A) the police, DRS and the TPO (if any) in the event of any theft or accident involving any Rented Item(s); and (B) DRS and the TPO (if any) if any of the other requirements of this § 4 shall be breached or proven incorrect or misleading.

5. You agree to ensure the Site is reasonably clean, safe, secure and fit for delivery and use of the Rented Item(s) at all times. If we agree to provide any service(s) (including without limitation, delivery and/or retrieval), you shall: (a) pay our regular charge(s) therefor, and for all waiting time; (b) be present at the Site at the agreed time(s); and (c) ensure our personnel have full access to the Site. We will not be responsible for any delay(s) caused by you, your agents, employees, or any other parties, including providers of other items or services ("Other Party(ies)") for which you agree to indemnify, defend and hold harmless DRS. If you are not present upon delivery or retrieval of any Item(s), you agree to accept the statements of our representatives regarding the same (including the status, condition, quality, quantities and defect(s) of or with respect to the Item(s) and the Site).

6. In the event of a Malfunction, you will immediately notify, and return the Malfunctioning Item to, us, and provided such Malfunction did not result from or in connection with any wrongful or negligent act or omission of, or any breach of any provision of this Contract by, you or any Other Party(ies), we may, at our option: (a) repair the Malfunctioning Item; (b) provide you with a comparable replacement Item; or (c) with respect only to the Malfunctioning Item(s), return the unused portion of the Rent and cancel this Contract. **The foregoing remedies are EXCLUSIVE**. DRS will have no other obligation(s) with respect to Malfunctions, all of which you waive, together with all associated direct, incidental, consequential and other indirect damages.

7. **WARNINGS. THE RENTED ITEM(S) CAN BE DANGEROUS.** YOU AGREE TO: (A) PROVIDE ALL APPLICABLE TRAINING, FAMILIARIZATION, INSTRUCTIONS AND WARNINGS TO ALL PERSONS WHO USE OR DEAL WITH SUCH ITEM(S); AND (B) ENSURE THAT EACH SUCH ITEM IS TRANSPORTED, SERVICED, MAINTAINED, REPAIRED, USED, OPERATED AND OCCUPIED: (I) WITH EXTREME CARE; (II) WITHIN ITS RATED CAPACITY; (III) UNLESS OTHERWISE SPECIFICALLY AGREED BY DRS, AT THE SITE; (IV) BY PROPERLY TRAINED, FAMILIARIZED, QUALIFIED, CERTIFIED, SUPERVISED AND/OR LICENSED (AS APPLICABLE) ADULTS; AND (V) OTHERWISE IN FULL COMPLIANCE WITH THIS CONTRACT, THE INSTRUCTIONS AND ALL APPLICABLE LAWS, RULES, REGULATIONS, POLICIES OF INSURANCE AND WARRANTIES AT ALL TIMES.

8. **NO WARRANTIES.** DRS IS NOT THE MANUFACTURER OR DESIGNER OF ANY OF THE ITEM(S) REFERENCED IN THIS CONTRACT, ALL OF WHICH ARE PROVIDED **"AS-IS"**. NEITHER DRS NOR ANY TPO, MAKES ANY WARRANTY(IES), EXPRESS OR IMPLIED (INCLUDING ANY WARRANTY(IES) OF **MERCHANTABILITY, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE**, FUNCTION, DESIGN, QUALITY, CAPACITY, FREEDOM FROM DEFECTS AND/OR CONTAMINATION, AND GOOD AND WORKMANLIKE PERFORMANCE, AS WELL AS ANY WARRANTY(IES) ARISING FROM OR IN CONNECTION WITH ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE) REGARDING ANY ITEM(S) OR SERVICE(S) REFERENCED IN THIS CONTRACT, NOR DOES DRS OR ANY TPO MAKE ANY WARRANTY(IES) AGAINST INTERFERENCE OR INFRINGEMENT, ALL OF WHICH YOU WAIVE. NO DESCRIPTIONS, SPECIFICATIONS, DEPICTIONS OR ADVERTISEMENTS CONSTITUTE REPRESENTATIONS OR WARRANTIES BY DRS OR ANY TPO. **THERE ARE NO WARRANTIES OTHER THAN THOSE APPEARING ON THE FACE HEREOF.**

9. **INDEMNITY.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, **YOU: (A) ASSUME ALL RISK OF PERSONAL AND BODILY INJURY, ILLNESS, LOSS, PROPERTY DAMAGE, AND CONTAMINATION OF, TO, AND/OR ARISING IN CONNECTION WITH, THE ITEM(S) AND/OR SERVICE(S) REFERENCED IN THIS CONTRACT, INCLUDING ALL LIABILITIES, CLAIMS, DAMAGES, LOSSES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES) ARISING FROM AND/OR IN CONNECTION WITH THE SELECTION, PROVISION, INSPECTION, DESIGN, MANUFACTURE, USE, CLEANING, CONTAMINATION, LOADING, UNLOADING, TRANSPORTATION, DEMONSTRATION, INSTALLATION, STORAGE, SERVICING, MAINTENANCE, REPAIR, DELIVERY AND/OR RETRIEVAL**

OF SUCH ITEM(S) AND/OR SERVICE(S), WHETHER OR NOT YOUR FAULT (COLLECTIVELY, "RISKS"); (B) **RELEASE AND DISCHARGE, AND AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS, DRS, EACH TPO,** their respective parents, affiliates and subsidiaries, and their respective owners, shareholders, members, managers, officers, directors, agents, employees, insurers, subrogees, representatives, successors and assigns (each, an "Indemnitee"), for, from and against all such RISKS, as well as all other liabilities, claims, damages, losses, costs and expenses (including attorneys' fees) arising from and/or in connection with the Rented Item(s), this Contract, our negligence, and/or your breach of any one or more of the terms hereof; and except only as provided in § 6. **(C) WAIVE** all rights, remedies and defenses available under the Uniform Commercial Code, as well as all direct, indirect, incidental, consequential, general, special, exemplary and punitive damages, against each and every Indemnitee.

10. You agree to maintain all insurance we may require, including: (a) liability insurance with minimum limits of \$1,000,000 per occurrence; (b) property damage/inland marine insurance covering all Items for the full (new) replacement cost thereof; (c) workers' compensation insurance; and (d) for all vehicles, containers and/or trailers included in or with the Rented Item(s), as applicable: (i) hired auto liability insurance with minimum limits of \$1,000,000; (ii) hired auto physical damage insurance for actual cash value; and (iii) contents insurance for the full new replacement cost of all contents thereof. Such policies shall, whenever possible: (i) name DRS as an additional insured and loss payee; (ii) waive subrogation against us; (iii) be primary and non-contributory; and (iv) include such other provisions (including deductibles) as we may require. You irrevocably appoint DRS as your agent and attorney-in-fact for purposes of submitting, negotiating and settling claims on all such policies.

11. **You agree to protect, properly maintain and care for each Rented Item at all times**, keep it safely and securely stored and locked when not in use, and return it to us on time, clean, free of contaminants (including without limitation, asbestos, beryllium and silica) and otherwise in good order, condition and repair, properly serviced and maintained, and if applicable, full of the proper fuel, fluids and lubricants. If you fail to do so, then in addition to any other amounts due hereunder, you will pay us: a) "Adjusted Rent" equal to 150% of the Rent originally specified on P.1 for each succeeding full rental period until all Item(s) have been returned or replaced as required; and (b) all costs and expenses we incur in connection with such failure. You will not, nor will you permit anyone else to: (i) abuse, misuse, overuse, remove from the Site, conceal, repair, store, modify or damage any Rented Item(s); (ii) violate any Instruction, law, insurance policy or warranty; (iii) expose any Rented Item(s) to any flammable, explosive, harmful or hazardous substance(s) (including without limitation, silica dust, asbestos, medical waste, petroleum compounds, chemicals, radioactive materials, paints, greases, solvents and corrosives) or circumstance(s); (iv) disable, misuse or circumvent any safety equipment or device(s) in, on or with any Rented Item(s); or (v) take possession of or exercise control over any Rented Item(s), without our prior consent (granted, conditioned or withheld in our sole and absolute discretion).

12. **YOU SHALL NOT PLACE OR STORE IN OR ON ANY RENTED ITEM(S) (including without limitation, containers and trailers) any:** (a) persons or animals; (b) weapons, ammunition, explosives, drugs or alcohol; (c) trash, dirt or debris; (d) perishables, food or food products; (e) valuables, jewelry, artifacts, works of art, heirlooms or precious archives; (f) toxic, noxious, flammable, corrosive or other potentially dangerous materials and/or substances; (g) medical waste and/or disease agents; (h) mercury, lead, lead-based paint, silica or asbestos; (i) radioactive or otherwise contaminated substances; (j) other "hazardous substances," "hazardous materials," and/or "toxic substances" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980; the Hazardous Materials Transportation Act; the Resource Conservation and Recovery Act; the common law; and/or any other laws, rules, regulations and/or orders pertaining to environmental or public health or welfare, as amended or supplemented from time to time; and/or (k) contraband.

13. Your Rental shall be deemed a "net" rental. Accordingly, your obligations hereunder shall be absolute and unconditional and shall not be subject to any present or future abatement, reduction, set-off, compensation, defense, counterclaim, cross-claim, interruption, deferment or recoupment, for any reason. If you or any guarantor shall: (a) fail to fully and timely honor, pay, perform or comply with this Contract, any other agreement(s) ("Other Contract(s)") between you and DRS, and/or any of your obligations arising (thereunder or in connection (therewith); (b) provide any incorrect or misleading information to us; (c) become insolvent or bankrupt; or (d) die or cease conducting business; if DRS reasonably deems itself insecure; or if any Rented Item(s) shall be lost or damaged, you will be in **DEFAULT** under this Contract and such Other Contract(s), whereupon, we may with or without legal process or notice (and without liability to you), to the maximum extent permitted under applicable law: (i) cancel the Term and/or the subject Contract(s) (and/or your rights to use and possess the Rented Item(s)); (ii) seek relief from stay; (iii) recover, empty, lock, restrict, shut down, disassemble and/or disable such Item(s) without being guilty of breach, trespass or wrongful interference, or liable for any injuries or property damage (for which you agree to indemnify, defend and hold harmless each Indemnitee); (iv) perform your obligations (thereunder on your behalf, without being obligated to do so; (v) purchase replacement Item(s); (vi) recover from you and/or any guarantor our associated direct and indirect damages, losses, costs and expenses (including without limitation, Rent for the entire scheduled Term, overtime, loss of use, interest, attorneys' fees, retrieval/repossession costs, and collection costs); and/or (vii) pursue any one or more other rights and/or remedies available (thereunder, at law and/or in equity, all of which are cumulative.

14. All disputes arising in connection with this Contract and/or its subject matter, shall, at the sole option of DRS, be submitted to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association before a single arbitrator and in a location selected by DRS. Judgment on the arbitrator's award shall be final and binding on the parties hereto and may be entered in any court of competent jurisdiction. This Contract shall be governed by and enforceable under the laws of Texas, and proper venue for all civil legal actions commenced in connection therewith which are not made subject to arbitration as provided above shall lie solely in the federal, state and local courts located in or nearest to Bowie County, TX (unless waived by DRS). You consent and submit thereto and waive all claims that such venue lies in an inconvenient forum. **YOU HEREBY WAIVE YOUR RIGHT TO TRIAL BY JURY.**

15. You agree to pay all sales, use and other taxes (including without limitation, all Texas Emissions Reduction Plan and Dealer's Heavy Equipment Special Inventory taxes), as well as all tolls, fines, fees, duties, assessments and other charges related to the Rented Item(s) and/or this Contract. If legal action is commenced in connection herewith, we will be entitled to recover our associated costs and expenses (including without limitation, attorneys' fees) from you if we prevail. To the maximum extent permitted under applicable law, you grant us a lien on all real and personal property: (a) placed in or on; and/or (b) improved with, any Rented Item(s). We may, without notice or liability to you, monitor and/or inspect, in person and/or electronically (including via GPS and/or telematics) any Rented Item(s) at any time. You consent thereto and agree that all information thereby obtained will be our property. If any performance required of us is delayed or impaired as a result of any act or omission of/by you, any Other Party(ies) or any "Act of God," event of *force majeure*, or other event, fact or circumstance beyond our reasonable control, we will be excused from such performance. You waive all statutes of limitations regarding our rights and remedies. All amounts due hereunder but not timely paid will bear interest at the lesser of: (i) 18% per annum; or (ii) the highest rate permitted under applicable law until paid. You authorize us to charge all amounts coming due hereunder to any and all debit and/or credit card(s) you provide. You agree to pay us the maximum lawful charge for any check you write which is returned unpaid. **Our maximum liability in connection with this Contract is limited to the amount(s) actually paid by you and received by us hereunder.** Neither our exercise, nor our failure or delay in the exercise, of any rights or remedies available in connection herewith will constitute an election of remedies or a waiver of any of our rights or remedies. Time is of the essence. There are no third-party beneficiaries hereto other than the applicable Indemnitees. This Contract, and any addenda we provide, (each of which shall be deemed incorporated herein) represent(s) the entire agreement between you and Dot's Rentals & Sales, superseding all other agreements and representations (including our website and advertising) and cannot otherwise be amended or extended except in a writing signed by us. These Terms and Conditions apply to all Item(s) identified on P.1, and to **all other Items** you obtain from us at any time (except only as we may otherwise agree in writing). You acknowledge that this Contract: (a) is a true operating lease, and not a financing; (b) is fair and reasonable; and (c) shall be enforceable by you, Dot's Rentals & Sales, the other Indemnitees, and their respective insurers, successors and permitted assigns. The terms of this Contract are severable. If any provision (thereof) is deemed invalid or unenforceable by any court or arbitrator of competent jurisdiction, such provision will be deleted, and the remainder (thereof) will remain valid and enforceable. Digital, electronic, photocopied and facsimiled signatures on this Contract and/or any addenda(um) we provide will be deemed originals.

16. **WARNING.** Wrongfully obtaining or withholding the property of another may be deemed **THEFT**. Your attention is directed to Texas Penal Code § 31.04, *et seq.*, and its successor provision(s).

LESSEE ACKNOWLEDGES THAT A LARGE-PRINT VERSION OF THESE TERMS AND CONDITIONS HAS BEEN MADE AVAILABLE TO LESSEE

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TERMS AND CONDITIONS OF RENTAL CONTRACT (Enlarged Version)

For good and valuable consideration, you and Dot's Rentals & Sales (also referred to in this Contract as "DRS" "Lessor," "we," "us," and "our") agree as follows:

1. As used herein, "P.1" refers to the first page or "face" of this Contract; "Contract" refers to P.1 together with these Terms and Conditions of Rental Contract; "Rented Item(s)" or "Item(s)" means the item(s) provided by DRS to you, as identified on P.1 (including any "Instructions" and/or safety device(s) provided per Section [or "§"] 4 below); "Site" means the address where the Item(s) will be delivered and/or used, as set forth on P.1; and "Customer," "Lessee," "you" and "your" mean the "Customer/Lessee" identified on P.1.

2. You agree to rent the Rented Item(s) from DRS for the period(s) specified on P.1 (the "Term"), at the end of which, you agree to return such Item(s) to us as required hereunder. You agree to pay us our stated rental rate(s) (the "Rent"), together with all other charges accruing hereunder, without proration, reduction or setoff, and remain liable for all loss of, damage to and/or destruction of the Rented Item(s) for the duration of the Term and until all such Rented Item(s) is/are returned to and accepted by DRS in the return condition required under this Contract including § 11 (even if the rental is called off before our acceptance of return). Rent is charged for all time out on the following basis: 8 Hours = 1 Day; 7 Days = 1 Week; and 28 Days = 1 Month. Unless otherwise agreed in writing by DRS, all rental rates are for normal use of the Rented Item(s) on a single-shift basis during the Term, not exceeding 8 hours per 24-hour period for which Rent is charged hereunder (each, a "Rental Day"), 40 hours per 7-Rental Day period, 160 hours per 28-Rental Day period (zero hours for any/all uncharged-for periods), and otherwise in accordance with the terms hereof and the "Instructions" described in § 4. Additional amounts will be charged for late returns and overuse as provided in § 11. You will not be entitled to any cancellation right or reduction of Rent or other amounts coming due hereunder in order to account for time in transit, Act(s) of God, event(s) of *force majeure* or any other period(s) of nonuse. We have estimated the Rent based on your estimate of the length of the Term (the "Estimated Rent"). Unless we otherwise agree in writing: (a) you shall pay us: (i) any deposit(s) and the Estimated Rent specified on P.1 in advance of the Term (the "Prepayment"); and (ii) all other amounts coming due hereunder upon demand; and (b)(i) we may deduct any amount you owe us from any Prepayment; (ii) no interest will accrue on any Prepayment; (iii) no Prepayment will be deemed a limit of your liability to us; (iv) all Prepayments are **NON-REFUNDABLE** except only as provided in § 6; and (v) anything remaining with, in or on any Item(s) upon return to us will be deemed surrendered and abandoned.

3. Except with respect to Items we rent from one or more third parties (each, a "TPO") and then re-rent to you ("Re-Rented Item(s)"), DRS owns and will retain title to all Rented Items at all times, and **you will have no ownership interest therein**. You will, however, have exclusive control over the Rented Item(s) during the Term; subject however, to your obligation to use it/them in compliance with this Contract at all times. You **SHALL NOT**: (a) permit the taking or existence of any lien, claim, security interest or encumbrance on any such Item; or (b) **loan, transfer, sublease, repair, surrender or assign any Rented Item or this Contract without our prior written consent (granted, conditioned or withheld in our sole discretion)**. We may sell and/or assign all or any part of our interests in the Rented Item(s) and/or this Contract, in which event, you will attorn to the assignee, who will not be responsible for any pre-existing obligations or liabilities of DRS.

4. Upon the earlier of your receipt, or the delivery to the Site, of the Rented Item(s) unless you immediately reject it/them, you represent, warrant, acknowledge and agree that: (a) each Item: (i) is complete and in good order, condition and repair; (ii) is appropriate for your purposes and in all ways acceptable to you; and (iii) was selected (not based on any recommendation by us), carefully examined and tested by you or your agent(s); and (b) you: (i) have carefully reviewed and understand all laws, rules, regulations, training, instructions, user manuals, maintenance requirements, and other information, if any, including all applicable EPA, OSHA, MSHA, ASME, IBC, IFC, IEEE, ASSP, DOT, FMCSA, IFTA, ANSI and other applicable standards (collectively, "Instructions"); (ii) will fully comply therewith (including Tier 4, Silica Dust, Ventilation and Electronic Logging Device requirements); (iii) have been made aware of the need to use all applicable personal protective equipment and safety devices (including RESPIRATORY and FALL PROTECTION); (iv) will use each Item only for **its intended purpose**, in a reasonable and safe manner in accordance with the Instructions; (v) will timely give all applicable notice(s) to, and obtain all applicable licenses, authorizations, permits and approvals from, all affected parties, including governmental authorities, utilities, cable companies and the owner(s) of the

Site, and ensure that all underground lines, cables and conduits are clearly and properly marked before using any Item(s) to disturb the ground surface (**call 811 and go to texas811.org at least 2 full working days prior to excavation**); (vi) will immediately cease using any Item that is damaged, breaks down, or proves defective (a "Malfunction"); and (vii) will ensure that all others comply with this Contract. You agree to immediately notify: (A) the police, DRS and the TPO (if any) in the event of any theft or accident involving any Rented Item(s); and (B) DRS and the TPO (if any) if any of the other requirements of this § 4 shall be breached or proven incorrect or misleading.

5. You agree to ensure the Site is reasonably clean, safe, secure and fit for delivery and use of the Rented Item(s) at all times. If we agree to provide any service(s) (including without limitation, delivery and/or retrieval), you shall: (a) pay our regular charge(s) therefor, and for all waiting time; (b) be present at the Site at the agreed time(s); and (c) ensure our personnel have full access to the Site. We will not be responsible for any delay(s) caused by you, your agents, employees, or any other parties, including providers of other items or services ("Other Party(ies)") for which you agree to indemnify, defend and hold harmless DRS. If you are not present upon delivery or retrieval of any Item(s), you agree to accept the statements of our representatives regarding the same (including the status, condition, quality, quantities and defect(s) of or with respect to the Item(s) and the Site).

6. In the event of a Malfunction, you will immediately notify, and return the Malfunctioning Item to, us, and provided such Malfunction did not result from or in connection with any wrongful or negligent act or omission of, or any breach of any provision of this Contract by, you or any Other Party(ies), we may, at our option: (a) repair the Malfunctioning Item; (b) provide you with a comparable replacement Item; or (c) with respect only to the Malfunctioning Item(s), return the unused portion of the Rent and cancel this Contract. **The foregoing remedies are EXCLUSIVE.** DRS will have no other obligation(s) with respect to Malfunctions, all of which you waive, together with all associated direct, incidental, consequential and other indirect damages.

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8. **NO WARRANTIES.** DRS IS NOT THE MANUFACTURER OR DESIGNER OF ANY OF THE ITEM(S) REFERENCED IN THIS CONTRACT, ALL OF WHICH ARE PROVIDED "**AS-IS**". NEITHER DRS NOR ANY TPO, MAKES ANY WARRANTY(IES), EXPRESS OR IMPLIED (INCLUDING ANY WARRANTY(IES) OF **MERCHANTABILITY, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE,** FUNCTION, DESIGN, QUALITY, CAPACITY, FREEDOM FROM DEFECTS AND/OR CONTAMINATION, AND GOOD AND WORKMANLIKE PERFORMANCE, AS WELL AS ANY WARRANTY(IES) ARISING FROM OR IN CONNECTION WITH ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE) REGARDING ANY ITEM(S) OR SERVICE(S) REFERENCED IN THIS CONTRACT, NOR DOES DRS OR ANY TPO MAKE ANY WARRANTY(IES) AGAINST INTERFERENCE OR INFRINGEMENT, ALL OF WHICH YOU WAIVE. **NO DESCRIPTIONS, SPECIFICATIONS, DEPICTIONS OR ADVERTISEMENTS CONSTITUTE REPRESENTATIONS OR WARRANTIES BY DRS OR ANY TPO. THERE ARE NO WARRANTIES OTHER THAN THOSE APPEARING ON THE FACE HEREOF.**

9. **INDEMNITY.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, **YOU: (A) ASSUME ALL RISK** OF PERSONAL AND BODILY INJURY, ILLNESS, LOSS, PROPERTY DAMAGE, AND CONTAMINATION OF, TO, AND/OR ARISING IN CONNECTION WITH, THE ITEM(S) AND/OR SERVICE(S) REFERENCED IN THIS CONTRACT, INCLUDING ALL LIABILITIES, CLAIMS, DAMAGES, LOSSES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES) ARISING FROM AND/OR IN CONNECTION WITH THE SELECTION, PROVISION, INSPECTION, DESIGN, MANUFACTURE, USE, CLEANING, CONTAMINATION, LOADING, UNLOADING, TRANSPORTATION, DEMONSTRATION, INSTALLATION, STORAGE, SERVICING, MAINTENANCE, REPAIR, DELIVERY AND/OR RETRIEVAL OF SUCH ITEM(S) AND/OR

SERVICE(S), WHETHER OR NOT YOUR FAULT (COLLECTIVELY, "RISKS"); (B) **RELEASE AND DISCHARGE, AND AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS, DRS, EACH TPO,** their respective parents, affiliates and subsidiaries, and their respective owners, shareholders, members, managers, officers, directors, agents, employees, insurers, subrogees, representatives, successors and assigns (each, an "Indemnitee"), for, from and against all such RISKS, as well as all other liabilities, claims, damages, losses, costs and expenses (including attorneys' fees) arising from and/or in connection with the Rented Item(s), this Contract, our negligence, and/or your breach of any one or more of the terms hereof; and except only as provided in § 6, **(C) WAIVE** all rights, remedies and defenses available under the Uniform Commercial Code, as well as all direct, indirect, incidental, consequential, general, special, exemplary and punitive damages, against each and every Indemnitee.

10. You agree to maintain all insurance we may require, including: (a) liability insurance with minimum limits of \$1,000,000 per occurrence; (b) property damage/inland marine insurance covering all Items for the full (new) replacement cost thereof; (c) workers' compensation insurance; and (d) for all vehicles, containers and/or trailers included in or with the Rented Item(s), as applicable: (i) hired auto liability insurance with minimum limits of \$1,000,000; (ii) hired auto physical damage insurance for actual cash value; and (iii) contents insurance for the full new replacement cost of all contents thereof. Such policies shall, whenever possible: (i) name DRS as an additional insured and loss payee; (ii) waive subrogation against us; (iii) be primary and non-contributory; and (iv) include such other provisions (including deductibles) as we may require. You irrevocably appoint DRS as your agent and attorney-in-fact for purposes of submitting, negotiating and settling claims on all such policies.

11. You agree to protect, properly maintain and care for each Rented Item at all times, keep it safely and securely stored and locked when not in use, and return it to us on time, clean, free of contaminants (including without limitation, asbestos, beryllium and silica) and otherwise in good order, condition and repair, properly serviced and maintained, and if applicable, full of the proper fuel, fluids and lubricants. If you fail to do so, then in addition to any other amounts due hereunder, you will pay us: a) "Adjusted Rent" equal to 150% of the Rent originally specified on P.1 for each succeeding full rental period until all Item(s) have been returned or replaced as required; and (b) all costs and expenses we incur in connection with such failure. You will not, nor will you permit anyone else to: (i) abuse, misuse, overuse, remove from the Site, conceal, repair, store, modify or damage any Rented Item(s); (ii) violate any Instruction, law, insurance policy or warranty; (iii) expose any Rented Item(s) to any flammable, explosive, harmful or hazardous substance(s) (including without limitation, silica dust, asbestos, medical waste, petroleum compounds, chemicals, radioactive materials, paints, greases, solvents and corrosives) or circumstance(s); (iv) disable, misuse or circumvent any safety equipment or device(s) in, on or with any Rented Item(s); or (v) take possession of or exercise control over any Rented Item(s), without our prior consent (granted, conditioned or withheld in our sole and absolute discretion).

12. **YOU SHALL NOT PLACE OR STORE IN OR ON ANY RENTED ITEM(S)** (including without limitation, containers and trailers) any: (a) persons or animals; (b) weapons, ammunition, explosives, drugs or alcohol; (c) trash, dirt or debris; (d) perishables, food or food products; (e) valuables, jewelry, artifacts, works of art, heirlooms or precious archives; (f) toxic, noxious, flammable, corrosive or other potentially dangerous materials and/or substances; (g) medical waste and/or disease agents; (h) mercury, lead, lead-based paint, silica or asbestos; (i) radioactive or otherwise contaminated substances; (j) other "hazardous substances," "hazardous materials," and/or "toxic substances" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980; the Hazardous Materials Transportation Act; the Resource Conservation and Recovery Act; the common law; and/or any other laws, rules, regulations and/or orders pertaining to environmental or public health or welfare, as amended or supplemented from time to time; and/or (k) contraband.

13. Your Rental shall be deemed a "net" rental. Accordingly, your obligations hereunder shall be absolute and unconditional and shall not be subject to any present or future abatement, reduction, set-off, compensation, defense, counterclaim, cross-claim, interruption, deferment or recoupment, for any reason. If you or any guarantor shall: (a) fail to fully and timely honor, pay, perform or comply with this Contract, any other agreement(s) ("Other Contract(s)") between you and DRS, and/or any of your obligations arising (t)hereunder or in connection (t)herewith; (b) provide any incorrect or misleading information to us; (c) become insolvent or bankrupt; or (d) die or cease conducting business; if DRS reasonably deems itself insecure; or if any Rented Item(s) shall be lost or damaged, you will be in **DEFAULT** under this Contract and such Other Contract(s),

whereupon, we may with or without legal process or notice (and without liability to you), to the maximum extent permitted under applicable law: (i) cancel the Term and/or the subject Contract(s) (and/or your rights to use and possess the Rented Item(s)); (ii) seek relief from stay; (iii) recover, empty, lock, restrict, shut down, disassemble and/or disable such Item(s) without being guilty of breach, trespass or wrongful interference, or liable for any injuries or property damage (for which you agree to indemnify, defend and hold harmless each Indemnitee); (iv) perform your obligations (t)hereunder on your behalf, without being obligated to do so; (v) purchase replacement Item(s); (vi) recover from you and/or any guarantor our associated direct and indirect damages, losses, costs and expenses (including without limitation, Rent for the entire scheduled Term, overtime, loss of use, interest, attorneys' fees, retrieval/repossession costs, and collection costs); and/or (vii) pursue any one or more other rights and/or remedies available (t)hereunder, at law and/or in equity, all of which are cumulative.

14. All disputes arising in connection with this Contract and/or its subject matter, shall, at the sole option of DRS, be submitted to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association before a single arbitrator and in a location selected by DRS. Judgment on the arbitrator's award shall be final and binding on the parties hereto and may be entered in any court of competent jurisdiction. This Contract shall be governed by and enforceable under the laws of Texas, and proper venue for all civil legal actions commenced in connection therewith which are not made subject to arbitration as provided above shall lie solely in the federal, state and local courts located in or nearest to Bowie County, TX (unless waived by DRS). You consent and submit thereto and waive all claims that such venue lies in an inconvenient forum. **YOU HEREBY WAIVE YOUR RIGHT TO TRIAL BY JURY.**

15. You agree to pay all sales, use and other taxes (including without limitation, all Texas Emissions Reduction Plan and Dealer's Heavy Equipment Special Inventory taxes), as well as all tolls, fines, fees, duties, assessments and other charges related to the Rented Item(s) and/or this Contract. If legal action is commenced in connection herewith, we will be entitled to recover our associated costs and expenses (including without limitation, attorneys' fees) from you if we prevail. To the maximum extent permitted under applicable law, you grant us a lien on all real and personal property: (a) placed in or on; and/or (b) improved with, any Rented Item(s). We may, without notice or liability to you, monitor and/or inspect, in person and/or electronically (including via GPS and/or telematics) any Rented Item(s) at any time. You consent thereto and agree that all information thereby obtained will be our property. If any performance required of us is delayed or impaired as a result of any act or omission of/by you, any Other Party(ies) or any "Act of God," event of *force majeure*, or other event, fact or circumstance beyond our reasonable control), we will be excused from such performance. You waive all statutes of limitations regarding our rights and remedies. All amounts due hereunder but not timely paid will bear interest at the lesser of: (i) 18% per annum; or (ii) the highest rate permitted under applicable law until paid. You authorize us to charge all amounts coming due hereunder to any and all debit and/or credit card(s) you provide. You agree to pay us the maximum lawful charge for any check you write which is returned unpaid. Our maximum liability in connection with this Contract is limited to the amount(s) actually paid by you and received by us hereunder. Neither our exercise, nor our failure or delay in the exercise, of any rights or remedies available in connection herewith will constitute an election of remedies or a waiver of any of our rights or remedies. Time is of the essence. There are no third-party beneficiaries hereto other than the applicable Indemnitees. This Contract, and any addenda we provide, (each of which shall be deemed incorporated herein) represent(s) the entire agreement between you and Dot's Rentals & Sales, superseding all other agreements and representations (including our website and advertising) and cannot otherwise be amended or extended except in a writing signed by us. These Terms and Conditions apply to all Item(s) identified on P.1, and to **all other Items** you obtain from us at any time (except only as we may otherwise agree in writing). You acknowledge that this Contract: (a) is a true operating lease, and not a financing; (b) is fair and reasonable; and (c) shall be enforceable by you, Dot's Rentals & Sales, the other Indemnitees, and their respective insurers, successors and permitted assigns. The terms of this Contract are severable. If any provision (t)hereof is deemed invalid or unenforceable by any court or arbitrator of competent jurisdiction, such provision will be deleted, and the remainder (t)hereof will remain valid and enforceable. Digital, electronic, photocopied and facsimiled signatures on this Contract and/or any addenda(um) we provide will be deemed originals.

16. WARNING. Wrongfully obtaining or withholding the property of another may be deemed **THEFT**. Your attention is directed to Texas Penal Code § 31.04, *et seq.*, and its successor provision(s).