



1317 SH 37 • Quitman, TX 75783

903-850-0674

Read and understand the contract provided to you by 5H Equipment Rental available online and in person.

Understand the rented equipment will be cleaned, and fueled before pick up or on delivery. If not, additional charges will be applied, which the customer agrees to pay. A \$50/hr cleaning fee will be applied.

Customer/Lessee is responsible for damages to the equipment rented, and that lessee should have insurance on the equipment before using. Contact your current insurance provider and have rented equipment added.

If Customer/Lessee goes over the stated hours on page 1, lessee will be charged an additional charge.

Customer/ Lessee is responsible for any charges that occur from equipment getting stuck. A licensed tow company is preferred when getting equipment unstuck.

Customer is responsible for de-tracking on machines. Customer is responsible for any damage to tires, tracks, and hydraulic hoses. 5H Equipment Rental will put tracks back on/change tire at additional charges.

\$85hr Shop labor, \$175 Field service labor.

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## TERMS AND CONDITIONS OF RENTAL CONTRACT – 5H EQUIPMENT RENTAL & SALES

For good and valuable consideration, you and 5H Rental & Land Management LLC, a Texas limited liability company, d/b/a "5H Equipment Rental & Sales" (also referred to herein as, "5H," "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) rented to you, as identified on P.1 (including any "Instructions" and/or safety devices provided per the terms of Section [or "§"] 3 below); "Site" means the delivery or use address set forth on P.1; and "Customer," "Lessee," "you" and "your" mean the "Customer," "Renter" or "Lessee" identified on P.1.

2. You agree to: (a) rent from 5H the Rented Item(s) for the period(s) specified on P.1 (the "Term"); (b) fully and timely pay us as and when due the rental rate(s) set forth on P.1 therefor (the "Rent"), together with all other charges accruing hereunder, without proration, reduction or setoff; and (c) remain fully liable for all injuries, losses and damages of, to and/or arising in connection with the Rented Item(s) for the entire Term and until all such Rented Item(s) is/are returned to and accepted by 5H in the proper return condition per § 10. Unless otherwise agreed in writing by 5H, all Rental rates are charged for normal use of the Rented Item(s); 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 all uncharged-for periods) in accordance with the terms of this Contract. Additional Rent will be charged as provided in § 10 for late returns and overuse. 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 unavailability or nonuse. We have estimated the Rent based on your estimate of the length of the Term (the "Estimated Rent"). Unless otherwise agreed by 5H in writing, you: (i) will pay us: (i) any deposit and the Estimated Rent specified on P.1 in advance (the "Prepayment"); and (ii) all other amounts coming due hereunder upon demand; and (b) agree that: (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 under or in connection with this Contract; and (iv) all Prepayments are **NON-REFUNDABLE** except as provided in § 5. Anything remaining with, in or on any Item(s) upon return will be deemed surrendered and abandoned.

3. Upon the earlier of your receipt, or our 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 5H), carefully examined and tested by you or your agent(s); and (b) you: (i) have received, carefully reviewed and understand all training, instructions, manuals, requirements, and other information, if any, including all applicable EPA, OSHA, MSHA, ASME, IBC, IFC, IEEE, ASSE, DOT, FMCSA, ANSI and other standards (collectively, "Instructions"); (ii) will fully and timely comply therewith (including Tier 4, Silica Dust, Cleaning and Disinfection requirements); (iii) have been made aware of the need to use all applicable personal protective equipment (including RESPIRATORY and FALL PROTECTION devices); (iv) will use each item only for its intended purpose, in a reasonable and safe manner; (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 dig or disturb the ground surface (call 811 and go to [www.Texas811.org](http://www.Texas811.org) at least 3, but not more than 14, full business days in advance); (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 at all times. You agree to immediately notify: (A) the local police and 5H in the event of any theft or accident involving any Rented Item(s); and (B) 5H if any of the other requirements of this Section shall prove incorrect.

4. 5H owns and will retain title to all Rented Items at all times. You will have exclusive control over the use of the Rented Item(s) during the Term, subject however, to your duty to fully and timely comply 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 Rented Item(s); (b) have any title or ownership interest in or with respect to any Rented Item(s); or (c) loan, transfer, sublease, re-rent, surrender, store, sell, encumber, assign or dispose of any Item(s) or this Contract, without our prior written consent (in our sole discretion). We may sell and/or assign all or any part of our interests in such 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 5H.

5. In the event of a Malfunction as defined in § 3, you will immediately notify, and return the Malfunctioning Item to, 5H, 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 anyone you permit to use or deal with such Item(s), we may, at our option: (a) repair such Item; (b) provide you with a comparable Item; or (c) solely with respect to the Malfunctioning Item, return the unused portion of the Rent and cancel this Contract. The foregoing remedies are **EXCLUSIVE**. We will have no other obligation(s) with respect to Malfunctions, all of which you waive, together with all associated direct and indirect liabilities, losses, claims and damages.

6. **WARNINGS: THE RENTED ITEM(S) CAN BE DANGEROUS, AND SHOULD BE TRANSPORTED, SERVICED, MAINTAINED, REPAIRED AND USED WITH EXTREME CARE, ONLY FOR ITS/THEIR INTENDED PURPOSE(S), AND ONLY BY PROPERLY TRAINED, FAMILIARIZED, QUALIFIED, CERTIFIED, SUPERVISED, INSTRUCTED, AND IF APPLICABLE, LICENSED, ADULTS. YOU AGREE TO PROVIDE ALL APPLICABLE TRAINING, FAMILIARIZATION, INSTRUCTIONS AND WARNINGS TO ALL USERS, OPERATORS AND OCCUPANTS OF THE RENTED ITEM(S), and ensure that each Item is used reasonably, safely and only: (a) for its intended purpose(s); (b) within its rated capacity; (c) unless otherwise specifically agreed by 5H on a case-by-case basis, at the Site; (d) by adults who satisfy the above requirements; and (e) otherwise in full compliance with this Contract, at all times.**

7. You shall ensure the Site is reasonably clean, safe, secure, and otherwise fit for delivery and use of the Rented Item(s) at all times without modification by 5H. If we agree to provide any service(s) (including delivery and/or retrieval), you agree to: (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 other parties, including providers of other equipment or services ("Other Providers") for which you agree to indemnify, defend, and hold harmless 5H. 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 status, condition, quality, utility and quantities of the Item(s) and the Site).

8. **NO WARRANTIES: 5H IS NOT THE MANUFACTURER OR DESIGNER OF ANY OF THE ITEMS, all of which are provided "AS-IS". 5H MAKES NO 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, GOOD AND WORKMANLIKE PERFORMANCE, AND ANY WARRANTY(IES) ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE AND/OR USAGE OF TRADE) regarding any Item(s) or Service(s) referenced in this Contract, nor does 5H make any warranty(ies) against INTERFERENCE OR INFRINGEMENT, all of which you waive. No depictions, models, descriptions, specifications, recommendations, or advertisements constitute representations or warranties by 5H.**

9. **INDEMNITY: TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, YOU HEREBY: (A) ASSUME ALL RISK OF PERSONAL AND BODILY INJURY, ILLNESS, PRODUCTS LIABILITY, LOSS, THEFT, DAMAGE AND CONTAMINATION OF, TO, AND/OR ARISING IN CONNECTION WITH, THE ITEM(S) AND/OR SERVICE(S) REFERENCED IN THIS CONTRACT, INCLUDING WITHOUT LIMITATION, ALL LIABILITIES, CLAIMS AND DAMAGES ARISING IN CONNECTION WITH THE SELECTION, PROVISION, INSPECTION, DESIGN, MANUFACTURE, USE, LOADING, UNLOADING, TRANSPORTATION, DEMONSTRATION, STORAGE, CLEANING, CONTAMINATION, DISINFECTION, SERVICING, MAINTENANCE, REPAIR, DELIVERY AND/OR RETRIEVAL THEREOF (COLLECTIVELY, "RISKS"); (B) RELEASE AND DISCHARGE, AND AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS, 5H RENTAL & LAND MANAGEMENT LLC, D/B/A "5H EQUIPMENT RENTAL & SALES", its parents, partners, suppliers, affiliates and subsidiaries, and their respective owners, shareholders, members, managers, officers, directors, agents, employees, insurers, representatives, subrogees, successors and assigns (each being referred to herein as an "Indemnitee") for, from and against all such RISKS (including without limitation, attorneys' fees) as well as any breach of this Contract by you, your agents, employees, contractors and/or invitees; and except only as provided in § 5, (C) WAIVE all rights, remedies, claims, damages 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 protect, properly load, transport, service, maintain and care for each Rented Item at all times, properly load and secure it during transportation in or on any vehicle or trailer, keep it safely and securely stored and locked when not in use, and return it to 5H on time at the end of the Term, complete (including all attachments, cords and peripherals), clean, free of contamination (including without limitation, silica, beryllium, asbestos and pathogens), 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 the amounts set forth on P.1, you will pay us: (a) Rent at our highest incremental rate 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 shall not, nor shall you permit anyone else to: (i) use any Rented Item while under the influence of any intoxicant(s) (including without limitation, **CANNABIS AND ALCOHOL**), abuse, misuse, overuse, conceal, repair, 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) or circumstance(s); (iv) disable, misuse or circumvent any safety equipment or device(s) in, on or with any Rented Item(s); (v) take possession of or exercise control over any Rented Item(s), without our prior consent (in our sole and absolute discretion); or (vi) place or store in any Rented Item(s) (including trailers) any hazardous material and/or contraband.

11. You agree to maintain all insurance we may require, including: (a) liability insurance with minimum limits of \$1,000,000 per occurrence; (b) workers' compensation and employer's liability insurance; (c) property damage/inland marine insurance covering all Items for the full (new) replacement cost thereof; and (d) hired auto liability and physical damage insurance, whenever possible: (i) naming 5H as an additional insured and loss payee; (ii) waiving subrogation against 5H; (iii) being primary and non-contributory; and (iv) including such other provisions (including deductibles) as 5H may require. You irrevocably appoint 5H as your agent and attorney-in-fact for purposes of submitting, negotiating, and settling claims on all such policies.

12. If and only if, we have offered, and you have elected to purchase the **OPTIONAL LIMITED DAMAGE WAIVER ("LDW")** (set forth on P.1, if available) and paid the LDW fee referenced therein prior to commencement of the Term, you will have no liability to us for the cost to repair or replace covered Item(s) which suffer physical damage during the Term; except that you will remain liable for all: (a) damage to or loss of covered Item(s) caused in whole or in part by: (i) your breach of this Contract, (ii) theft or other failure to return Rented Item(s) to us; (iii) intentional damage, misuse and abuse; (iv) use of alcohol or drugs; and (v) use of any Rented Item in violation of any Instruction or policy of insurance; and (b) loss of and/or damage to on-road vehicles, batteries, keys, glass, tires, wheels, tracks, tubes, booms, belts, fittings, chains, knobs and/or hoses. You may decline LDW if you provide the property damage / inland marine insurance referenced in § 11. **DAMAGE WAIVER IS NOT INSURANCE. NOR IS IT A WARRANTY.**

13. Your Rental shall be deemed a "net" rental. Your obligations hereunder are unconditional and are not subject to reduction, setoff, abatement, or counterclaim. 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 any Indemnitee, 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 5H reasonably deems itself insecure; or if any Rented Item(s) shall be lost or, unless covered by LDW per § 12, damaged, you will be in **DEFAULT** hereunder and thereunder, 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, 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 and shall remain cumulative and unimpaired.

14. This Contract shall be governed by and enforceable under the laws of Texas. Disputes arising under and/or in connection with this Contract and/or its subject matter, shall, at the sole option of 5H, be submitted to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association at its office(s) located in or nearest to Harlingen, TX before a single arbitrator selected by 5H. 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. Proper venue for all other civil legal actions commenced in connection herewith shall lie solely and exclusively in the federal, state, and local courts located in or nearest to Wood County, TX (unless waived by 5H). You consent and submit thereto and waive all claims that such venue lies in an inconvenient forum. **EACH PARTY VOLUNTARILY WAIVES ITS RIGHTS TO: (A) PARTICIPATE IN ANY JOINT, COLLECTIVE OR CLASS ACTION AGAINST THE OTHER PARTY HERETO; AND (B) TRIAL BY JURY.**

15. This Contract, and any addenda(um) we provide, (include our form of Aerial Addendum), each of which is incorporated herein, represent(s) the entire agreement between you and 5H, superseding all other agreements and representations (including our website and advertising). The terms of this Contract are severable. If any provision hereof shall be deemed invalid or unenforceable by any court or arbitral body of competent jurisdiction, such provision will be deleted, and the remainder of this Contract will remain valid and enforceable. This Contract cannot otherwise be amended or extended except in a writing signed by 5H. Time is of the essence. These Terms and Conditions apply to the 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). This Contract: (a) constitutes an operating lease, and not a financing; (b) is fair and reasonable; and (c) shall bind and be enforceable by you, 5H Equipment Rental & Sales, the other Indemnitees, and such parties' respective insurers, successors and permitted assigns (there being no other third-party beneficiaries hereto). 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. In the event legal action is commenced in connection herewith, we will be entitled to recover our costs and expenses associated therewith (including without limitation, our attorneys' fees, and expenses) from you if we prevail. 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. To the maximum extent permitted under applicable law, you grant to 5H: (a) a lien on all real and personal property placed in or on and/or improved with, any Rented Item(s); and (b) the right to claim on any bond provided in connection therewith. 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, impaired or made more costly as a result of any act or omission of/by you, any Other Provider(s) or any "Act of God," event of force majeure (including fire, flood, storm, earthquake, tsunami, slide, subsidence, collapse, riot, war, violence or threat thereof, theft, terrorism, power surge or outage, epidemic, pandemic and governmental and regulatory actions) or other events, facts or circumstances beyond our reasonable control, we will be excused from such performance. All amounts due to 5H hereunder but not timely paid will bear interest at the lesser of: (a) 18% per annum; or (b) the highest rate permitted under applicable law until paid. You authorize us to charge all amounts coming due hereunder to any 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 hereunder. Digital, electronic, photocopied, and facsimiled signatures appearing on this Contract and/or any Addenda(um) we provide will be deemed originals.

16. Any item(s) sold to you ("Sale Items"), as provided on P.1 are provided "**AS-IS**" and are subject to the terms of this Contract (modified to address sales), except that § 5 shall not entitle you to any associated return(s) or refund(s). All item(s) not specifically identified as Sale Items on P.1 will be deemed to be "Rented Item(s)".

17. **STATUTORY DAMAGE WAIVER NOTICE:** This contract offers an optional loss damage waiver for an additional charge to cover your responsibility for loss of or damage to the heavy equipment. You do not have to purchase this coverage. Before deciding whether to purchase this loss damage waiver, you may consider whether your insurance policies afford you coverage for loss of or damage to the heavy equipment rented and the amount of the deductible you would pay under your policies.

18. **WARNING:** Wrongfully obtaining or withholding property and/or services of another which are available only for compensation may be deemed **THEFT**, resulting in **CIVIL LIABILITY** and/or **CRIMINAL PROSECUTION**. See Texas Penal Code § 31.04, *et seq.* and its/their successor(s) for details.

**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 5H Rental & Land Management LLC, a Texas limited liability company, d/b/a "5H Equipment Rental & Sales" (also referred to herein as, "5H," "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) rented to you, as identified on P.1 (including any "Instructions" and/or safety devices provided per the terms of Section [or "\$"] 3 below); "Site" means the delivery or use address set forth on P.1; and "Customer," "Lessee," "you" and "your" mean the "Customer," "Renter" or "Lessee" identified on P.1.

2. You agree to: (a) rent from 5H the Rented Item(s) for the period(s) specified on P.1 (the "Term"); (b) fully and timely pay us as and when due the rental rate(s) set forth on P.1 therefor (the "Rent"), together with all other charges accruing hereunder, without proration, reduction or setoff; and (c) remain fully liable for all injuries, losses and damages of, to and/or arising in connection with the Rented Item(s) for the entire Term and until all such Rented Item(s) is/are returned to and accepted by 5H in the proper return condition per § 10. Unless otherwise agreed in writing by 5H, all Rental rates are charged for normal use of the Rented Item(s), 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 all uncharged-for periods) in accordance with the terms of this Contract. Additional Rent will be charged as provided in § 10 for late returns and overuse. 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 unavailability or nonuse. We have estimated the Rent based on your estimate of the length of the Term (the "Estimated Rent"). Unless otherwise agreed by 5H in writing, you: (a) will pay us: (i) any deposit and the Estimated Rent specified on P.1 in advance (the "Prepayment"); and (ii) all other amounts coming due hereunder upon demand; and (b) agree that: (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 under or in connection with this Contract; and (iv) all Prepayments are **NON-REFUNDABLE** except as provided in § 5. Anything remaining with, in or on any Item(s) upon return will be deemed surrendered and abandoned.

3. Upon the earlier of your receipt, or our 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 5H), carefully examined and tested by you or your agent(s); and (b) you: (i) have received, carefully reviewed and understand all training, instructions, manuals, requirements, and other information, if any, including all applicable EPA, OSHA, MSHA, ASME, IBC, IFC, IEEE, ASSE, DOT, FMCSA, ANSI and other standards (collectively, "Instructions"); (ii) will fully and timely comply therewith (including Tier 4, Silica Dust, Cleaning and Disinfection requirements); (iii) have been made aware of the need to use all applicable personal protective equipment (including RESPIRATORY and FALL PROTECTION devices); (iv) will use each Item only for its intended purpose, in a reasonable and safe manner; (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 dig or disturb the ground surface (call 811 and go to [www.Texas811.org](http://www.Texas811.org) at least 3, but not more than 14, full business days in advance); (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 at all times. You agree to immediately notify: (A) the local police and 5H in the event of any theft or accident involving any Rented Item(s); and (B) 5H if any of the other requirements of this Section shall prove incorrect.

4. 5H owns and will retain title to all Rented Items at all times. You will have exclusive control over the use of the Rented Item(s) during the Term, subject however, to your duty to fully and timely comply 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 Rented Item(s); (b) have any title or ownership interest in or with respect to any Rented Item(s); or (c) loan, transfer, sublease, re-rent, surrender, store, sell, encumber, assign or dispose of any Item(s) or this Contract, without our prior written consent (in our sole discretion). We may sell and/or assign all or any part of our interests

in such 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 5H.

5. In the event of a Malfunction as defined in § 3, you will immediately notify, and return the Malfunctioning Item to, 5H, 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 anyone you permit to use or deal with such Item(s), we may, at our option: (a) repair such Item; (b) provide you with a comparable Item; or (c) solely with respect to the Malfunctioning Item, return the unused portion of the Rent and cancel this Contract. The foregoing remedies are **EXCLUSIVE**. We will have no other obligation(s) with respect to Malfunctions, all of which you waive, together with all associated direct and indirect liabilities, losses, claims and damages.

6. **WARNINGS:** THE RENTED ITEM(S) CAN BE **DANGEROUS**, AND SHOULD BE TRANSPORTED, SERVICED, MAINTAINED, REPAIRED AND USED WITH **EXTREME CARE**, ONLY FOR ITS/THEIR INTENDED PURPOSE(S), AND ONLY BY PROPERLY **TRAINED, FAMILIARIZED**, QUALIFIED, CERTIFIED, SUPERVISED, INSTRUCTED, AND IF APPLICABLE, **LICENSED**, ADULTS. YOU AGREE TO PROVIDE ALL APPLICABLE TRAINING, FAMILIARIZATION, INSTRUCTIONS AND WARNINGS TO ALL USERS, OPERATORS AND OCCUPANTS OF THE RENTED ITEM(S), and ensure that each Item is used reasonably, safely and only: (a) **for its intended purpose(s)**; (b) within its rated capacity; (c) unless otherwise specifically agreed by 5H on a case-by-case basis, at the Site; (d) **by adults who satisfy the above requirements**; and (e) otherwise in full compliance with this Contract, at all times.

7. You shall ensure the Site is reasonably clean, safe, secure, and otherwise fit for delivery and use of the Rented Item(s) at all times without modification by 5H. If we agree to provide any service(s) (including delivery and/or retrieval), you agree to: (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 other parties, including providers of other equipment or services ("Other Providers") for which you agree to indemnify, defend, and hold harmless 5H. 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 status, condition, quality, utility and quantities of the Item(s) and the Site).

8. **NO WARRANTIES:** 5H IS NOT THE MANUFACTURER OR DESIGNER OF ANY OF THE ITEMS, all of which are provided **"AS-IS"**. 5H MAKES NO 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, GOOD AND WORKMANLIKE PERFORMANCE, AND ANY WARRANTY(IES) ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE AND/OR USAGE OF TRADE) regarding any Item(s) or Service(s) referenced in this Contract, nor does 5H make any warranty(ies) against **INTERFERENCE OR INFRINGEMENT**, all of which you waive. No depictions, models, descriptions, specifications, recommendations, or advertisements constitute representations or warranties by 5H.

9. **INDEMNITY:** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, **YOU HEREBY: (A) ASSUME ALL RISK** OF PERSONAL AND BODILY INJURY, ILLNESS, PRODUCTS LIABILITY, LOSS, THEFT, DAMAGE AND CONTAMINATION OF, TO, AND/OR ARISING IN CONNECTION WITH, THE ITEM(S) AND/OR SERVICE(S) REFERENCED IN THIS CONTRACT, INCLUDING WITHOUT LIMITATION, ALL LIABILITIES, CLAIMS AND DAMAGES ARISING IN CONNECTION WITH THE SELECTION, PROVISION, INSPECTION, DESIGN, MANUFACTURE, USE, LOADING, UNLOADING, TRANSPORTATION, DEMONSTRATION, STORAGE, CLEANING, CONTAMINATION, DISINFECTION, SERVICING, MAINTENANCE, REPAIR, DELIVERY AND/OR RETRIEVAL THEREOF (COLLECTIVELY, "RISKS"); **(B) RELEASE AND DISCHARGE, AND AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS, 5H RENTAL & LAND MANAGEMENT LLC, D/B/A "5H EQUIPMENT RENTAL & SALES"**, its parents, partners, suppliers, affiliates and subsidiaries, and their respective owners, shareholders, members, managers, officers, directors, agents, employees, insurers, representatives, subrogees, successors and assigns (each being referred to herein as an "Indemnatee"), for, from and against all such **RISKS** (including without limitation, attorneys' fees) as well as any breach of this Contract by you, your agents, employees, contractors and/or invitees; and except only as provided in § 5, **(C) WAIVE** all rights, remedies, claims, damages 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 Indemnatee.

10. You agree to protect, properly load, transport, service, maintain and care for each Rented Item at all times, properly **load and secure it during transportation in or on any vehicle or trailer**, keep it safely and securely stored and locked when not in use, and return it to 5H on time at the end of the Term, complete (including all attachments, cords and peripherals), clean, free of contamination (including without limitation, silica, beryllium, asbestos and pathogens), 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 the amounts set forth on P.1, you will pay us: (a) Rent at our highest incremental rate 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 shall not, nor shall you permit anyone else to: (i) use any Rented Item while under the influence of any intoxicant(s) (including without limitation, CANNABIS AND ALCOHOL), abuse, misuse, overuse, conceal, repair, 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) or circumstance(s); (iv) disable, misuse or circumvent any safety equipment or device(s) in, on or with any Rented Item(s); (v) take possession of or exercise control over any Rented Item(s), without our prior consent (in our sole and absolute discretion); or (vi) place or store in any Rented Item(s) (including trailers) any hazardous material and/or contraband.

11. You agree to maintain all insurance we may require, including: (a) liability insurance with minimum limits of \$1,000,000 per occurrence; (b) workers' compensation and employer's liability insurance; (c) property damage/inland marine insurance covering all Items for the full (new) replacement cost thereof; and (d) hired auto liability and physical damage insurance, whenever possible: (i) naming 5H as an additional insured and loss payee; (ii) waiving subrogation against 5H; (iii) being primary and non-contributory; and (iv) including such other provisions (including deductibles) as 5H may require. You irrevocably appoint 5H as your agent and attorney-in-fact for purposes of submitting, negotiating, and settling claims on all such policies.

12. If and only if, we have offered, and you have elected to purchase the **OPTIONAL LIMITED DAMAGE WAIVER ("LDW")** (set forth on P.1, *if available*) and paid the LDW fee referenced therein prior to commencement of the Term, you will have no liability to us for the cost to repair or replace covered Item(s) which suffer physical damage during the Term; except that you will remain liable for all: (a) damage to or loss of covered Item(s) caused in whole or in part by: (i) your breach of this Contract; (ii) theft or other failure to return Rented Item(s) to us; (iii) intentional damage, misuse and abuse; (iv) use of alcohol or drugs; and/or (v) use of any Rented Item in violation of any Instruction or policy of insurance; and (b) loss of and/or damage to on-road vehicles, batteries, keys, glass, tires, wheels, tracks, tubes, booms, belts, fittings, chains, knobs and/or hoses. You may decline LDW if you provide the property damage / inland marine insurance referenced in § 11. **DAMAGE WAIVER IS NOT INSURANCE, NOR IS IT A WARRANTY.**

13. Your Rental shall be deemed a "net" rental. Your obligations hereunder are unconditional and are not subject to reduction, setoff, abatement, or counterclaim. 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 any Indemnitee, 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 5H reasonably deems itself insecure; or if any Rented Item(s) shall be lost or, unless covered by LDW per § 12, damaged, you will be in **DEFAULT** hereunder and thereunder, 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, 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 and shall remain cumulative and unimpaired.

14. This Contract shall be governed by and enforceable under the laws of Texas. Disputes arising under and/or in connection with this Contract and/or its subject matter, shall, at the sole option of 5H, be submitted to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association at its

office(s) located in or nearest to Harlingen, TX before a single arbitrator selected by 5H. 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. Proper venue for all other civil legal actions commenced in connection herewith shall lie solely and exclusively in the federal, state, and local courts located in or nearest to Wood County, TX (unless waived by 5H). You consent and submit thereto and waive all claims that such venue lies in an inconvenient forum. **EACH PARTY VOLUNTARILY WAIVES ITS RIGHTS TO: (A) PARTICIPATE IN ANY JOINT, COLLECTIVE OR CLASS ACTION AGAINST THE OTHER PARTY HERETO; AND (B) TRIAL BY JURY.**

**15.** This Contract, and any addenda(um) we provide, (include our form of Aerial Addendum), each of which is incorporated herein, represent(s) the entire agreement between you and 5H, superseding all other agreements and representations (including our website and advertising). The terms of this Contract are severable. If any provision hereof shall be deemed invalid or unenforceable by any court or arbitral body of competent jurisdiction, such provision will be deleted, and the remainder of this Contract will remain valid and enforceable. This Contract cannot otherwise be amended or extended except in a writing signed by 5H. Time is of the essence. These Terms and Conditions apply to the 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). This Contract: (a) constitutes an operating lease, and not a financing; (b) is fair and reasonable; and (c) shall bind and be enforceable by you, 5H Equipment Rental & Sales, the other Indemnitees, and such parties' respective insurers, successors and permitted assigns (there being no other third-party beneficiaries hereto). 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. In the event legal action is commenced in connection herewith, we will be entitled to recover our costs and expenses associated therewith (including without limitation, our attorneys' fees, and expenses) from you if we prevail. 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. To the maximum extent permitted under applicable law, you grant to 5H: (a) a lien on all real and personal property placed in or on and/or improved with, any Rented Item(s); and (b) the right to claim on any bond provided in connection therewith. 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, impaired or made more costly as a result of any act or omission of/by you, any Other Provider(s) or any "Act of God," event of *force majeure* (including fire, flood, storm, earthquake, tsunami, slide, subsidence, collapse, riot, war, violence or threat thereof, theft, terrorism, power surge or outage, epidemic, pandemic and governmental and regulatory actions) or other events, facts or circumstances beyond our reasonable control, we will be excused from such performance. All amounts due to 5H hereunder but not timely paid will bear interest at the lesser of: (a) 18% per annum; or (b) the highest rate permitted under applicable law until paid. You authorize us to charge all amounts coming due hereunder to any 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 hereunder. Digital, electronic, photocopied, and facsimiled signatures appearing on this Contract and/or any Addenda(um) we provide will be deemed originals.

**16.** Any item(s) sold to you ("Sale Items"), as provided on P.1 are provided "**AS-IS**" and are subject to the terms of this Contract (modified to address sales), except that § 5 shall not entitle you to any associated return(s) or refund(s). All item(s) not specifically identified as Sale Items on P.1 will be deemed to be "Rented Item(s)".

**17. STATUTORY DAMAGE WAIVER NOTICE:** This contract offers an optional loss damage waiver for an additional charge to cover your responsibility for loss of or damage to the heavy equipment. You do not have to purchase this coverage. Before deciding whether to purchase this loss damage waiver, you may consider whether your insurance policies afford you coverage for loss of or damage to the heavy equipment rented and the amount of the deductible you would pay under your policies.

**18. WARNING:** Wrongfully obtaining or withholding property and/or services of another which are available only for compensation may be deemed **THEFT**, resulting in **CIVIL LIABILITY** and/or **CRIMINAL PROSECUTION**. See Texas Penal Code § 31.04, *et seq.* and its/their successor(s) for details.

**TRAILERS:** With respect to all trailers included with/in the Rented Item(s), you agree to: (a) carefully inspect all coupling mechanisms, chains, tongue jacks, doors, latches, tires, brakes, lights, signals, pins and tie-downs before each use; (b) secure, protect and regularly inspect all contents of, and refrain from overloading, such trailers; (c) exclude all illegal and/or hazardous substance(s); (d) comply with all laws, rules and regulations (including DOT and FMCSA requirements), and connect all lights and turn signals; and (e) avoid confiscation, seizure, impounding and/or "booting"; (f) timely pay all tolls, taxes, fees, fines, and other charges; (g) maintain them in roadworthy condition; and (h) waive all claims against Lessor for damage to motor vehicle(s) (including bumpers, hitches and mirrors), as well as all associated direct and indirect damages (see Page 2 hereof).

**DROPOFFS:** By signing this contract, you acknowledge that you: (a) have requested that 5H Equipment Rental & Sales ("5H") deliver the Rented Items to the location specified above (the "Site") whether or not you or your representative(s) is/are then present; (b) have received all necessary familiarization, training, instructions and warnings regarding the safe and proper use of such Rented Item(s); (c) voluntarily assume all liability for such Items (including without limitation, any and all loss and/or damage thereto) from and after such delivery; and (d) agree to accept the statements of 5H's representatives regarding the status,

All charges due and coming due hereunder are subject to FINAL AUDIT by 5H EQUIPMENT RENTAL & SALES, ("5H" or "Lessor"). By signing below, you authorize 5H to charge all amounts due and coming due under this Rental Contract (up to 150% of the new replacement value of the item(s) rented to you, as identified above (hereinafter, "Rented Item(s)") to any and all debit or credit card(s) you provide.

**This is a legally binding Contract.** ANY DIFFERENT OR ADDITIONAL TERMS (INCLUDING ANY HANDWRITTEN MODIFICATIONS), WHETHER ORAL OR WRITTEN, ARE HEREBY OBJECTED TO, AND SHALL NOT BE ENFORCEABLE AGAINST 5H, UNLESS SEPARATELY (AND SPECIFICALLY) APPROVED IN WRITING BY 5H.

You, for yourself and for the Customer/Lessee acknowledge and agree that you have carefully reviewed, fully understand, and agree to all of the terms and conditions set forth in this Contract, that you have received a complete and legible copy of each of the same, together with all applicable Instructions and Warnings, and that YOU PERSONALLY GUARANTEE the full and prompt payment and performance of each and every obligation of the Customer / Lessee arising under and/or in connection with this Contract.

## Limited Damage Waiver

### Limited Damage Waiver

\*A fee that limits (does not exclude) your financial responsibility for **ACCIDENTAL** damage to rented equipment during normal use. The limited damage waiver **IS NOT INSURANCE**, and it does not cover **theft, vandalism, misuse, negligence, intentional damage, unauthorized use, loss, or any damage that affects the structural integrity or safe operation of the equipment.**

Customers remain responsible for any damage or loss not covered by the limited damage waiver.

Limited Damage Waiver does not replace insurance coverage

Limited Damage Waiver does not cover any tree work/demo work

Limited Damage Waiver does not cover when equipment was neglected due to overloading or improper use

Limited Damage Waiver does not cover **tracks or tires** (the Customer will be charged a service fee to come replace or work on tracks or tires)

Limited Damage Waiver does not cover any damage to **windows**

Limited Damage Waiver does not cover **hydraulic hoses** (Customer needs to inspect hoses before using machine and point out any concerns before operating)

Limited Damage Waiver does not cover **neglect from improper service of the machine.** (Daily greasing, fluid checks, air filter, and radiator cleaning and inspection are the customers responsibility)

Limited Damage Waiver does not cover **teeth replacement** on buckets when doing tree work/demo work

### Limited Damage Waiver Coverage:

The Limited Damage Waiver covers certain accidental mechanical failures that occur during proper use of the equipment. Covered items include:

- Failure of hydraulic hose O-rings or seals, provided the hose has not been damaged, cut, or abraded on the exterior.
- Select service calls for issues such as A/C fuse replacement or equipment that becomes inoperable due to mechanical failure not caused by customer misuse, negligence, or damage.
- Minor cosmetic scuffs and scratches to rubber tracks that do not compromise the structural integrity, performance, or serviceability of the tracks.

**The renter agrees to maintain adequate insurance covering the rented equipment against physical damage, theft, and liability during the rental period. Failure to maintain insurance does not relieve the renter of responsibility for damage or loss.**

**Customer's failure to maintain required insurance coverage will make the customer fully liable for any deductible, damages, or related costs associated with claims filed through 5H Equipment Rental.**