

TERMS AND CONDITIONS OF RENTAL CONTRACT

For good and valuable consideration, you and Gary L. Gann, L.L.C., d/b/a "ABC Equipment Rentals" (also referred to herein as "ABC," "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 device(s) provided per the terms of Section for ("§") 5 below); "Site" means the delivery or use address 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 ABC for the period(s) specified on P.1 (the "Term"), at the end of which, your right to use and possess the Rented Item(s) shall expire and terminate. 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 ABC in the proper return condition as required under this Contract (including § 9). Unless otherwise agreed in writing by ABC, 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 "week" (a "week" being a single period of 7 consecutive Rental Days), 160 hours per "month" (a "month" being defined as a single period of 28 consecutive Rental Days), and otherwise in accordance with the terms of this Contract and the "Instructions" referenced in § 5. Additional prorated Rent will be charged for late returns and overuse. No allowance will be made for weekends, holidays, weather delays, time in transit or other period(s) of nonuse. We have estimated the Rent based on your estimate of the length of the Term (the "Estimated Rent"). You agree: (a) to pay ABC: (i) any deposit and the Estimated Rent specified on P.1 in advance of the Term (the "Prepayment") unless otherwise agreed in writing by ABC; and (ii) any other amounts coming due hereunder upon demand; and (b) 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 to us; and (iv) all Prepayments are **NON-REFUNDABLE** except only as provided in § 6. Anything remaining with, in or on any Item(s) upon return will, at our option, be deemed surrendered and abandoned.

3. You agree to ensure the Site is reasonably clean, safe, secure and otherwise fit for delivery and use of the Rented Item(s) at all times. 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 hereby agree to indemnify and hold harmless ABC. 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, freedom from defects and quantities of the Item(s) and the Site).

4. Except with respect to Rented Items which ABC rents from one or more third parties (each, a "TPO") and then re-rents to you ("Re-Rented Items"), ABC owns and will retain title to all Rented Items at all times. You will have exclusive control over the Rented Item(s) during the Term; subject however, to your obligation 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); or (b) loan, transfer, sublease, surrender or assign any Rented Item(s) or this Contract, without our prior written consent (in our sole discretion). ABC may sell and/or assign all or any part of its interests in the Rented Item(s) and/or this Contract, in which event, you will attach to the assignee, who will not be responsible for any pre-existing obligations or liabilities of ABC or any TPO.

5. 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 ABC), carefully examined and tested by you or your agent(s); and (b) you: (i) have received, carefully reviewed and understand all training, instructions, user manuals, maintenance requirements, and other information, if any, including all applicable EPA, OSHA, MSHA, ASME, IBC, IFC, IEEE, ASSE, DOT, FMCSA, ANSI and other applicable standards (collectively, "Instructions"); (ii) will fully comply therewith (including Tier 4, Silica Dust 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 devices); (iv) will use each Item only for its intended purpose, in a reasonable and safe manner; (v) will timely give all required 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 at least 2, 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 will notify us immediately if any of the foregoing shall be breached or proven incorrect or misleading.

6. In the event of a Malfunction, you will immediately notify, and return the Malfunctioning Item to, ABC, 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 otherwise deal with such Item(s), we will, at our option: (a) repair the subject 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. ABC will have no other obligation(s) with respect to Malfunctions, all of which you waive, together with all associated direct and indirect damages.

7. **WARNINGS: THE RENTED ITEM(S) CAN BE DANGEROUS.** ACCORDINGLY, YOU AGREE TO: (A) PROVIDE ALL APPLICABLE TRAINING, FAMILIARIZATION, INSTRUCTIONS AND WARNINGS TO ALL PERSONS WHO USE, OPERATE, OCCUPY OR OTHERWISE DEAL WITH ANY RENTED ITEM(S); AND (B) ENSURE THAT EACH RENTED ITEM IS TRANSPORTED, SERVICED, MAINTAINED, REPAIRED, USED, OPERATED AND OCCUPIED: (I) WITH GREAT CARE; (II) WITHIN ITS RATED CAPACITY; (III) UNLESS OTHERWISE SPECIFICALLY AGREED BY ABC, 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 AND REGULATIONS, AT ALL TIMES.

8. You agree to maintain all insurance ABC 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) for all automobiles and trailers included in and/or with the Rented Item(s), hired auto liability insurance with minimum limits of \$1,000,000 and hired auto physical damage insurance for actual cash value; and (d) for all trailers included in the Rented Item(s), insurance covering all items placed and/or stored therein and/or thereon ("Contents") for the full new replacement cost of such Contents. Such policies shall, whenever possible: (i) name ABC and each TPO as an additional insured and loss payee; (ii) waive subrogation against them; (iii) be primary and non-contributory; and (iv) include such other provisions (including deductibles) as we may require. You irrevocably appoint ABC as your agent and attorney-in-fact for purposes of submitting and negotiating claims on all of the above referenced policies.

9. 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 ABC on time, clean, free of contaminants (including without limitation, asbestos, beryllium and silica dust) and otherwise in good order, condition and repair, properly serviced and maintained, and if applicable, full of the appropriate fuel, fluid and lubricants. If you fail to do so, then in addition to the amounts set forth on P.1, you will pay us: (a) hourly Rent until all Item(s) has/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, modify or damage any Rented Item(s); (ii) violate any law, policy of insurance or warranty; (iii) expose any Rented Item(s) to any flammable, explosive, corrosive, or otherwise harmful or hazardous substance(s) or circumstance(s); or (iv) take possession of or exercise control over any Rented Item(s), without our prior consent (which may be granted, conditioned or withheld in our sole and absolute discretion). Additionally, **YOU SHALL NOT PLACE OR STORE IN ANY RENTED ITEM(S) (including trailers) any: (A) animals; (B) trash, dirt or debris; (C) perishables; (D) valuables, jewelry, artifacts, archives or works of art; (E) toxic, noxious, flammable, explosive, corrosive, contaminated or other potentially harmful or hazardous materials and/or substances; or (F) contraband.**

10. **ABC IS NOT THE MANUFACTURER OR DESIGNER OF ANY OF THE RENTED ITEMS, all of which are provided "AS-IS". NEITHER ABC 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 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 ABC or any TPO make any warranty against INTERFERENCE OR INFRINGEMENT, all of which you waive.** No depictions, models, samples, descriptions, specifications, recommendations or advertisements made or accepted by ABC or any TPO constitute representations or warranties by ABC or any such TPO.

11. **TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, YOU: (A) ASSUME ALL RISK OF PERSONAL AND BODILY INJURY, LOSS, PROPERTY DAMAGE, DESTRUCTION AND CONTAMINATION OF, TO, AND/OR ARISING IN CONNECTION WITH, THE ITEM(S) AND 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, 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, ABC AND EACH TPO, 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 liabilities, claims, damages, losses, costs and expenses (including attorneys' fees) arising from and/or in connection with your breach of this Contract; and except only as provided in § 6, (C) WAIVE all rights and remedies 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.**

12. If and only if, we have offered, and you have paid for our **OPTIONAL LIMITED DAMAGE WAIVER ("LDW")** (set forth on P.1, if available) in advance of the Term, you will have no liability to us for the first \$2,500 of repair/replacement costs for physical damage to Item(s) covered by LDW ("Covered Item(s)"); provided however, that you will remain fully liable for: (a) all loss of and damage to: (i) Item(s) not covered by LDW; (ii) Covered Item(s) lost or damaged as a result of: (A) your breach of this Contract; (B) theft or other failure to timely return Covered Item(s) to us; (C) negligence, misuse and/or abuse of Rented Item(s) (including submerging, overturning and overloading); (iii) GPS devices, telematics, batteries, keys, glass, tires, tubes, tracks, booms, belts, chains, knobs and hoses; (b) damage during transportation; and (c) all repair and replacement costs exceeding \$2,500 in the aggregate across all Covered Item(s). You may decline LDW if you provide the property damage/inland marine insurance referenced in § 8. **LDW IS NOT INSURANCE, NOR IS IT A WARRANTY.**

13. Your duties hereunder are unconditional. If you or any guarantor: (a) fail to fully and timely honor, pay, perform or comply with this Contract and/or any of your obligations arising in connection herewith; (b) provide any incorrect or misleading information to us; (c) become insolvent; or (d) die or cease conducting business, or if any Rented Item(s) shall be lost or, unless covered by LDW per § 12, damaged, you will be in **DEFAULT**, under this Contract, whereupon, we may with or without legal process or notice (and without liability to you or any guarantor), to the maximum extent permitted under applicable law: (i) terminate your rental(s); (ii) seek relief from stay; (iii) recover, empty, lock, restrict and/or disable any one or more Rented Item(s) without being guilty of breach, trespass or wrongful interference, or liable for any injuries or property damage (for which you will indemnify, defend and hold harmless each Indemnitee); (iv) perform your obligations hereunder on your behalf, without being obligated to do so; (v) purchase replacement Item(s); (vi) recover from you our associated direct and indirect damages, losses, costs and expenses (including without limitation, Rent for the balance of the Term, loss of use, interest, attorneys' fees and collection costs); and/or (vii) pursue any other rights and/or remedies available hereunder, at law and/or in equity, all of which shall be cumulative.

14. You agree to pay all taxes (including all sales, use, transfer, value added and other taxes), fines, fees, assessments, tolls and other charges related to each Item. 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, attorneys' fees) from you if we prevail. To the maximum extent permitted under applicable law, you grant to ABC 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) any Rented Item(s) at any time, and all information thereby obtained will be the sole and exclusive property of ABC. If any performance required of ABC is delayed or impaired as a result of any act or omission of you, any Other Provider(s) or any "Act of God" (any event, fact or circumstance beyond our reasonable control), we will be excused from such performance. You waive the benefits of 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 ABC 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. 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.

15. Time is of the essence. There are no third-party beneficiaries hereto other than the applicable Indemnitees. This Contract, and any addenda provided by ABC (including as applicable, our Aerial Equipment Addendum), each of which is incorporated herein, represent(s) the entire agreement between you and ABC, superseding all other oral and written agreements and representations (including our website and advertising). The terms of this Contract are severable. If any provision hereof is deemed invalid or unenforceable by any court 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 ABC. **These Terms and Conditions will be deemed to apply to the Item(s) identified on P.1, and to all other Items you obtain from ABC at any time (except only as otherwise agreed by ABC).** You acknowledge that this Contract: (a) constitutes a true operating lease, and not a disguised financing; (b) is fair and reasonable; (c) shall be enforceable by you, Gary L. Gann, L.L.C., and the other Indemnitees; and (d) shall be interpreted under the laws of Texas, with proper venue for all associated civil legal proceedings lying exclusively in the federal, state and local courts located in or nearest to Dallas County, TX (unless waived by ABC). You consent and submit thereto and waive all claims that such venue lies in an inconvenient forum.

16. **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 **CIVIL CRIMINAL PROSECUTION**. See Texas Penal Code § 31.04, et seq, and its/their successor provision(s) for details.

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