TERMS AND CONDITIONS OF RENTAL CONTRACT

- Agreement. Hawthorne Machinery Co., including all subsidiaries and related entities and affiliates ("LESSOR") and the signing party ("LESSEE") (collectively "Parties") agree that these terms and conditions and any related invoices ("LEASE") are the entire agreement between them and can only be modified in writing by LESSOR.
- Assumed Liability. LESSEE assumes all risk and liability for the loss of, damage to, death of, or injury to any person or property caused by the use, condition, possession, or storage of property leased from LESSOR ("Equipment") as well as all other risks and liabilities arising from the same.
- 3. Duty to Indemnify. LESSEE will indemnify, defend, and hold harmless LESSOR, its agents and employees from any and against any and all claims, losses, expenses, liabilities, or damage, including reasonable attorneys' fees ("Losses"), incurred, or reasonably anticipated to be incurred, by LESSOR arising from or related to LESSEE's use, operation, possession, condition, or storage of the Equipment or LESSEE's failure to perform any portion of the Agreement, which Losses include but are not limited to (a) Loss of or damage to the Equipment for any cause; (b) Injury to or death of any person; and (c) Property damage, excepting those Losses that arise from LESSOR's sole negligence or willful misconduct. LESSEE will also pay interest at the rate of 10% per annum from the day payment is made by LESSOR through the day LESSOR is reimbursed by LESSEE.

 4. Normal Wear and Tear. LESSEE agrees to return the Equipment to LESSOR in the same condition as it was
- 4. Normal Wear and Tear. LESSEE agrees to return the Equipment to LESSOR in the same condition as it was leased and, at LESSOR's discretion, agrees to compensate LESSOR for any damage in excess of normal wear and tear. At LESSOR's discretion, a cleaning charge for one day's rental or more may apply.
- 5. LESSEE's Examination of Equipment.

 LESSEE acknowledges that LESSEE has examined and accepts responsibility for all Hitches, Bolts, Safety Chains, Stop and Tail Lighting, Hauling Tongues and Brakes, together with all devices and material used to attach the Equipment to LESSEE's towing vehicle. LESSEE further acknowledges that the Equipment is suitable for LESSEE's needs and understands (without further instructions) its proper operation and use.
- 6. Duties of LESSEE. LESSEE will use and store the Equipment in a careful and proper manner and will not permit it to be operated or used in violation of any and all applicable manuals, user guides, instructions, or applicable federal, state or local statute, ordinance, rule or regulation relating to the possession, use or maintenance of the Equipment as specified by the manufacturer.
- 7. LESSEEs Duty to Insure. LESSEE agrees at its own expense to maintain the following insurance: Public Liability of \$1,000,000 Occurrence/\$2,000,000 Aggregate, Auto Liability of \$1,000,000, Physical Damage Coverage with limits equal to the value of the equipment being rented, Worker's Compensation with state statutory limits, and Employer's Liability of \$1,000,000.
- 8. Insurance Certificate. LESSEE will provide LESSOR no less than two days before the date on which the Equipment is delivered to LESSEE and no less than five days before the expiration date of existing insurance An Acord certificate evidencing the required coverage with Hawthorne Machinery Co., 16945 Camino San Bernardo, San Diego, CA 92127 listed as an Additional Insured. LESSEE must also provide LESSOR a valid Physical Damage certificate or purchase LESSOR's Rental Protection Plan (RPP) to lease the Equipment.
- 9. Disclaimer of Warranties. LESSOR makes no warranties, expressed or implied, as to the Equipment's merchantability of fitness for any particular purpose.
- 10. Obligations Survive Lease Term.

 The indemnities and assumptions of risk, liabilities and obligations by LESSEE arising under the Lease will continue in effect after the termination of Lease regardless of the reason for termination.
- 11. Failure of Equipment Waiver of Damages. In the event of any failure of the Equipment, LESSEE at its expense shall immediately return it to LESSOR's premises. LESSEE shall not repair or incur any expense to repair to the Equipment without LESSOR's written authorization.
- 12. No Assignment of Encumbrance. LESSEE agrees to keep the Equipment free from any lien and encumbrance of any kind, and agrees not to assign this Lease or any interest hereunder or to sublet or hire out the Equipment without the prior written consent of LESSOR.
- 13. Loss or Destruction of the Equipment. (a) LESSEE is responsible to LESSOR for any loss or damage to the Equipment, except for ordinary wear and tear. If the equipment is stolen, lost or damaged, LESSEE shall be liable to LESSOR for the full value of the Equipment, together with interest at the highest legal rate on such value, plus all of LESSOR's expenses related to said loss or damage, including, but not limited to, loss of use, appraisal fees, or cost of recovery.
- (b) Only if LESSEE has elected and been charged for the RPP and has met all of the conditions as outlined in subsection 4 and 6 shall subsection (a) paragraph 13 not apply, and instead this subsection (b) shall apply to any physical damage loss covered under the RPP not caused by the negligence or willful misconduct of the LESSEE. when LESSEE elects and pays for the RPP, LESSOR agrees to waive its rights of subrogation against LESSEE for all loses covered under the RPP. LESSEE expressly agrees and understands that the RPP is NOT insurance and does not offer coverage for risks including, but not limited to, Public Liability, Auto Liability, General Liability, or Workers Compensation.
- LESSEE shall be liable to LESSOR for any loss or damage (1) caused by use of the equipment in violation of any of the terms of this Lease or of any law or ordinance, (2) to crane, dragline, or derrick booms, or forklift masts or mast carriages resulting from overloading or exceeding the rated capacity of the equipment or from a collision when a boom is in motion: (3) caused by negligence reckless conduct, or willful or intentional conduct of LESSEE, (4) to electrical appliances, motors, or other electrical devices, caused by artificial electrical current, (5) due to theft, disappearance, or conversion unless such theft, disappearance, or conversion is immediately documented with with the appropriate public authorities (police report), and a copy is given to LESSOR. (6) resulting from the lack of lubrication, the use of improper fuel, or other failure of LESSEE to perform the required maintenance and servicing of the equipment, (7) caused by exposure to hazardous, corrosive, contaminated or radioactive materials, (8) to the tires or tubes, such as blowouts, bruises, cuts or other causes inherent in the use of the equipment, and/or (9) to equipment used outside of The Continental limits of the United States of America, and Canada.
- (c) Regardless of whether subsection (a) or subsection (b) applies to this Agreement, in no circumstance (other than damages resulting from covered losses when Rental Protection Plan coverage is elected and charged) shall LESSOR waive any claim against LESSEE, and in all circumstances LESSEE shall be responsible for accessories such as air hoses, tool steel, electric cords, blades, welding cables, LPG tanks, fuel containers and other similar items. Moreover, the waiver of subrogation specified in subsection (b), above shall not apply to any bodily injury or property damage liability claims in any circumstances.

- (d) if LESSEE fails or refuses to select and pay for the RPP, then at LESSOR's sole option, LESSOR may terminate the Lease. However, if LESSOR elects to continue the Lease, the RPP specified in subsection (b), above, will not be effective, regardless of whether the RPP has been selected and charged on the face of this Agreement, and LESSEE shall be fully responsible for all loss and damage to the equipment as specified in subsection (a) of this paragraph.
- 14. Return of Equipment: LESSEE shall be liable for all damages to or loss of the equipment and liability incurred prior to equipment's return to LESSOR. If the equipment is to be "picked-up" by LESSOR, LESSEE agrees to provide a secure storage location and LESSEE accepts all risk including damage to and liability relative to the equipment for a reasonable period of time until the equipment is picked-up by LESSOR.
- 15. LESSOR'S Right to Remove Equipment from LESSEE'S Premises: If LESSEE fails to make any of the payments required by the Lease, fails to keep the Equipment in proper working condition, misuses the Equipment in any manner, does not keep or perform any of the conditions set out herein, or if an order for relief in bankruptcy is entered by or against the LESSEE, or if the LESSEE shall make an assignment for benefit of his creditors, the LESSOR may terminate the Lease and LESSEE's rights under the Lease, declare the balance of all unpaid amounts and all other charges of any kind required of LESSEE under the Lease to be payable immediately, and be entitled to the balance due together with interest at the rate of 10% per annum from the date of notification, and repossess the Equipment without legal process free of all rights of LESSEE to the Equipment. LESSEE authorizes LESSOR or LESSOR's agent to enter onto any premises where the Equipment is located and repossess and remove it LESSEE specifically waives any right of action LESSEE might otherwise have arising out of the aforementioned entry and repossession and releases LESSOR of any claim for trespass or damage caused by reason of the entry, repossession, or removal. LESSEE will reimburse LESSOR for all reasonable expenses of repossession and enforcement of LESSOR's rights and remedies, together with interest at the rate of 10% per annum from the date of payment. Notwithstanding any other provision of this Lease, LESSEE will pay, subject to any limits under applicable law, LESSOR's attorneys' fees and legal exper to enforce any provision in this Lease.
- 16. LESSOR's Right to Inspection: The LESSOR shall have the right during business hours to to enter LESSEE's premises for the purpose of inspecting the Equipment and making any repairs and adjustments necessary to ensure the proper and safe operation thereof. LESSOR at its sole discretion may remove the Equipment and replace it with similar equipment covered by this Agreement at any time during the term of the Lease
- 17. Fuel. It is the responsibility of the LESSEE to use appropriate fuels. Engine damage arising from the use of incorrect fuel will be charged to LESSEE.
- 18. Normal Use: The rental rate shown on the face of this Lease covers normal use only, not to exceed eight (8) hours per day, forty (40) hours per week or one hundred and sixty (160) hours per four week period. Any excess use will be pro-rated against the appropriated rate and charged to the LESSEE.
- 19. Term. LESSOR may extend the Lease on Equipment beyond thirty (30) days. In the event of such an extension, the terms and conditions of the original executed rental contract are carried over and incorporated by reference.
- 20. Arbitration. In the event of any claim between the Parties relating to this Lease, including without limitation any tort claim, and if the Parties are unable to settle said disputes, the Parties shall promptly mediate in San Diego under the Commercial Mediation Rules of the American Arbitration Association. If the Parties are unable to resolve such dispute, then such dispute shall be submitted to binding arbitration in San Diego under the Commercial Arbitration Rules of the American Arbitration Association and Title 9 of the California Code of Civil Procedure and shall be administered by the American Arbitration Association.
- 21. Air Pollution Permit Compliance. LESSEE agrees to fully read and understand all terms and conditions of any State or Federally issued air permit for the equipment being rented. LESSEE agrees as a "Rental Operator", to comply with all requirements of any issued air permit and all applicable local, state and federal air quality rules and regulations. LESSEE fully understands that permitted equipment is subject to enforcement action by Local, State and Federal regulatory agencies for any violations of the listed permit conditions and local, state and federal air quality rules and regulations.
- 22. Personal Propertry Tax. LESSEE agrees to pay LESSOR an additional 0.75% charge on the rental price of qualified heavy equipment as defined in California Civil Code 1656.5 ("PPT"). The PPT is an estimate of the personal property tax LESSOR will be required to remit for the rental of certain qualified heavy equipment by LESSEE. In the event the PPT exceeds actual amounts owed by LESSOR, LESSEE acknowledges and authorizes the excess to be remitted to the State Board of Equalization for deposit into the State of California General Fund as required by law.

23. EMISSIONS REQUIREMENTS:

CAL AIR RESOURCES BOARD 5 MIN IDLING LIMIT WHEN OPERATED IN CAL, ANY OFF-ROAD DIESEL VEHICLE MAY BE SUBJECT TO THE CAL AIR RESOURCES BOARD IN-USE OFF-ROAD DIESEL VEHICLE REGULATION. IT THEREFORE COULD BE SUBJECT TO RETROFIT OR ACCELERATED TURNOVER REQUIREMENTS TO REDUCE EMISSIONS OF AIR POLLUTANTS. FOR MORE INFORMATION, PLEASE VISIT THE CAL AIR RESOURCE BOARD WEBSITE AT:

HTTP://ARB.CA.GOV/MSPROG/ORDIESEL/ORDIESEL.HTM.

24. AGREEMENT FOR EXTENSION OF CREDIT:

LESSEE'S signature attests financial responsibility, to pay our invoices in accordance with the following terms: (1) Payment is due Net 10th prox. of the month following invoice date. (2) All sums past due 30 or more days shall bear a service charge of 1 1/2% per month as reimbursement to Hawthorne for clerical and other expenses incurred as a result of the delinquency, it being expressly agreed it would be impractical or difficult to fix actual expenses. I/We expressly agree to pay the service charge as liquidated damages and not as a penalty representing reasonable and fair compensation for the foreseeable losses/expenses resulting therefrom, (3) LESSEE agrees to pay Hawthorne a \$50.00 Service Charge on each dishonored check returned. (4) Hawthorne has the right to file a Preliminary Notice against any customer to which equipment has been supplied and payment not received. Failure to provide any Preliminary notice information when requested could constitute revoking extension of credit.