

Terms and Conditions

For the purpose of this Rental Agreement Rental Center "Stemar Equipment & Supply Company, Inc." shall mean Center, its owners, officers, directors, shareholders, and employees, and "Customer" shall mean Customer, its agents, assigns, family members and/or employees.

In consideration of hiring of the rental equipment (herein "the rental equipment or equipment") described on the front of this Agreement it is agreed as follows:

1. INDEMNITY/HOLD HARMLESS. CUSTOMER WILL TAKE ALL NECESSARY PRECAUTIONS REGARDING THE EQUIPMENT RENTED, AND PROTECT ALL PERSONS AND PROPERTY FROM INJURY OR DAMAGE. CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS CENTER FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, JUDGMENTS, ATTORNEYS' FEES AND COSTS, OF EVERY KIND AND NATURE, INCLUDING, BUT NOT LIMITED, TO INJURIES OR DEATH TO PERSONS AND DAMAGE TO PROPERTY, ARISING OUT OF THE USE, MAINTENANCE, INSTRUCTION, OPERATION, POSSESSION, OWNERSHIP OR RENTAL OF THE EQUIPMENT RENTED, HOWEVER CAUSED, EXCEPT CLAIMS OR LITIGATION ARISING THROUGH THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF CENTER.

2. ASSUMPTION OF RISK/RELEASE-DISCHARGE OF LIABILITY. CUSTOMER IS FULLY AWARE AND ACKNOWLEDGES THERE IS A RISK OF INJURY OR DAMAGE ARISING OUT OF THE USE OR OPERATION OF THE EQUIPMENT RENTED HEREUNDER AND HEREBY ELECTS TO VOLUNTARILY ENTER INTO THIS AGREEMENT AND ASSUME ALL OF THE ABOVE RISKS OF INJURY OR DAMAGE. CUSTOMER AGREES TO RELEASE AND DISCHARGE CENTER FROM ANY AND ALL RESPONSIBILITY OR LIABILITY FROM SUCH INJURY OR DAMAGE ARISING OUT OF THE USE OR OPERATION OF THE EQUIPMENT; AND CUSTOMER FURTHER AGREES TO WAIVE, RELEASE AND DISCHARGE ANY AND ALL CLAIMS FOR INJURY OR DAMAGE AGAINST CENTER WHICH CUSTOMER OTHERWISE MAY BE ENTITLED TO ASSERT.

3. OPERATORS. No operators are furnished, directly or indirectly with our equipment.

4. RECEIPT/INSPECTION OF EQUIPMENT. Customer hires the equipment on an "as is, where is, with all faults" basis. Customer acknowledges that he has, or will, personally inspect the equipment prior to its use and finds it suitable for customer's needs. Customer acknowledges receipt of all items listed in this Agreement and that the equipment is in good working order and repair and that Customer understands (without further instructions) its proper operation and use. Customer acknowledges the equipment was received with all manuals and hazard/warning "stickers" required under the law.

5. POSSESSION/TITLE. Customer's right to possession of the equipment begins upon equipment leaving Center and terminates when the equipment is returned to the Center or if the Center ends the rental agreement which the Center may do at any time for any reason. Retention of possession after the Center ends the rental agreement constitutes a material breach of this Agreement.

Time is of the essence of this Agreement. Any extension of this Agreement must be agreed upon in writing. Title to the equipment is and shall remain in Center. Customer hereby agrees to indemnify, defend and hold Center harmless from any and all claims and costs arising from any retaking and/or levy. If equipment is levied upon, Customer shall notify Center immediately. Center will utilize its reasonable efforts to deliver and retrieve rental items from locations determined solely by Customer; accordingly, Customer assumes sole risk and liability for any personal or property damage occurring at such locations.

6. RENTAL PERIOD/RATE/PAYMENT. Rental charges begin immediately upon equipment leaving Center. Customer understands that monthly rental invoices will be issued every four weeks for equipment that is kept for extended periods of time. Rental charges end upon return of the equipment to Center in an acceptable condition. No allowance will be made for Saturdays, Sundays, Holidays, or time in transit, nor for any period of time the equipment may not be in actual use while in Customer's possession. Rental rates are based upon single shift usage (eight hours per day, five days per week). If Customer makes greater use of the equipment, it is agreed that the additional usage will be charged. If the equipment is returned prior to the end of the minimum rental period, the rental due shall be for the entire minimum rental period. Center may terminate rental at any time and retake the equipment without further notice in case of violation by Customer of any terms or conditions of this Agreement. Customer agrees to pay a monthly service charge on all unpaid balances. Customer agrees to pay Center a fee (which may go to Center's general revenue and be utilized by Center to pay its environmental expenses and costs of compliance with environmental laws) for environmental compliance. Customer agrees not to use equipment in violation of environmental laws.

7. ORDINARY WEAR AND TEAR. Customer shall be responsible for all damage not caused from ordinary wear and tear. "Ordinary wear and tear" shall mean only the normal deterioration of the rental equipment caused by ordinary, reasonable and proper use of the equipment. Customer responsible for all tire damage. Damage which is not "ordinary wear and tear" includes, but is not limited to: damage due to overturning, overloading or exceeding rated capacities; breakage; improper use; abuse; lack of cleaning; dirtying of equipment by paint, mud, plaster, concrete, resin or any other material. A cleaning charge will be made on equipment returned unclean.

8. COMPLIANCE WITH LAWS/USE OF EQUIPMENT. Customer agrees not to use or allow anyone to use the equipment for any illegal purpose or in any illegal manner or in an unsafe manner. Customer agrees at his sole cost and expense to comply with all local, municipal, county, state and federal laws, ordinances and regulations and ANSI standards which may apply to the use of the equipment during the rental period. Customer further agrees to pay all licenses, fines, fees, permits, registrations, or taxes arising from his use of the equipment, including any subsequently determined to be due.

Customer shall not allow any person who is not qualified and who has not received and understands safety and operating instructions and who does not utilize all safety equipment required, to operate the equipment or use the equipment. Customer shall not allow any person to use or operate the equipment when it is in need of repair or when it is in an unsafe condition or situation; modify, misuse, harm or abuse the equipment; permit any repairs to the equipment without Center's prior written permission; or, allow a lien to be placed upon the equipment.

Customer agrees to check filters, oil, fluid levels, air pressure, clean and visually inspect the equipment at least daily and to immediately discontinue use and notify Center when equipment is found to need repair or maintenance or is not properly functioning. Customer acknowledges that Center has no responsibility to inspect the equipment while it is in Customer's possession.

9. RETURN OF EQUIPMENT. Customer agrees to return to Center the equipment in as good condition and repair as when received. Customer shall be liable for all damages (up to the full replacement cost of the equipment and loss of rental revenue) to or loss to the equipment and liability incurred prior to equipment's return to Center. Customer shall be responsible for all costs incurred by Center recovering and returning damaged equipment to Center's premises. If equipment is to be "picked-up" by Center, Customer agrees to provide a secure storage location and Customer accepts all risk including damage to and liability relative to equipment until the equipment is picked-up by Center.

10. DISCLAIMER OF WARRANTIES. Center makes no warranty of merchantability or fitness for any particular use or purpose, either express or implied. There is no warranty or representation that the equipment is fit for Customer's particular intended use, or that it is free of latent defects. Center shall not be responsible to Customer or any third party for any loss, damage or injury resulting from, or in any way attributable to the operation of, use of, or any failure of the equipment. Center shall not be responsible for any defect or failure unknown to the Center. Customer's sole remedy for any failure of or defect in the equipment shall be termination of the rental charges at the time of failure provided that Customer notifies Center immediately and in writing of such failure and returns the equipment to Center within twenty-four (24) hours of such failure.

11. PURCHASE ORDERS. The use of Customer's purchase order number on this Agreement is for Customer's convenience and identification only and does not bind Center.

12. SUBLETTING. Customer agrees not to sublet, loan or assign the equipment.

13. DEFAULT. Should Customer in any way fail to observe or comply with any provision of this Agreement, Center may, at its sole option, terminate this Agreement, retake the equipment, declare any charges due and payable and initiate legal process to recover monies owed, and/or, pursue any other legal rights and remedies available to Center. Exercise of any remedy available to Center shall not constitute an election of remedies or a waiver of any additional remedies to which Center may be entitled.

14. RETAKING OF EQUIPMENT. If for any reason it becomes necessary for Center to retake the equipment, Customer authorizes Center to retake the equipment without further notice or further legal process and agrees that Center shall not be liable for any claims for damage or trespass arising out of the removal of the equipment.

15. LEGAL FEES. In the event an attorney is retained to enforce any provision (including collection costs) of this Agreement, the prevailing party in the dispute shall be entitled to recover reasonable attorney's fees and court costs in such action, or proceeding, in an amount to be determined by the court.

16. NOTICE OF NON-WAIVER/SEVERABILITY. Any failure of Center to insist upon strict performance by Customer as regards any provision of this Agreement shall not be interpreted as a waiver of Center's right to demand strict compliance with all other provisions of this Agreement against Customer or any other person. The provisions of this Agreement shall be severable so that the unenforceability, invalidity or waiver of any provision shall not effect any other provision.

17. INSURANCE. Customer shall maintain in full force and effect during the term of this Agreement separate General Liability and Automobile Liability insurance policies with coverage limits for bodily injury, including death, personal injury and/or property damage that will respond as primary coverage for Customer's liability and all obligations outlined under this Agreement. In addition to the foregoing, Customer shall maintain Property Insurance in an amount adequate to cover any loss and/or damage to the equipment, up to full replacement cost. Customer shall furnish Center with a Certificate of Insurance evidencing the foregoing insurance requirements and naming Center as an additional insured.

18. MISCELLANEOUS.

A. This Agreement may be executed or delivered by facsimile or e-mail. If this Agreement is executed or delivered by facsimile or e-mail, Customer acknowledges receipt of a completed Agreement and agrees to all of the terms and conditions of such Agreement.

B. Before digging, it is the sole responsibility of the Customer to follow the requirements of the regional notification center law pursuant to Article 2 (commencing with Section 4216) of Chapter 3.1 of Division 5 of Title 1 of the Government Code. By signing this Agreement, the Customer accepts all liabilities and responsibilities contained in the regional notification center law.

C. Customer authorizes and instructs Center to complete Customer's "blank/open check" and to "fill-in" the amount of all charges.

D. Customer authorizes Center to submit all Customer charges to Customer's credit card account.

E. WARNING: THIS PRODUCT CONTAINS OR PRODUCES ONE OR MORE CHEMICALS KNOWN TO THE STATE OF CALIFORNIA TO CAUSE CANCER AND BIRTH DEFECTS (OR OTHER REPRODUCTIVE HARM).

F. Customer acknowledges that it is a violation and Customer assumes potential civil liability of section 4442 or 4443 to use or operate an internal combustion engine on any forest, brush, or grass-covered land unless the engine is equipped with a spark arrester.

G. Customer responsible to comply with Fugitive Dust Provisions of Air Quality Management Districts and Silica dust requirements. Customer responsible for all requirements of State Air Resources Board and local Air Quality Management Districts including, but not limited to recordkeeping, providing notification of use, permits and registrations.

H. Customer is fully aware and acknowledges that the terms and conditions of this Agreement shall apply to all subsequent rentals by Customer. Customer further agrees that the Terms and Conditions of this Agreement shall govern all future deliveries should Customer fail or be unable to sign the Agreement at time of delivery.

I. Customer responsible for any damages due to digging, disturbing soil or earth, staking, post hole digging, augering, etc. Customer responsible for identifying and disclosing to Center all underground obstacles. Center not responsible for damage to above or below ground obstacles.

J. WAIVER OF JURY TRIAL. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF THIS AGREEMENT.

K. Customer waives any rights and/or claims to property "left with equipment" and instructs Center to "turn-over" such property (within a reasonable period of time and without duty of Center to inspect, protect or inventory such property) to the police department of the city where Center is located.

L. Customer instructs Center to deliver equipment to address at which Customer represented it will be used and to leave such equipment at such location even if Customer is not present and Customer shall be solely responsible for such equipment pursuant to the terms and conditions of this Agreement.

M. Customer agrees to be bound by the terms and conditions of this Agreement for all future deliveries and authorizes Customer's agent's signature of Agreement.

N. Customer is responsible for any and all permits that may be required.