

# LEASE AGREEMENT

1. LESSEE acknowledges that it, through its fully authorized agent, has inspected the Leased Equipment and accepts same, AS IS, WHERE IS, at the time of delivery. LESSOR shall not be liable for any special, indirect, incidental, or consequential damages of any nature, arising out of, or in any way or manner in connection with, the leasing, maintenance, use, operation, storage, erection, dismantling, and/or transportation of the Leased Equipment.
2. LESSOR HEREBY STATES, AND LESSEE SPECIFICALLY ACKNOWLEDGES, THAT LESSOR IS NOT THE MANUFACTURER OF THE LEASED EQUIPMENT (NOR THE MANUFACTURER'S AGENT OR REPRESENTATIVE), BUT MERELY LEASES THE LEASED EQUIPMENT FOR USE BY LESSEE, SUBJECT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.
3. **LESSOR MAKES NO WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY AND/OR THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. LESSOR MAKES NO WARRANTIES REGARDING THE LEASED EQUIPMENT AND/OR ITS CONDITION FOR ANY USE OR PURPOSE.**
4. All rentals, other charges and interest, accruing under this agreement, accrue under open account and LESSOR may avail itself of any and all provisions and recoveries of the law applicable to open accounts, including, but not limited to, attorneys' fees, damages, and expenses for non-payment and collection thereof.
5. LESSEE agrees to pay LESSOR at the locations noted on this agreement, rentals stipulated in this agreement during the entire term of this lease. Rent shall be paid within thirty (30) days of each invoice thereof, which shall be issued by LESSOR from time to time, but no less frequently than once each thirty (30) days. Balances beyond thirty (30) days will be subject to a one and one-half (1.5%) percent finance or interest charge per month (eighteen (18%) percent per annum). LESSEE shall be liable for all costs, fees (including LESSOR's attorneys' fees) and expenses incurred in collection of rentals, other charges and/or interest.
6. The Leased Equipment shall at all times be and remain the sole and exclusive property of LESSOR, and LESSEE shall not have or acquire any rights of property or title in or to said Leased Equipment, except the right to possess and use same so long, and only so long, as LESSEE shall not be in default in performance hereof. LESSEE covenants that the equipment leased hereunder will be permanently located at its address shown on this agreement and LESSEE shall promptly notify the LESSOR in writing of any change in such location except temporary changes in the usual course of LESSEE's business.
7. (a) LESSEE will maintain General Liability insurance for no less than \$1,000,000 per occurrence / \$2,000,000 general aggregate (and any other public liability insurance that may be applicable to LESSEE's business) on a primary and non-contributory basis, including waiver of subrogation and additional insured in favor of LESSOR. Lessee must also maintain Worker's Compensation insurance as may be required including a waiver of subrogation in favor of Lessor.  
(b) LESSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND LESSOR FROM AND AGAINST ANY AND ALL CLAIMS, ACTIONS, LOSSES, DEMANDS, LIABILITY, AND/OR EXPENSES, WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, LESSOR'S ATTORNEY'S FEES, IF ANY, AND INCLUDING, BUT NOT LIMITED TO, PUNITIVE OR EXEMPLARY DAMAGES, IF ANY) ARISING OUT OF, OR IN ANY WAY OR MANNER CONNECTED WITH, THE USE, OPERATION, MAINTENANCE, POSSESSION, LEASE, STORAGE, ERECTION, DISMANTLING, SERVICE, AND/OR TRANSPORTATION OF THE LEASED EQUIPMENT. THIS INDEMNITY SHALL APPLY EVEN THOUGH ANY SUCH LIABILITY, DAMAGE, EXPENSE, LOSS, INJURY OR DEATH IS CAUSED, IN WHOLE OR IN PART, BY ANY DEFECT IN, OR CONDITION OF, ANY SUCH EQUIPMENT WHICH IS THE SUBJECT OF THIS LEASE. THIS INDEMNITY SHALL APPLY REGARDLESS OF WHETHER OR NOT SUCH LIABILITY, DAMAGE, EXPENSE, LOSS, INJURY OR DEATH IS CAUSED OR CONTRIBUTED TO BY THE NEGLIGENCE OR FAULT OF THE LESSOR, BY THE VIOLATION OF ANY LAW, STATUTE, REGULATION, OR OTHERWISE, AND, ALSO, EVEN THOUGH LESSOR IS FOUND TO BE STRICTLY AND/OR ABSOLUTELY LIABLE THEREFORE.
8. LESSEE agrees to provide the LESSOR with a Certificate of Insurance stating that the Leased Equipment is in fact insured for physical damage and such physical damage coverage must include Lessor as loss payee. The policy limit must be at least equal to the value of the leased equipment. LESSEE agrees to IMMEDIATELY notify the LESSOR of any occurrence or damage exceeding TWO HUNDRED AND FIFTY DOLLARS (\$250).
9. (a) LESSEE assumes and agrees to pay when due any sales tax, use tax, excise tax, *ad valorem* tax, stamp tax, documentary tax, or other tax based upon the amount of the rentals, which LESSOR shall have paid, or be obligated to pay hereunder, and for any other taxes based on the use or operation of said equipment by LESSEE.  
(b) LESSEE shall pay all fines and other charges levied or assessed in relation to the use or operation of the Leased Equipment.
10. LESSEE shall not assign this lease or sub-lease any of the Leased Equipment without first receiving the LESSOR's written consent. LESSEE shall not permit others to use the Leased Equipment without LESSOR's written consent. LESSOR may, without notice to LESSEE, pledge or assign its rights under the lease and to the Leased Equipment, and assign to another any monies due or becoming due to LESSOR hereunder. LESSEE's rights are subordinate to the rights of any assignee, trustee, mortgagee, or other holder of legal title pursuant to any form of financing agreement covering the Leased Equipment in the event of the occurrence of an event of default by LESSOR under such financing agreement.
11. LESSEE shall not make any substantial changes or alterations to the Leased Equipment without prior written consent from LESSOR. Any improvements to the Leased Equipment shall at once become and remain the property of LESSOR.
12. (a) LESSEE agrees that the Leased Equipment shall be used only in the normal course of its business and only as to commodities, weight and there limitations as specifically set forth in this agreement.  
(b) LESSEE shall keep the Leased Equipment in good and efficient working order, condition and repair, reasonable wear and tear alone excepted. LESSEE assumes all risk of loss or damage to the Leased Equipment, however caused, including, but not limited to, all hazards normally insured against, acts beyond or outside of LESSEE's control, acts of God, fortuitous events, natural disasters, war, and/or any other causes. The Leased Equipment will remain on lease until repairs are made and the Leased Equipment is ready for re-use.  
(c) It is implicit in LESSEE's acceptance for use of the Leased Equipment (and LESSEE specifically warrants herein), that LESSEE, its agents and/or employees, have sufficient familiarity with the Leased Equipment to properly use said equipment, and to cause said equipment to receive proper maintenance and care in all particulars, and further to protect the health and safety of persons required to come in contact with the Leased Equipment.  
(d) It is implicit in LESSEE's acceptance for use of the Leased Equipment (and LESSEE specifically warrants herein), that LESSEE has sufficient knowledge of, and is conversant with, federal, state and local laws, rules and regulations governing the operation and use of said equipment, to allow LESSEE to fully comply with same. LESSEE agrees, warrants, and acknowledges that it will fully comply with all such laws, rules and regulations and LESSEE assumes any and all liability for failure to fully comply with same.  
(e) Upon expiration of this lease, LESSEE shall return the Leased Equipment with the interior clean and free of all foreign matter and with the exterior reasonably clean, or pay to LESSOR the cost of cleaning said equipment.  
(f) In the event of LESSEE's failure to perform any of the repairs, maintenance or replacements required by the foregoing subparagraphs, LESSOR may, upon written notice to LESSEE, cause such Leased Equipment to be restored to the required good working order and condition; and

- LESSEE hereby agrees promptly to reimburse LESSOR for all expenses incurred by LESSOR under this subparagraph.
- (g) LESSOR shall incur no liability whatsoever for failure of equipment to perform in LESSEE's service, nor for any damage to cargo(es) owned by LESSEE (or any other party) for which LESSEE might be held responsible.
  - (h) LESSEE assumes responsibility, liability, costs, and expense for all licensing, registrations, permits, certificates, and/or any other documentation as may be required for lawful operation of the equipment. LESSEE will indemnify LESSOR for any loss, forfeiture, fine, or penalty caused by failure of LESSEE to perform accordingly.
  - (i) If LESSEE loses or forfeits possession of the Leased Equipment at any time, under any circumstance, including, but not limited to, impoundment, forfeiture, bailment, and/or pursuant to any failure to abide by applicable laws and/or obtain required licensing, registration, permits, certificates, or otherwise, it is expressly understood that, for the entire period during which LESSEE has lost possession of the Leased Equipment (and/or such is not returned to LESSOR, in LESSOR's complete control and dominion), this lease will remain in full force and effect, with rental, and associated charges and interest, to continue to accrue unabated until LESSEE regains possession of the Leased Equipment and returns same to LESSOR, in such condition and pursuant to such terms as otherwise provided in this agreement.
  - (j) All fuel required and consumed is the responsibility of LESSEE. LESSEE will be responsible for reporting and paying fuel use taxes.
13. If during the term of this lease (i) any item of the Leased Equipment is stolen or disappears and is not recovered within thirty (30) days thereafter, or (ii) any item of the Leased Equipment is damaged by accident or otherwise to such an extent that it cannot economically be restored to good working order and condition, LESSEE shall promptly pay to LESSOR on demand, the fair market value of such items of equipment based upon its condition at the commencement of this lease (with due allowance for any salvage actually recovered by LESSOR). Any insurance proceeds recovered by LESSOR on account of such damage or loss shall reduce pro-rata the amount payable by LESSEE under this paragraph; any excess of such insurance over LESSEE's liability hereunder is to be retained by LESSOR.
  14.
    - (a) On expiration or termination of this lease in any manner whatsoever, LESSEE shall forthwith (i) return all Leased Equipment to the LESSOR complete and in good order and condition, reasonable wear and tear excepted, and (ii) pay transportation charges to LESSOR's branch from which the Leased Equipment was delivered to the LESSEE. Should any item of the Leased Equipment not be returned to LESSOR upon expiration or termination of this lease, LESSEE agrees promptly upon receipt of demand from LESSOR to pay LESSOR, (retroactive to the expiration or termination of this lease), for the use of such Leased Equipment upon the same basis as is provided elsewhere in this agreement, but the option of LESSOR to call for such payment shall not operate automatically as an extension or renewal of this lease, and shall further be without prejudice to any other remedies available to LESSOR under this lease.
    - (b) Should LESSEE fail promptly to return any of the Leased Equipment to LESSOR, the LESSOR is hereby authorized to proceed by any lawful means to recover or take possession of the Leased Equipment, including, but not limited to, self-help repossession as permitted by Miss. Code Ann. 75-9-503, *et seq.* LESSEE agrees to pay upon demand to LESSOR (i) any and all monies expended by LESSOR in connection with such removal of Leased Equipment, including attorneys' fees, court costs and expenses, sheriff's costs and expenses, service costs and fees, and any other fees, costs, and expenses, and transportation costs, from the location of such Leased Equipment to the branch of the LESSOR, and (ii) the amount expended by LESSOR to put such Leased Equipment in good order and condition, reasonable wear and tear alone excepted. Should LESSEE claim that any of said Leased Equipment contained property belonging to LESSEE, the LESSEE shall give written notice to LESSOR of such fact within a period of twenty-four (24) hours after retaking by LESSOR. Failure to give such notice within said twenty-four (24) hours shall forever bar LESSEE from asserting any claim or claims against LESSOR on account of property alleged to have been in said retaken Leased Equipment.
    - (c) Anything in this Section 14 or elsewhere in this lease to the contrary notwithstanding, the exercise by LESSOR of any remedy or remedies given to LESSOR under this lease, including the remedy of retaking the Leased Equipment, shall not constitute an exclusive election of remedy by LESSOR.
  15. Upon the occurrence of any one or more of the following events, LESSOR may, at its option, terminate this lease (with LESSEE waiving any requirement that it be put in default):
    - (a) Upon LESSEE's failure (i) to pay any rent when due or (ii) to correct any other default in its performance under this lease within ten (10) days after written notice from LESSOR calling its attention to such default; or
    - (b) In the event that (i) LESSEE shall become insolvent or commit an act of bankruptcy, (ii) a meeting of the creditors of LESSEE is called or any proceeding in bankruptcy or for reorganization, composition, arrangement or liquidation is begun by or against such LESSEE or granted for the appointment of a receiver for the LESSEE or any of its property;
    - (c) LESSOR has reasonable grounds for believing LESSEE has become unable to discharge one or more of the obligations of this lease.
  16. LESSOR's right to exercise its remedies under this Section 16 shall not be affected because a previous similar default on the part of LESSEE may have been waived or condoned by LESSOR, and the exercise by LESSOR of a remedy under this Section 16 shall not preclude LESSOR from simultaneously or later exercising any other right or remedy that may be available to it under this lease, or otherwise, all of such remedies being cumulative but not exclusive
  17. In addition to LESSOR's option to terminate this lease, pursuant to Section 15, or any other provision of this agreement, LESSOR may, at its option, upon a default or breach of any provision or condition of this agreement by LESSEE:
    - (a) Declare all unpaid rent and other charges and interest due, and accelerate all unaccrued rentals, charges, and/or interest, requiring the payment of all such amounts immediately;
    - (b) Take possession of the Leased Equipment as provided in Paragraph 14(b); and/or;
    - (c) Exercise any other right or remedy provided for in this agreement or under the applicable law, including the collection of attorney's fees, damages, expenses, and costs.
  18. LESSOR may, at any time, inspect the equipment and observe its use. LESSEE, whenever requested by LESSOR, shall advise LESSOR of the exact location of all of the equipment and its condition. LESSOR may immediately remove any equipment from any jobsite, building or other place without notice or liability to LESSEE, if upon inspection, LESSOR determines in LESSOR's opinion that any of the equipment is being used beyond capacity or in any manner improperly cared for or abused. This Section 18 shall not, in any way, obligate LESSOR to inspect, repair, and/or warrant the Leased Equipment, regardless of the circumstances.
  19. LESSEE agrees that LESSOR may recover attorneys' fees, damages, expenses, and costs which LESSOR may incur in enforcement of this agreement, collection of rent, and/or in pursuit of any and all remedies for LESSEE's breach of this agreement and/or breach of any obligations of LESSEE pursuant to law, contract, or otherwise.
  20. LESSEE hereby waives any and all existing and future claims, and offsets, against any rent or other payments due hereunder; LESSEE agrees to pay the rent and other amounts hereunder regardless of any offset or claim that may be asserted by LESSEE or on its behalf.
  21. To the extent that any provisions (or any part thereof) of this agreement is held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of said provision, or any other provision (or part thereof) of this agreement.
  22. This agreement is binding on, and insures to the benefit of, and obligations of, the contracting parties and their prospective heirs, successors, legal representatives, and assigns when permitted by this agreement. LESSEE must promptly notify LESSOR, in writing, before any changes in ownership or

any material disposition or encumbrance to the assets of LESSEE's business.

23. This agreement has been mutually negotiated by all parties and is not to be read or construed strictly or broadly against one party and/or in favor of another.
24. The terms and conditions set forth herein in this agreement constitute the entire agreement between the parties with respect to the subject matter of this lease. There are no other agreements, representations, or warranties, except those expressly set forth herein. No amendment or addition to this lease shall be valid unless contained in writing, signed by the party to be charged thereunder.
25. This agreement shall be construed under, and in accordance with, the laws of the State of Mississippi.
26. Forum Selection Clause/ Waiver of Right to Jury Trial - LESSEE specifically consents to the *exclusive* personal jurisdiction and venue in Rankin County, Mississippi. The parties specifically agree and consent that this Forum Selection Clause is mandatory and not inconvenient or burdensome. LESSEE also knowingly, voluntarily, and willingly agrees to waive its right to trial by jury and hereby expressly consents to have all matters submitted to a bench trial in Rankin County, Mississippi.
27. LESSEE has personally inspected the rental equipment referenced within and certifies that it is clean and in proper working condition and is accepted in its "As Is" condition.
28. LESSEE understands that at the end of the rental period LESSEE is responsible for returning the equipment in the same working condition as LESSEE received it. LESSEE also understands that the equipment is to be clean, including but not limited to the exterior, cab interior, cabinets, pumps, cyclones, bag houses, water towers, pipes and tanks.
29. LESSEE understands that LESSEE will be charged for the repair of any broken or non-working items, items that have excessive wear and tear, and cleaning of equipment required to return the equipment to its condition as of the date LESSEE took possession. LESSEE understands that all repairs and cleaning will be billed to LESSEE.
30. LESSEE understands that LESSEE is responsible for the general maintenance of the equipment while it is rented. This includes but not limited to oil levels, grease, hydraulic fluids levels, coolants, tires and wheels.
31. LESSEE understands that LESSEE is responsible for returning the equipment with the same fuel level as LESSEE received it. Failure to comply will result in fuel surcharge billed to LESSEE of not less than double the fuel price used to refuel the equipment.
32. LESSEE certifies that LESSEE has received general instructions in the safe and efficient operation of the equipment and an operations manual and that LESSEE fully understands those instructions and manual. If at anytime LESSEE does not understand the operations or manual or the equipment fails to operate in a safe and efficient manner LESSEE will immediately shut down the equipment and contact LESSOR at 1-888-955-2087 for information.
33. LESSEE certifies that the following information has been provided to ALL equipment operators by the LESSEE before (or simultaneously with) an operator's use of leased vehicle and LESSEE and its agents/servants/and/or employees agree as follows:
  - (a) **ONLY TRAINED AND QUALIFIED PEOPLE MAY OPERATE THE EQUIPMENT. LESSOR Has Training/Operating Materials Available for Leased Equipment.**
  - (b) The manufacturer's operating instructions and user's safety rules accompanies each piece of equipment.
  - (c) Heed the equipment operating instructions, user's safety rules, and decal warnings.
  - (d) Inspect equipment for safe conditions before each use.
  - (e) Notify LESSOR immediately of any safety defects discovered.
  - (f) Do not use equipment with known safety defects.
  - (g) Verify safe operating conditions before each use.
  - (h) Do not operate equipment where conditions endanger anyone.
  - (i) Wear seatbelts where provided.
  - (j) Never use equipment without guards or safety devices.
  - (k) Never modify or alter the equipment without written approval from LESSOR.
34. LESSEE should acquire and use any auxiliary safety device that is recommended by LESSOR or the manufacturer, required by law, or appropriate for the conditions of use.
35. LESSEE should communicate safety instructions to any operator who does not speak and understand the English Language.
36. LESSEE is responsible to ensure that only qualified, licensed operators use rented equipment where the law requires.
37. LESSEE must return the operator's manual when returning equipment.
38. Modifications and additions that affect capacity and safe operation shall not be performed by the LESSEE without manufacturer's prior written approval through LESSOR.
39. If you have any questions about the above guidelines call LESSOR at 1-888-955-2087.