

# H&E EQUIPMENT SERVICES, INC.

## RENTAL AGREEMENT TERMS AND CONDITIONS

THIS AGREEMENT CONTAINS PROVISIONS RELATING TO INDEMNIFICATION, LIABILITY RELEASE, LIMITATION OF REMEDY, ALLOCATION OF RISK AND INSURANCE. This agreement may be delivered and or received by electronic transmission or facsimile which shall be deemed to be an original.

**1. DEFINITIONS.** The term "agreement" shall mean this agreement, all pages, front and back. The term "Equipment" shall reference and mean all pieces of equipment referenced in this agreement as well as all attachments or parts rented or sold to Lessee. The term "manual" shall mean any operating manual, safety manual, or other information provided by the Equipment manufacturer. The term "H&E" shall include H&E Equipment Services, Inc. and any of its subsidiaries, related entities, divisions, or controlled affiliates including, but not limited to, Great Northern Equipment, Inc., H&E Equipment Services (California), L.L.C., and H&E Equipment Services (Mid-Atlantic, Inc.).

**2. INSURANCE.** Lessee is responsible for the full value of loss or damage to the Equipment, regardless of fault, including lost rental income. Lessee shall, prior to delivery of the Equipment and throughout the rental period, maintain Commercial General Liability/Commercial Auto Liability, Physical Damage Insurance, and Workers' Compensation Insurance (if required by law). Commercial General Liability/Commercial Automobile Liability must name H&E as additional insured with waiver of subrogation, and must have a per occurrence limit of at least \$1,000,000. Physical Damage Insurance must cover the full replacement value all Equipment with a deductible applicable to H&E, name H&E as loss payee, and shall be on an "all-risk" form insuring against all perils attendant to Lessee's use, maintenance or possession of the Equipment. Lessee shall provide a Certificate of Insurance and shall provide that the issuing companies shall give H&E thirty (30) days written notice prior to any cancellation. Lessee will bear all costs associated with this insurance, including any deductible(s) and any loss or damage not covered by insurance.

**3. LOSS DAMAGE WAIVER.** In the event proof of acceptable insurance coverage is not provided prior to delivery of the Equipment, Lessee agrees to purchase Loss Damage Waiver (LDW). The LDW charge will be 15% of the gross rental charge. Lessee is not entitled to any refund or credit of Loss Damage Waiver charges invoiced or paid. If LDW is paid, Lessee will not be responsible for loss or damage to the Equipment above \$2,500 per incident from any cause except: (a) overloading or exceeding rated capacity, (b) misuse, abuse, or improper servicing of the Equipment; (c) damage to tires (d) violation of the manual; (e) disappearance or wrongful conversion; (f) damage to glass; or (g) damage resulting from Lessee breach of any provision of this agreement. **LDW IS NOT INSURANCE** and only applies to physical loss or damage to the Equipment. Regardless of and in addition to any LDW, Lessee must maintain Commercial General Liability / Commercial Automobile Liability and Workers' Compensation insurance pursuant to the requirements above.

**FOR LEASES SUBJECT TO THE TEXAS BUSINESS AND COMMERCE CODE ONLY:** This contract offers an optional loss damage waiver for an additional charge to cover your responsibility for loss of or damage to the 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 Equipment rented and the amount of the deductible you would pay under your policies. H&E reserves the right to not rent to any Lessee. The following exclusions apply to Lessee's loss damage waiver purchase: loss or damage to the Equipment that is caused by an unexplained disappearance or abandonment of the Equipment; damage that is intentionally caused by Lessee; or damage that results from Lessee's willful or wanton misconduct.

**4. RENTAL PERIOD, CALCULATION OF RENT.** The rental period begins when the Equipment leaves H&E's possession and ends when the Equipment is returned to H&E in good condition or is put in good condition by H&E. No deduction shall be made for Sundays, holidays, time in transit, or any period of time the Equipment is not in use. A rental day is 24 hours. Any rental period less than 24 hours shall constitute a full rental day. A rental week is seven calendar days. A rental month is four weeks (there are 13 rental months in a calendar year). All rental rates are based on 8 hours of Equipment use per day, 40 hours per rental week and 160 hours per rental month. If the Equipment is used more hours than allotted, an overtime rate will apply. Lessee agrees to immediately notify H&E if Equipment is used more than the allotted hours in any rental period(s) and to permit H&E to inspect its records upon request. Lessee shall pay all drayage charges, all taxes associated with the agreement, including but not limited to sales tax, use tax, tax on damage repairs, fuel taxes, or any other levied taxes, and any recovery fees/surcharges as required or permitted by law. Lessee shall hold H&E harmless against any liability or expense resulting from Lessee's failure to pay taxes or file tax returns.

**5. MISC. FEES AND CHARGES.** To the extent other charges apply to this agreement, including but not limited to permit charges, freight charges, delivery or pick-up charges, fuel charges, supply charges, environmental charges and LDW charges, these charges are not designated for any particular use and are used at H&E's discretion.

**6. OPERATION / KNOWLEDGE.** Lessee has studied and understands the manual. Lessee agrees to restrict the use of the Equipment to only its employees, and only those employees who are competent and qualified operators, who are familiar with the Equipment, who understand the manual, and the limitations of the Equipment. Lessee agrees to use the Equipment within its rated capacity, with all safety devices fully operational, and only for purposes for which it was designed. Lessee shall maintain and use the Equipment pursuant to applicable law and regulation. Customer represents and warrants that Customer and its employees are familiar with and shall at all times comply with applicable safety regulations, including but not limited to ANSI Safety Requirements for Excavating (ANSI/ASSP A10.12-1998 (R2016)), OSHA Excavating standards (29 CFR Part 1926, Subpart P), and OSHA Trenching and Excavation Safety (OSHA 2226-10R 2015). Lessee shall not operate the Equipment, and shall notify H&E, if any safety device or label is missing or damaged.

**7. EQUIPMENT RETURN AND LESSEE DUTY TO MAINTAIN EQUIPMENT.** Lessee is solely responsible for the Equipment until H&E regains physical possession of the Equipment, regardless of any "call-off". Lessee agrees to return the Equipment in the same condition as when received. If damaged, subject to applicable LDW provisions, Lessee agrees to pay the expenses of returning the Equipment to its original condition, subject to normal wear. This guarantee is unconditional and may not be excused by theft, act of God, or for any other reason. Lessee agrees, while Equipment is in its possession, to check engine oil, water, tire condition, cooling systems, and fuel each day, and to perform routine preventive maintenance pursuant to the manual. Equipment returned unclean will be cleaned by H&E and a cleaning fee determined in H&E's discretion shall be imposed.

**8. REPAIRS.** Lessee will immediately notify H&E of any accidents, failures, or breakdowns involving the Equipment. Lessee expressly agrees all repairs must be conducted by only H&E. The cost of all repairs outside of normal wear and tear shall be borne by Lessee, subject to any applicable LDW provisions, and shall be considered additional rent owed by Lessee. In the event the Equipment requires repair, this agreement, including the invoicing of rent, shall continue during the repair period.

**9. EQUIPMENT LOCATION, JOBSITE AND BOND INFORMATION.** Lessee shall use the Equipment only at the address shown on the face of this agreement. The Equipment may not be moved without prior written consent of H&E. Upon H&E's request, Lessee shall promptly provide (a) copies of any contracts governing the projects on which the Equipment is used; (b) copies of any payment and/or performance bond(s) issued on said projects; and (c) the name and location of all projects where the Equipment has been used. Lessee agrees to provide any other information requested by H&E.

**10. OWNER CONTROL OF EQUIPMENT.** Lessee agrees that H&E shall retain all ownership rights in the Equipment, and agrees to execute any financing statements or other document necessary to disclose and protect H&E's ownership. If necessary, Lessee agrees to subordinate any of its interests arising from this agreement to any interest that H&E or its lender may have in the Equipment. During this lease, in the event the Equipment is lien for any reason, this agreement shall immediately terminate and H&E, or anyone acting on H&E's behalf, may take possession of the Equipment. H&E and its agents shall have free access to the Equipment at all times for any lawful purpose.

**11. ASSIGNMENT/SUBLEASE.** Lessee may not assign, sublease, or loan the Equipment. Any act by Lessee in violation of this provision shall be void.

**12. HAZARDOUS WASTE.** Lessee agrees that it is familiar with all hazardous waste laws and regulations and all hazards that may be encountered on the job, project, or work on which the Equipment will be used. Lessee shall not expose the Equipment to any hazardous material or waste. In the event of exposure, Lessee shall immediately notify H&E and, if applicable, the appropriate regulatory authority and have the Equipment removed from such exposure, and completely clean and decontaminate the Equipment, all pursuant to applicable local, state, or federal laws and regulations. If the Equipment cannot be completely cleaned and decontaminated, Lessee shall pay for the full value of the Equipment.

**13. HOLDOVER.** If Lessee keeps the Equipment beyond the agreed upon end date, this agreement shall extend and continue until the Equipment is returned pursuant to section 7. During this holdover period, H&E may terminate the agreement and take possession of the Equipment for any reason without notice.

**14. INDEMNIFICATION/HOLD HARMLESS. LESSEE AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS H&E AND ANY OF H&E DIRECTORS, OFFICERS, OR AGENTS (COLLECTIVELY, THE "INDEMNITEE") FROM ANY AND ALL CLAIMS OR DAMAGES (WHETHER SOUNDING IN TORT, CONTRACT, PRODUCTS LIABILITY, STATUTE OR OTHERWISE) ARISING FROM, RELATING TO OR CONNECTED WITH LESSEE'S USE, SELECTION, ACCEPTANCE, REJECTION, TRANSPORTATION, OPERATION, RENTAL, MAINTENANCE, PURCHASE OR POSSESSION OF THE EQUIPMENT, OR FROM EXPOSURE OF THE EQUIPMENT TO HAZARDOUS WASTE OR MATERIAL, INCLUDING BUT NOT LIMITED TO ANY LOSS OR DAMAGE TO THE EQUIPMENT, ANY LOSS, DAMAGE, OR INJURIES TO PERSONS OR PROPERTY, INCLUDING EMPLOYEES, THIRD PARTIES AND THEIR PROPERTY, OR FROM ANY INACCURACY IN OR BREACH OF ANY OF THE REPRESENTATIONS MADE BY INDEMNITY TO LESSEE OR ANY BREACH OR NON-FULFILLMENT OF ANY COVENANT, AGREEMENT, OR OBLIGATION TO BE PERFORMED BY INDEMNITEE, AND ANY AND ALL EXPENSES INCURRED IN THE DEFENSE OF SUCH CLAIMS INCLUDING ATTORNEY FEES AND COSTS. THE LESSEE ACKNOWLEDGES, UNDERSTANDS AND AGREES ITS OBLIGATION TO INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEE PURSUANT TO THIS AGREEMENT SHALL APPLY REGARDLESS OF WHETHER THE LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE, ACTS, OR OMISSIONS OF INDEMNITEE OR ANY THIRD PARTY. IN NO EVENT SHALL INDEMNITY BE HELD RESPONSIBLE FOR INJURY, DELAYS, OR DAMAGES, CONSEQUENTIAL OR OTHERWISE, RESULTING BY REASON OF THE CONDITION, FAILURE, OR OPERATIONAL DIFFICULTY OF THE EQUIPMENT, INCLUDING, WITHOUT LIMITATION, LATENT OR OTHER DEFECTS IN THE EQUIPMENT, WHETHER OR NOT DISCOVERABLE BY INDEMNITEE OR LESSEE, DELIVERY DELAYS, LOSS OR DAMAGE TO THE EQUIPMENT IN TRANSIT OR WHILE IN USE BY LESSEE, STRIKES OR ANY CONTINGENCIES BEYOND THE CONTROL OF THE H&E, OR ANY OTHER CAUSE. INDEMNITEE SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL DAMAGE UNDER ANY CIRCUMSTANCE.**

**15. GOODS SOLD.** Any option to purchase the Equipment must be in a separate written contract, signed by authorized officers of both H&E and Lessee. In the event that goods are sold as part of this agreement, the goods that are sold shall be clearly identified on the face of this agreement. In the event that goods are defective, buyer's sole remedy from H&E, and H&E's sole obligation to buyer, is for H&E to use its best efforts to secure repair and/or replacement of the goods pursuant to the existing manufacturer's warranty. As to these goods, H&E PROVIDES NO OTHER WARRANTIES, EITHER WRITTEN, ORAL, IMPLIED OR STATUTORY, PARTICULARLY NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. Returned goods shall be subject to a reasonable restocking charge.

**16. TERMS AND REMEDIES.** Except for extended term agreements, invoices are payable upon receipt and Lessee agrees to pay the amount due within thirty (30) days of the invoice date. Balances that are unpaid beyond 30 days of the date of the invoice will be subject to a finance or interest charge per month at the highest rate allowable by law. Lessee's account will be delinquent when any part of the account is 30 days past due. H&E reserves the right to apply payments at its discretion. H&E may, at its option and without notice, raise or allow charges in excess of any credit limit granted. Lessee understands it is responsible for all charges to the account. Lessee shall be liable for all costs and fees, including attorney and/or collection agency fees and expenses, incurred in pursuit and/or collection of any amounts past due, including interest charges. H&E shall have any and all remedies provided in this agreement, at law or equity, including but not limited to the right to sue for damages, collection of unpaid rent or other charges, repossession, and consequential damages for Lessee's breach of this agreement. All remedies provided to H&E in this agreement are cumulative, and the exercise of any one remedy by H&E shall not affect H&E's right to exercise any other remedy. Termination of this agreement shall not affect H&E's right to pursue any remedy provided here or at law or equity. If at any time H&E, in its sole discretion, determines that the Equipment is being used beyond its capacity, improperly maintained, damaged, or that H&E's rights to the Equipment are endangered, or if Lessee defaults on any term or condition set forth in this agreement, H&E may: (a) demand return of the Equipment and Lessee shall return the Equipment to H&E within 72 hours of such demand; or (b) promptly repossess the Equipment, lock up or remove the Equipment from the job site, and immediately terminate this agreement without demand or notice to Lessee. H&E will deem Lessee's failure to timely return Equipment as theft. Lessee grants H&E the right to enter the premises where the Equipment is located for the purpose of taking possession of the Equipment.

**17. AGREEMENT BINDING, ENTIRE AGREEMENT AND SEVERABILITY.** This agreement shall be binding upon Lessee, H&E, and their heirs, successors, personal representatives, agents, and assigns. This writing constitutes the entire agreement between the parties regarding the subjects addressed, and any representation or agreement not contained in this agreement shall be of no force or effect. The provisions in this agreement cannot be waived or amended unless made in a writing signed by H&E's authorized corporate officer. If any word, phrase, clause, sentence, or paragraph of this agreement is or shall be invalid for any reason, it shall be severed from the remainder of this agreement and shall in no way affect or impair the validity of the remaining provisions of this agreement.

**18. NOTICE OF NON-WAIVER.** H&E's failure to insist upon strict performance of any provision of this agreement shall not be construed as a waiver of H&E's right to demand strict performance of any and all provisions, and Lessee waives notice of demand for strict compliance.

**19. VENUE, JURISDICTION, CHOICE OF LAW, JURY WAIVER.** This agreement shall be construed under Louisiana law. Lessee agrees that the sole and exclusive venue for any dispute arising from or relating to this agreement is East Baton Rouge Parish, except that H&E, in its sole discretion, may file suit in the parish or county of Lessee's domicile or where the transaction occurred. Lessee agrees to waive any right to a trial by jury in any proceeding arising from or relating to this agreement.

**20. CLASS ACTION WAIVER.** Lessee agrees that any claims or proceedings that it brings against H&E will be conducted on an individual basis, and not on a class-wide, collective, or representative basis, and that any one person's or entity's claims shall not be consolidated with any other claims or proceedings. Lessee will not sue H&E as a class plaintiff or class representative, join as a class member, or participate as an adverse party in any way in a class-action lawsuit against H&E. Nothing in this provision limits Lessee's right to bring an individual claim, action, or lawsuit against H&E.

**21. ACCEPTANCE.** Lessee will be deemed to have accepted the provisions of this agreement, regardless of Lessee signing this agreement, upon Lessee's acceptance, use, or possession of the Equipment. Lessee's signature will also be deemed acceptance.