

Rocking B Equipment LLC Rental Agreement
(801) 516-9460
398 West Young Street Morgan, Utah 84050

1. DEFINITIONS

“Agreement” means the Rental Agreement (as defined below), together with the contract and any associated Limited Damage Waiver (LDW), including these Rental and Service Terms which are incorporated by reference therein.

“Equipment” anyone, or more, of the items identified as such on the first page of this rental agreement and any accessories, attachments, or other similar items delivered to customer. This includes, but is not limited to air hoses, electric cords, blades, liquid fuel tanks, and nozzles.

“Customer” The person, or entity identified as such on the first page of this rental agreement, or any representative agent, officer, or employee of customer.

“Rental Period” The periods of time between the rental out and rental in as set forth on the first page of this rental agreement, except that the rental period may terminate earlier as provided in sections 17 and 22 hereof.

2 **AUTHORITY TO SIGN.** Any individual signing this rental agreement represents and warrants that he or she is of legal age and has the authority and power to sign this rental agreement on their own behalf, or for the customer.

3. **INDEMNITY/HOLD HARMLESS** To the fullest extent permitted by law, customer agrees to indemnify, defend, and hold ROCKING B Equipment and any of its officers, agents, servants, or employees and affiliates, parents, and subsidiaries harmless from and against all liability, claims, loss, damage, or costs (including but not limited to attorneys fees, loss of profit, business interruption, or other special or consequential damages relating to property damage, bodily injury, or damage relating to wrongful death) arising out of or related to the operation, use, possession, or rental of the equipment. This indemnity provision also applies to any claims asserted ROCKING B Equipment based upon strict, or product liability causes of action. However, customer shall not be obligated to indemnify ROCKING B Equipment for that part of any loss, damage, or liability, caused solely by the intentional misconduct, or sole negligence of ROCKING B Equipment. In furtherance of, but not in limitation of, the indemnity provisions in this agreement, customer expressly and specifically agrees that the forgoing obligation to indemnify shall not in any way be affected, or diminished, by any statutory, or any constitutional imitation of liability, or immunity customer enjoys from suits by its own employees. The duty to indemnify will continue in full effect notwithstanding the expiration or early termination of the contract.

4. **INSPECTION OF EQUIPMENT** Customer acknowledges that customer has inspected the equipment prior to taking possession thereof, finds it in good working order and repair, and suitable for customers needs. Customer further acknowledges that customer has inspected the propulsion tank of vehicles registered and licensed, or required to be registered and licensed for use on any highway or public road prior to taking possession thereof and such propulsion tank contained no dyed fuel. Customer is familiar with the proper operation and use of each item of equipment. Customer has inspected all hitches, bolts, safety chains, hauling tongues, and other devices and materials used to connect the equipment to customers towing vehicle if any. Customer acknowledges ROCKING B Equipment is not responsible for any damage to customers towing vehicle caused by detachable hitches or mirrors.

5. **LIMITATIONS OF LIABILITY** In no event shall ROCKING B Equipment be responsible to customer or any other party for any loss, damage, or injury caused by, resulting from, or in any way connected with the equipment, its operation, or its use. ROCKING B Equipment’s failure to deliver the equipment as required hereunder, or ROCKING B’s failure to repair or replace non-working equipment, or ROCKING B Equipment’s be liable for any incidental, consequential, punitive, or special damages. Customer acknowledges and assumes all risks inherent in the operation use and possession of the equipment from the time the equipment is delivered to the customer until the equipment is returned to ROCKING B Equipment and will take all necessary precautions to protect all persons and property from injury, or damage, from the equipment.

6. **USE OF EQUIPMENT** Customer will not use or allow anyone to use the equipment: a) for illegal purpose, or in an illegal manner, b) without a license, if required under any applicable law, or c) who is not qualified to operate it. Customer agrees, at customers sole expense, to comply with all applicable municipal, state, and federal laws,

ordinances, and regulations (including OSHA and the Internal Revenue Code) which may apply to the use of the equipment. Customer shall not insert, or permit to be inserted, any dyed fuel into propulsion tank of vehicles registered and licensed, or required to be registered and licensed for use on any highway or other public road. Customer agrees to defend, indemnify, and hold ROCKING B harmless from all fines, penalties, and costs incurred by ROCKING B due to dyed fuel being introduced into the propulsion tank of such vehicles. Customer agrees to check filters, oil, fluid levels, and tire pressure to clean and visually inspect the equipment daily and to immediately notify ROCKING B Equipment when equipment needs repair or maintenance. Customer acknowledges that ROCKING B Equipment has no responsibility to inspect the equipment while in customer's possession. ROCKING B Equipment shall have the right to replace the equipment with other similar equipment at any time and for any reason.

7. **DISCLAIMER OF WARRANTIES** ROCKING B Equipment WARRANTS THAT THE EQUIPMENT WILL BE IN GOOD WORKING ORDER UPON DELIVERY EXCEPT AS EXPRESSLY SET FORTH HEREIN, ROCKING B MAKES NO WARRANTIES, EXPRESS OR IMPLIED WITH RESPECT TO THE EQUIPMENT AND MAKES NO WARRANTIES AS TO THE MERCHANTABILITY OF THE EQUIPMENT OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THERE IS NO WARRANTY THAT THE EQUIPMENT IS SUITED FOR CUSTOMER'S INTENDED USE, OR THAT IT IS FREE FROM DEFECTS EXCEPT AS MAY BE SPECIFICALLY SET FORTH IN THE AGREEMENT, ROCKING B DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, MADE IN CONNECTION WITH THIS RENTAL TRANSACTION.

8 **MALFUNCTIONS OF EQUIPMENT** Should the Equipment be involved in an accident, become unsafe, malfunction or require repair, Customer shall immediately cease using the Equipment and immediately notify ROCKING B. If such condition is the result of normal operation, ROCKING B will repair or replace the Equipment with reasonably similar Equipment in working order, if such replacement Equipment is available. ROCKING B has no obligation to repair or replace Equipment rendered inoperable by misuse, abuse or neglect. Customer's sole remedy for any failure or defect in Equipment shall be the termination of any rental charges accruing after the time of failure. Customer must return the Equipment to the Store Location within twenty-four (24) hours from the time of defect in order to terminate rental charges.

9 **RETURN OF EQUIPMENT/DAMAGED AND LOST EQUIPMENT** At the expiration of the Rental Period, Customer will return the Equipment to the Store Location during ROCKING B's regular business hours or if ROCKING B has agreed to pick up the Equipment, ROCKING B shall endeavor to pick up the Equipment within a commercially reasonable period of time after Customer notifies ROCKING B that the Equipment is called "off rent." Customer is obligated to restore the Equipment to the same condition as when delivered, reasonable wear and tear excepted. Customer shall be responsible for all damages to or loss of the Equipment from the time Customer takes possession of the Equipment until the Equipment is either returned to the Store Location by Customer or picked up by ROCKING B. In the case of the loss or destruction of any Equipment, or inability or failure to return same to ROCKING B for any reason whatsoever, Customer will pay ROCKING B the then full replacement list value of the Equipment together with the full rental rate as specified until such Equipment is replaced. If the Equipment is returned in a damaged or excessively worn condition, Customer shall pay ROCKING B the reasonable cost of repair and pay rental on the Equipment at the regular rental rate until all repairs have been completed. ROCKING B shall be under no obligation to commence repair work until Customer has paid to ROCKING B the estimated cost thereof. Customer agrees that ROCKING B reserves the right to charge the Credit Card and/or Customer's account for any amount owed by Customer pursuant to this section due to damaged or lost Equipment.

10. **REASONABLE WEAR AND TEAR** Reasonable wear and tear of the Equipment shall mean only the normal deterioration of the Equipment caused by ordinary and reasonable use on a one -shift basis (8 hours per day/ 40 hours per week). The following shall not be considered reasonable wear and tear: (A) damage resulting from lack of lubrication, insertion of improper fuel or maintenance of necessary oil, water and air pressure levels; cavitation; or freezing; (B) except where ROCKING B expressly assumes the obligation to service or maintain the Equipment, any damage resulting from lack of servicing or preventative maintenance suggested in the manufacturer's operation and maintenance manual; (C) damage resulting from any collision, overturning or improper operation, including overloading or exceeding the rated capacity of the Equipment; (D) damage in the nature of dents, bending, tearing, staining, corrosion or misalignment to or of the Equipment or any part thereof; (E) wear resulting from use in excess of shifts for which rented; and (F) any other damage to the Equipment which is not considered ordinary and

reasonable in the equipment rental industry. Repairs to the equipment to the reasonable satisfaction of ROCKING B and in a manner which will not adversely affect the operation, manufacture design, or value of the equipment.

11. LATE RETURN Customer agrees that if the Equipment is not returned by the end of the Rental Period, ROCKING B, in its sole discretion, may require Customer to do any of the following: (A) continue to pay the rental rate(s) applicable to the Equipment as specified in the Agreement; (B) for periods less than 24 hours, pay the full daily rental rate applicable to the Equipment; (C) pay any increased rental rate(s) in effect at the time of, or after, the expiration of the Rental Period. Customer agrees that ROCKING B reserves the right to charge the Credit Card, and/or Customer's account for any amount owed by Customer pursuant to this section due to late return of Equipment.

12. RENTAL PERIOD/CALCULATION OF CHARGES Rental charges commence when the Equipment leaves the Store Location and end when the Equipment is either returned to the Store Location during ROCKING B's regular business hours or picked up by ROCKING B after Customer notifies ROCKING B that the Equipment is "off rent". Pick-up and delivery by ROCKING B is subject to a "Delivery and Pick-up Service Charge," the amount(s) of which are disclosed on the Rental Agreement. Rental charges apply during Saturdays, Sundays and Holidays. Rental rates are for normal "one-shift" usage based on an eight (8) hours per day, 40 hours per week and 160 hours per four-week period. On power equipment, operations in excess of one shift will be as follows: one and one-half times the rental charge for double shift and two times the rental charge for triple shift. Customer will truthfully and accurately certify to ROCKING B the number of shifts the Equipment was operated. Customer's right to possess the Equipment terminates on the expiration of the Rental Period and retention of possession after this time is a material breach of the Agreement. TIME IS OF THE ESSENCE

13. DEPOSIT In addition to securing the payment of rental charges hereunder, Customer agrees that any rental deposit shall be deemed to be a guarantee by Customer of the full and complete performance of each and all of the terms of this Agreement to be performed by Customer. In the event of any breach by Customer, the deposit will be credited against any damages, cost or expense incurred by ROCKING B as a result of the breach.

14. PAYMENT All amounts due hereunder shall be payable in full upon receipt of invoice by Customer. Customer acknowledges that timely payment of rental charges is essential to ROCKING B's business operations and it would be impractical and extremely difficult to fix the actual damages caused by late payment. Customer and ROCKING B agree that there shall be added to all past due rental charges a late payment fee equal to the lesser of two percent (2%) per month (24% per annum) on any such payments outstanding after 30 days, or the maximum amount allowed by applicable law.

15. TITLE/NO PURCHASE/NO LIENS This rental agreement is not a contract of sale, and title to the Equipment shall at all times remain with ROCKING B. Unless covered by a specific supplemental agreement signed by ROCKING B, Customer has no option or right to purchase the Equipment. Customer shall keep the Equipment free and clear of all mechanics and other liens and encumbrances.

16. TIRE AND TUBE REPAIR OR REPLACEMENT Repair or replacement of tires and tubes on Equipment is the responsibility of Customer and is not included in the rental rate.

17. DEFAULT Customer shall be deemed in default should Customer fail to pay any amount when due hereunder; fail to perform, observe or keep any provision of the Agreement; become "Insolvent" (as defined herein), or should ROCKING B anticipate that Customer may become Insolvent; or otherwise be in default. If Customer is in default, ROCKING B may do any one or more of the following: (A) terminate the Rental Period; (B) declare the entire amounts due hereunder immediately due and payable and commence legal action therefor; (C) cause ROCKING B's employees or agents, with notice but without legal process, to enter upon Customer's property and take all action necessary to retake and repossess the Equipment, and Customer hereby consents to such entry, re-taking and repossession and hereby waives all claims for damages and losses, physical and pecuniary, caused thereby and shall pay all costs and expenses incurred by ROCKING B in retaking and repossessing the Equipment; or (D) pursue any other remedies available by law. Customer shall be considered "Insolvent" if Customer shall generally not pay, or be unable to pay, or admit its inability or anticipated inability to pay its debts as such debts become due; make an assignment for the benefit of creditors, or petition or apply to any court or tribunal for the appointment of a custodian, receiver, or trustee for it or a substantial part of its assets; commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; have had any such petition or application filed or any such proceeding commenced against it in which an order for relief is entered or an adjudication or appointment is made;

or take any action indicating its consent to, approval of or acquiescence in any such petition, application, proceeding or order for relief or the appointment of a custodian, receiver or trustee for all or any substantial part of its properties.

18. CUSTOMERS INSURANCE COVERAGE Customer agrees to maintain and carry, at customers sole cost, the following insurance: a) property insurance for the full replacement cost of the equipment including coverage for all risks of loss, or damage, to the equipment. Such coverage will include but not be limited to risk of loss arising out of the maintenance, operation, possession, or use of the equipment, b) commercial auto liability insurance with at least a per occurrence limit of \$2 million, c) commercial general liability insurance (CGL)(providing coverage equal to or greater than the standard ISO CG 00 01 1204 Form) for any property damage, bodily injury, or personal and advertising injury arising out of the maintenance, operation, possession, or use of the equipment with combined single limits of insurance not less than \$2 million per occurrence and \$4 million in the aggregate. Customer shall obtain insurance policies that provide, or are endorsed to provide, that all insurance required here under is primary and non-contributory to any other insurance maintained by ROCKING B. ROCKING B shall be named as an additional insured for liability insurance and additional loss payee for property insurance. Any deductibles or self insured retentions shall be the sole responsibility of the customer. All insurance required by this agreement shall include a waiver of rights of recovery against ROCKING B, or it's insurers, by the customer and it's insurers as well as a waiver of subrogation against ROCKING B, or it's insurers. The policies required hereunder shall provide that ROCKING B must receive not less than 90 day notice prior to any cancellation. FOR RENTAL OF EQUIPMENT NOT LICENSED FOR ROAD USE, CUSTOMER MUST EITHER A) ELECT TO NAME ROCKING B AS LOSS PAYEE EVIDENCE PROPERTY INSURANCE COVERAGE, OR B) ELECT TO PURCHASE THE RENTAL PROTECTION PLAN.

19. NO ASSIGNMENT/LENDING/OR SUBLETTING Customer shall not sublease, subrent, assign or loan the Equipment without first obtaining the written consent of ROCKING B, and any such action by Customer, without ROCKING B's written consent, shall be void. Customer agrees to use and keep the Equipment at the job site set forth in the Agreement unless ROCKING B approves otherwise in writing. ROCKING B may at any time, without notice to Customer, transfer or assign the Agreement or any Equipment or any moneys or other benefits due or to become due hereunder.

20. ENTIRE AGREEMENT/ONLY AGREEMENT These terms and conditions and the front the Agreement, and any Addendum attached thereto, represent the entire agreement between Customer and ROCKING B with respect to the Equipment and the rental of the Equipment. There are no oral or other representations or agreements not included herein. None of ROCKING B's rights or Customer's rights may be changed and no extension of the terms of this Agreement may be made except in writing, signed by both ROCKING B and Customer. Any use of Customer's purchase order number on this Agreement is for Customer's convenience only and conditions, whether oral or written, that are different, or inconsistent with the terms contained herein are hereby rejected by ROCKING B.

21. ORDER OF PRECEDENCE These terms and conditions of this rental Agreement shall control over any terms and conditions contained in Customer's purchase order or similar documents.

22. CLASS ACTION WAIVER Customer agrees that any claims or proceedings brought by Customer relating to this Agreement will be conducted on an individual basis, and not on a class-wide, collective, or representative basis, and that any one person's claims or proceedings may not be consolidated with any other claims or proceedings. Customer will not sue ROCKING B 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 ROCKING B. Nothing in this paragraph, however, limits Customer's right to bring a lawsuit as an individual plaintiff.

23. OTHER PROVISIONS

- A. Any failure of ROCKING B to insist upon strict performance by Customer of any terms and conditions of this Agreement shall not be construed as a waiver of ROCKING B's right to demand strict compliance. Customer has carefully reviewed this Agreement and waives any principle of law which would construe any provision hereof against ROCKING B as the drafter of this Agreement.
- B. Customer agrees to pay all reasonable costs of collection, court costs, attorneys' fees and other expenses incurred by ROCKING B in the collection of any charges due under this Agreement or in connection with the enforcement of its terms.

- C. Customer shall pay the rental charges without any offsets, deductions or claims.
- D. The federal and state courts in the county in which the Store Location is located shall have exclusive jurisdiction over all matters relating to this Agreement. TRIAL BY JURY IS WAIVED. In order to effect service of process on United, please contact the Secretary of State Corporations Division or the equivalent office in your state to obtain the name of the registered agent and the registered office address that is on file with the Secretary of State for ROCKING B. ROCKING B shall be entitled to decrees of specific performance (without posting bond or other security) in addition to such other remedies as may be available.
- E. Customer consents to the collection, use and disclosure of his or her personal identification and financial information as described herein and in ROCKING B's Privacy Policy. Customer's personal identification and financial information is provided voluntarily and not as part of a credit card transaction. Personal identification information includes, for example, Customer's name, billing address, ZIP code, telephone number, date of birth, driver's license number and email address. Financial information includes, for example, information related to any balances or invoices related to the Agreement. Customer's personal identification information can be used for purposes of this transaction, any subsequent transactions with ROCKING B and for ROCKING B to evaluate and improve its products. Customer's personal identification information and/or financial information may be disclosed to contractors, service providers and other third parties that support ROCKING B's business and who are bound by contractual obligations to keep personal information confidential and use it only for the purposes for which we disclose it to them.

CRIMINAL WARNING The use of false identification to obtain equipment, or the failure to return equipment, by the end of the rental period may be considered a theft subject to criminal prosecution pursuant to applicable criminal, or penal code, provisions.