



Application for Credit with Beard Equipment Company

Corporate Office: 2480 E. I-65 Service Rd. N | Mobile, AL 36617 | beardequipment.com
Phone: 251-456-1993 | 800-848-8563 Fax: 251-452-2309



| | | | | | | |
|---|---|-------------------|---------------|---|-------------------|------------|
| Information on Person or Entity Applying for Credit Account (Applicant) | Name: | | | Corp. | Proprietorship | Individual |
| | Address: | | | Partnership | Limited Liability | Entity |
| | City: | State: | Zip: | Fed ID or SSN | | |
| | Phone: () | | Fax: () | State of Corporation: | | |
| | Description of Business | | | Date Business Started: | | |
| Principal Owners/ Partners or Stockholders | (1) | Name: | Title: | Phone: () | | |
| | | Address: | City: | State: | Zip: | |
| | (2) | Name: | Title: | Phone: () | | |
| | | Address: | City: | State: | Zip: | |
| | (3) | Name: | Title: | Phone: () | | |
| | | Address: | City: | State: | Zip: | |
| Other Pertinent Information We Need To Establish Your Account | Billing Address: | | | City: | State: | Zip: |
| | Principal Contact at Company: | | | Title | | |
| | Phone: () | | | Email: | | |
| | Are purchase orders required? (Check One) YES or NO | | | Tax exempt no: | | |
| | Estimated monthly credit requirement amount: \$ | | | Any prior bankruptcies? (Check One) YES or NO | | |
| Bank and Trade References. Please provide all pertinent information. | Bank | Bank Name: | Contact Name: | Contact Phone: () | | |
| | | Address: | City: | State: | Zip: | |
| | Bank | Bank Name: | Contact Name: | Contact Phone: () | | |
| | | Address: | City: | State: | Zip: | |
| | Trade | Company Name: | Contact Name: | Contact Phone: () | | |
| | | Address: | City: | State: | Zip: | |
| | Trade | Company Name: | Contact Name: | Contact Phone: () | | |
| | | Address: | City: | State: | Zip: | |
| | Trade | Company Name: | Contact Name: | Contact Phone: () | | |
| | | Address: | City: | State: | Zip: | |
| The applicant named above hereby certifies that the information provided in this credit application is true and correct. Applicant has given this information for the purpose of obtaining credit from Beard Equipment Company (Beard) and authorizes Beard to verify the information given and to obtain additional information concerning applicant from any source, including its suppliers and financial institutions, all of whom applicant hereby authorizes to provide such information to Beard. Applicant acknowledges by signing below, that he/she has read the Customer Agreement appearing on the second page of this Credit Application and agrees to the terms and conditions contained therein, including the arbitration provisions contained therein. Applicant further certifies that the person (or persons) signing this credit application is (are) authorized to enter into legally binding agreements on behalf of the Applicant. | | | | | | |
| Signature: _____ | | Print Name: _____ | | | | |
| Title: _____ | | Date: _____ | | | | |
| PERSONAL GUARANTEE | | | | | | |
| The undersigned (whether one or more, the "Guarantor"), individually, jointly, severally, absolutely, independently, and unconditionally guarantees the full, complete, and prompt payment and performance of all obligations of the above Applicant or its designee and any assignee arising under this Agreement, including but not limited to payment when due of all amounts owed by the Applicant to Beard under the terms of this Agreement, including collection and/or reasonable attorney's fees and accrued finance charges. Notice of acceptance hereof and all notices of any kind, including but not limited to notices of default, demand, extensions, renewals, modifications and compromises, are hereby waived. The liability of each of the undersigned is direct, unconditional and unlimited, and may be enforced without requiring Beard first to resort to applicant, or any other right, remedy or security. Nothing shall discharge or satisfy our liability hereunder except the full performance and payment of all present and future obligations of applicant to Beard. The undersigned guarantor(s) waive any right to trial by jury in any lawsuit by Beard to enforce this guaranty, and such waiver shall apply to all defenses and counterclaims by the guarantor(s). The undersigned Guarantor, recognizing that his or her individual credit history may be a necessary factor in the evaluation of this Credit Application hereby consents to and authorizes the use of a consumer credit report on the undersigned by Beard in the credit evaluation process. Each Guarantor has read the terms of this Agreement, including the terms appearing on of the reverse side of this document and agrees to be bound by all of the provisions contained therein | | | | | | |
| Signature: _____ | | Signature: _____ | | | | |
| Print Name: _____ | | Print Name: _____ | | | | |
| SSN: _____ | | SSN: _____ | | | | |
| Date: _____ | | Date: _____ | | | | |
| Please mail Originals to: Beard Equipment Company, 2480 East I-65 Service Rd N., Mobile, AL 36617 To expedite process: Fax to: (251) 452-2309, then mail originals to above address. | | | | | | |

Application For Credit and Customer Agreement

By signing this Application for Credit and Customer Agreement (this "Agreement"), the individual executing this Agreement below on behalf of the applicant named above (the "Applicant") hereby certifies individually, personally, and on behalf of the Applicant, that the information provided in this Agreement is true, complete, and correct. Applicant has given this information for the purpose of obtaining credit from Beard Equipment Company ("Beard") and authorizes Beard to verify the information given and to obtain additional information concerning applicant from any source, including its suppliers and financial institutions, all of whom Applicant hereby authorizes to provide such information to Beard. Applicant acknowledges by signing below, that he/she has read this Agreement, and agrees to the terms and conditions contained therein, including the arbitration provisions contained therein. Applicant further certifies that the person (or persons) signing this Agreement is (are) authorized to execute and deliver this Agreement on behalf of the Applicant.

ADDITIONAL TERMS AND CONDITIONS. This Agreement contains the terms by which Beard Equipment Company ("Beard") may extend credit to you. The word "Applicant" herein refers to the person, corporation, Guarantor, or other entity who applied for the account, and all of its affiliates, subsidiaries, parent companies, successors in interest, and predecessors in interest. Beard may extend credit to Applicant for the purpose of purchasing goods and services or the renting of equipment. This is not an agreement by Beard to lend money; it is an agreement by Applicant for the benefit of Beard if Beard determines to extend credit. In lieu of a separate rental agreement, Applicant hereby agrees to all terms and conditions of Beard's Master Rental Agreement which are set forth in a separate document.

1. CREDIT LIMIT:

Beard may establish a credit limit for the total outstanding credit transactions. Applicant promises to keep the outstanding balance of credit transactions within these limits. Beard may demand immediate payment of any amount by which Applicant's credit transactions exceed Applicant's established credit limit. Beard may approve, from time-to-time, credit transactions in excess of Applicant's credit limit without permanently raising Applicant's credit limit. Beard may re-evaluate Applicant's financial condition and credit standing at any time, including annually, determining whether to renew and/or continue the extension of credit to Applicant. Beard may increase or lower Applicant's credit limit at Beard's discretion. Applicant agrees to permit and cooperate with any credit investigation Beard deems necessary.

2. APPLICANT'S BASIC OBLIGATIONS:

By using the account Applicant agrees (a) to assume responsibility for paying for all credit transactions extended to Applicant or to anyone Applicant authorizes to use Applicant's account, (b) to notify Beard of any change in Applicant's mailing address or principal place of business, (c) to notify Beard of any change in ownership of Applicant's company and (d) to all terms and conditions contained in this Agreement. After the close of a monthly cycle, Beard will mail Applicant a statement of your account. Applicant agrees to pay the balance due by the tenth (10th) day of the following month. Applicant further agrees to act in a prompt and reasonable manner in reviewing Applicant's statement and reporting any exceptions to Beard.

3. PAYMENTS:

Within ten (10) days after the closing date of each billing cycle, Applicant must pay Beard the full amount of the outstanding balance shown on Applicant's monthly statement. Accounts that are over thirty (30) days past due will be charged a service charge of 1 1/2% (1.5 %) per month (18.0 APR). Payments and credits to Applicant's account will be applied first to any accrued service charges, then to Beard's costs and expenses incurred in collection, if any, and then to credit transactions. No payment shall operate as an accord and satisfaction without our prior written approval. Payments to your account should be remitted to: Beard Equipment Company, 2480 E-I65 Service Road North, Mobile, AL 36617. (Checks should be made payable to "Beard Equipment Exchange").

4. NOTICES:

Any notice Applicant is required to give Beard hereunder will be effective only when Beard actually receives said notice, in writing. The address for all notices to Beard, including change of address, unauthorized use, and other is Beard Equipment Company, 2480 E-I65 Service Road North, Mobile, AL 36617.

5. EVENTS OF DEFAULT:

At Beard's option, the occurrence of the following events shall constitute an "Event of Default". If Applicant: (a) Allows Applicant's your total account balance to exceed Applicant's credit limit or fail by the applicable due date to make Applicant's payment due in full; (b) Fails to abide by any terms of this Agreement, (c) Misrepresents any material fact in connection with the account, (d) Transfers, or allows the transfer of ownership or control of Applicant's business, (e) Files or has filed against Applicant a petition under the provision of Bankruptcy Code or amendment thereto, or become insolvent, or suffer an adverse change in Applicant's financial condition, which in Beard's opinion, would increase Beard's risk or render Beard's prospect of payment insecure; (f) If Applicant is a natural person, Applicant dies, or is declared legally incompetent or are imprisoned; (g) If Applicant is a business organization or other entity and such entity dissolves or otherwise ceases to operate or such entity is a party to a merger or other reorganization without Beard's prior written approval. If, after default, Applicant's obligations under this Agreement are referred to a collection agency or attorney for collection, whether by suit or otherwise, Applicant shall pay reasonable costs of collecting amounts Applicant owes Beard, including reasonable attorney's fees and accrued finance charges as described in paragraph "3".

6. UNCONDITIONAL OBLIGATION TO PAY:

Applicant unconditionally agrees to pay all amounts Applicant owes Beard under this Agreement, notwithstanding any claims, defenses or offsets that Applicant could assert against Beard. To secure prompt payment and performance of its obligations, the Applicant hereby grants Beard a continuing security interest in and to the following, whether now owned or existing or hereafter created, acquired or arising and wheresoever located, "Collateral": (a) any and all inventory, equipment (including fixtures) or goods sold by Beard to the Applicant, together with all replacements or substitutions therefor, products, and all cash and non-cash proceeds of any of the foregoing; and (b) any and all proceeds, accounts, documents, instruments, chattel paper (including electronic chattel paper), and general intangibles of Applicant, and all other rights of Applicant to the payment of money, arising from any sale or other disposition of the items described in (a) above, together with all replacements or substitutions therefor, products, and all cash and non-cash proceeds of any of the foregoing. Applicant authorizes Beard to file financing statements or amendments thereto or other documentation covering the Collateral in any jurisdiction as Beard shall deem necessary or desirable to protect its interest in the Collateral. Applicant hereby appoints Beard as Applicant's irrevocable attorney in fact for the purpose of executing any documents necessary to protect or continue the perfection of any security interests and liens in and to the Collateral. Applicant shall reimburse Beard for all expenses for the perfection, termination and continuing perfection of Beard's security interests and liens in the Collateral.

7. CLOSING YOUR ACCOUNT:

Beard may close Applicant's account at any time without notice. Applicant may close Applicant's account at any time by notifying Beard in writing of your intent to do so and by paying Applicant's outstanding balance in full.

8. INDEMNIFICATION.

Applicant agrees to protect, indemnify, defend and hold Beard, its parent companies, subsidiaries, affiliates, their respective successors and assigns and each of their respective shareholders, directors, officers, employees, attorneys and agents (collectively, the "Indemnified Parties") harmless from any and against any and all taxes which may be imposed or due with respect to any transaction between Beard and Applicant other than income taxes, as well as any loss, liability, obligation, damage, penalty, judgment, claim, deficiency, expense, interest, penalties, fines, attorneys' fees (including the fees and expenses of any attorneys engaged by the Indemnified Person) and amounts paid in settlement ("Claims") to which any of the Indemnified Parties may become subject arising out of or relating to the obligations, this Agreement or any other documents executed and delivered in connection therewith or the Collateral. APPLICANT EXPRESSLY AGREES TO INDEMNIFY THE INDEMNIFIED PARTIES FOR ALL CLAIMS ARISING FROM THE NEGLIGENCE OF OTHERS, INCLUDING THE NEGLIGENCE OF BEARD OR THE INDEMNIFIED PARTIES. Applicant's indemnity obligation shall include attorneys' fees, fees and costs incurred in enforcing any right to indemnification under this Agreement, and the cost of pursuing any insurance providers. Beard reserves the right to control the defense and to select or approve defense counsel. Applicant shall not enter into any settlement without Beard's or the Indemnified Parties' prior written consent. Applicant will promptly notify Beard of all Claims made. The indemnification provided for in this paragraph shall survive the termination of this Agreement and shall not be affected by the presence, absence or amount of or the payment or nonpayment of any claim under, any insurance.

9. GOVERNING LAW; DISPUTE RESOLUTION; JURISDICTION:

This Agreement will be executed and performed in the State of Alabama and shall be governed by and construed in accordance with the laws of the State of Alabama, without regard to conflict of laws principles.

Any and all disputes, controversies or claims arising between Beard and Applicant (or the assigns of either) whether arising out of or relating to this Agreement and/or the Equipment or otherwise shall be resolved by mandatory binding arbitration pursuant to the Rules of the American Arbitration Association except that Beard may bring a lawsuit in a judicial forum to repossess the Equipment, enforce a mechanic's or materialman's lien, obtain injunctive relief or a temporary restraining order, collect any outstanding amounts owed Beard under this Agreement, and/or to enforce a money judgment or award. Any such lawsuit to collect any outstanding amounts owed Beard under this Agreement shall be brought in and each party irrevocably submits itself to the exclusive jurisdiction of the state and federal courts of the State of Alabama sitting in Mobile County, Alabama, and irrevocably agrees that all claims in respect of such action or proceeding shall be heard and determined only in and by either of the aforementioned courts. The filing of such an action by the Beard does not alter nor diminish the parties' agreement that any other type of dispute—including any claims or counterclaims by Applicant against Beard—still must be resolved through binding arbitration. This arbitration agreement is governed by the Federal Arbitration Act. All disputes of fact, procedure and law -- be the law statutory, administrative ease or regulatory -- and whether the matter is subject to arbitration shall be resolved by the arbitrator. The arbitrator may order any remedy that a court has the power to award. The award can be enforced in any court with competent jurisdiction. A single arbitrator shall be selected jointly by the Beard and Applicant. If they cannot agree on an arbitrator, they shall select a single arbitrator in accordance with the commercial rules of the American Arbitration Association. Any arbitration involving Beard shall be held in Mobile, Alabama.

Any controversies or claims relating to arbitration and the enforceability of the arbitration provisions of this Agreement and any claims for judgment on final award of an arbitration pursuant to this Agreement, shall be brought in and each party irrevocably submits itself to the exclusive jurisdiction of the state and federal courts of the State of Alabama sitting in Mobile County, Alabama, and irrevocably agrees that all claims in respect of such action or proceeding shall be heard and determined only in and by either of the aforementioned courts. Furthermore, each party hereby irrevocably waives and agrees not to assert by way of motion, as a defense or otherwise in any such action or proceeding, any claim that such party is not personally subject to the jurisdiction of the state or federal courts of the State of Alabama sitting in Mobile County, Alabama, that such action or proceeding is brought in an inconvenient forum, or that the venue of such action or proceeding is improper or that this Agreement may not be enforced in or by such courts.

If any dispute arising out of or relating to this Agreement or the Equipment is found by the arbitrator or a court of competent jurisdiction not to be subject to arbitration, such dispute shall be brought in and each party irrevocably submits itself to the exclusive jurisdiction of the state and federal courts of the State of Alabama sitting in Mobile County, Alabama, and irrevocably agrees that all claims in respect of such action or proceeding shall be heard and determined only in and by either of the aforementioned courts.

WAIVER OF JURY TRIAL

THE PARTIES HERETO WAIVE ANY RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY EQUIPMENT LEASED HEREUNDER. APPLICANT CERTIFIES THAT NO REPRESENTATIVE OF BEARD OR BEARD'S COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT BEARD WOULD NOT, IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF JURY TRIAL PROVISION. APPLICANT ACKNOWLEDGES THAT BEARD HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT IN PART BY THE PROVISIONS OF THIS PARAGRAPH.

GENERAL:

The provisions of any prior Agreement between Applicant and Beard respecting Applicant's Account, to the extent that such agreement is or may be in conflict with the foregoing terms, are hereby superseded and shall be void and of no force and effect. Applicant agrees that Applicant has read and understands all of the terms and conditions of this Agreement and agrees to be bound by them. By using the account Applicant accepts the terms of this Agreement when Applicant uses the account. Except as the Federal Arbitration Act may apply to the arbitration provisions contained in Paragraph "9", this Agreement shall be governed by the laws of the State of Alabama, including but not limited to the validity, mode of performance, and interpretation; provided further, however, that the rights and remedies of the parties with respect to the enforcement of any court order or judgment shall be governed by the law of the state in which such order or provisions of the laws of the state in which Applicant's principal place of business is located shall apply. If any provision is found to be invalid or unenforceable, the remaining provisions or terms will remain in full force and effect. Without prior notice or approval from Beard, we reserve the right to assign or transfer Applicant's Account to another entity or person. Applicant may not assign Applicant's rights in the account or proceeds thereof.

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MASTER RENTAL AGREEMENT

This Master Rental Agreement ("Agreement") is meant to be a general rental agreement to cover all present and future rentals as of the date of this Agreement between Beard Equipment Company ("Lessor") and the customer ("Lessee"), be it Corporate or Individual, signed below

TERMS:

The parties anticipate that Lessor will rent to Lessee certain equipment as more fully described on Beard Equipment Company's rental invoice(s) ("Rental Invoice") and it is the intent of the Parties that this Agreement will apply to all such future rentals. Rental payments shall be made to Lessor at 2480 E-I65 Service Road North, Mobile, AL 36617, subject to the provisions of the Application for Credit and Customer Agreement. Lessee also agrees to pay any additional charges such as fuel, insurance, delivery/pickup and taxes as noted on the rental invoice.

Time is of the essence. All rental payments shall be made to Lessor at the address set forth in the Rental Invoice. In the event of Lessee's failure to pay any amount due hereunder within ten (10) days after it becomes due, Lessee agrees to pay to Lessor, as additional rent, interest on such unpaid sum from its due date to the date of payment by Lessee at a rate equal to one- and one-half percent (1.5%) per month, or the maximum rate permitted by law, whichever is greater.

LESSEE'S PAYMENT OBLIGATIONS ARE ABSOLUTE AND UNCONDITIONAL, AND ARE NOT SUBJECT TO CANCELLATION, REDUCTION OR SETOFF FOR ANY REASON WHATSOEVER.

TRANSPORTATION:

The equipment will be transported to and from Lessor's place of business during the rental term at Lessee's expense, unless otherwise agreed in writing.

USAGE:

It is contemplated that the equipment will be operated for not more than 8 hours in any one day, 40 hours in any one week or 160 hours in any one month. The monthly billing cycle is based on a 28-day month. Lessee agrees to pay additional rent prorated at the applicable daily, weekly or monthly rate for each hour the equipment is used in excess of such time. The additional rent for excess hours of use will be paid at the time the equipment is returned or, on the next billing cycle following such use, at the option of the Lessor. An hour meter is furnished and as such: (1) Lessee agrees to keep it connected to the equipment and in good working condition at all times and to report the failure of such to the Lessor, and (2) it will be used as the conclusive measure of the number of hours the equipment has been operated.

TELEMATICS:

The Equipment may be equipped with telematics hardware and software ("Telematics") that transmit data to Lessor, John Deere, or other John Deere dealers. Lessee agrees that Lessor, John Deere and other John Deere dealers (their affiliates, successors and assigns), without further notice to Lessee have the right to: (i) access, use, collect and disclose any data generated by, collected by, or stored in, the Equipment or any hardware or devices interfacing with the Equipment ("Machine Data"); (ii) access Machine Data directly through data reporting devices integrated within, or attached to, the Equipment, including Telematics ("Data Reporting Systems"); and (iii) update the Data Reporting Systems software from time to time. Machine Data may be transferred out of the country where it is generated, including to the U.S.A. In the event that the Machine Data includes Lessee's personal information, Lessee hereby consents to the collection, use and disclosure of such personal information, to permit Lessor, John Deere and other John Deere dealers to access and use the Machine Data as set forth herein. Lessee warrants that it has obtained any necessary consent from its employees or any other third parties, including with respect to the transfer of Machine Data to other jurisdictions, to comply with any applicable privacy laws or contractual agreements with such employees or third parties and to permit Lessor, John Deere and other John Deere dealers to access and use the Machine Data as set forth herein. Lessee shall not use the Data Reporting Systems to track the location of any person unless Lessee has first obtained any necessary approvals from such person to permit Lessee, Lessor, John Deere and other John Deere dealers to track such location. Lessee shall not remove, modify or disable any Data Reporting Systems without Lessor's prior written consent.

INDEMNIFICATION AND HOLD HARMLESS:

Lessee shall be solely responsible for all losses, damages, injuries, death, suits, actions, claims, judgments, liabilities, deficiencies, settlements, interest, awards, penalties, fines, attorneys' fees, costs, and expenses of whatever kind, whether special, consequential, or otherwise, incurred or asserted by any person, in any manner related to the Equipment or the use, rental, possession or transportation thereof ("Claims"), including any Claims stemming from actual or alleged negligence of Lessor. Lessee agrees to protect, defend, indemnify and hold harmless Lessor and its parent companies, subsidiaries, affiliates, their respective successors and assigns and each of their respective shareholders, directors, officers, employees, attorneys and agents (collectively, the "Indemnified Parties"), from and against all Claims of any kind or nature whatsoever. **LESSEE EXPRESSLY AGREES TO INDEMNIFY THE INDEMNIFIED PARTIES FOR ALL CLAIMS ARISING FROM THE NEGLIGENCE OF OTHERS, INCLUDING THE NEGLIGENCE OF LESSOR OR THE INDEMNIFIED PARTIES.** Lessee's indemnity obligation shall include attorneys' fees, fees and costs incurred in enforcing any right to indemnification under this Agreement, and the cost of pursuing any insurance providers. Lessor reserves the right to control the defense and to select or approve defense counsel. Lessee shall not enter into any settlement without Lessor's or the Indemnified Parties' prior written consent. Lessee will promptly notify Lessor of all Claims made. Lessee's liability under this Section is not limited to the amounts of insurance required under this Agreement. This indemnity commences upon the date Lessee takes possession of any equipment of Lessor and continues beyond the termination of this Agreement, for acts or omissions, which occurred during the Agreement term. Lessee waives all rights and remedies conferred upon a lessee under Article 2A of the Uniform Commercial Code.

INSURANCE:

Lessee unconditionally assumes all risk and liability for all losses and damages, including personal injuries or death to persons, arising out of or related to the use, rental, possession or transportation of the Equipment including but not limited to any claims that Lessor was negligent or failed to warn Lessee of any risks or dangers associated with the use, possession or transportation of the Equipment. Therefore, both general liability and physical damage insurance is required during the term of the rental. Lessee, at its expense, shall keep said Equipment insured with companies and in such amounts as are satisfactory to Lessor, for the term of this Agreement and any renewals or extensions thereof, for the full replacement cost thereof, against fire and theft with extended or combined additional coverage and against such other risks in such amounts as Lessor may specify. Lessee shall also maintain general liability insurance in form and amount satisfactory to Lessor, but in no event less than \$1,000,000. Lessee shall on request of Lessor deliver to Lessor the policies or evidence of insurance together with receipts for the premiums thereunder. Such policies shall contain a standard long form endorsement, showing losses, if any, payable to Lessor, and naming Lessor as an additional insured with respect to any liability policies, and shall be payable to Lessor irrespective of any breach, default, or fraud on the part of the Lessee. The insurance shall be primary, without the right of contribution from any insurance carried by Lessor. All insurance policies must provide that no cancellation thereof shall be effective without 30 days prior written notice to Lessor. All proceeds of insurance shall be paid to Lessor, and may be applied, at Lessor's option, to (1) the repair, restoration or replacement of the Equipment, or (ii) toward the Lessee's obligations for rent hereunder. Lessee hereby appoints Lessor its attorney-in-fact to make any claim, receive payment for, and to execute, negotiate and endorse any checks or other instruments relating to such insurance policies. In the event Lessee fails to maintain the insurance required by this section, Lessor may obtain such policies, and Lessee shall reimburse Lessor therefor within ten (10) days from Lessor's request for reimbursement.

TAXES:

Lessee shall comply with and conform to all laws, ordinances and regulations relating to the ownership, possession, use or maintenance of the Equipment and shall save Lessor harmless against actual or asserted violations, and pay all costs and expenses of every character occasioned by or arising out of such use. Lessee agrees that during the term of this Agreement, in addition to the rent and all other amounts provided herein to be paid, it will promptly pay to Lessor all taxes, assessments and other governmental charges (including penalties and interest, if any, and fees titling or registration, if required) levied or assessed against the Lessee: (a) upon the interest of the Lessee in the Equipment or upon the use or operation thereof or on the earnings arising therefrom; and (b) against Lessor on account of its acquisition or ownership of the Equipment or any part thereof; or the use or operation thereof or the leasing thereof to the Lessee, or the rent herein provided for, or the earnings arising therefrom, exclusive, however, of any taxes based on net income of Lessor. Lessee agrees to file, on behalf of Lessor, all required tax returns and reports concerning the Equipment with all appropriate governmental agencies, and within not more than 4 days after the due date of such filing, to send Lessor confirmation, in form satisfactory to Lessor, of such filing.

TERMINATION:

The term of this Agreement is set forth in Section I above, unless and until earlier terminated as provided under this Agreement (the "Term"). In addition to any remedies that may be provided in this Agreement, Lessor may terminate this Agreement with immediate effect upon notice to Lessee: (i) if Lessee fails to pay any amount when due under this Agreement; (ii) if Lessee has not otherwise performed or complied with any of the terms of this Agreement, in whole or in part; (iii) if an event of default occurs; or (iv) for any other reason.

CARE:

Lessee agrees to use and care for the Equipment in a careful and prudent manner, and to pay all operation and maintenance expenses while the Equipment is out of possession of Lessor. Lessee agrees (A) to NOT move Equipment to another County or State without first notifying Lessor in writing; (B) to operate and maintain the Equipment in accordance with all (1) Laws, ordinances, and regulations, (2) operator's manuals, and (3) insurance policy terms and requirements; (C) to perform at Lessee's expense all maintenance and repairs necessary to keep the equipment in as good a condition as when delivered to Lessee; and (D) to NOT represent the Equipment as being owned by Lessee or to pledge the equipment as collateral to any lender or other party. Lessee will return the equipment to Lessor in as good condition as received, reasonable wear and tear excepted.

RISK OF LOSS:

Lessee shall bear the entire risk of loss, theft or damage (collectively, a "Casualty Loss") of the Equipment from any cause whatsoever until the Equipment has been returned to Lessor. Lessee shall give Lessor immediate written notice of any Casualty Loss, and Lessee shall, at Lessor's option, (i) repair the Equipment to Lessor's satisfaction, at Lessee's sole expense, (ii) replace the Equipment with like equipment acceptable to Lessor, at Lessee's sole expense, or (iii) pay Lessor the fair market value for the Equipment, whereupon this Agreement shall terminate, and Lessor shall transfer to Lessee, **WITHOUT RECOURSE OR WARRANTY**, Lessor's right, title and interest in the Equipment on an **"AS-IS" and "WHERE IS" basis, with all faults, and subject to the WARRANTY DISCLAIMERS contained within.**

RENTAL DAMAGE WAIVER:

Lessee may choose to purchase a Rental Damage Waiver from Lessor based on the amount of rentals due. The Rental Damage Waiver is not insurance. However, no proof of Property Damage Coverage is required for Lessee choosing to purchase the Rental Damage Waiver. Any charges made for the Rental Damage Waiver shall be only to protect Lessor's interest in or to rented equipment for losses arising from fire, theft or vandalism of or to the equipment. The Rental Damage Waiver will not extend to any other causes of loss not enumerated above, including damage caused by Lessee's negligence. Additionally, the purchasing of the Rental Damage Waiver in no way modifies the duties and assumptions of risk and liability set forth above. Should Lessee provide Lessor an acceptable certificate of insurance after being charged for the Rental Damage Waiver as itemized on rental invoices, credit shall be issued to Lessee for up to a maximum of two months. The first \$5,000.00 of each loss will be considered deductible.

RENTERS SIGNATURE: _____

DISCLAIMER OF EXPRESSED OR IMPLIED WARRANTIES:

Lessor rents equipment "as-is." **LESSOR MAKES NO WARRANTIES WHATSOEVER WITH RESPECT TO THE EQUIPMENT OR THIS LEASE AND LESSOR HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTY OF SUITABILITY, OR ANY WARRANTY AGAINST INTERFERENCE OR INFRINGEMENT, AND LESSOR NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY WARRANTY OR LIABILITY IN CONNECTION WITH SUCH EQUIPMENT AND SUCH EQUIPMENT IS BEING LEASED ON AN AS-IS BASIS AND WITH ALL FAULTS.** If the Equipment leased hereunder is covered by a manufacturer's warranty, such warranty is strictly made and delivered on behalf of such manufacturers and in no manner affects the disclaimer of all warranties made by the Lessor herein. No defect or unfitness of the Equipment shall relieve Lessee of the obligation to pay rent or of any other obligation under this Agreement. Lessee acknowledges that the equipment is of a size, design and capacity selected by Lessee and that Lessee is satisfied that the equipment is suitable for Lessee's purpose.

LIMITATION OF LIABILITY:

IN NO EVENT SHALL LESSOR BE RESPONSIBLE OR LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR REVENUES, DAMAGE OR LOSS OF OTHER PROPERTY OR EQUIPMENT, COST OF REPLACED GOODS OR CLAIMS OF LESSEE'S CUSTOMERS, ARISING OUT OF OR RELATING TO ANY BREACH OF ANY PROVISION OF THIS LEASE OR USE OF THE EQUIPMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT LESSOR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL LESSOR'S AGGREGATE LIABILITY UNDER THIS LEASE EXCEED THE TOTAL OF THE AMOUNTS PAID TO LESSOR HEREUNDER.

ADDITION OF ACCESSORIES:

Lessee will not, without Lessor's written consent, install any accessories or devices on the equipment if such installation will impair the originally intended function or use of the equipment. All accessories or devices affixed to the equipment will become the property of the Lessor unless such accessory or device can be removed without in any way affecting the originally intended function or use of the equipment. Any damage to the equipment caused by the removal of such accessories or devices will be repaired at Lessee's expense.

COMPLIANCE WITH REGULATIONS:

Lessee will comply with all laws and regulations relating to Ownership, possession, use or maintenance of the Equipment.

INSPECTION:

Lessee shall, whenever requested, advise Lessor of the exact location of the Equipment. Lessor and its representative may, for the purpose of inspection, enter upon any job, building or place where the Equipment is located at any reasonable time. Lessor may remove the Equipment without notice to Lessee if, in the opinion of the Lessor, the Equipment is being used beyond its capacity or in any other manner improperly cared for or abused.

ASSIGNMENT:

Lessee agrees that Lessor may assign this Agreement and all right, title and interest of Lessor in and to the equipment, and all sums due or to become due to Lessor hereunder (of which assignment Lessee hereby waives notice), and Lessee agrees to recognize such assignment and shall abide thereby and make payment as may be directed. Lessee's obligation to pay rent under this Agreement will not as to any such assignee be subject to any diminution arising out of any breach of any obligation hereunder or other liability of Lessor to Lessee. Lessor may not assign this Agreement.

DEFAULT:

An event of default shall occur if: (a) Lessee fails to pay when due any installment of rent or any other charge due hereunder; (b) Lessee shall fail to perform or observe any covenant, condition or agreement to be performed or observed hereunder; (c) Lessee ceases doing business as a going concern; (d) Lessee shall commit an act of bankruptcy or become insolvent or bankrupt, or make an assignment for the benefit of creditors, or consents to the appointment of a trustee or receives or either shall be appointed for Lessee or a substantial part of its property without its consent, or bankruptcy or insolvency proceedings shall be instituted against Lessee; (e) Lessee attempts to remove, sell, transfer, encumber, part with possession or sublet the Equipment or any item thereof; (f) Lessee shall merge with or into any corporation sells substantially all of its assets, or changes the composition, form of business ownership or association of Lessee, without the prior written consent of Lessor; (g) if any attachment, execution, writ or process is levied against the equipment; or (h) Lessee shall default in the payment of any other indebtedness owed to Lessor.

Upon the occurrence of an event of default, Lessor may, at its option: (a) declare all sums due and to become due hereunder immediately due and payable; (b) proceed by appropriate court action or actions or other proceedings either at law or equity to enforce performance by the Lessee of any and all covenants of this Agreement and to recover damages for the breach thereof; (c) demand that Lessee deliver the Equipment forthwith to Lessor at Lessee's expense at such place as Lessor may designate; (d) without notice or liability or legal process, enter into any premises of or under control or jurisdiction of Lessee or any agent of Lessee where the Equipment may be or by Lessor is believed to be, and repossess all or any item thereof, disconnecting and separating all thereof from any other property and using all force necessary or permitted by applicable law to do so, Lessee hereby expressly waiving all further rights to possession of the Equipment and all claims for injuries suffered through loss caused by such repossession; and (e) exercise any other right or remedy available under applicable law. The provisions of this paragraph shall be without prejudice to any rights given to the Lessor by such statute to prove for any amounts allowed thereby. Lessee shall pay all of Lessor's (i) costs of collection of any monies due hereunder, (ii) costs of repossession of the Equipment, and (iii) costs of exercising any remedies available to Lessor hereunder, including attorney's fees. No express or implied waiver of an event of default shall constitute a waiver of any subsequent event of default, or a waiver of any of Lessor's rights hereunder.

CONSTRUCTION:

This is an agreement for rental only. Nothing herein will be construed as conveying to Lessee any right, title or interest in or to the Equipment. Title to all Equipment shall remain exclusively in Lessor. Lessee shall keep the Equipment and its interest therein free from any and all liens, claims, and encumbrances; and shall not do or permit any act or thing whereby Lessor's title or rights may be encumbered or impaired. Upon expiration or termination hereof, the Equipment shall be returned unencumbered to Lessor by Lessee at the place where the Equipment was picked up, or to such a place as Lessor may direct, at Lessee's sole expense and in the same condition as when received by Lessee, reasonable wear and tear resulting from proper use thereof alone excepted.

PRECAUTIONARY UCC-1 FINANCING STATEMENT; FURTHER ASSURANCE:

Lessee authorizes Lessor to file precautionary Uniform Commercial Code ("UCC") financing statements and other similar filings and recordings with respect to the Equipment. Lessee agrees not to file any corrective or termination statements or partial releases with respect to any UCCs or other similar filings or recordings filed by Lessor in connection with the Equipment except (i) if Lessor fails to file a corrective or termination statement or release on request from Lessee after the expiration or earlier termination of this Agreement or (ii) with Lessor's written consent. In addition, Lessee shall execute and deliver to Lessor, upon Lessor's request such instruments and assurances as Lessor deems necessary or advisable for the confirmation or perfection of this Agreement and rights of the parties hereunder.

MISCELLANEOUS:

Time is of the essence of this Agreement. Lessor's failure at any time to require strict performance by Lessee of any provision of this Agreement will not waive or diminish Lessor's right thereafter to demand strict compliance with that or any other provision. Waiver by Lessor of any default will not waive any other default. This Agreement may not be modified except by a written revision signed by the parties hereto.

Lessee will not change or remove any insignia or lettering on the Equipment and shall conspicuously identify each item of the Equipment by suitable lettering thereon to indicate Lessor's ownership. All transportation charges shall be borne by Lessee. Either party may change its address by giving notice to the other in the manner specified in this Section. If any part hereof is contrary to, prohibited by or deemed invalid under applicable laws or regulations of any jurisdiction, such provisions shall be inapplicable and deemed omitted but shall not invalidate the remaining provisions hereof. Lessee waives all rights under all exemption laws. Lessee acknowledges receipt of a true copy of this Agreement. This Agreement is irrevocable for the full term hereof and for the aggregate rental herein reserved, and the rent shall not abate by reason of adverse working or weather conditions, termination of Lessee's right of possession and/or the taking of possession by Lessor, or for any other reason.

GOVERNING LAW; DISPUTE RESOLUTION; JURISDICTION:

This Agreement will be executed and performed in the State of Alabama and shall be governed by and construed in accordance with the laws of the State of Alabama, without regard to conflict of laws principles.

Any and all disputes, controversies or claims arising between Lessor and Lessee (or the assigns of either) whether arising out of or relating to this Agreement and/or the Equipment or otherwise shall be resolved by mandatory binding arbitration pursuant to the Rules of the American Arbitration Association except that the Lessor may bring a lawsuit in a judicial forum to repossess the Equipment, enforce a mechanic's or materialman's lien, obtain injunctive relief or a temporary restraining order, collect any outstanding amounts owed Lessor under this Agreement, and/or to enforce a money judgment or award. Any such lawsuit to collect any outstanding amounts owed Lessor under this Agreement shall be brought in and each party irrevocably submits itself to the exclusive jurisdiction of the state and federal courts of the State of Alabama sitting in Mobile County, Alabama, and irrevocably agrees that all claims in respect of such action or proceeding shall be heard and determined only in and by either of the aforementioned courts. The filing of such an action by the Lessor does not alter nor diminish the parties' agreement that any other type of dispute—including any claims or counterclaims by Lessee against Lessor—still must be resolved through binding arbitration. This arbitration agreement is governed by the Federal Arbitration Act. All disputes of fact, procedure and law -- be the law statutory, administrative ease or regulatory -- and whether the matter is subject to arbitration shall be resolved by the arbitrator. The arbitrator may order any remedy that a court has the power to award. The award can be enforced in any court with competent jurisdiction. A single arbitrator shall be selected jointly by the Lessor and Lessee. If they cannot agree on an arbitrator, they shall select a single arbitrator in accordance with the commercial rules of the American Arbitration Association. Any arbitration involving Lessor shall be held in Mobile, Alabama.

Any controversies or claims relating to arbitration and the enforceability of the arbitration provisions of this Agreement and any claims for judgment on final award of an arbitration pursuant to this Agreement, shall be brought in and each party irrevocably submits itself to the exclusive jurisdiction of the state and federal courts of the State of Alabama sitting in Mobile County, Alabama, and irrevocably agrees that all claims in respect of such action or proceeding shall be heard and determined only in and by either of the aforementioned courts. Furthermore, each party hereby irrevocably waives and agrees not to assert by way of motion, as a defense or otherwise in any such action or proceeding, any claim that such party is not personally subject to the jurisdiction of the state or federal courts of the State of Alabama sitting in Mobile County, Alabama, that such action or proceeding is brought in an inconvenient forum, or that the venue of such action or proceeding is improper or that this Agreement may not be enforced in or by such courts.

If any dispute arising out of or relating to this Agreement or the Equipment is found by the arbitrator or a court of competent jurisdiction not to be subject to arbitration, such dispute shall be brought in and each party irrevocably submits itself to the exclusive jurisdiction of the state and federal courts of the State of Alabama sitting in Mobile County, Alabama, and irrevocably agrees that all claims in respect of such action or proceeding shall be heard and determined only in and by either of the aforementioned courts.

WAIVER OF JURY TRIAL:

THE PARTIES HERETO WAIVE ANY RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY EQUIPMENT LEASED HEREUNDER. LESSEE CERTIFIES THAT NO REPRESENTATIVE OF LESSOR OR LESSOR'S COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT LESSOR WOULD NOT, IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF JURY TRIAL PROVISION. LESSEE ACKNOWLEDGES THAT LESSOR HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT IN PART BY THE PROVISIONS OF THIS PARAGRAPH.

ENTIRE AGREEMENT; AMENDMENTS:

This Agreement, including and together with any related exhibits or attachments, constitutes the sole and entire agreement of the parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each party.

COUNTERPARTS:

This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same Agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

RENTERS SIGNATURE: _____

PRINTED NAME: _____

TITLE: _____

DATE: _____