

CLARK'S MERCANTILE
225 Garza Avenue PO BOX 247
Tuscola, Texas, 79562
Telephone: (325) 660-9090 Email: clarksmmercantile@gmail.com

RENTAL AGREEMENT

CLARK'S MERCANTILE EQUIPMENT RENTAL & SALES, LLC, hereby rents to the customer undersigned on the Rental Form (the "Customer") and Customer hereby accepts the equipment described on the Rental Form (the "Equipment") subject to the provision in this Agreement.

1. **RETURN OF EQUIPMENT.** Equipment is the property of Clark's Mercantile and is in good mechanical condition. Except as otherwise specifically provided herein Customer shall return Equipment in the same condition as when received, ordinary wear and tear accepted, to the place from which rented (unless otherwise provided herein) on the day specified, or sooner if demanded by Clarks Mercantile.
2. **CHARGES.** Customer shall pay to Clark's Mercantile on demand at the office designated on the Rental Form hereof all fixed rental, time, mileage served, minimum, delivery, pickup, and other charges (including the reasonable cost of fuel supplied by Clark's Mercantile as well as any attorney's fees incurred to collect such above-mentioned payment). With respect to Equipment, double shift use (16 hours per day) will be charged at one and one-half times the normal rate and triple shift use (24 hours per day) will be charged at twice the normal rate. Clark's Mercantile shall have a lien as allowed by law for charges incurred hereunder upon premises and improvements upon which Equipment is employed. Unless otherwise specifically provided in this Agreement, all rentals are made F.O.B. the Clark's Mercantile location at which the rental was made. All shipping charges from such location to destination and return and all loading, unloading, assembling, and dismantling shall be paid by Customer. Fuel usage will be charged at \$8 per gallon, unless the equipment is returned with a full tank of diesel.
3. **USE OF EQUIPMENT.** Equipment shall be used solely in Customer's business and kept only at Customer's place of business or on job site and shall not be removed without prior written consent of Clark's Mercantile. Equipment shall be used only within its rated capacity by safe, careful, and competent personnel. Customer shall notify Clark's Mercantile immediately of any accident or occurrence, disablement, or failure of Equipment, and promptly furnish Clark's Mercantile in writing all information required by Clark's Mercantile in connection therewith.
4. **SERVICE.** Customer shall perform and pay for all normal periodic and other basic service, adjustments and lubrication for Equipment, including but not limited to: checking Equipment before each shift or use, checking and maintaining crank case, transmission and cooling systems daily, and checking tire pressures and battery fluid and charge levels weekly. If Equipment fails to operate properly or needs repairs, Customer shall immediately cease using Equipment and notify Clark's Mercantile. In the event service or repair is needed on any rental equipment, trailers, tires, or any other item, Clark's Mercantile will provide the services or repairs needed at the prevailing market rates not to exceed One Hundred Fifty Dollars (\$150.00) per hour. In the event service or repairs are needed outside of 25 miles from Clark's Mercantile mileage will be charged at a rate not to exceed Three Dollars (\$3.00) per mile plus the prevailing market rate of the hourly service charge listed above.
5. **RESPONSIBILITY FOR EQUIPMENT.** All loss or damage to Equipment or any part thereof from any cause whatsoever, including but not limited to fire, theft, comprehensive losses, collision and upset, Acts of God, and the public enemy shall be the sole responsibility of Customer and shall be paid to Clark's Mercantile promptly upon invoice.
6. **TOWING CAPACITY.** With respect to towing heavy equipment, Customer shall use a ¾ ton capacity vehicle with a 14,000 GVWR. With respect to towing smaller utility and dump trailers, Customer may use a ½ ton capacity vehicle. All vehicles used by Customer to tow trailers and heavy equipment shall be in good mechanical condition and shall be subject to inspection at all times during the term of the Contract.
7. **INSURANCE.** With respect to Equipment, Customer shall, at its expense, during the term hereof, maintain in force a policy of public liability and property damage insurance with bodily injury and death liability limits of \$100,000 for each person in each accident. \$300,000 limits for all persons in each accident, and property damage liability limits of \$50,000 insuring Clark's Mercantile on a primary and not excess or contributory basis against liability for damage sustained by any person or persons, including but not limited to employees of Customer, because of the maintenance use, operation, storage erection, dismantling, servicing, or transportation of such Equipment. Customer shall, on demand, furnish Clark's Mercantile a certificate of such insurance, which may not be cancelled or materially modified except on twenty (20) days prior written notice to Clark's Mercantile. Customer agrees to abide by the provisions of said policy and to make a written report to Clark's Mercantile and the insurer as soon as practicable after any accident or occurrence involving such Equipment.
8. **INDEMNITY.** Customer shall defend, indemnify and hold forever harmless Clark's Mercantile, its subsidiary and affiliate companies, their officers, agents and employees, against all loss, liability and expense, including reasonable attorney's fees, by reason of bodily injury including death and property damage, sustained by any person or persons, including but not limited to employees of Customer, a result of the maintenance, use, operation, storage, erection dismantling, servicing or transportation of Equipment, whether such bodily injury, death, or property damage are due or claimed to be due to any negligence of Clark's Mercantile, employees or agents of Clark's Mercantile or any other person.
9. **COMPLIANCE WITH LAW.** Customer shall, at its expense, comply with all state, federal and local laws and regulations affecting Equipment and its use, erection, design, and transportation, including licensing, and building code requirements, and shall defend, indemnify and Clark's Mercantile harmless from all loss, liability or expense resulting from actual or asserted violations of any such laws, requirements, or regulations.
10. **RENTAL.** This is a contract of rental only and Customer shall not be deemed an agent or employee of Clark's Mercantile for any purpose. Customer shall not suffer any liens or encumbrances to attach to Equipment and shall defend and indemnify and hold Clark's Mercantile harmless from all loss, liability, and expense by reason thereof. Customer shall not sublet Equipment or assign this Agreement in whole or in part. All operation or use of Equipment by others than Customer or its employees shall be Customer's sole risk and subject to this Agreement. Clark's Mercantile shall not be liable for loss of or damage to any property left, stored, moved, or transported by Customer or any other person in or upon Equipment either before or after the return thereof to Clark's Mercantile whether caused by Clark's Mercantile, and Customer agrees to hold harmless Clark's Mercantile for any such loss or damage.
11. **INSPECTION; ACCEPTANCE OF PARTS AND EQUIPMENT.** Customer represents and acknowledges that it has inspected the goods, services, and equipment rented by Customer from Clark's Mercantile, finds the same to be in satisfactory condition, properly operating, and fit for its intended use or purpose intended by Customer and without reliance on Clark's Mercantile or its employees, and that Clark's Mercantile (i) has not selected the equipment or attachments rented, and (ii) is not responsible for the suitability of the equipment for the use Customer intends. Customer agrees and accepts that as expressly set forth herein, Clark's Mercantile is not liable and not makes no warranties, either express, implied, or by operation of law, as to any matter whatsoever including, without limitation, the condition of the equipment, attachments, or parts, its merchantability, or its fitness for a particular purpose, and Customer hereby release Clark's Mercantile to the fullest extent allowed by law from any warranties, express, implied or by operation of law. There are no warranties which extend beyond the description of the equipment, parts, or attachments on the rental form.
12. **LIABILITY.** The liability of Clark's Mercantile for delay or failure to deliver to pick up Equipment or for failure of equipment to perform shall not exceed the rental charge herein provided for.
13. **LOSS DAMAGE WAIVER.** This Rental Agreement offers an optional loss damage waiver for an additional charge to cover Customer's responsibility for loss or damage to the Equipment. Customer does not have to purchase if sufficient insurance coverage is provided in the Rental Application. Loss Damage Waiver is not insurance. If Customer purchases Loss Damage Waiver, Customer shall pay Clark's Mercantile 15% of the gross rental value and it will modify Section 5 of this Rental Agreement. The Loss Damage Waiver excludes (i) unexplained disappearance of the Equipment, (ii) intentional damage caused by Customer, (iii) willful or wanton misconduct by the Customer including (a) neglect, misuse, or carelessness by the operator, (b) exceeding operational standards, (c) violations of terms of this Agreement, (d) overturning or tipping the Equipment. The Loss Damage Waiver does not cover or include any of the following repairs: (i) theft of accessories, including hoses, tires, tubes, wheels, electric cords, and tools (ii) damages to tires tubes or wheels caused by deflation, blowouts, bruises, dents, cuts, road hazards (iii) any loss or damage to the motor or electrical components of the Equipment caused by electrical surges (iv) loss or damages due to mechanical or electrical breakdown or failure.
14. **ENTIRE AGREEMENT.** No right of Clark's Mercantile under this Agreement may be waived except by a written instrument signed by a duly authorized officer of Clark's Mercantile. This instrument expresses the entire agreement between the parties.
15. **DEFAULT.** In case of default or breach of this Agreement by Customer, or if Clark's Mercantile for any reason deems itself insecure, Clark's Mercantile may enter premises where Equipment is located and render inoperative or remove same with or without process of law and without notice or liability to Customer and may terminate this Agreement without prejudice to any remedies or claims which Clark's Mercantile might otherwise have for arrears of rent, expense of retaking, court costs and reasonable attorney's fees, and in addition a sum equal to the balance of the rent and other payments call for hereunder for the remainder of the original or extended terms, as the case may be as liquidated damages and not as a penalty. Customer shall remain liable for the Equipment or for any loss of or injury to the Equipment notwithstanding such termination.
16. **MEDIATION/ARBITRATION.** Any controversy or claim arising out of or related to this contract, or the breach thereof, shall be settled by arbitration or mediation. In the event of a dispute, controversy, or claim arising out of or relating in any way to the agreement, the complaining party shall notify in writing and within 30 days of such notice Parties shall meet at an agreed upon location in Taylor County, Texas to attempt to resolve the dispute in good faith. Should the dispute not be resolved during a good faith attempt, then a party may demand arbitration within a reasonable time not to exceed two years after the aggrieved party knew or should have known about the controversy, claim, dispute, or breach and the arbitration shall take place in Taylor County, Texas, with a qualified arbitrator. Any claim or controversy arising out of this agreement brought in court shall be filed in Taylor County, Texas, applying Texas Law, and attorney's fees shall be awarded to the prevailing party.

NOTES:

Customer Initials: _____