



**GRAVITY POWER & RENTAL LLC**  
**TERMS AND CONDITIONS FOR EQUIPMENT RENTAL AND SALE**

- 1. TERMS OF AGREEMENT:** The rental of any equipment hereunder (the "Agreement") and the term of the lease begin when the leased equipment leaves Gravity Power & Rental LLC's or its affiliates (collectively the "Lessor") yard and the rental continues until the leased equipment is returned thereto and accepted by an authorized official of the Lessor.
- 2. RENTAL CHARGES:** You as the equipment renter (the "Lessee") will pay Lessor as rental for leased equipment the rental charges set forth in Lessor's scheduled rental rates, as published from time to time. All rental rates are subject to change without notice. Lessee shall pay rental, or any other charges hereunder, when due irrespective of any claims, demands, set-offs, defense, actions, suits, or proceedings that Lessee may have or assert against Lessor, any supplier or manufacturer of any leased equipment or any portion thereof. If it becomes necessary for Lessor to sub rent equipment from third parties at a higher rate than Lessor's then scheduled rental rate, Lessee shall pay such third party's published rental rate, plus any additional costs and charges incurred by Lessor as a result of the rental of such third party equipment. Lessee shall pay additional rental when the leased equipment is utilized in areas with adverse or hazardous conditions.
- 3. TRANSPORTATION CHARGES:** All transportation charges including freight, rail or air express and drayage charges shall be paid by the Lessee.
- 4. OPERATING CONDITIONS:** Operating conditions which prevent satisfactory operation of the equipment do not relieve Lessee of responsibility for any rental charges.
- 5. TERMS OF PAYMENT:** All rental charges, purchase price, fees or other charges, and any other payments due or to become due hereunder shall be due and payable within thirty (30) days from the date of the invoice with no discounts Interest at the highest lawful rate permitted to be charged by either the applicable state or federal law is applicable to unpaid invoices and begins accruing on the unpaid amount thirty (30) days after the due dates thereof. If the invoiced amount is not paid when due, Lessor has a right of set-off, and if the account is placed in the hands of an attorney for collection or if suit is filed to collect the account or any part thereof, Lessee (or the purchaser of equipment as the case may be) shall pay all costs, interest and expenses, including but not limited to, attorney's fees, arising in connection therewith.
- 6. RETURN OF EQUIPMENT:** Lessee warrants, by Lessee's acceptance of delivery of any equipment leased hereunder, that such equipment is in proper operational order and appearance. Lessee shall return such equipment to the Lessor in the same condition as it was delivered to Lessee, ordinary wear and tear from reasonable use thereof excepted.
- 7. DAMAGED OR LOST EQUIPMENT:** For all equipment lost or damaged beyond repair (in Lessor's sole determination), Lessee shall pay to Lessor the actual replacement cost for new equipment prevailing at the time such equipment is lost or damaged. All damaged equipment which Lessor may repair or lost equipment which Lessor may replace shall be repaired or replaced at Lessee's sole cost and expense.



Equipment damaged beyond repair (in Lessor's sole determination) while in Lessee's possession may be billed to Lessee as a sale of that equipment.

**8. DEFAULT:** If Lessee breaches any of the terms or conditions hereof or if Lessee becomes insolvent, bankrupt or its financial responsibility becomes impaired (in Lessor's sole discretion), or if the leased equipment or any part thereof be abused or illegally used or misused, or if Lessor (in its sole discretion) deems the rental of equipment insecure, Lessor may, at its option and without legal proceedings, enter any premises where the equipment may be and take possession thereof without being liable to any suit or action or proceeding by Lessee. Upon Lessor's retaking possession of said equipment, the rental Agreement shall terminate provided, however, the termination shall be without prejudice to Lessor's right to claim payment in arrears of the rental, if any and for damages. If Lessor retakes the equipment, the retaking shall be at Lessee's sole cost and expense.

**9. EXCLUSIONS OF LIABILITY:** Lessor shall exercise reasonable precaution to deliver the equipment leased hereunder in good condition as of the delivery date thereof; however, all equipment is furnished to and leased by Lessee at Lessee's sole risk and expense. Lessee is and shall remain liable for any damage or injury to persons or property arising as the result of Lessee's use of the rental equipment and shall hold Lessor harmless therefrom. Lessor assumes no liability of any type, nature or degree, from any source for equipment leased to Lessee hereunder. Lessee shall be solely liable for damages, injuries, deaths, delays or losses of any kind or nature, from any source, occasioned by or related to the use of said equipment, whether used or operated by Lessee, its agents, employees, or subcontractors and their employees or whether resulting from the acts or omissions of Lessor or any of its agents, servants, employees, or otherwise.

**10. INDEMNITY BY LESSEE:** Lessee shall protect, indemnify and hold harmless Lessor, its officers, agents and employees from every kind and character of damages (including consequential damages), losses, expenses, demands, claims, and causes of action arising against Lessor, its officers, agents, employees and its subcontractors, their officers, agents, employees or any other persons, firm or corporation whatsoever, on account or personal injuries, death claims or damages to property arising from any cause whatsoever growing out of or incident to such equipment rental, including, but not limited to, any and all fines, penalties, costs, or losses, resulting from failure of Lessee to comply with environmental laws and/or resulting from pollution or contamination arising in connection with any work being done by Lessee utilizing the rental equipment, and Lessee agrees to indemnify Lessor, WHETHER OR NOT SUCH INJURIES, DEATH OR DAMAGE RESULT FROM OR ARE CLAIMED TO HAVE RESULTED FROM THE CONCURRENT OR SOLE NEGLIGENCE (IN ANY AMOUNT) OF LESSOR OR LESSOR'S OFFICERS, AGENTS, OR EMPLOYEES, OR LESSOR'S SUBCONTRACTORS, OFFICERS, AGENTS, OR EMPLOYEES, STRICT LIABILITY OR OTHER FAULT. Lessee at its own expense shall defend any suit or action brought against the Lessor based on any such alleged injury, death or damage, and shall pay all damages, costs and expense, including attorney's fees in connection therewith or in any manner resulting therefrom. The indemnities and other terms of this Section 10 shall survive termination of this Agreement for any reason whatsoever, and are granted without regard to, and without any right to contribution from, any insurance maintained



by Lessor. Although the release, indemnity, defend, and hold harmless provisions of this Agreement are expressed in terms of tort, it is the intent of the parties to allocate risks for all claims, whether those claims are expressed in terms of contract, tort, product liability, statutory duty, warranty or otherwise. To the extent permitted under applicable law, Lessee waives any remedy it may have under the Deceptive Trade Practices Act of the State of Texas, as amended, or any similar applicable consumer protection legislation.

**11. EXAMINATION AND INSPECTION:** Lessee agrees to afford Lessor access to the leased equipment for the purposes of examination and inspection at all reasonable times during the terms hereof.

**12. DISCLAIMER:** LESSOR MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE RENTED OR PURCHASEDEQUIPMENT. LESSEE UNDERSTANDS AND AGREES THAT NO WARRANTY IS TO BE IMPLIED WITH RESPECT TO THE CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY, THE FITNESS OF THE EQUIPMENT FOR A PARTICULAR PURPOSE, OR WITH RESPECT TO INFRINGEMENT OR THE LIKE. THE LESSOR SHALL NOT IN ANY EVENT BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES. IN THE EVENT THE EQUIPMENT IS FOUND TO BE DEFECTIVE, LESSOR'S SOLE RESPONSIBILITY SHALL BE THE REPAIR OR THE REPLACEMENT OF SUCH EQUIPMENT. LESSOR MAKES NO WARRANTY AS TO WHETHER THE EQUIPMENT LEASED AND/OR SOLD HEREUNDER MEETS THE SPECIFICATIONS, STIPULATED SIZE, OR THE DESCRIPTION FOR WHICH LESSEE CONTRACTED HEREUNDER. LESSEE UNDERSTANDS AND ACKNOWLEDGES THAT THE EQUIPMENT RENTED AND/OR SOLD HEREUNDER MAY BE PREVIOUSLY USED EQUIPMENT.

**13. CONFLICT OF PROVISIONS:** In the event of a conflict between the provisions of this Agreement and any invoice, published rate schedule, or any other type of written memoranda, statement, or agreement, whether oral or written, the provisions of the Agreement control.

**14. ASSIGNMENT:** Lessee may not assign this Agreement without the prior written consent of Lessor. Lessor may assign this Agreement.

**15. VENUE:** The laws of the State of Texas shall be used should a dispute arise between the Lessor and the Lessee and the venue for any litigation shall be Midland County, Texas.

**16. FORCE MAJEURE:** If Lessor determines that it is unable to carry out its obligations hereunder by reason of force majeure, then upon Lessor's giving of notice in writing to Lessee, Lessor's obligations that are affected by force majeure shall be suspended during the continuance of the force majeure and Lessor shall not be liable to Lessee for any damages incurred by the Lessee as a result thereof.

**17. SEVERABILITY:** If, in any legal proceeding, it is determined that any provision of this Agreement is unenforceable under applicable law, the unenforceable provision shall be automatically amended to conform to applicable law, but the rest of this Agreement shall remain in full force and effect.

**18. GENERAL CONDITIONS:** All equipment rented hereunder is, and shall remain at all times, the property of Lessor and the Lessee agrees to keep such equipment at all times free and clear of all claims, levies, liens and encumbrances.



**19. CONSEQUENTIAL DAMAGES:** Lessor shall not be liable to the Lessee for special, punitive, indirect, or consequential damages resulting from or arising out of this Agreement, including, without limitation, loss of profit or business interruptions, lost production, or damage to a well, however same may be caused.

Accepted by: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_