

## WENDT EQUIPMENT LEASING TERMS AND CONDITIONS

**ARTICLE 1. THE PARTIES.** Wendt, LLP, (“Lessor”) agrees to lease to the customer (the “Lessee”) identified on the front page or order form of this lease agreement (the “Lease”) the equipment as described on the front page or order form of this Lease (the “Equipment”).

**ARTICLE 2. THE RENTAL PERIOD.** The Rental Period extends from the time the Equipment leaves the Lessor’s yard until it is returned to the Lessor’s yard in satisfactory working condition. On out-of-town shipments of Equipment, the date of the bill of lading is the beginning of the rental period and it ends on the date the Equipment is returned to the Lessor’s yard or siding, or on the date of return bill of lading, if stipulated by the Lessor.

**ARTICLE 3. RENT.** The rental rates are set forth on the face of this Lease. Rental rates are based on 8 hours per day, 5 days per week, 22 eight-hour days in any 30 consecutive day period. Should the Equipment be used longer, the overtime rates, set forth in Article 3, shall apply. The Lessee shall pay rent for the entire period on each piece of Equipment. Rent is not subject to any deductions on account of non-working time. The monthly rates are not subject to deductions on account of non-working time. Fractions of the month at the beginning or the end of the rental period shall be at the monthly rental rate, pro-rated, but only after one full month of rental.

If Lessee fails to take possession of the Equipment reserved for it or cancels this Lease, the Lessee agrees to pay a cancellation fee to the Lessor in the amount of two (2) per cent of the value of the Equipment as noted on the face of this Lease and four (4) per cent of the value of the Equipment if it has been loaded for transit to the Lessee.

**ARTICLE 4. OVERTIME RATE BASIS.** One of the following schedules of overtime charges should be agreed upon, and noted on the front page or order form of this Lease.

*Schedule A:* On the daily rate, add 1/8th of the daily rate for each hour worked in excess of 8 hours in any one day; 1/40th of the weekly rate for each hour worked in excess of 40 hours in any one week; 1/176th of the monthly rate for each hour in excess of 176 hours worked in any 30 consecutive day period.

*Schedule B:* On the daily rate, for each hour over 8 hours, 1/16th of the daily rate shall be charged. On the weekly or monthly rate, two shifts are charged at 1 1/2 times the single shift, and three shifts are charged at 2 times the single shift rate.

If no overtime rate schedule is referenced on the front page or order form of this Lease. Schedule “A” shall apply. Lessee agrees to state in writing the number of excess hours the Equipment is used and to pay the Lessor the appropriate rent amount.

**ARTICLE 5. TERMS OF PAYMENT.** Rentals shall be paid on the 15th of the month following the first use of the Equipment unless otherwise stipulated on the first page or order form of this Lease. Lessor shall be entitled to reimbursement of all costs and expenses, including court costs and attorneys fees, incurred in collecting payment from Lessee. Any past due accounts shall

have interest accruing at a rate of 2 % per month. Any payments made on past due accounts shall first be applied to collection costs and expenses, then late payment fees, then to interest, then to rent. Payment of late payment fees and interest shall not waive the Lessor’s right to terminate this Lease as hereinafter provided.

In addition to any other rights available to Lessor under this Lease, if any rent is not paid within 30 days of due date, the Lessee shall be in breach of the terms of this Lease. If the Lessee is in breach of this Lease or becomes subject to any of bankruptcy, receivership, or insolvency proceeding, the Lessor may, without notice, declare the entire amount of rent under this Lease due and payable, terminate this Lease without court order, and take possession of the Equipment without being in breach of this Lease or liable to Lessee for trespass. Lessee will be responsible for any and all legal and transportation costs incurred by Lessor in any such repossession.

**ARTICLE 6. LOADING AND FREIGHT CHARGES.** The Equipment is rented F.O.B. to the Lessor’s yard or siding. Any additional charges incurred in loading, unloading, erection, dismantling, are the responsibility of the Lessee. If the Lessee does not furnish shipping instructions, the Lessor will select the means of conveyance for Lessor.

**ARTICLE 7. NOTICE OF RETURN OR RECALL.** The Lessor may recall any or all Equipment upon 30 days written notice to the Lessee. The Lessee may return any or all Equipment to the Lessor upon 30 days written notice to Lessor.

**ARTICLE 8. SUBLEASING.** No Equipment listed herein may be subleased by the Lessee. The Lessee further agrees not to assign or transfer any interest in this Lease without written consent of the Lessor.

**ARTICLE 9. RELOCATION EQUIPMENT.** Lessee agrees not to move the Equipment to another location without the express written consent of the Lessor.

**ARTICLE 10. REPAIRS AND MAINTENANCE.** The Lessor is required to supply the Equipment in good operating condition. The Lessee acknowledges by signing this Lease that it has carefully examined the Equipment and accepts the Equipment as being in good operating condition. The Lessee agrees that it will pay all cost of repairs during the rental period, including labor, material, parts and other items, except for normal wear and tear. Rent continues until the Equipment is returned to Lessor with all necessary repairs made to the Equipment and with it in normal operating condition.

“Normal wear and tear” is defined as use of the Equipment under normal work conditions, with qualified personnel providing proper operation, maintenance and service. If repairs exceeding the normal wear and tear are necessary upon return of the Equipment, Lessor is authorized to make such repairs and Lessee agrees to pay Lessor the reasonable costs of such repairs to the Equipment and rent while such repairs are being made. Lessee agrees not to cover, alter, substitute, or remove any identifying insignia displayed on the Equipment. Lessee will not permit the Equipment to be abused, overloaded, and used beyond its capacity. Lessee will not alter the Equipment in any fashion and shall use and operate the Equipment in accordance with all

applicable laws and the manufacturer's operating manual. The Equipment furnished is standard from manufacturer only. Any modification or additions or optional equipment to be added to the Equipment shall be at an additional cost to Lessee. Equipment to be used by Lessee under normal working conditions as designed and specified by manufacturer. Unusual or abnormal working conditions, requiring work in rock, excessive mud, abrasives, etc. or tying down, towing, demolition, adding additional or excessive weight will be billed to the Lessee as additional wear and tear and/or cost of repairs as provided herein.

**ARTICLE 11. INSPECTION.** Before shipment is made, the Lessee may require inspection of the Equipment. If it is not in substantially the condition required by this Lease, the cost of inspection will be paid by the Lessor, and Lessee may cancel the Lease at its option, or require the Lessor to supply Equipment in normal operating condition. The Lessor will have the right at any time to inspect Equipment and will be given free access by Lessee to it and the necessary facilities to accomplish the inspection.

**ARTICLE 12. INSURANCE & INDEMNIFICATION.** Lessee, at its own expense, shall carry and maintain in force at all times during the term of this Lease insurance of the type and minimum coverage limits as follows:

- (1) Worker's Compensation – Statutory amount under the laws of the state where the Lessee is operating the Equipment.
- (2) Commercial General Liability - \$1,000,000 per occurrence.
- (3) Property/Casualty insurance – with coverage limits sufficient to cover the full replacement cost of the Equipment.

All such insurance shall be in form and with companies reasonably satisfactory to the Lessor. Evidence of adequate insurance shall be delivered to Lessor within ten (10) days after execution of this Lease, and thereafter certificates of renewal policies shall be delivered to Lessor within ten (10) days prior to the expiration of the term of such policy. Any policies of insurance carried by the Lessee shall provide that as against Lessor, the Lessee and insurers shall waive any rights of subrogation, setoff, counterclaim or any other deduction, whether by attachment or otherwise.

Notwithstanding Lessee's responsibility for insurance hereunder, Lessee shall defend, indemnify and hold the Lessor harmless from and against any and all loss or damage to the Equipment or liability through use of the Equipment during the term of this Lease. If the Equipment is destroyed through fire, flood, explosion, or any other cause, the Lessee will repay the Lessor the full replacement cost of the Equipment. Rent shall continue to accrue through the date Lessor receives payment in full of the replacement cost of the Equipment.

**ARTICLE 13. TITLE.** Title to the Equipment shall at all times remain vested in the Lessor. The Lessee agrees to keep the

Equipment free and clear of any claims, liens, or encumbrances. Lessee further agrees to use the Equipment in accordance with all applicable government regulations, ordinances or laws. The Lessee shall give the Lessor immediate notice in case any Equipment is levied upon or becomes subject to seizure.

**ARTICLE 14. TAXES.** Lessee agrees to pay all government taxes or other assessments against this Equipment except as provided on the first page or order form of this Lease.

**ARTICLE 15. WAIVERS.** No waivers of any part or article of this Lease shall be construed to be a waiver of any other part or article or be recognized unless it is in writing and signed by both parties.

**ARTICLE 16. LIMITED LIABILITY:** LESSEE AGREES LESSOR DOES NOT AND CANNOT GUARANTEE OR WARRANT THE SUCCESS OR FAILURE OF THE USE OF ANY EQUIPMENT LEASED HEREUNDER. BECAUSE LESSOR CANNOT GUARANTEE OR WARRANT THE OUTCOME FROM ANY USE OF EQUIPMENT LEASED HEREUNDER, LESSEE AGREES IT SHALL RENT THE EQUIPMENT FROM LESSOR ON THE BASIS THAT SUCH EQUIPMENT MAY BE WHOLLY INEFFECTIVE AT THE INTENDED PURPOSE FOR WHICH IT HAS BEEN LEASED. BASED ON THE FOREGOING, LESSOR DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LESSEE FURTHER AGREES THAT LESSOR SHALL NOT BE LIABLE TO LESSEE, OR ANY OF ITS AGENTS, EMPLOYEES, CUSTOMERS OR CONTRACTORS FOR ANY LOSS OR INJURY ARISING OUT OF, IN WHOLE OR IN PART, THE EQUIPMENT LEASED HEREUNDER. NOTWITHSTANDING THE FOREGOING AND BASED UPON THE NEGOTIATED RENT FOR THE EQUIPMENT LEASED HEREUNDER, LESSOR'S MAXIMUM LIABILITY FOR ANY CLAIM BROUGHT AGAINST IT HEREUNDER SHALL BE THE LESSER OF: I) THE AMOUNT OF RENT PAID BY LESSEE TO LESSOR FOR THE EQUIPMENT AT ISSUE, OR II) ONE MONTH'S RENT FOR THE EQUIPMENT AT ISSUE. UNDER NO CIRCUMSTANCES SHALL LESSOR BE RESPONSIBLE FOR ANY BUSINESS INTERRUPTION DAMAGES INCURRED BY LESSEE OR ANY OTHER THIRD PARTY RELATING IN ANY MANNER TO THIS LEASE OR THE EQUIPMENT THAT IS THE SUBJECT OF THIS LEASE.

**ARTICLE 17. INDEMNITY.** Lessee agrees to indemnify, defend and hold harmless Lessor, its affiliates, employees, successors and assigns (all referred to as "Lessor") from and against any losses, damages, claims, fines, penalties and expenses (including reasonable attorneys fees) that arise out of or result from injuries or death to persons or damage to property in any way arising out of or caused or alleged to have been caused by services or Equipment provided by Lessor.