



Sam's Site Rentals – Rentals Terms and Conditions

- 1) **DEFINITIONS.** "Authorized Individuals" are those individuals that Customer directly or indirectly allows to use the Equipment, who must be properly trained to use the Equipment, at least 18 years old or the legal age of majority in the state, whichever is greater and are not under the influence of any drugs, alcohol, substances or otherwise impaired. "Customer" is identified earlier and includes any of your representatives, agents, officers, employees or anyone signing this Contract on your behalf. "Incident" is any fine, citation, theft, accident, casualty, loss, vandalism, injury, death or damage to person or property, claimed by any person or entity that appears to have occurred in connection with the Equipment. "Lost" means the Equipment is either stolen, its location is unknown, or Customer is unable to recover it for a period of 30 days. "FMV" is the Equipment's fair market value on or about the date of the Incident relating to the Equipment, plus any administrative fees and expenses. "One Shift" means not more than 8 hours per day, 40 hours per week and 160 hours every 4-week period, provided that double shift will be 150% and triple shift will be 200% of the rental charge on Equipment with hour meters. "Ordinary Wear and Tear" means normal deterioration considered reasonable in the equipment rental industry for One Shift use. "Party" means SSR or Customer and together both are the "Parties". "Pick-Up Number" is the number Customer obtains from SSR evidencing the Customer's call to pick up Equipment. "Rental Period" commences when the Equipment is delivered to Customer or the Site Address and continues until the Equipment is returned to the Store or picked up by SSR during normal business hours, provided Customer has otherwise complied with this Contract. "Site Address" is the location that Customer represents the Equipment will be located during the Rental Period identified earlier. "Store" is the SSR location identified earlier. "SSR" is SSR and its affiliated companies, their respective officers, directors, employees and agents.
- 2) **TERMS.** Customer's execution of this Contract or taking possession of the Equipment (whichever occurs first) shall be deemed acceptance of the terms herein for this and all past and future contracts between SSR and Customer upon Customer's receipt of SSR's Equipment under those contracts. Customer rents the Equipment from SSR pursuant to this Contract, which is a true lease. The Equipment (a) is and shall remain the personal property of SSR and (b) shall not be affixed to any other property. Customer shall not pledge or encumber the Equipment in any manner.
- 3) **PERMITTED USE.** Customer agrees and warrants that (a) SSR has no control over the manner in which the Equipment is operated during the Rental Period by Customer or any third party that Customer implicitly or explicitly permits, (b) prior to each use and its return to SSR, Customer shall inspect the Equipment to confirm that the Equipment is in good condition, without defects, readable decals are on

the Equipment, and the Equipment is suitable for Customer's intended use; (c) Customer has access to and reviews the operating and safety instructions and will operate the Equipment in accordance with the manufacturer's instructions and with applicable safety equipment; (d) any apparent agent at the Site Address is authorized to accept delivery of the Equipment (and if Customer requests, Customer authorizes SSR to leave the Equipment at the Site Address without requirement of written receipt); (e) Customer shall immediately stop use and notify SSR if the Equipment is damaged, unsafe, disabled, malfunctioning, warning lights come on, levied upon, threatened with seizure, Lost, or if any Incident occurs; (f) Customer has received from SSR all information needed or requested regarding the operation of the Equipment; (g) SSR is not responsible for providing operator or other training unless Customer specifically requests in writing and SSR agrees to provide such training (Customer being responsible to obtain all training that Customer desires prior to the Equipment's use); (h) SSR is not responsible for Customer's obligation to provide reasonable accommodation(s) to any (disabled) Authorized Individual(s); (i) only Authorized Individuals shall use and operate the Equipment, however Customer is responsible for the Equipment and its use during the Rental Period regardless of the user; (j) the Equipment shall be used and maintained in a careful manner, within the Equipment's capacity and in compliance with all applicable laws, regulations, as well as all operating and safety instructions provided on, in or with the Equipment and all applicable federal, state and local laws, permits and licenses, including but not limited to, OSHA and ADA, as revised; (k) the Equipment shall be kept in a secure location; and (l) Customer shall provide SSR with accurate and complete information, which SSR relies upon to provide the appropriate Equipment to Customer.

4) **PROHIBITED USE.** Customer shall not (a) alter or cover up any decals or insignia on the Equipment, remove any operating or safety equipment or instructions or alter or tamper with the Equipment; (b) assign its rights under this Contract; (c) move the Equipment from the Site Address without SSR's written consent; (d) use the Equipment in a negligent, illegal, unauthorized or abusive manner; or (e) publicize use of the Equipment in any manner (including, without limitation, print, audiovisual or electronic); or (f) allow the use of the Equipment by anyone other than Authorized Individuals (Customer acknowledging that the Equipment may be dangerous if used improperly or by untrained parties).

5) **MAINTENANCE.** Customer shall perform routine maintenance on the Equipment, including routine inspections and maintenance of fuel and oil levels, grease, cooling and fluid systems, batteries, tires/tracks cutting edges, and cleaning in accordance with the manufacturer's specifications, as applicable. All other maintenance or repairs may only be performed by SSR or its agents, but SSR has no responsibility during the Rental Period to inspect or perform any maintenance or repairs unless Customer requests a service call. If SSR determines that repairs to the Equipment are needed, other than Ordinary Wear and Tear, Customer shall pay the full repair charges, additional fees, if any, and rental of the Equipment until the repairs are completed. If Equipment is stolen or damaged in excess of 40% of the Equipment's FMV, Customer will be responsible for the FMV of the Equipment, including sales tax, as applicable. SSR has the right to inspect the Equipment wherever located. Customer has the authority to and hereby grants SSR and its agents the right to enter the physical location of the Equipment for the purposes set forth herein. SSR shall be responsible for repairs needed because of Ordinary Wear and Tear. Customer agrees that repair or replacement of the Equipment is Customer's exclusive remedy for SSR's breach of this Section. Notwithstanding SSR's service commitment, if

Customer breaches this Contract, SSR shall have no obligation to stop the Rental Period, commence repairs or rent other equipment to Customer until Customer or its agent agrees to pay for such charges.

6) **CUSTOMER LIABILITY. DURING THE RENTAL PERIOD, CUSTOMER ASSUMES ALL RISK ASSOCIATED WITH THE POSSESSION, CONTROL OR USE OF THE EQUIPMENT, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY, DEATH, RENTAL CHARGES, THEFT, LOSSES, DAMAGES AND DESTRUCTION, INCLUDING CUSTOMER TRANSPORTATION, LOADING AND UNLOADING, WHETHER OR NOT THE CUSTOMER IS AT FAULT.** After an Incident, Customer shall (a) immediately notify SSR, the police, if necessary, and Customer's insurance carriers; (b) secure and maintain the Equipment and the surrounding premises in the condition existing at the time of such Incident, until SSR or its agents investigate; (c) immediately submit copies of all police or other third party reports to SSR; and (d) as applicable, pay SSR, in addition to other sums due herein, the rental rate for Equipment until the repairs are completed or Equipment replaced plus either (i) the FMV or (ii) the full charges of recovery and repairs of damaged Equipment. Accrued rental charges shall not be applied against these amounts. SSR shall have the immediate right, but not obligation, to reclaim any Equipment involved in any Incident.

7) **NO WARRANTIES. SSR DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT, ITS DURABILITY, CONDITION, MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR ANY PARTICULAR PURPOSE. CUSTOMER ACKNOWLEDGES ACCEPTANCE OF THE EQUIPMENT ON AN "AS IS, WHERE IS" BASIS, WITH "ALL FAULTS" AND WITHOUT ANY RECOURSE WHATSOEVER AGAINST SSR ENTITIES. CUSTOMER ASSUMES ALL RISKS ASSOCIATED WITH THE EQUIPMENT AND RELEASES SSR ENTITIES FROM ALL LIABILITIES AND DAMAGES (INCLUDING LOST PROFITS, PERSONAL INJURY, AND SPECIAL, INCIDENTAL AND CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) IN ANY WAY CONNECTED WITH THE EQUIPMENT, ITS INSTALLATION, OPERATION OR USE OR ANY DEFECT OR FAILURE THEREOF, A BREACH OF SSR'S OBLIGATIONS HEREIN OR ERRORS OR INACCURACIES IN INFORMATION OBTAINED FROM CUSTOMER OR THIRD PARTIES, UPON WHICH SSR RELIES; PROVIDED HOWEVER, IF CUSTOMER IS A CONSUMER UNDER APPLICABLE LAW, THEN NO CONSEQUENTIAL DAMAGES LIMITATION OF INJURIES TO PERSONS SHALL APPLY.**

8) **RELEASE AND INDEMNIFICATION. TO THE FULLEST EXTENT PERMITTED BY LAW, CUSTOMER INDEMNIFIES, RELEASES, HOLDS SSR ENTITIES HARMLESS AND AT SSR'S REQUEST, DEFENDS SSR ENTITIES (WITH COUNSEL APPROVED BY SSR), FROM AND AGAINST ALL LIABILITIES, CLAIMS, LOSSES, DAMAGES, AND EXPENSES (INCLUDING ATTORNEY'S AND/OR LEGAL FEES AND EXPENSES) HOWEVER ARISING OR INCURRED, RELATED TO ANY INCIDENT, DAMAGE TO PROPERTY, INJURY OR DEATH OF ANY PERSON, CONTAMINATION OR ALLEGED CONTAMINATION, OR VIOLATION OF LAW OR REGULATION CAUSED BY OR CONNECTED WITH THE (a) ACCESS, USE, POSSESSION OR CONTROL OF THE EQUIPMENT BY CUSTOMER OR ANY THIRD PARTY THAT CUSTOMER IMPLICITLY OR EXPLICITLY PERMITS TO ACCESS, USE, POSSESS OR CONTROL THE EQUIPMENT DURING THE RENTAL PERIOD OR (b) BREACH OF THIS CONTRACT, WHETHER OR NOT CAUSED IN PART BY THE ACTIVE OR PASSIVE NEGLIGENCE OR OTHER FAULT OF ANY PARTY INDEMNIFIED HEREIN AND ANY OF THE FOREGOING ARISING OR IMPOSED IN ACCORDANCE WITH THE DOCTRINE OF STRICT OR ABSOLUTE LIABILITY. CUSTOMER ALSO AGREES TO WAIVE ITS WORKERS' COMPENSATION IMMUNITY, TO THE EXTENT APPLICABLE. CUSTOMER'S INDEMNITY OBLIGATIONS SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS CONTRACT.** All of Customer's indemnification obligations under this paragraph shall be joint and several.

9) **INSURANCE.** During the Rental Period, Customer shall maintain, at its own expense, the following minimum insurance coverage: (a) for Customers using Equipment for non-personal use, general liability insurance of not less than \$1,000,000 per occurrence, including coverage for Customer's contractual liabilities herein such as the release and indemnification clause contained in Section 8; (b) for Customers using Equipment for non-personal use, property insurance against loss by all risks to the Equipment, in an amount at least equal to the FMV thereof (c) worker's compensation insurance as required by law; and (d) automobile liability insurance (including comprehensive and collision coverage, and uninsured/underinsured motorist coverage), in the same amounts set forth in subsections (a) and (b), if the Equipment is to be used on any roadway. Such policies shall be primary, non-contributory, on an occurrence basis, contain a waiver of subrogation, name SSR and its agents as an additional insured (including an additional insured endorsement) and loss payee, and provide for SSR to receive at least 30 days prior written notice of any cancellation or material change. Any insurance that excludes boom damage or overturns is a breach. Customer shall provide SSR with certificates of insurance evidencing the coverages required above prior to any rental and any time upon SSR's request. To the extent SSR Entities carry any insurance, SSR Entities' insurance will be considered excess insurance. The insurance required herein does not relieve Customer of its responsibilities, indemnification, or other obligations provided herein, or for which Customer may be liable by law or otherwise.

10) **RENTAL RATES.** The total charges specified in this Contract are: (a) estimated based upon Customer's representation of the estimated Rental Period identified herein (rental rates beyond the estimated Rental Period may change) and other information conveyed by Customer to SSR; and (b) for the Equipment's use for One Shift, unless otherwise noted. Weekly and 4 week rental rates shall not be prorated. Rental charges accrue during Saturdays, Sundays, and holidays. The rental rates do not include and Customer is responsible for, (i) all consumables, fees, licenses, present and future taxes and any other governmental charges based on Customer's possession and/or use of the Equipment, including additional fees for more than One Shift use; (ii) delivery and pickup charges to and from the Store, including but not limited to any freight, transportation, delivery, pickup and surcharge fees listed in this Contract; (iii) maintenance, repairs and replacements to the Equipment as provided herein; (iv) a cleaning fee if required; (v) miscellaneous charges, such as fees for lost keys, costs to recover Equipment, emergency mobilization or store opening; (vi) fuel used during the Rental Period and for refueling Equipment as described below; and (vii) fines for use of dyed diesel fuel in on-road Equipment. The convenience charge for off road diesel fuel does not include governmental motor fuel taxes or charges. SSR collects these fees as revenue and uses them at its discretion.

11) **PAYMENT.** Customer shall pay for the rental of Equipment, sale of Equipment, materials and all other items and services identified in this Contract and all other amounts due, without any offsets, in full, in advance at the time of rental, unless SSR approves Customer's executed commercial credit application. Commercial customers who are approved for SSR's extended payment terms must pay, in arrears, upon receipt of SSR's invoice, either by cash, check or ACH. Customer must notify SSR in writing of any disputed amounts, including credit card charges, within 15 days after the receipt of the invoice/contract or Customer shall be deemed to have irrevocably waived its right to dispute such amounts. At SSR's discretion, any account with a delinquent balance may be placed on a cash basis, deposits may be required and the Equipment may be picked up without notice. Due to the difficulty in fixing actual damages caused by late payment, Customer agrees that a service charge equal to the lesser of 1.5% per month or the maximum rate permitted by law shall be assessed on all delinquent accounts,

until paid in full. Customer shall reimburse SSR for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. Payment of any late charge does not excuse Customer of any default under this Contract. Customer shall pay a fee of \$75 for each check returned for lack of sufficient funds to compensate SSR for its overhead for processing missed payment. Deposits will only be returned after all amounts are paid in full. **CUSTOMER AGREES THAT IF A CREDIT OR DEBIT CARD IS PRESENTED TO PAY FOR CHARGES OR TO GUARANTEE PAYMENT, CUSTOMER AUTHORIZES SSR TO CHARGE THE CREDIT OR DEBIT CARD ALL AMOUNTS SHOWN ON THIS CONTRACT AND CHARGES SUBSEQUENTLY INCURRED BY CUSTOMER, INCLUDING BUT NOT LIMITED TO, LOSS OF OR DAMAGE TO THE EQUIPMENT AND EXTENSION OF THE RENTAL PERIOD.** Effective June 1, 2021 and where permitted by law, SSR may impose a surcharge of 2% (minimum \$3) for credit card payments on charge accounts. This surcharge is not greater than SSR's merchant discount rate for credit card transactions and is subject to sales tax in some jurisdictions.

12) **RETURN OF EQUIPMENT.** SSR may terminate this Contract at any time, for any reason. The Equipment shall be returned to SSR (when needed for inspections, maintenance and at the end of the Rental Period) in the same condition it was received, less Ordinary Wear and Tear and free of any hazardous materials and contaminants. Customer will return the Equipment at the end of the Rental Period but will continue to be responsible for rental and other charges after the Rental Period if the Equipment is not returned in the condition required herein. If SSR delivered the Equipment to Customer, Customer shall notify SSR that the Equipment is ready to be picked up at the Site Address and obtain a Pick-Up Number, which Pick-Up Number Customer should keep as proof of the call; provided Customer remains liable for any loss, theft, damage to or destruction of the Equipment until SSR confirms that the Equipment is returned in the condition required herein. Customer will not be charged the rental charges after the date the Pick-Up Number is given, provided Customer has otherwise complied with this Contract. No pickups occur on Saturdays, Sundays, or statutory holidays. If Customer picked up Equipment, Customer shall return Equipment to the Store. If the Equipment is not returned by the estimated end of the Rental Period specified earlier, Customer agrees to pay the applicable rental rate for the Equipment until the end of the Rental Period.

13) **DEFAULT.** Customer shall be in default if SSR deems itself insecure or if Customer: (a) fails to pay sums when due; (b) breaches any Section of this Contract; (c) becomes a debtor in a bankruptcy proceeding, goes into receivership, takes protection from its creditors under any insolvency legislation, ceases to carry on business, or has its assets seized by any creditor; (d) fails to insure the Equipment as required, or otherwise places the Equipment at risk; (e) fails to return Equipment immediately upon SSR's demand; or (f) is in default under any other contract with SSR. If a Customer default occurs, SSR shall have, in addition to all rights and remedies at law or in equity, the right to repossess the Equipment without judicial process or prior notice. Customer shall pay all of SSR's costs, including reasonable costs of collection, court costs, attorneys, and legal fees, incurred in exercising any of its rights or remedies herein. SSR shall not be liable due to seizure of Equipment by order of governmental authority. **CUSTOMER WAIVES ANY RIGHT OF ACTION AGAINST SSR ENTITIES FOR SUCH REPOSSESSION.**

14) **FUEL.** For Equipment that uses fuel, Customer has three options: (a) Prepay Fuel Option - Customer may purchase a full tank of fuel for the Equipment at the start of the rental, in which case a "convenience charge" will appear on this Contract (calculated by multiplying the estimated fuel capacity of Equipment by the Prepay per gallon rate). As an added benefit, Customer may return the Equipment full of fuel and the convenience charge will be refunded (however, if not returned full, Customer will not

obtain any credit for fuel left in the Equipment upon return); (b) Pay on Return Option - if Customer returns Equipment with less fuel than when received, Customer shall pay a refueling charge (calculated by multiplying gallons required to refill tank with fuel to level when received, by the Pay on Return per gallon rate); and (c) Return Full Option – if Customer returns the Equipment with at least as much fuel as when it was received (most SSR Equipment comes with a full tank of fuel, but not all), no fuel charge will be assessed. The cost of Customer refueling Equipment itself will generally be lower than the Prepay Fuel Option or the Pay on Return Option; however, these options each allow for the convenience of not refueling. Customer agrees that none of these options are a retail sale of fuel.

15) **LIMITATION OF SSR'S LIABILITY. IN CONSIDERATION OF THE RENTAL OF EQUIPMENT, CUSTOMER AGREES THAT SSR'S LIABILITY UNDER THIS CONTRACT, INCLUDING ANY LIABILITY ARISING FROM SSR'S, SSR ENTITIES, OR ANY THIRD PARTY'S COMPARATIVE, CONCURRENT, CONTRIBUTORY, PASSIVE OR ACTIVE NEGLIGENCE OR THAT ARISES AS A RESULT OF ANY STRICT OR ABSOLUTE LIABILITY, SHALL NOT EXCEED THE TOTAL RENTAL CHARGES PAID BY CUSTOMER UNDER THIS CONTRACT.**

16) **ARBITRATION AGREEMENT.** AT THE ELECTION OF CUSTOMER OR SSR, ANY DISPUTE ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY PERTAINING TO THIS CONTRACT SHALL BE SETTLED BY ARBITRATION BROUGHT IN THE PARTY'S INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF IN A PURPORTED CLASS OR REPRESENTATIVE CAPACITY, ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION UNDER ITS COMMERCIAL ARBITRATION RULES OR BY JAMS PURSUANT TO ITS STREAMLINED ARBITRATION RULES AND PROCEDURES AND JUDGEMENT ON THE AWARD RENDERED BY THE ARBITRATOR(S) MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF.

17) **GOVERNING LAW.** The Parties expressly and irrevocably agree: (a) this Contract, including any related tort claims, shall be governed by the laws of California, without regard to any conflicts of law principles and (b) if any Section of this Contract is prohibited by any law, such Section shall be ineffective to the extent of such prohibition without invalidating the remaining Sections.

18) **FORCE MAJEURE.** SSR shall not be liable or responsible to the Customer, nor be deemed to have defaulted under or breached this Contract, for any failure or delay in fulfilling or performing any term of this Contract when and to the extent such failure or delay is caused by or results from acts beyond SSR's control, including, without limitation, the following force majeure events ("Force Majeure Event(s)"): (a) acts of God; (b) flood, fire, earthquake, epidemics, pandemics or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, regulations, shutdowns, or actions; (e) embargoes or blockades in effect on or after the date of this Contract; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power or transportation facilities; and (i) other events beyond the control of SSR.

19) **MISCELLANEOUS.** This Contract, together with any Customer executed commercial credit application, if any, constitutes the entire agreement of the Parties regarding the Equipment and may not be modified except by written amendment signed by the Parties. Any reference in the Customer's purchase order or other Customer document to other terms that shall control this transaction shall be void. This Contract benefits solely the Parties and their respective permitted successors and assigns and nothing in this Contract, express or implied, confers on any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Contract. Customer's obligations

hereunder shall survive the termination of this Contract. If any term is invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other term or invalidate or render unenforceable such term. This Contract and all of Customer's rights in and to the Equipment are subordinate to all rights, title and interest of all persons (including SSR's lenders) who have rights in the Equipment. Headings are for convenience only. To the extent that any terms in this Contract conflict, the Parties agree that the more specific terms control. A copy of this Contract shall be valid as the original. Any failure by SSR to insist upon strict performance of any Section of this Contract shall not be construed as a waiver of the right to demand strict performance in the future. Customer and the person signing this Contract agree, represent and warrant that: (a) the person executing is 18 or the legal age of majority in the state, whichever is greater and they both have full authority to execute, deliver and perform this Contract; and (b) this Contract constitutes a legal, valid and binding obligation of Customer, enforceable in accordance with its terms. If the Parties have a fully executed, active agreement, intended to govern over conflicting terms and conditions, such agreement shall take precedence over the terms herein.