

## RENTAL AGREEMENT TERMS AND CONDITIONS

The person or entity named as customer on the reverse side of this Rental Agreement (the "Customer") shall rent from Stephenson's Rental Services Inc. ("Stephenson's") the machinery, equipment and other items more particularly described on the reverse side of this Rental Agreement (the "Equipment") in accordance with the following terms and conditions:

1. **Term.** Stephenson's shall rent to the Customer the Equipment for a term set forth on the reverse side of this Rental Agreement commencing on the time and date on which the Equipment is delivered to the Customer. The insertion of the delivery time and date on the reverse side of this Rental Agreement shall be deemed to be conclusive evidence of the time and date of delivery.
2. **Authority.** Where the Customer is not an individual or is other than the person signing the Rental Agreement on the Customer's behalf, the person signing this Rental Agreement represents and warrants that he or she has the authority of the Customer to sign this Rental Agreement on the Customer's behalf and to pledge the credit of the Customer, and where the Customer is not an individual, the person signing this Rental Agreement on behalf of the Customer is a duly appointed signing officer of the Customer, duly authorized to sign this Rental Agreement and to bind the Customer to it. The person signing this Rental Agreement shall be jointly and severally liable with the Customer for the performance of all the Customer's obligations under this Rental Agreement. If more than one Customer is named in this Rental Agreement, the liability of each shall be joint and several.
3. **Purchase Order.** This Rental Agreement shall govern and supersede the terms of the Customer's purchase order, notwithstanding that the Customer's purchase order is accepted, acknowledged or otherwise executed by or on behalf of Stephenson's.
4. **Title.** Stephenson's shall retain all right to ownership and title to the Equipment. No ownership or title to the Equipment is transferred or assigned to the Customer under this Rental Agreement.
5. **Acts Inconsistent with Title of Stephenson's.** The Customer shall not do any act or permit any other person to do any act or omit to do any act that would be inconsistent with Stephenson's ownership and title in the Equipment. Without limiting the generality of the foregoing statement, the Customer shall not permit any other person or entity to obtain an interest in the Equipment by way of lien, charge, encumbrance, right to possession or otherwise.
6. **Delay.** Stephenson's shall not be liable to the Customer in any way for any delay in supplying the Customer with the Equipment, replacements of the Equipment or in any servicing or repairing of the Equipment.
7. **Inspection and Removal of Equipment.** Equipment shall not at any time be removed from the location specified on the reverse side of this Rental Agreement without the express prior written consent of Stephenson's. Any third party testing or inspection of the Equipment must be approved in writing by a Vice President of Stephenson's prior to such testing or inspection taking place. At all times an authorized representative from Stephenson's must be physically present during any third party testing and/or inspection of the Equipment. Stephenson's may enter upon the premises of the Customer where the Equipment is located or where Stephenson's believes the Equipment to be located. Stephenson's may enter these premises without notice to the Customer at any time to examine the Equipment. Stephenson's may enter such premises and remove the Equipment for the purposes of repairing and/or maintaining the Equipment or exercising the rights of Stephenson's upon default by the Customer under this Rental Agreement, without notice to the Customer. Any removal of the Equipment by Stephenson's shall thereby terminate the Customer's right to possession of the Equipment under this Rental Agreement. Stephenson's shall not be liable to the Customer for any loss, damage or expense incurred by the Customer, including but not limited to any consequential loss, loss of opportunity or loss of profit caused by the entry of Stephenson's on such premises or the removal of the Equipment under the terms of this Rental Agreement.
8. **No Warranties or Representations Given by Stephenson's.** The Customer acknowledges that it has selected the Equipment for Customer's intended purposes as a result of Customer's own investigations and without relying on any representations or warranties given by Stephenson's and Stephenson's specifically disclaims all implied warranties, including warranties of merchantability, non-infringement and fitness for a particular purpose, or arising from a course of dealing, usage or trade practice. Stephenson's shall have no liability for any cost, expense or damage suffered or incurred by the Customer or any third party arising from the Customer's use, operation, maintenance or storage of the Equipment.
9. **Compliance with OHS and Regulations.** The Customer confirms that it has received the Equipment in good condition, that it is safe to operate, and that the Equipment is in compliance with all Occupational Health and Safety legislation and regulations that apply to it, and in particular, the Equipment will not be in possession of or operated by anyone other than the Customer and its authorized and qualified personnel. The Customer acknowledges Stephenson's offers familiarization on Equipment as well as formal training on the use, care and inspection of the Equipment. The Customer agrees to only permit a competent operator who is fully trained and familiar with the specific make and model of the Equipment to operate the Equipment. The Customer is responsible to ensure that every operator agrees to follow at all times the operator's and maintenance guidelines set out in the Equipment manuals. This includes, but is not limited to a) reading and understanding the Operator's Manual before use, b) conducting daily pre-use inspections to ensure the Equipment is operationally safe and free of defects, c) ensuring the Equipment manufacturer's recommended maintenance, in accordance with the intervals outlined in the Operator's Manual, is being adequately performed while the Equipment is in the possession of the Customer, and d) should a defect arise including but not limited to damaged or worn parts, leaks, malfunctions, etc, the Customer agrees to lock out and tag out the Equipment until such time as any and all defects identified have been repaired by a qualified person and the Equipment has been returned to a safe operational condition.

10. **Location and Use.** The Customer shall operate, maintain or store the Equipment in a clean, safe, secure place at the location specified on the reverse side of this Rental Agreement. The Customer shall not remove the Equipment from the specified location without the express prior written consent of Stephenson's. The Customer shall operate, transport, maintain and store the Equipment in the manner contemplated by the manufacturer of the Equipment. The Customer shall use the Equipment only for such purpose for which it was manufactured and only in accordance with this Rental Agreement, all applicable laws, by-laws, rules and regulations affecting the use of same including but not limited to the Occupational Health and Safety Act.
11. **Payment of Charges.**
  - (a) The Customer shall pay to Stephenson's on the terms set out on the reverse side of this Rental Agreement, and where the Customer has an approved charge account with Stephenson's, on the terms set out on the credit approval letter sent to the Customer by Stephenson's:
    - (i) rent for the Equipment at the rates set out on the reverse side of this Rental Agreement and taxes thereon from the time and date of delivery of the Equipment to the Customer to the time and date of the return of the Equipment to Stephenson's by the Customer;
    - (ii) the cost of the Loss Damage Waiver, if applicable, as set out in Section 14 of this Rental Agreement;
    - (iii) any and all costs, charges and expenses or outlays incurred by Stephenson's in exercising its remedies hereunder or otherwise on default by the Customer, including solicitors fees on a substantial indemnity basis, collection fees, disbursements, bailiff's fees and transportation charges;
    - (iv) the cost of cleaning any Equipment not returned in a reasonably clean condition;
    - (v) interest on any overdue amounts payable to Stephenson's by the Customer under this Rental Agreement at the rate of 1% per month (12% per annum);
    - (vi) all applicable federal and provincial, government sales, consumption and use taxes as may be exigible in respect of the provision of Equipment to the Customer and the provision of any services of Stephenson's to the Customer under this Rental Agreement; and
    - (vii) all amounts otherwise set out in this Rental Agreement, including without limitation, as set out in Sections 9, 12, 16(a), 18(d) and 19;
  - (b) Unless otherwise specified in this Rental Agreement, the full daily rental rate set out on the reverse side of this Rental Agreement shall be payable to Stephenson's by the Customer for each full day or portion thereof until the Equipment is returned to Stephenson's.
12. **Loss or Damage to Equipment.** The Customer shall use the Equipment at its own risk and shall indemnify and save Stephenson's harmless pursuant to Section 19. Any amounts payable by the Customer's insurers, or by any third party, for loss or damage suffered by Stephenson's are to be made payable to Stephenson's, and the Customer is to pay Stephenson's the difference between the invoiced amount and the amount otherwise paid, immediately, in full.
13. **Insurance.** Subject to Section 14, the Customer shall, at its own expense:
  - (a) insure the Equipment against all perils and risks at an amount equal to the current and new cost of the Equipment; and
  - (b) place and maintain insurance against liability for any loss, costs, injury and/or damages resulting from or in any way connected with the use, operation, maintenance or possession of the Equipment or the ownership hereof by Stephenson's in such amounts as would be placed and maintained by a prudent owner of the Equipment.
14. **Loss Damage Waiver.** In the event that the Customer accepts and pays for the Loss Damage Waiver option and loss or damage of the Equipment occurs that is covered under the Loss Damage Waiver policy, the Customer is responsible for the payment of the deductible, being the greater of \$500 or 15% of the replacement value of the Equipment, per occurrence, (the "Deductible"), and Stephenson's waives its claim against the Customer for any amount in excess of the Deductible, up to \$100,000.00 CAD. The Loss Damage Waiver shall not apply to the Customer when the Equipment is being held against the will and consent of Stephenson's, or if the cause of the loss or damage is outside of the terms of the Loss Damage Waiver policy. It is at Stephenson's sole discretion as to whether the loss or damage is within the terms or the Loss Damage Waiver policy. The Customer's obligation to insure for Public Liability is not waived hereunder.
15. **Loss Damage Waiver Exemptions.** Notwithstanding the Customer's acceptance of the Loss Damage Waiver, the Customer shall be liable for all loss or damage from acts or omissions that are negligent, as determined by Stephenson's in its sole discretion. Examples of items that are NOT COVERED include, but are not limited to:
  - (a) Equipment that has disappeared under suspicious or mysterious circumstances that would be classified as missing inventory.
  - (b) Loss where reasonable security precautions were not taken, such as Equipment left unsupervised, unsecured overnight, in a parked motor vehicle (whether it was operative or being used for storage).
  - (c) Loss or damage caused by or due to employee, sub-trade or agent infidelity.
  - (d) Damage caused by improper operation or servicing of the Equipment, including, but not limited to, overloading, exceeding rated capacities, improper use, negligent operation, damage caused by: lack of fuel or lubrication, improper fuel or fuel mixtures, failure to maintain proper oil, water, hydraulic or air pressure levels, low voltage, or the use of inappropriate extension cords (either too long or too light).
  - (e) Damage to expected wear items, including but not limited to, carbide and diamond drills, carbide and diamond blades, carbide bits or cutters, hammers, or breaker tools.
  - (f) Damage to tires, tubes, windows, drill bits, cutting blades/chains, points or chisels.
  - (g) Damage to Equipment while in transit, including but not limited to, damage caused by overturning, or collisions with bridges or overpasses. But such damage must be covered/claimed under the insurance policy for the transport vehicle.
  - (h) Damage to Equipment caused by operators of other moving vehicles or other equipment. Any such damage must be covered/claimed under the insurance policy for the other vehicle or other equipment.
  - (i) Damage caused by use or operation of the Equipment in violation of the Rental Agreement, construction safety laws including but not limited to the Occupational Health and Safety Act, national building codes, regulatory certification/requirements/licensing or any other applicable laws or regulations.
  - (j) Cleaning charges.
  - (k) Loss or damage exceeding \$100,000.00 CAD, less the Deductible.

**16. Return of Equipment.**

(a) The Customer shall at the sole expense of the Customer return the Equipment to Stephenson's at the location and on the return date specified on the reverse side of this Rental Agreement in the same condition in which the Equipment was received by the Customer, save and except for reasonable wear and tear to the Equipment. In the event the Customer fails to return the Equipment on the date or in the condition specified regardless of the reason for such failure, the Customer shall pay to Stephenson's any and all costs, charges and expenses incurred by Stephenson's to replace, repair or restore the Equipment to its original condition, and reasonable compensation for loss of rental of the Equipment until any replacement, repair or restoration is complete. Notwithstanding Section 14, the Customer shall be liable for all losses, thefts, malicious or non-accidental damages, vandalism, and damage to the Equipment caused by any failure of the Customer to lubricate, maintain or properly operate the Equipment.

(b) The signature of an employee of Stephenson's on the reverse side of this Rental Agreement indicating that the Equipment has been returned to the Customer shall not constitute an acknowledgement of Stephenson's that the Equipment has been returned in an undamaged condition or in accordance with the terms of this Rental Agreement and that the signature shall not act as a waiver of any Stephenson's rights under this Rental Agreement against the Customer.

(c) In the event the Customer has not returned the Equipment to Stephenson's on the date set out on the reverse side of this Rental Agreement, the Customer shall be deemed to be in unlawful possession of the Equipment and to have authorized the issuance of a warrant for his or her arrest or any other person in possession of the Equipment.

**17. Events of Default.** The Customer shall be deemed to be in default under this Rental Agreement if any of the following events occurs:

- (a) the Customer is in breach of any term or provision of this Rental Agreement;
- (b) the Customer: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (iii) seeks reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts; (iv) makes or seeks to make a general assignment for the benefit of its creditors; or (v) applies for or has a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business; or
- (c) the Customer permits a judgement against it to remain unpaid for a period of ten (10) days after the date of judgement.

**18. Effect of Default.** Upon the occurrence of an event of default under Section 17 of this Rental Agreement:

- (a) all rent and other charges thereafter payable by the Customer to Stephenson's under this Rental Agreement shall immediately accelerate and become due and payable to Stephenson's without notice or demand to the Customer;
- (b) the Customer shall forthwith at its sole expense return the Equipment to Stephenson's to the address of Stephenson's set out on the reverse side of the Rental Agreement or to such other address as Stephenson's may notify the Customer;
- (c) in the event the Customer fails to return the Equipment as described in subsection (b), Stephenson's may take possession of the Equipment and Stephenson's may enter upon any premises without notice or demand as provided for in this Rental Agreement to remove or to immobilize and subsequently remove the Equipment. Stephenson's shall not be liable to the Customer in any manner for such entry, immobilization or removal; and
- (d) notwithstanding the immobilization and removal of the Equipment, the Customer shall be liable to Stephenson's for the following amounts;
  - (i) the amounts due and unpaid by the Customer to Stephenson's under this Rental Agreement;
  - (ii) the amount of rent payable under this Rental Agreement for the period from the date of such immobilization and/or removal to the date on which Stephenson's rents to another person all the Equipment and not just a portion thereof;
  - (iii) all costs and expenses incurred by Stephenson's arising as a result of or in connection with the removal of the Equipment as provided for;
  - (iv) and interest on the then outstanding amounts due and owing by the Customer to Stephenson's under this Rental Agreement at the rate of 1% per month (12% per annum).

**19. General Indemnity.** The Customer shall indemnify and save Stephenson's and its officers, directors, partners, shareholders, employees, agents, affiliates, successors, and permitted assigns harmless from all losses, costs, expenses, claims, demands, interest, damages, fines, judgements, settlements, awards, and lawsuits arising out of, relating to or occurring in connection with:

- (a) any breach of the Rental Agreement (including, without limitation, these terms and conditions) by Customer (including, without limitation, any failure by Customer or its personnel to comply with any applicable laws);
- (b) injury to persons or property or death arising from or in connection with the actual or alleged use, operation, delivery or transportation of the Equipment or its location or condition;
- (c) any claim by a third party or personnel of Customer made against Stephenson's in relation to any Equipment;
- (d) the issuance of a warrant for the arrest of the Customer under this Rental Agreement;
- (e) any action of Stephenson's, including self-help, used by Stephenson's to get the Equipment back or otherwise enforce the terms of this Rental Agreement; or
- (f) any action against Stephenson's arising from the Customer's breach of any term or provision of this Rental Agreement.

**20. Limitation of Liability.** In no event shall Stephenson's or its representatives be liable under this Agreement to Customer or any third party for consequential, indirect, incidental, special, exemplary, punitive or aggravated damages, lost profits or revenues, or diminution in value, arising out of, or relating to, and/or in connection with any breach of this Agreement, regardless of (i) whether the damages were foreseeable; (ii) whether or not Stephenson's was advised of the possibility of the damages; or (iii) the legal or equitable theory (contract, tort or otherwise) upon which the claim is based. In no event shall Stephenson's aggregate liability arising out of or related to this Agreement, whether arising out of or related to breach of contract, tort (including negligence), or otherwise, exceed the lesser of (A) the lowest amount permitted by applicable law; and (B) total of the amounts paid to Stephenson's in the one month period preceding the event giving rise to the claim. The foregoing limitations apply even if the Customer's remedies under the Rental Agreement fail their essential purpose.**21. Assignment.** Stephenson's may assign its rights under this Rental Agreement and transfer its title and interest in the Equipment to any party without the prior written consent of the Customer. The Customer may not assign any of its rights and obligations under this Rental Agreement without the prior written consent of Stephenson's, which may be arbitrarily withheld.**22. Entire Agreement.** Except as set out in a credit approval letter sent by Stephenson's to the Customer where the Customer has an approved charge account, this Rental Agreement constitutes the entire agreement between the parties pertaining to its subject matter and supersedes all prior agreements, understandings, negotiations and discussions whether oral or written, of the parties and there are no warranties, representations or other agreements between the parties in connection with the subject matter of this Rental Agreement except as set forth in this Rental Agreement. No supplemental modification, waiver or termination of this Rental Agreement shall be binding unless executed in writing by both parties.**23. Sub-letting and Assignment.** The Customer shall not sublet the Equipment or any part thereof or assign this Contract without the prior written consent of Stephenson's, which permission may be arbitrarily withheld.**24. Miscellaneous.**

- (a) This Rental Agreement shall be construed and enforced in accordance with the laws of the province in which the Stephenson's branch identified on the reverse side of this Rental Agreement is located and the federal laws of Canada applicable therein.
- (b) Any schedules attached to this Rental Agreement form part of this Rental Agreement.
- (c) No waiver by Stephenson's of any term of this Rental Agreement shall constitute a waiver of any other term of this Rental Agreement nor shall it constitute a continuing waiver of that term of the Rental Agreement.
- (d) Any notices required to be given under this Rental Agreement shall be given in writing at the address of each party set out on the reverse side of this Rental Agreement or to such other address as either party may by notice in writing inform the other. Notices shall be deemed to have been effectively made on the day upon which they are delivered to such address, or on the fifth (5th) business day after they are deposited for mail delivery as prepaid ordinary mail.
- (e) If Customer occupies leased premises in connection with the use or storage of Equipment, it must provide Stephenson's with the name and address of the lessor of such leased premises.
- (f) In construing this Rental Agreement the singular shall include the plural and vice versa, and words importing the masculine shall include the feminine and the neuter genders and vice versa and words importing persons shall include corporations and vice versa.
- (g) All parties (party) to this Rental Agreement have required that the Rental Agreement be drawn up in English.
- (k) Time is of the essence of this Rental Agreement.
- (j) This Rental Agreement shall be binding upon and shall enure to the benefit of the parties and their respective heirs, legal representatives, executors, administrators, successors and permitted assigns.