

J Creek Equipment Rental Terms & Conditions

1: This Agreement is made by and between J Creek Equipment Rental, LLC ("J Creek Equipment Rental") as Lessor and the undersigned as Lessee. This Agreement shall be continuing in duration and shall cover all rentals of any Equipment by Lessee from Lessor. Lessee acknowledges that the terms contained herein shall be applicable to any rentals made from Lessor to Lessee and such terms and conditions may not be modified, terminated, or released by Lessee's return of equipment and/or subsequent rental of Equipment.

2. Terms- Lessee'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 J Creek Equipment Rental and Lessee upon Lessee's receipt of J Creek Equipment under those contracts. Lessee rents the Equipment from J Creek Equipment Rental under this Contract, which is a true lease. The Equipment (a) is and shall remain the personal property of J Creek Equipment Rental and (b) shall not be affixed to any other property. Lessee shall not sublease or encumber the Equipment in any manner.

- I. Assignment- Without prior written consent of the Lessor, Lessee shall not (a) assign, transfer, pledge, hypothecate, or otherwise dispose of this lease, equipment, or any part thereof or any interest therein. Or (b) sublet or lend equipment or any part thereof or permit equipment or any part thereof to be used by anyone other than the Lessee or Lessee's employees. Upon any permitted assignment by Lessee, its assignees shall become bound by all the terms hereof and Lessee shall remain fully liable hereunder.
- II. Accident Notification-It is the Lessee's responsibility to immediately notify the Lessor in the event of any accidents.

3: Permitted Uses- Lessee agrees and warrants that (a) J Creek Equipment Rental has no control over the manner in which the Equipment is operated during the Rental Period by Lessee or Lessee' employees implicitly or explicitly permits, (b) prior to each use and its return to J Creek Equipment, Lessee 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 Lessee' intended use; (c) Lessee 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 Lessee requests and/or Lessee authorizes J Creek Equipment to leave the Equipment at the Site Address without requirement of written receipt); (e) Lessee shall immediately stop use and notify J Creek Equipment if the Equipment is damaged, unsafe, disabled, malfunctioning, warning lights come on, levied upon, threatened with seizure, Lost, or if any Incident occurs; (f) Lessee has received from J Creek Equipment all information needed or requested regarding the operation of the Equipment; (g) J Creek Equipment is not responsible for Lessee' obligation to provide reasonable accommodation(s) to any (disabled) Authorized Individual(s); (i) only Authorized Individuals shall use and operate the Equipment, however Lessee 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) Lessee shall provide J Creek Equipment Rental with accurate and complete information, which J Creek Equipment relies upon to provide the appropriate Equipment to Lessee.

4: Prohibited Uses- Lessee 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 J Creek Equipment's written consent; expect trailers (d) use the Equipment in a negligent, illegal, unauthorized or abusive manner; or (e) allow the use of the Equipment by anyone other than the Lessee or lessee' employees, without the Lessor's written permission (Lessee acknowledges that the Equipment may be dangerous if used improperly or by untrained parties). (f) smoke in any enclosed cab machine or trailer. The Lessee are responsible and liable for any fees associated with the presence of smoking inside an enclosed unit.

5: Inspection- The lessor shall have the right to inspect the equipment at reasonable times and to enter the premises where the equipment is located for such purpose.

- I. Lessee inspection- The Lessee acknowledges that they must personally inspect the equipment (a) sign off on noticeable dents, scratches, or other damages, (b) find that the equipment is suitable for their needs and in good working condition, and (c) understand its proper use and agrees to notify Lessor of any defects before use. The Lessee agrees to inspect the trailer and bindings (d) before leaving rental facilities to ensure (e) the trailer coupling mechanism is safely locked and secure, (f) safety chains are properly secure to the vehicle, (g) trailer breaks are working and set to proper settings (h) all chains and bindings are working properly, and all 4 sides of equipment are secure. (i) inspect equipment and trailer periodically (100 miles) to ensure the trailer is coupled securely with working breaks, and equipment is secure at all four bindings. (j) before leaving the site location and returning to the rental office location. Lessee's acceptance of the equipment acknowledges they have had sufficient time to perform the above inspections and to notify Lessor of any nonconformity in the equipment. Lessee's acceptance of the equipment acknowledges that the equipment is in good working condition and Lessee is familiar with how to operate said equipment.
- II. Inspection of rental hours: The Lessee acknowledges that they are responsible for monitoring equipment hours. The Lessee agrees to set rate based on their desired rental needs. These rates are as follows: a ½ day rental rate is up to 4 hours of machine runtime over a 6-hour period. A full-day rental rate is up to 8 hours of machine runtime over a 24-hour period. A week rental rate of up to 40 hours of machine runtime over a 7-day period. The Lessee is fully responsible for any additional fees for going over scheduled rental rates/runtimes. The Lessee will be charged based on the amount of hours exceeded from original purchased rates.

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- a. Saturday Rentals (for equipment with hour meters only): The Lessee will only be charged for a one day rental up to 8 hours of runtime, but have the machine from Friday afternoon through Monday morning. The Lessee is responsible for monitoring runtime hours, and if they were to exceed the one day rental of 8 hours of runtime, they will be responsible for the upcharge. The lessee remains liable for any loss, theft, damage to, or destruction of the Equipment until J Creek Equipment confirms that the Equipment is returned in the condition required herein on Monday, morning.
 - b. Weekend rentals (for trailers and equipment without hour meters): The Lessee will be charged a 2 full day rental for rentals occurring on Saturday and Sunday for all trailers and equipment that do not contain an hour meter.
- III. Acceptance by Lessor Upon Return: J Creek Equipment Rental shall inspect the Equipment within 72 hours upon return and termination of rental. During this time, the Lessee is still responsible for any damages and associated fees made to the machine during the rental period.
 - IV. Labels- The lessee shall not remove, alter, or cover up any numbering, lettering, or insignia placed upon the equipment, nor play any signage thereon.
 - V. Alterations- Without written permission of the Lessor, the lessee shall not make any alterations, additions, or improvements to equipment. All additions and/or improvements or whatsoever kind of nature shall belong to and become the property of the Lessor when made.

6: Maintenance- Lessee 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 J Creek Equipment Rental or its agents, but J Creek Equipment has no responsibility during the Rental Period to inspect or perform any maintenance or repairs unless Lessee requests a service call. If J Creek Equipment determines that repairs to the Equipment are needed, other than normal wear and tear, Lessee shall pay the full repair charges, additional fees, if any, and rental of the Equipment until the repairs are completed. J Creek Equipment shall be responsible for repairs needed because of normal wear and tear. Notwithstanding J Creek Equipment Rental service commitment, if Lessee breaches this Contract, J Creek Equipment shall have no obligation to stop the Rental Period, commence repairs, or rent other equipment to Lessee until Lessee or its agent agrees to pay for such charges.

7: Replacement of Malfunctioning Equipment- It is the Lessee's responsibility to notify the Lessor if the equipment becomes unsafe or in disrepair. The Lessee agrees to immediately discontinue the use of the equipment and notify the Lessor. The Lessor will replace the equipment with similar equipment in good working order, if available. The Lessor is not responsible for any incidental or consequential damage caused by delays or otherwise.

8: Lessee Liability- **DURING THE RENTAL PERIOD, LESSEE 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 LESSEE TRANSPORTATION, LOADING, AND UNLOADING, WHETHER OR NOT THE LESSEE IS AT FAULT.** After an Incident, Lessee shall (a) immediately notify J Creek Equipment, the police, if necessary, and Lessee's insurance carriers; (b) secure and maintain the equipment and the surrounding premises in the condition existing at the time of such Incident until J Creek Equipment or its agents investigate; (c) immediately submit copies of all police or other third-party reports to J Creek Equipment. J Creek Equipment shall have the immediate right, but not the obligation, to reclaim any Equipment involved in any Incident.

Equipment damaged beyond reasonable repair, as determined by Lessor in its sole discretion, shall be paid for by Lessee at the Fair Market Value for the Equipment when leased/rented. As used herein, "Fair Market Value" means the value of the Equipment as determined by an appraiser selected by Lessor. Lessee acknowledges that repair and replacement of tires are not included in the rental rate and agrees to pay for the repair or replacement of any tires returned to Lessor in a damaged condition, reasonable wear and tear excepted, regardless of the cause of the damage.

8: No Warranties: J CREEK EQUIPMENT RENTAL 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. LESSEE ACKNOWLEDGES ACCEPTANCE OF THE EQUIPMENT ON AN "AS IS, WHERE IS" BASIS, WITH "ALL FAULTS" AND WITHOUT ANY RECOURSE WHATSOEVER AGAINST J CREEK EQUIPMENT ENTITIES. LESSEE ASSUMES ALL RISKS ASSOCIATED WITH THE EQUIPMENT AND RELEASES J CREEK EQUIPMENT 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.

9: Loss & Damages- Lessee hereby assumes and shall bear the entire risk of loss, theft, destruction, and damage to equipment from any and every cause whatsoever. The lessee agrees to pay for any damage to or loss of equipment, regardless of cause, within 15 days of notice. If the equipment is damaged beyond repair, the lessee will be required to pay the replacement cost of the machine. The Refundable Security Deposit does not cover theft (see more information below).

- I. Damages to bumpers: The lessor is not liable for any damage to the lessee's bumper or vehicle done by detachable hitches.
- II. Loading & Unloading Equipment: if the lessor's employees assist in loading or unloading the equipment, the Lessee agrees to assume the risk of, and hold the Lessor harmless for any property damage or personal injuries, including, but not limited to damage or injuries attributable to the negligence of the Lessor and its employees.

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10: Insurance- For the rental of Devlon 89 Excavator and the John Deere Dozer, the Lessee must have proof of General Liability (GL) Insurance of 1,000,000.00 with J Creek Equipment Rental, LLC listed as an additional insured on the policy, as well as being listed as the loss payee. All equipment rentals are subjected to an additional Refundable Security Deposit at the start of the rental. The Refundable Security Deposit will be a hold on the Lessees' card for the duration of the rental. The Refundable Security Deposit may vary from \$100 to \$500. The Refundable Security Deposit will be returned to the Lessee at the end of the rental, if and only if there is no damage to the equipment. The Refundable Security Deposit may not cover the full cost of damages; therefore, the Lessee will be fully responsible for damage cost that are over the set Refundable Security Deposit.

11: Payments- The Lessor will capture the Refundable Security Deposit at the "approval" of the rental to the credit card provided by the Lessee. The Lessor will capture the full payment amount of the desired rental time at the start of the rental. The Lessor reserves the right to charge additional fees at the end of the rental. The fees include, but are not limited to, refueling fees, cleans fees, and/or damage fees. The Lessor will require a credit card for payment at the time of the rental. The Lessees' card will be left on file for damages or charges that may accrue at the end of the rental. The Lessee will be fully responsible for a 3.5% card fee for each card transaction. Lessees with approved "On Accounts" can pay the balance at the end of the rental, within a net 15-day period, unless otherwise discussed with the Lessor.

- I. Liens & Taxes- Lessee agrees to pay all expenses of every character occasioned by, or involving the use, or operation of the equipment and further agrees to pay all legal assessments, taxes, and/or public charges which may be levied upon said equipment while in Lessee's possession.
- II. Lessor's Expenses- Lessee shall pay Lessor all costs and expenses, including attorneys' fees, incurred by Lessor in exercising any of its rights and remedies hereunder or enforcing any of the terms, conditions, or provisions hereof.
 - a. Default and Remedies: The following events shall constitute defaults on the part of the Lessee hereunder: (i) Failure of Lessee to pay any installment of rental on its due date; (ii) any breach or failure of Lessee to observe or perform any of its other obligations hereunder; (iii) failure of Lessee to return the equipment at the end of the minimum rental term; or (iv) bankruptcy, reorganization arrangement, receivership, or insolvency proceedings being instituted by or against the Lessee; (v) or the death or judicial declaration of incompetency of the Lessee. If an individual upon the occurrence of any such default, the Lessee may, at its options and without notice or demand on Lessee, declare this Agreement in default and declare all remaining rental to be immediately due and payable, and thereupon, the equipment and all rights of the Lessee therein shall be surrendered to Lessor. Failure of the Lessor to exercise its right in the event of default shall not constitute a waiver to exercise such right at a later date. In addition to all other rights and remedies provided by law, upon default by Lessee, Lessor and its agents may take possession of the equipment wherever found, with or without process of law, and for that purpose may enter upon the premises of the Lessee to remove the same.
- III. Overdue accounts- Lessee with approved "On Accounts" are due and payable at the termination of the rental period with a 15-day net. A 15% late fee will be charged to accounts not paid in the 15-day net pay period and interest on any balance due shall begin to accrue at a rate of eight percent (8%) per month beginning on the 16th day after the due date. J Creek Equipment has the right to decline reservations if Lessee has an open unpaid balance.
- IV. Cancellations: The Lessee can cancel an equipment reservation at any time; however, fees may apply if the reservation is canceled within 24 hours of the equipment reservation. Reservations that are canceled within 24 hours of scheduled delivery/pick-up may be charge a cancellation fee. The cancellation will be 25% of the scheduled rental, as well as the 3.5% card fee.
- V. Repossession- If Lessee fails to pay rent or breaches this contract, the Lessor may terminate the contract for breach and take possession of and remove equipment from wherever it is. The Lessor and its agents shall not be liable for any claims for damages or trespassing arising from the removal of equipment.
- VI. Smoking Fee: Lessees are subject to a \$500 cleaning fee to machines and/or trailers that have been smoked in.
- VII. Cleaning Fee: Lessees are subject to a cleaning fee for any equipment and/or trailer that has returned in extreme dirty conditions. The Lessor requires that the Lessee return tracked equipment with all tracks shoveled out. If the Lessor must spend more than 10 minutes shoveling tracks, the Lessee will be charged a minimum of \$50, plus \$50 per additional hour of cleaning. The Lessee will charged a minimum of \$50 for any trailer that must be washed.

12: Return of Equipment- J Creek Equipment Rental may terminate this Contract at any time, for any reason. The Equipment shall be returned to J Creek Equipment (when needed for inspections, maintenance, and at the end of the rental period) in the same condition it was received, with less normal wear and tear and free of any hazardous materials and contaminants. The Lessee will return the equipment at the end of the rental period but will continue to be responsible for the rental and other charges after the rental period if the equipment is not returned in the condition required herein. The Lessee is solely responsible for fees associated to the loss of rentals because of downtime made of Lessees damages. If J Creek Equipment delivers the equipment to Lessee, Lessee shall notify J Creek Equipment that the equipment is ready to be picked up at the site address provided. The lessee remains liable for any loss, theft, damage to, or destruction of the Equipment until J Creek Equipment confirms that the Equipment is returned in the condition required herein. No pickups occur on Weekends and/or holidays. If Lessee picked up equipment, the Lessee shall return the equipment during normal business hours. If the equipment is not returned by the estimated end of the rental period specified earlier, Lessee agrees to pay the applicable rental rate for the equipment until the equipment is returned.

If the equipment is not returned within forty-eight (48) hours after the expiration of the rental period, including by reason of termination of the Lessor, Lessor shall be immediately entitled to pursue recovery of the equipment through a claim and delivery action under N.C.G.S. Chapter 1, Article 36. In the event such action is necessary, Lessee shall be liable for the costs of such action, including attorney fees, as

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well as any towing fees, sheriff execution costs, and any other expense borne by Lessor. Nothing herein shall act as a limitation on Lessor's civil or criminal remedies and Lessor in its discretion may choose to pursue recovery of equipment as it deems fit.

13. Use of Equipment. Lessee agrees not to use or allow anyone to use the equipment for any illegal purpose or in any illegal manner or in an unsafe manner. Lessee agrees at its sole cost and expense to comply with all municipal, county, state and federal laws, ordinances and regulations which may apply to the use of the equipment during the rental period. Lessee agrees to operate machinery only when in full control of faculties, misuse of the machine due to substance use will not be tolerated and will be grounds for immediate termination of the rental.

14. Compliance with Laws. Before digging, it is the sole responsibility of the Lessee to follow the requirements of the regional notification center law pursuant to Article 2 (commencing with Section 4216) of Chapter 3.1 of Division 5 of Title 1 of the Government Code. The contact number is 811 for North Carolina. By signing this Rental Agreement, the Lessee accepts all liabilities and responsibilities contained in the regional notification center law. Lessee is responsible for complying with Fugitive Dust Provisions of Air Quality Management Districts. Lessee is responsible for all requirements of the State Air Resources Board and local Air Quality Management Districts including, but not limited to recordkeeping, providing notification of use, permits and registrations. Lessor is not responsible for damage to above or below ground obstacles/obstructions.

15. Legal Action. In the event an attorney is retained to enforce any provision (including collection costs) of this Rental Agreement, the prevailing party in the dispute shall be entitled to recover reasonable attorney's fees and court costs in such action, or proceeding, in an amount to be determined by the court. If legal proceedings are sought, Lessee agrees to hold those proceedings in the Superior Court of Haywood County, North Carolina and such proceedings, and the terms of this contract will be interpreted under North Carolina law.

The parties hereby waive their respective rights to trial by jury in any action or proceeding arising out of this agreement. Should Lessee in any way fail to observe or comply with any provision of this Agreement, Lessor may, at its sole option, terminate this Agreement, retake the equipment, declare any charges due and payable and initiate legal process to recover monies owed, and/or pursue any other legal rights and remedies available to Lessor. Exercise of any remedy available to Lessor shall not constitute an election of remedies or a waiver of any additional remedies to which Lessor may be entitled. Any failure of Lessor to insist upon strict performance by Lessee as it regards to any provision of this Agreement shall not be interpreted as a waiver of Lessor's right to demand strict compliance with all other provisions of this Agreement against Lessee or any other person designated in contract specifically.

16: Criminal Warning- The use of false identification to obtain equipment or the failure to return equipment by the end of the rental period may be considered theft, subject to criminal prosecution and civil liability where permitted, pursuant to applicable laws.

17. Governing Law. This Agreement shall be deemed to be a contract made under, and for all purposes shall be governed by and construed in accordance with the laws of the State of North Carolina. The Parties agree that any actions to enforce the terms of this contract shall be adjudicated in the sole and exclusive jurisdiction of the superior court located in Haywood County, North Carolina.

18. Severability. The Parties agree that if any term of this Agreement is deemed to be invalid for any reason, the remaining terms and provisions shall retain their full force and effect.

19. No Assignment. Each party covenant and agree that each has not assigned, transferred, or conveyed in any manner all or any part of their legal claims or legal rights in connection with the matters described above.

20. Successors in Interest. This Agreement shall be binding upon and inure to the benefit of the Parties and each of their respective heirs, successors, and assigns.

21. All Amendments Must Be In Writing. The terms of this Agreement may not be changed, modified, waived, discharged, or terminated orally and can only be waived or amended by a written instrument signed by all of the Parties.

22. Entire Agreement- Lessee agrees that this agreement constitutes the entire agreement and that no written or oral representation, promises or warranties, express or implied, have been made by Lessor with reference to said equipment. This agreement shall be binding upon and ensure the benefit of each party, and their respective legal representatives, successors, and assigns.

Signature: _____

Date: _____

Printed Name: _____