

## Terms of Service

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**For the purpose of this rental agreement, "Weshare" shall mean Weshare, inc., Its owners, officers, directors, shareholders, and employees, and "customer" shall mean customer, its agents and/or employees.**

In consideration of renting of the equipment (herein "the rental equipment or equipment") described on the front of this rental agreement and/or rental contract it is agreed as follows:

### **1. Indemnity/hold harmless.**

Customer will take all necessary precautions regarding the equipment rented, and protect all persons and property from injury or damage. Customer agrees to hold harmless Weshare from and against any and all liability, claims, judgments, attorneys' fees and costs, of every kind and nature, including, but not limited, to injuries or death to persons and damage to property, arising out of the use, maintenance, instruction, operation, possession, ownership or rental of the equipment rented, however caused, except claims or litigation arising through the sole negligence or willful misconduct of Weshare.

### **2. Assumption of risk/release-discharge of liability.**

Customer is fully aware and acknowledges there is a risk of injury or damage arising out of the use or operation of the equipment rented hereunder and hereby elects to voluntarily enter into this rental agreement and assume all of the above risks of injury or damage. Customer agrees to release and discharge Weshare from any and all responsibility or liability from such injury or damage arising out of the use or operation of the equipment; and customer further agrees to waive, release and discharge any and all claims for injury or damage against Weshare which customer otherwise may be entitled to assert.

### **3. Operators.**

No operators are furnished, directly or indirectly with our equipment.

### **4. Receipt/inspection of equipment.**

Customer rents the equipment on an "as is" basis. Customer acknowledges that he has, or will, personally inspect the equipment prior to its use and finds it suitable for customer's needs. Customer acknowledges receipt of all items listed in this rental agreement and that the equipment is in good working order and repair and that customer understands (without further instructions) its proper operation and use.

### **5. Possession/title.**

Customer's right to possession of the equipment begins upon equipment leaving Weshare and terminates on the agreed return date indicated on the front of this rental contract. Retention of possession after this date constitutes a material breach of this rental contract. Time is of the essence of this rental contract. Any extension of this rental contract must be agreed upon in writing. Title to the equipment is and shall remain in Weshare's name. If the equipment is not returned and/or levied upon for any reason whatsoever, Weshare may retake said equipment without further notice or legal process and use whatever force is reasonably necessary to do so. Customer hereby agrees to indemnify, defend and hold Weshare harmless from any and all claims and costs arising from such retaking and/or levy. If equipment is levied upon, customer shall notify Weshare immediately. Weshare will utilize its reasonable efforts to deliver and retrieve rental items from locations determined solely by customer; accordingly, customer assumes sole risk and liability for any personal or property damage occurring at such locations.

### **6. Rental period/rate/payment.**

Rental period is for a minimum of twenty-four (24) hours unless a shorter term is specified in the rental agreement agreed return date on the front of this rental agreement. Rental rates are based upon single shift usage (24 hours per day, five days per week). If customer makes greater use of the equipment, it is agreed that the additional usage will be charged. Rental charges begin immediately upon equipment leaving Weshare. Rental charges end upon return of the equipment to Weshare in an acceptable condition. No allowance will be made for Saturdays, Sundays, holidays, or time in transit, nor for any period of time the equipment may not be in actual use while in customer's possession. If the equipment is returned prior to the end of the minimum rental period, the rental due shall be for the entire minimum rental period. Weshare may terminate rental at anytime and retake the equipment without further notice in case of violation by customer of any terms or conditions of this rental agreement. Customer agrees to pay a monthly service charge on all unpaid balances. Customer agrees not to use equipment in violation of environmental laws.

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### 7. Ordinary wear and tear.

Customer shall be responsible for all damage not caused from ordinary wear and tear. "Ordinary wear and tear" shall mean only the normal deterioration of the equipment caused by ordinary, reasonable and proper use of the equipment. Customer responsible for all tire damage. Damage which is not "ordinary wear and tear" includes, but is not limited to: damage due to overturning, overloading or exceeding rated capacities; breakage; improper use; abuse; lack of cleaning; dirtying of equipment by paint, mud, plaster, concrete, resin or any other material. A cleaning charge will be made on equipment returned unclean.

### 8. Compliance with laws/use of equipment.

Customer 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. Customer agrees at his 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. Customer further agrees to pay all licenses, fines, fees, permits, or taxes arising from his use of the equipment, including any subsequently determined to be due.

Customer shall not allow any person who is not qualified and who has not received and understands safety and operating instructions and who does not utilize all safety equipment required, to operate the equipment or use the equipment. Customer shall not allow any person to use or operate the equipment when it is in need of repair or when it is in an unsafe condition or situation; modify, misuse, harm or abuse the equipment; permit any repairs to the equipment without Weshare's prior written permission; or, allow a lien to be placed upon the equipment. Customer agrees to check filters, oil, fluid levels, air pressure, clean and visually inspect the equipment at least daily and to immediately discontinue use and notify Weshare when equipment is found to need repair or maintenance or is not properly functioning. Customer acknowledges that Weshare has no responsibility to inspect the equipment while it is in customer's possession.

### 9. Return of equipment.

Customer agrees to return to Weshare the equipment in as good condition as when received, by rental agreement

Agreed return date. Customer shall be liable for all damages (up to the full replacement cost of the equipment and loss of rental revenue) to or loss of the equipment and liability incurred prior to equipment's return to Weshare. Customer shall be responsible for all costs incurred by Weshare recovering and returning damaged equipment to Weshare's premises. If equipment is to be "picked-up" by Weshare, customer agrees to provide a secure storage location and customer accepts all risk including damage to and liability relative to equipment for a reasonable period of time until the equipment is picked-up by Weshare.

### 10. Disclaimer of warranties.

Weshare makes no warranty of merchantability or fitness for any particular use or purpose, either express or implied. There is no warranty or representation that the equipment is fit for customer's particular intended use, or that it is free of latent defects. Weshare shall not be responsible to customer or any third party for any loss, damage or injury resulting from, or in any way attributable to the operation of, use of, or any failure of the equipment. Weshare shall not be responsible for any defect or failure unknown to Weshare. Customer's sole remedy for any failure of or defect in the equipment shall be termination of the rental charges at the time of failure provided that customer notifies Weshare immediately and in writing of such failure and returns the equipment to Weshare within twenty-four (24) hours of such failure.

### 11. Purchase orders.

The use of customer's purchase order number on this rental agreement is for customer's convenience and identification only and does not bind Weshare.

### 12. Subletting/location of equipment.

Customer agrees not to sublet, loan or assign the equipment. Customer shall not move the equipment from the address at which customer represented it was to be used.

### 13. Default.

Should customer in any way fail to observe or comply with any provision of this rental agreement, Weshare may, at its sole option, terminate this rental 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 Weshare. Exercise of any remedy available to Weshare shall not constitute an election of remedies or a waiver of any additional remedies to which Weshare may be entitled.

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### 14. Retaking of equipment.

If for any reason it becomes necessary for Weshare to retake the equipment, customer authorizes Weshare to retake the equipment without further notice or further legal process and agrees that Weshare shall not be liable for any claims for damage or trespass arising out of the removal of the equipment.

### 15. Legal fees.

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.

### 16. Damage waiver.

Damage waiver is not insurance. By payment of the amount equal to ten percent (10%) of the total rental charges and with immediate notification in the event of an accident and the prompt submission of applicable police reports, Weshare and customer agree that Weshare will waive certain claims (e.G.: Fire, flood, wind and earthquake) against customer for direct physical damage to the equipment while in use by the customer. Customer to maintain its own insurance on the equipment. In the event of damage to the equipment, customer further agrees to file a claim with its insurance carrier and assign said claim and any and all proceeds from such insurance to Weshare. Upon request of Weshare, customer shall fully cooperate with Weshare and furnish the name of customer's insurance agent, insurance company, and complete information concerning insurance coverage carried. Notwithstanding the foregoing the following conditions are not covered under the damage waiver:

- A. Any item of equipment or part thereof which is not returned for whatever reason, including theft;
- B. Damage resulting from improper use, failure to secure during transportation, overloading or exceeding the rated capacity of the equipment;
- C. Damage to motors or other electrical appliances or devices caused by artificial current;
- D. Damage to tires, tubes and wheels caused by blowout, bruises, cuts and other causes inherent in the use of the equipment.
- E. Damage as a result of vandalism or malicious mischief or intentional abuse;
- F. Damage resulting from misuse, abuse, failure to maintain, cleanliness, proper oil, fuel, hydraulic, coolant or pressure levels, lack of lubrication or other normal servicing of equipment;
- G. All damage resulting from overturning;
- H. All damage resulting from use of the equipment in violation of any provision of this rental agreement, violation of any law, ordinance or regulation.

### 17. Notice of non-waiver/severability.

Any failure of Weshare to insist upon strict performance by customer as regards any provision of this rental agreement shall not be interpreted as a waiver of Weshare's right to demand strict compliance with all other provisions of this rental agreement against customer or any other person. The provisions of this rental agreement shall be severable so that the unenforceability, invalidity or waiver of any provision shall not effect any other provision.

### 18. Insurance.

Customer shall maintain in full force and effect during the term of this agreement separate general liability and automobile liability insurance policies with coverage limits for bodily injury, including death, personal injury and/or property damage that will respond as primary coverage for customer's liability and all obligations outlined under this agreement. In addition to the foregoing, customer shall maintain property insurance in an amount adequate to cover any loss and/or damage to the equipment, up to full replacement cost. Customer shall furnish Weshare with a certificate of insurance evidencing the foregoing insurance requirements and naming Weshare as an additional insured.

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### 19. Miscellaneous.

A. This rental agreement may be executed or delivered by facsimile or e-mail. If this rental agreement is executed or delivered by facsimile or e-mail, customer acknowledges receipt of a completed rental agreement and agrees to all of the terms and conditions of such rental agreement.

B. Before digging, it is the sole responsibility of the customer 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. By signing this rental agreement, the customer accepts all liabilities and responsibilities contained in the regional notification center law.

C. Customer authorizes and instructs Weshare to complete customer's "blank/open check" and to "fill-in" the amount of all charges.

D. Customer authorizes Weshare to submit all customer charges to customer's credit card account.

E. Warning: this product contains or produces one or more chemicals known to the state of California to cause cancer and birth defects (or other reproductive harm).

F. Customer acknowledges that it is a violation and customer assumes potential civil liability of section 4442 or 4443 to use or operate an internal combustion engine on any forest, brush, or grass-covered land unless the engine is equipped with a spark arrestor.

G. Customer responsible to comply with fugitive dust provisions of air Weshare management districts. Customer responsible for all requirements of state air resources board and local air Weshare management districts including, but, not limited to recordkeeping, providing notification of use, permits and registrations.

H. Customer is fully aware and acknowledges that the terms and conditions of this rental agreement shall apply to all subsequent rentals by customer. Customer further agrees that the terms and conditions of this agreement shall govern all future deliveries should customer fail or be unable to sign the rental agreement at time of delivery.

I. Customer responsible for any damages due to digging, disturbing soil or earth, staking, post hole digging, augering, etc. Customer responsible for identifying and disclosing to Weshare all underground obstacles. Weshare not responsible for damage to above or below ground obstacles.

J. Waiver of jury trial. The parties hereby waive their respective rights to trial by jury in any action or proceeding arising out of this agreement.