

TERMS AND CONDITIONS OF RENTAL AGREEMENT

- Rental Basis:** Fresno Tractor, Inc.'s, (hereafter called **F.T.I.**) rental period begins at the time the Equipment leaves the yard until it is returned (see * under 9. Hauling). The minimum rental charges are based on a 24 hour possession 8 hour work day, 7 day possession 40 hour work week, 4 week possession 160 hour month, unless noted on the front of the contract. No reduction in rental charges will be made for any time the equipment is not in use while the Lessee's possession or control except for the inability to operate equipment due to excessively wet ground conditions caused by rain. In this event, the customer shall notify **F.T.I.** immediately that they cannot operate the equipment. At **F.T.I.**'s election, customer will return the equipment or immediately notify **F.T.I.** as soon as ground conditions allow them to resume operation. Overtime hourly rates will be billed as follows – Over 8 hour work day: 1/8 of daily rate, 40 hour work week exceeded, 1/40 of weekly rate, and 160 hour work 4 weeks exceeded, 1/160 of 4 week rate will be charged. Hours of use will be determined by the engine hour meter. Hours of use for equipment without an engine meter will be determined by the dash hour meter. Hours for all equipment is at the rate herein stated payable within 15 days after mailing. Sales Tax will be added to all rent billed. All payments are to be made in Fresno, California.
- NO WARRANTY BY F.T.I.** is made herein, nor shall any be implied by this rental agreement, and it is specifically agreed that **F.T.I.** is not the manufacturer of the equipment and makes **NO EXPRESSED OR IMPLIED WARRANTIES AS TO THE EQUIPMENT, ITS QUALITY, ITS DURABILITY, ITS MERCHANTABILITY OR FITNESS FOR THE PARTICULAR PURPOSE.** **F.T.I.** shall not be liable to customer for any liability, loss, damage caused or alleged to be caused directly or indirectly by the rented equipment by any inadequacy of such equipment or defects in such equipment or by any incident in connection with such equipment.
- As a routine business procedure, F.T.I.** files Preliminary Notices on all heavy equipment rentals. This is not a reflection on the integrity of any contractor or subcontractor. It is therefore important however; that the location of the equipment will be working is accurately listed on this contract.
- Customer shall not assign** this rental agreement or the equipment described herein, or assign any interest in the equipment herein, or sub-rent any of the equipment described herein, or the equipment subject to this rental agreement, without first obtaining written consent of **F.T.I.**
- Customer assumes all risk and liability for the loss of or damage to the equipment,** for death of or injury to any person or property of another, and for all other risks and liabilities arising from the maintenance, operation, use, condition, possession, or storage of the equipment. The customer agrees to indemnify, defend, and hold harmless **F.T.I.**, its agents and employees, from all claims, losses, or other damages **F.T.I.** may sustain for any of the following: (a.) The loss of or injury to any of the rental equipment for any cause; including, but not limited to loss of use (b.) The injury or death of any person, including, but not limited to, agents or employees of customer; or (c.) Damages to any property arising from use, possession, selection, delivery, return, condition or operation of any rental equipment.
- Customer shall provide and maintain insurance coverage** in full force and effect during the entire term of this rental agreement to cover all the risk losses, damages, or liabilities as described herein for an amount not less than \$1,000,000.00 combined single unit and include **F.T.I.** and any other party who may have ownership interest in the equipment referenced in this agreement as loss payee and as additional insured. In the event the equipment is sub-rented, the customer agrees to require its' renter to provide the above referenced insurance coverage naming **F.T.I.** and any other party who has an ownership in the equipment as loss payee and as additional insured.
- Customer is responsible** for contacting Underground Services Alert (U.S.A.) @800-642-2444 for inspection of property and agree to secure and protect U.S.A.'s findings prior to performing any underground work with rented equipment.
- Customer acknowledges** that detectable amounts of chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm may be found in and around this equipment.
- Hauling** to and from **F.T.I.** to the job site is the responsibility of the customer as well as payment for all permits and fees as required by County, City & the California State Department of Transportation. (*) If hauling is provided by **F.T.I.**, customer must call off rental and obtain a call off number. The hauling rate per hour is subject to a 2 hour minimum on 5 axle loads and a 3 hour minimum on 6 axle loads and above each way for hauling performed by **F.T.I.** When needed, there is a 3 hour minimum charge per pilot car.
- Location.** The machine will be used at the ship to location and will not be removed from this location without the consent of **F.T.I.**
- Customer shall inspect** the equipment at the time of delivery. Customer agrees that any use thereafter is an acknowledgement that the equipment is in safe, and in good condition and repair.
- F.T.I. shall have the right to inspect** the equipment at the customers business or place of use and shall have the right to enter the premises for said inspections without further consent. If **F.T.I.** finds that the equipment is not being properly maintained and/or used in the sole opinion of **F.T.I.**, **F.T.I.** shall have the right, but not the obligation, to have it repaired or maintained at a service facility at the expense of the customer.
- Use of the equipment by customer** shall require customer to operate the equipment in a careful and proper manner by a qualified, trained, and experienced operator and shall not permit any equipment to be operated or used in violation of any applicable federal, state, or local statute, law, or ordinance, rule or regulation relating to possession, use of maintenance of the equipment. The customer agrees to reimburse **F.T.I.** in full for all damages to the equipment arising from any misuse or negligent act by customer, its employees and its agents. The customer is responsible for daily maintenance and inspection, and if necessary, replacement of air filter elements, and for daily oil use. The customer also agrees to change engine oil and filters for Komatsu D-155 & D-355 Bulldozers at 150-hour intervals and all other equipment at 200-hour intervals. The customer agrees to provide oil and filters for such changes at customer's own expense. If **F.T.I.** services the equipment, the customer agrees to pay **F.T.I.** its normal billing rate for the service. If Customer continues to operate the equipment beyond the service time without either servicing the equipment or notifying **F.T.I.** to service the equipment, customer agrees to pay **F.T.I.** a \$5.00 per hour penalty for each hour of usage above and beyond the point of service as indicated in this section.
- Cutting edges, teeth, adapters, pins, ripper shanks, points, guards and protectors** are expendable items and will be supplied only at customer's expense. They will be provided in good condition, and are the responsibility of the customer to return in good condition. If they are not returned in good condition or guards are excessively worn, **F.T.I.** is hereby authorized to add a reasonable value for the repair or replacement thereof.
- The equipment shall be returned clean and in the same condition as when delivered** including fuel levels, subject to normal wear. If not returned in the same condition customer is subject to cleaning charges at shop labor rates. Excessive wear or damage resulting from adverse conditions such as (rock, concrete, wire, stakes, pipes, cables, gas lines, etc), or misapplication is not considered normal wear and not covered by the **F.T.I.** rental damage waiver. If equipment is used in adverse conditions including but not limited to those described above, a minimum of 25% additional charge is added to the rental fee. Any repair required because of abuse or negligence, including but not limited to operation of machine with dirty and/or restricted air filters, lack of lubrication (grease and/or oil), coolant, fuel, or damage resulting from lack of normal servicing, collision, over-speeding, overturning, or improper operation is not covered by the **F.T.I.** damage waiver and shall be at the lessee's/renters expense. Customer is responsible for tire damage (including flats), scarifier damage, and glass repair.
- Prompt notification to F.T.I.** is required if any equipment covered by this agreement is damaged, lost, stolen, or destroyed, or if any person is injured or dies, or if any property is damaged as a result of its operation, use, maintenance or possession. Customer shall file all necessary accident reports, including those required by law, and those required by insurers of the equipment.
- After Default** of customer **F.T.I.** shall have the following options: (a.) Terminate the rental agreement; (b.) All other rights and remedies as provided by law; (c.) To repossess the equipment without legal process, free of all rights of customer in and to the equipment. Customer authorizes **F.T.I.** or its agents to enter on any premises where equipment is located to remove equipment. Customer specifically waives any right of action arising out of the entry and repossession, and releases **F.T.I.** of any claim for trespass or damage caused by reason of entry, repossession or removal of the equipment.
- Prepayments/Deposits.** Should charges incur above and beyond the estimated amount, Customer agrees to pay the remaining balance immediately. Customer agrees to pay a service charge of two percent (2%) per month, twenty-four (24%) per annum on any amount not paid in full.
- Miscellaneous.** This rental contract with its terms and conditions along with any waivers and any credit application will be deemed to be executed in California and governed by the laws of California as well as any action necessary to enforce this agreement. The parties intend this lease to be the final expression of their agreement and it is intended also as a complete and exclusive statement of the terms of their agreement. No prior or contemporaneous representation, understanding, agreements or warranties other than set forth in this lease will be binding on the parties unless set forth in writing and signed by the party to be charged. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any of the lease. Acceptance or acquiescence in a course of performance rendered under this contract shall not be relevant to determine the meaning of this lease even when the accepting or acquiescing party had knowledge of the nature of the performance and opportunity for objection. Customer shall reimburse **F.T.I.** for all expenses, losses, liabilities, fines, penalties and claims of every type including reasonable attorney's fees imposed on or incurred by **F.T.I.** because of customers use or operation of any of the leased equipment or because of the failure by the customer to perform any of the terms within. Customer agrees to Binding Arbitration to settle any disputes. If legal action is necessary to enforce the terms thereof then the prevailing party shall be entitled to costs and Attorney fees. Customer agrees that Fresno County is the proper place of venue to settle disputes. **F.T.I.** reserves the right to cancel this contract at any time.

I HAVE READ AND UNDERSTAND THE TERMS AND CONDITIONS OF THIS RENTAL AGREEMENT

032008 Signature _____ Print _____ Date _____