

THE WAGNER-SMITH EQUIPMENT CO. RENTAL AGREEMENT TERMS AND CONDITIONS (PAGE 2)

ADDITIONAL RENTAL: Renter agrees that the above rental is based on the use of the rented equipment for one shift day, or in any event not more than one hundred eighty (180) hours per month. If rented equipment is operated in excess of one hundred eighty (180) hours per month, then monthly rental shall be one and one-half times the amount shown above, unless otherwise provided for in the rental rate. Interest will be charged on any unpaid rent at the rate of one and one-half percent (1 ½%) per month on the unpaid balance due.

MAINTENANCE AND OPERATION: Renter will, at all times and at its own expense, keep the rented equipment in good working order and operating condition and Renter will furnish all replacement parts and maintenance required to preserve the rented equipment according to good standards of operation during this rental. Renter will operate rented equipment with reasonable care and will use it only for the purpose for which such equipment was designed, specifically excluding the excavation of rock, shale, or other material that would result in abnormal wear and Renter will comply with all laws, regulations and ordinances applicable to the possession, maintenance and operation of the rented equipment. The operation and maintenance of the rented equipment shall be under the sole and exclusive control of Renter and the personnel operating and maintaining the rented equipment shall be the agents and employees of Renter and not WS. Renter will not remove or permit the removal of any plate, marking or other inscription affixed to the rented equipment by WS.

RIGHT OF INSPECTION: WS may inspect the rented equipment at all reasonable times and Renter will arrange for and permit WS, its employees and agents to enter upon the premises where the rented equipment may be located for the purpose of such inspection.

RETURN OF EQUIPMENT: Upon the termination of this rental in any manner whatsoever, or upon any default by Renter hereunder, Renter shall forthwith deliver and return the rented equipment to WS at Renter's expense, in as good order and operating condition as when initially delivered to Renter, ordinary and reasonable wear and tear alone excepted, in the event Renter fails to return said equipment to WS, WS may take such steps as it deems necessary to repossess said equipment, and Renter shall be liable to pay all reasonable expenses of repossession, transportation, storage and safe keeping of said equipment.

LIABILITY OF RENTER: Renter assumes full responsibility for damage, loss or destruction of the rented equipment from the date of delivery thereof until return thereof to WS. Renter assumes full responsibility for and indemnities WS against, and will protect and save WS harmless from any and all loss, liability, damages and expense in connection with any injury to person or property arising from or in connection with the use or operation of the rented equipment until the return thereof to WS, and Renter will at its own expense defend all claims and suits relating to any such alleged loss, liability, damage or expense.

INSURANCE: Renter will carry, at its own expense, public liability insurance to protect the WS for any accident or occurrence for injury to persons and for damage to property in the amount of not less than one million (\$1,000,000) combined single limits. Renter shall also carry physical damage insurance in the amount of the equipment valuation on the front side hereof. Renter shall furnish a certificate of such insurance to WS.

TAXES: Renter will pay taxes, fees and other charges which may be imposed on this transaction or in connection with the use of the rented equipment during the term of the rental.

TITLE AND POSSESSION: The rented equipment shall at all times remain and be the sole and exclusive personal property of WS or of its assignee, and Renter shall have only the right to possession and use of the same upon and under the conditions stated in this rental agreement. It is specifically understood by and between the parties that Renter shall acquire no equity in or right of ownership to the equipment and shall have no rights of any description, other than those specifically granted herein.

DEFAULT: In the event of any default by Renter hereunder, as hereinafter defined, or it, in the opinion of WS, the rented equipment is being damaged in excess of ordinary wear and tear, this Rental Agreement may be terminated at the election of WS, and WS may take immediate possession of said rented equipment, wherever found, with or without force or process of law and without waiving any rights to the rents which may be due for the use of said equipment, or without

waiving any other rights hereunder. In the event of any default by Renter hereunder the entire total minimum rental shall become immediately due and payable, without any demand by WS or notice to Renter and Renter hereby authorizes any attorney of law to appear in any Court of Record in the United States, after the above obligation becomes due and waive the issuing and service of process and confess a judgment against said Renter in favor of WS for the amount then appearing due, together with costs of suit and thereupon to release all errors and waive all right of appeal. For the purpose of this Rental Agreement an event of default by Renter shall include but not be limited to any of the following events: (1) Failure to pay rent or other amount herein provided when said rent is due and payable; (2) Any execution or any other writ of process which is issued in any action or proceeding against the Renter whereby said equipment may be seized, taken or distrained; (3) if a proceeding in bankruptcy, receivership or insolvency shall be instituted by or against Renter or its property; (4) If the Renter shall enter into any arrangement of composition with its creditors; (5) If Renter, with regard to any item or items of equipment falls to serve keep or perform any other provision of this rental required to be observed, kept, or performed by the Renter.. In addition to the remedies provided for above, WS shall be able to pursue any other remedy at law or in equity. Notwithstanding any said repossession, or any other action which the WS might take, the Renter shall be and remain liable for the full performance of all obligations to be performed by the Renter under this Rental. All such remedies are cumulative, and may be exercised concurrently or severally.

NON-WAIVER: None of the terms, covenants or conditions of the rental shall be deemed to be waived by any act of WS, its agents or employees, but only by an instrument in writing, signed by an authorized officer of WS.

NOTICES: All notices hereunder shall be in writing and shall be mailed by registered mail addressed to WS and Renter at their respective addresses as the same shall be designated by either party to the other from time to time.

ASSIGNMENT: This rental may not be assigned by Renter and the rented equipment may not be transferred or subrented by Renter without prior written consent of WS. WS may assign or pledge this rental and all its rights hereunder without the consent of Renter, provided, however, that any such assignee or pledges shall have only the rights and remedies of WS hereunder but shall not be deemed to have assumed any of the obligations of WS hereunder, and WS shall continue to be liable for all its obligations hereunder notwithstanding any such assignment or pledge.

CONSTRUCTION OF RENTAL: The rental contains the entire agreement between the parties and shall be interpreted in accordance with the laws of Ohio. No representation or warranty, express or implied, not specifically set forth herein shall bind either party thereto. No delay or failure by WS to assert a default hereunder shall constitute a waiver or any subsequent default.

EXCLUSION OF WARRANTIES: THE EQUIPMENT RENTED PURSUANT TO THE RENTAL AGREEMENT IS RENTED AS IS. WS HEREBY EXCLUDES, AND RENTER HEREBY WAIVES, ALL WARRANTIES, GUARANTEES, AND/OR LIABILITIES NOT SET FORTH EXPRESSLY IN THIS RENTAL AGREEMENT, WHETHER ARISING BY LAW OR OTHERWISE (INCLUDING WITHOUT LIMITATION AND OBLIGATION OF WS WITH REGARD TO CONSEQUENTIAL AND INCIDENTAL DAMAGES) AND WHETHER OR NOT OCCASIONED BY WS'S NEGLIGENCE; WS HEREBY EXCLUDES, AND RENTER HEREBY WAIVES, ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR INTENDED USE OR FOR A PARTICULAR PURPOSE, AND EXCLUDES AND WAIVES RECOVERY BASED UPON ANY THEORY OF STRICT LIABILITY; NO WARRANTY SHALL BE EXTENDED, AND THESE EXCLUSIONS AND WAIVERS SHALL NOT BE ALTERED OR VARIED, EXCEPT BY A WRITTEN INSTRUMENT SIGNED BY WS AND RENTER; PROVIDED THAT IN THE EVENT THE PROVISIONS RELIEVING WS FROM LIABILITY FOR ITS NEGLIGENCE OR FOR STRICT LIABILITY OR EITHER OF THEM SHOULD FOR ANY REASON BE INEFFECTIVE, THE REMAINDER OF THIS PARAGRAPH SHALL REMAIN IN FULL FORCE AND EFFECT.