



# HAWK

## *EQUIPMENT RENTAL AGREEMENT*

**RENTAL EQUIPMENT SUBJECT TO THIS CONTRACT.** All rentals of equipment from HAWK Excavator (Company) require the Customer to thoroughly read and agree to the following terms. These terms and conditions, and the Quote to which they are attached, form the entire agreement (the “Agreement”) between the Company and the customer identified in such Purchase Order or Quote (the “Customer”). The Customer’s agreement to the terms is deemed provided once Customer submits a Purchase Order or submits a signed Quote. Acceptance of any portion of the Services, providing payment in whole or in part, taking possession of any Equipment, or acceptance of the Agreement in any form (which-ever occurs first) shall constitute acceptance of these Rental Agreement Terms and Conditions and any terms set forth in the document(s) issued by HAWK Excavator. Should the terms of any proposal, purchase order or statement of work issued by Customer or a third party conflict with the terms and conditions of this Agreement, the terms of this Agreement shall control.

**PAYMENT RATE AND TERMS.** Rental rates are based upon the time frame equipment is rented and the hourly is monitored by electric hour meter usage. Premium rental rates may apply due to excessive wear in abnormal applications. Rental rates are subject to change with notice.

Four week rates are based upon 176 hours. Weekly rates are based upon 44 hours. Rental rates are subject to change.

One month payment is due at the time of the time of contract execution. The rental payments shall be due whether or not the Customer has received notice of a payment. Customer may pay via check or wire. All credit card charges will be subject to an additional four percent (4%) charge.

Should Customer wish to delay shipment of Equipment, Company agrees to hold equipment for a period of up to four weeks at a rate of 25% of the total monthly rental value. Thereafter, Customer may continue to pay 25% of the rental rate, however Company has the right to release the equipment to another customer.

**RENT TO BUY.** Customer may have the option to purchase equipment and receive the following credits:

- 50% of 1<sup>st</sup> Month Rental fee is applied to the purchase price.



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- 25% of 2<sup>nd</sup> Month Rental fee is applied to the purchase price.
- 0% will be applied to the purchase price thereafter.
- **Example:** Customer has a \$1,000 monthly rental. Credits will be provided as follows: Month 1 = \$500 (50%), Month 2 = \$250 (25%). SUM of \$750 credit goes towards a buyout price. Rentals over two months will not receive a credit.

\* The rental fee shall continue to accrue until the Customer pays the buyout price in full.

**SERVICE CHARGE.** If any Rental installment is not paid within two (2) days after the due date, the Customer shall pay to the Company a surcharge charge of 1% of monies overdue per day or the highest rate permitted under applicable law, calculated daily and compounded monthly. If any Rental installment is not paid within five (5) days after the due date, the Rental will cease at Company's option, and the equipment shall be returned immediately to the Renter at the Customers expense.

**NON-SUFFICIENT FUNDS.** The Customer shall be charged \$250.00 for each check that is returned to the Company for lack of sufficient funds in addition to any applicable bank fees



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**SECURITY DEPOSIT.** The Customer shall pay a security deposit equivalent to 15% of the total sales cost of the equipment which is due at the time of the contract execution. This deposit will be returned to the Customer at the termination of this Rental, subject to the option of the Company to apply it against Rental charges and damages. Any amounts refundable to the Customer shall be paid after the Rental is terminated, the equipment is returned and Company performs an evaluation of the damages. The security deposit shall not bear interest.

**RISK OF LOSS OR DAMAGE.** From the point the equipment leaves Company's office in El Cajon, CA the Customer assumes all risks of loss or damage to the equipment from any cause, and agrees to return it to the Company in the condition received from the Company, with the exception of normal wear and tear. The Company or their appointed agent will determine normal wear and tear. All determinations made by the Company are final.

**DELIVERY TERMS.** All products sent to Customer shall be sent EX Works (EXW) or FCA Company's facility in El Cajon, CA, and in domestic packing. Customer will bear and pay for all taxes of any nature imposed prior to, at the time of, or after delivery to, the carrier at the EXW point. Customer shall also bear and pay for all charges for freight, shipping, consular fees, customs duties, and all costs and charges.

Customer must return the equipment in the same shipping container it was received in.

**INSURANCE AND INSURANCE CERTIFICATE.** The Customer shall insure the equipment for its full replacement value under an OPEN PERILS/ALL RISKS POLICY. A copy of the insurance certificate shall be provided to the Company prior to the commencement of the Rental. The sole beneficiary of the insurance will be stated on the certificate as HAWK Excavator 15405 Olde Highway 80, El Cajon, California 92021. Failure of the insurance company to honor a claim in no way changes the obligation of the Customer to compensate the Company for the full new replacement value of the equipment. The minimum paid up term of the Insurance must be for the initial period of the Rental plus one-month.

**TIMING.** Company shall use reasonable efforts to meet any performance dates specified in the Agreement. Customer agrees that any such dates shall be estimates only.

**RENTAL TERM.** Rental terms require a minimum of two (2) months rental period. Should equipment be returned prior to the two (2) month period, the full two (2) months will be charged.



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This Rental shall begin on the day the equipment arrives at Customers job site and shall terminate on the day the trackable bill of lading is emailed to [info@hawkexcavator.com](mailto:info@hawkexcavator.com). Equipment must arrive at Company headquarters within seven (7) days of Company receipt of the BOL. International shipping will be independently determined. Any additional days will be charged at the pro-rated rental rate. The equipment must be returned clean and in fully working condition to the Company's facility. Rental charges are billed to the Customer for the full term even if the equipment is returned before the end of the term. If the equipment is not returned during or at the end of the term, then the rental charges shall continue on a full term basis for any additional term or portion thereof until the equipment is returned.

At any time the Company has the right to terminate the Rental with seven (7) days notice. The Customer may terminate the Rental after the initial period of the Rental has been completed.

**CHANGE IN SERVICES.** If Customer wishes to change the scope of the Services, it shall submit details of the requested change to Company in writing. Changes may incur additional fees included, but not limited to, engineering time fees, change of equipment fees, and administrative fees.



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**USED GOODS.** Should the Agreement include the purchase of used machinery, parts or other equipment, said used equipment are sold “AS IS” and “with all faults”. Company makes no warranty related to the title of these goods.

**CARE AND OPERATION OF EQUIPMENT.** The equipment may only be used and operated in a careful and proper manner. Its use must comply with the manual in addition to all laws, ordinances, and regulations relating to the possession, use, or maintenance of the equipment, including registration and/or licensing requirements, if any.

Customer must provide all wearable supplies that include, but not limited to, fuel, oil, filters, and grease.

**MAINTENANCE AND REPAIR.** The Customer shall maintain the equipment in good repair and operating condition, allowing for reasonable wear and tear. The Customer shall pay all costs required to maintain the equipment in good operating condition. Such costs shall include assembly and disassembly costs associated with transport, labor, material, parts, and similar items. Should the equipment become excessively dirty or contaminated an additional cleaning fee may apply.

**COMPANY'S RIGHT OF INSPECTION.** The Company shall have the right to inspect the equipment at the Customer's facility or job site during Customer's normal business hours.

**RETURN OF EQUIPMENT.** At the end of the Rental period, the Customer shall be obligated to make all arrangements to return the equipment to the Company at the Customer's expense and in the original packaging. Equipment must be returned in similar condition as it was received and must be internally and externally cleaned prior to shipping. Customer agrees to compensate Company for any damage in excess of normal wear and tear. If equipment is not returned empty and in a clean condition, a cleaning charge based on hazard handling may apply. Any freight, insurance or customs charges related to the rented equipment incurred during or at the end of the rental will be paid for by the Customer. Return will be to 15405 Olde Highway 80, El Cajon, CA 92021. Liability will remain with Customer until equipment arrives at the Company location.

**OPTION TO RENEW OR PURCHASE.** If the Customer is not in default upon the expiration of this rental, the Customer shall have first option to rent or purchase the equipment on such terms as the parties may agree at that time.



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**ACCEPTANCE OF EQUIPMENT.** The Customer shall inspect each item of equipment delivered pursuant to this Rental. The Customer shall immediately notify the Company of any discrepancies between such item of equipment and the description of the equipment in the Equipment Schedule. If the Customer fails to provide such notice in writing within 2 day(s) after the delivery of the equipment, the Customer will be conclusively presumed to have accepted the equipment as specified in the Equipment Schedule and acknowledges that the equipment is suitable for the Customer's needs and understands (without further instructions) its proper operations and use. Any subsequent claim that the equipment was not provided in fully functional order will not be considered.

## **FAILURE TO PERFORM AND IDLE EQUIPMENT**

The Company will not be held responsible for any failure of equipment for any reason and the equipment will remain on rental. The Company will not be held liable for any costs associated with equipment downtime for any reason.

The Company will not be held responsible for any errors or omissions due to the Customer's lack of operational or technical capability.



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No allowance will be made for any rented equipment or portion thereof which is claimed not to have been used. Acceptance of returned equipment by Company does not constitute a waiver of any of the rights Company has under the rental agreement.

**OWNERSHIP AND STATUS OF EQUIPMENT.** The equipment will be deemed to be personal property, regardless of the manner in which it may be attached to any other property. The Company shall be deemed to have retained title to the equipment at all times, unless the Company transfers the title by sale. The Customer shall immediately advise the Company regarding any notice of any claim, levy, lien, or legal process issued against the equipment.

**LIMITED WARRANTY.** Should Customer purchase their rented equipment, a 12 month warranty will be applied beginning at the start of the rental period. The Company warrants for 12 months from the date of shipment Company's manufactured products to the extent that Company will replace those having defects in materials or workmanship when used for the purpose and in the manner which Company recommends. If Company's examination at Company headquarters shall disclose to its satisfaction that the products are defective, and an adjustment is required, the amount of such adjustment shall not exceed the net sales price of the defective products and no allowance will be made for labor or expense of repairing or replacing defective products or workmanship or damage resulting from the same. If Company examination shall disclose that Customer is responsible for the damage, Customer shall be responsible for all freight and repair or replacement costs. Company warrants the products which it sells of other manufacturers to the extent of the warranties of their respective makers. Where engineering design or fabrication work is supplied, buyer's acceptance of Company's design or of delivery of work shall relieve Company of all further obligation, other than as expressed in Company's product warranty.

**THIS IS HAWK'S SOLE WARRANTY.** No other warranties, written or oral, express or implied, including the warranties of fitness for a purpose and merchantability, are made or authorized. No affirmation of fact, promise, and description of product of use or sample or model shall create any warranty from manufacturer, unless signed by the vice president of the manufacturer. Company neither assumes, nor authorizes any person to assume for it, any other obligation about the sale of its engineering designs or products. This warranty shall not apply to any products or parts of products which (a) have been repaired or altered outside of Company's factory, in any manner; or (b) have been subjected to misuse, negligence or accidents; or (c) have been used in a manner contrary to Company's instruction or recommendations. Company shall not be responsible for design errors due to inaccurate or incomplete information supplied by Buyer or its representative.



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**REVERSE ENGINEERING.** Customer agrees not to disassemble, decompile or otherwise reverse engineer any equipment or materials provided.

**INDEMNITY OF COMPANY FOR LOSS OR DAMAGES.** If the equipment is damaged by the Customer, the Customer must, at the Company's option, return equipment to Company and pay for Company to repair the equipment to a state of good working order or pay for Company employees to repair equipment on Customers job site.

**LIABILITY AND INDEMNITY.** Customer assumes all risk and liability for the loss of, damage to, death of or injury to any person or property caused by the use, condition, possession or storage of property rented from Company as well as all other risks and liabilities arising from the same. In no event shall HAWK Excavator be liable to Customer or any third party for any loss of use, revenue or profit or loss of data or diminution in value or for punitive damages (including attorney's fees and costs and expert witness fees and costs) of any nature whatsoever. Liability for injury, disability, and death of workers and other persons





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caused by operating, handling, or transporting the equipment during the term of this Rental is the obligation of the Customer, and the Customer shall indemnify and hold the Company harmless from and against all such liability. Customer shall maintain liability insurance of at least \$1,000,000.00 unless waived in writing by the Company.

**CONFIDENTIALITY.** From time to time during the term of the Agreement, either Party may disclose or make available non-public proprietary and confidential information. The receiving party shall protect and safeguard the confidentiality of the disclosing party's confidential information.

**CASUALTY INSURANCE.** The Customer shall insure the equipment in an amount sufficient to cover the replacement cost of the equipment. Customer shall provide a copy of this insurance to Company prior to shipment of equipment. Delay in receipt of this insurance will delay shipment.

**TAXES AND FEES.** Rates do not include any sales, use or property taxes. During the term of this Rental, the Customer shall pay all taxes, assessments, and license and registration fees on the equipment.

**DEFAULT.** The occurrence of any of the following shall constitute default under this agreement:

- a. The failure to make a required payment under this Rental when due.
- b. The violation of any other provision or requirement that is not corrected within 4 day(s) after written notice of the violation is given.
- c. The insolvency or bankruptcy of the Customer.
- d. The subjection of any of Customer's property to any levy, seizure, assignment, application or sale for or by any creditor or government agency.

**RIGHTS ON DEFAULT.** If the Customer is in default under this Rental, without notice to or demand on the Customer, the Company may take possession of the equipment as provided by law, deduct the costs of recovery (including attorney fees and legal costs), repair, and related costs, and hold the Customer responsible for any deficiency. The Company shall be obligated to re-rent the equipment, or otherwise mitigate the damages from the default, only as required by law.

**NOTICE.** All notices required or permitted under this Rental shall be deemed delivered when delivered in person or by mail, addressed to the appropriate party at the address shown for that party at the beginning of this Rental.



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**ASSIGNMENT.** The Customer shall not assign or sublet any interest in this Rental or the equipment or permit the equipment to be used by anyone other than the Customer or Customer's employees, without Company's prior written consent.

**ENTIRE AGREEMENT AND MODIFICATION.** This contract constitutes the entire agreement between the parties. No modification or amendment of this contract shall be effective unless in writing and signed by both parties. This contract replaces any and all prior agreements between the parties.

**GOVERNING LAW.** This contract shall be construed in accordance with the laws of the State of California.

**SEVERABILITY.** If any portion of this contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision



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of this contract is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

**WAIVER.** The failure of either party to enforce any provision of this contract shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this contract.

**CERTIFICATION.** Customer certifies that the application, statements, references, and reports submitted to Company are true and correct and any material misrepresentation will constitute default under this contract.



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## TRAINING AND STARTUP.

(Optional)

### International

- Technician
  - Weekdays: The first day of startup and training is billed to customer at a rate of \$5,512.50 for the day. Any additional consecutive days are billed at \$3,858.75 per day. A day is measured by an eight (8) hour period with two (2) required 15-minute breaks and one (1) required 30-minute lunch break. Any additional hours up to 12 hours will be approved at the discretion of the HAWK Excavator technician and will be billed at \$200 per hour. An additional 30-minute break must be provided. Any additional hours over 12 hours will be approved at the discretion of the HAWK Excavator technician and will be billed at \$300 per hour. An additional 30-minute break must be provided.
- Engineer
  - Weekdays: The first day of startup and training is billed to customer at a rate of \$6,615.00 for the day. Any additional consecutive days are billed at \$5,512.50 per day. A day is measured by an eight (8) hour period with two (2) required 15-minute breaks and one (1) required 30-minute lunch break. Any additional hours up to 12 hours will be approved at the discretion of the HAWK Excavator technician and will be billed at \$200 per hour. An additional 30-minute break must be provided. Any additional hours over 12 hours will be approved at the discretion of the HAWK Excavator technician and will be billed at \$300 per hour. An additional 30-minute break must be provided.
- Weekends: Weekends will require an additional charge of \$500.00 per day. A day is measured by an eight (8) hour period with two (2) required 15-minute breaks and one (1) required 30-minute lunch break. Any additional hours up to 12 hours will be approved at the discretion of the HAWK Excavator technician and will be billed at \$200 per hour. An additional 30-minute break must be provided. Any additional hours over 12 hours will be approved at the discretion of the HAWK Excavator technician and will be billed at \$300 per hour. An additional 30-minute break must be provided.



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- **Holidays:** Holidays will require an additional charge of \$1,000.00 per day. A day is measured by an eight (8) hour period with two (2) required 15-minute breaks and one (1) required 30-minute lunch break. Any additional hours up to 12 hours will be approved at the discretion of the HAWK Excavator technician and will be billed at \$200 per hour. An additional 30-minute break must be provided. Any additional hours over 12 hours will be approved at the discretion of the HAWK Excavator technician and will be billed at \$300 per hour. An additional 30-minute break must be provided.
- Customer will not be responsible for airfare or travel time. If the customer extends the visit, airline change fees may apply.
- Three (3) weeks' notice is required for scheduling a technician and is subject to availability. We will try to accommodate all expedite requests, however an expedite fee will be incurred for all requests made within the three (3) week period. The fee equals 5% of the total startup cost which is determined at the conclusion of the technician visit.
- **Cancellation Policy:** Customer will be billed for all cancellation and rescheduling fees/charges plus a \$300 administration fee.



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## Domestic

- Technician
  - Weekdays: The first day of startup and training is billed to customer at a rate of \$3,858.75 for the day. Any additional consecutive days are billed at \$3,307.50 per day. A day is measured by an eight (8) hour period with two (2) required 15-minute breaks and one (1) required 30-minute lunch break. Any additional hours up to 12 hours will be approved at the discretion of the HAWK Excavator technician and will be billed at \$200 per hour. An additional 30-minute break must be provided. Any additional hours over 12 hours will be approved at the discretion of the HAWK Excavator technician and will be billed at \$300 per hour. An additional 30-minute break must be provided.
- Engineer
  - Weekdays: The first day of startup and training is billed to customer at a rate of \$5,512.50 for the day. Any additional consecutive days are billed at \$4,410.00 per day. A day is measured by an eight (8) hour period with two (2) required 15-minute breaks and one (1) required 30-minute lunch break. Any additional hours up to 12 hours will be approved at the discretion of the HAWK Excavator technician and will be billed at \$200 per hour. An additional 30-minute break must be provided. Any additional hours over 12 hours will be approved at the discretion of the HAWK Excavator technician and will be billed at \$300 per hour. An additional 30-minute break must be provided.
- Weekends: Weekends will require an additional charge of \$500.00 per day. A day is measured by an eight (8) hour period with two (2) required 15-minute breaks and one (1) required 30-minute lunch break. Any additional hours up to 12 hours will be approved at the discretion of the HAWK Excavator technician and will be billed at \$200 per hour. An additional 30-minute break must be provided. Any additional hours over 12 hours will be approved at the discretion of the HAWK Excavator technician and will be billed at \$300 per hour. An additional 30-minute break must be provided.
- Holidays: Holidays will require an additional charge of \$1,000.00 per day. A day is measured by an eight (8) hour period with two (2) required 15-minute breaks and one (1) required 30-minute lunch break. Any additional hours up to 12 hours will be approved at the discretion of the HAWK Excavator technician and will be billed at \$200 per hour. An additional 30-minute break must be provided. Any additional



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hours over 12 hours will be approved at the discretion of the HAWK Excavator technician and will be billed at \$300 per hour. An additional 30-minute break must be provided.

- Customer will not be responsible for airfare or travel time. If customer extends the visit, airline change fees may apply.
- Two (2) weeks' notice is required for scheduling a technician and is subject to availability. We will try to accommodate all expedite requests, however an expedite fee will be incurred for all requests made within the two (2) week period. The fee equals 5% of the total startup cost which is determined at the conclusion of the technician visit.
- Cancellation Policy: Customer will be billed for all cancellation and rescheduling fees/charges plus a \$300 administration fee.