

BLACK SWAMP EQUIPMENT LLC

TERMS AND CONDITIONS OF LEASE

Black Swamp Equipment, LLC's (the "Company") lease of the Equipment described on the face hereof is made subject to the following terms and conditions:

- 1. Term.** The term of this lease shall be for the rental period of time specified on the face hereof (the "Rental Period"). The Rental Period is non renewable and cannot be extended without the express written consent of the Company. Should the Customer retain the Equipment after the expiration of the Rental Period, the obligation of Customer to pay rent and to perform the other terms, covenants and conditions imposed upon Customer under this Lease shall continue. However, such permissive use shall not be considered as a renewal of the Rental Period or the terms hereof nor as a waiver of any right or continuation of any obligation of Company and Company may take possession of the Equipment at any time and charge Customer late return fees pursuant to the terms of this Lease. A Rental Period of eight (8) hours or less during workdays shall constitute a Rental Period of one (1) day. A Rental Period beginning at 7:30 a.m. on a Saturday and continuing through 8:00 a.m. on a Monday shall also constitute a Rental Period of one (1) day.
- 2. Rent and Payment.** The payment of the Rent specified on the face hereof shall be due and payable in lawful money of the United States immediately upon the expiration or earlier termination of the Rental Period, or when Company rightfully demands possession of the Equipment. All amounts not paid when due shall bear interest at the rate of 1½ percent per month or the highest rate permitted by applicable law, if lower, from the date that the payment is due until paid in full.
- 3. Taxes.** Prices indicated on the face hereof do not include applicable excise, sales, use or other taxes or import, export or custom fees or duties which may be imposed on the lease of the Equipment. All such taxes and charges, when applicable, will be charged and are payable by Customer.
- 4. Deposit.** A deposit in an amount equal to twice the amount of the Rent due hereunder shall be due and payable in lawful money of the United States immediately upon the delivery of the Equipment to Customer. It is expressly understood and agreed by Customer that the deposit amount shall be applied to the payment of rent, late fees, and any and all other costs, expenses and charges that the Company may incur or charge pursuant to the terms hereof. Any amounts not applied to the payment of rent, late fees or other costs, expenses or charges pursuant to the terms hereof, shall be returned to the Customer upon the return of the Equipment.
- 5. Set Off.** The Company shall have the right to credit toward the payment of any monies that may become due Company hereunder any sums which may now or hereafter be owed to Customer by Company.
- 6. Possession, Use and Maintenance.** Except as provided on the face hereof, the Equipment shall be located and used exclusively at the Customer's address indicated on the face hereof. Customer, at its sole expense, shall at all times during the Rental Period maintain the Equipment in good operating order, repair and condition and shall use and maintain the Equipment in a manner that is consistent with the requirements of the Company, any applicable operator's guide, service manual or maintenance guide for the Equipment. Customer shall not (a) use, operate, maintain, or store any of the Equipment improperly, carelessly, unsafely or in violation of any applicable law or regulation; (b) sublease the Equipment or permit use thereof by anyone other than Customer, or its authorized agents or employees without the express written consent of Company; (c) allow the Equipment to be used or operated by anyone under the age of 18 or anyone who is not in possession of a valid driver's license; (d) allow the Equipment to be used or operated by anyone who is not competent to operate such Equipment; (e) permit the location of the Equipment to be changed from that specified above without the prior written consent of the Company; (f) alter any of the Equipment or affix any accessory to the Equipment without the prior written consent of the Company; (g) tamper with or remove any labels affixed to the Equipment, including any labels stating that the Equipment is leased from Company; (h) sell, assign or transfer, directly or indirectly any of Customer's rights hereunder or in any of the Equipment. Customer shall be solely responsible for reviewing and thoroughly understanding all federal, state and local codes and regulations governing the use and operation of the Equipment. Upon prior notice to Customer, Company or its agents shall have the right (but not the obligation) at all reasonable times to inspect the Equipment and observe its use and operation and to inspect any applicable maintenance records relating to such Equipment. Company assumes no responsibility and waives no rights as a result of any such inspection or observation. The Equipment is and shall remain personal property irrespective of its use, operation or manner of attachment to realty.
- 7. Loading, Unloading and Transporting the Equipment.** Customer shall be obligated, at its sole cost and expense, to cause the Equipment, and all other Equipment ancillary thereto, which is reasonably necessary for the proper and lawful operation and use of the Equipment, to be loaded and unloaded onto its vehicles or to be properly and safely connected or hitched to its vehicles. Customer is solely responsible for inspecting the trailer coupling mechanism and safety chain before leaving the Company's premises. Company, its employees, agents or representatives assume no responsibility or obligation for the improper hitching to or the loading or unloading of the Equipment onto its vehicles and **CUSTOMER ASSUMES ALL RISK AND LIABILITY FOR LOSS, DAMAGE, OR INJURY TO PERSONS OR PROPERTY ARISING OUT OF THE HITCHING, LOADING OR UNLOADING HEREOF, EVEN IF THE COMPANY'S EMPLOYEES ASSIST THE CUSTOMER IN SUCH HITCHING, LOADING OR UNLOADING.**
- 8. Risk of Loss and Damage to Equipment.** Unless Customer elects to purchase the Loss and Damage Waiver Insurance ("LDI") pursuant to the terms of Paragraph 9 hereof, Customer shall bear the entire risk of loss, theft, damage or destruction of the Equipment from any cause whatsoever. In the event that the Equipment is lost, stolen or destroyed beyond repair, Customer shall pay to Company the replacement value for such Equipment. If Customer does not purchase LDI from Company, Customer shall keep the Equipment insured against all risks for not less than its market value. Customer shall also maintain comprehensive liability insurance (including commercial liability, automobile insurance, and Workers' Compensation covering the Equipment) in form and substance satisfactory to Company and shall provide that such insurance may not be cancelled or altered so as to affect the Company's interest without at least thirty (30) days notice to Company. All insurance covering loss or damage to Equipment shall be payable solely to Company to the extent of any replacement value of the Equipment less any deposit paid hereunder, with the excess, if any, payable to Customer. The insurance shall be in such form and with such companies as Company shall approve. Customer hereby appoints Company as Customer's Attorney-in-Fact to receive payment of and endorse checks, drafts and other documents, and to take any other actions necessary to pursue insurance claims and recover payments if Customer fails to do so. Customer must promptly notify Company of any accident or occurrence which may become the basis of a claim under any insurance coverage and shall provide Company with all pertinent information. Upon request by Company, Customer shall deliver to Company in form and substance satisfactory to Company, evidence of insurance coverage.
- 9. Loss and Damage Waiver Insurance.** If Customer is unable to provide satisfactory proof of insurance coverage pursuant to the terms of Paragraph 8 hereof, Customer shall be required to purchase Loss and Damage Waiver Insurance from Company, subject to the terms and conditions of such insurance as provided to Customer at the time of the execution of the Lease.
- 10. Return of the Equipment.** Upon the expiration or earlier termination of the Rental Period, or if Company shall rightfully demand possession of the Equipment, Customer, at its sole expense, shall forthwith deliver the Equipment to Company, appropriately protected and delivered and in the condition required by Paragraph 6 hereof. If the Equipment is not in the condition required by Paragraph 6 hereof, Customer shall pay to Company, on demand or as a set off against the Deposit, all costs and expenses incurred by Company to bring such Equipment into such condition. If the Equipment is returned unreasonably dirty, Customer shall pay, on demand or as a set off against the Deposit, all costs and expenses incurred by Company to clean the Equipment. Customer acknowledges and agrees that the Equipment shall be returned to Company during Company's normal business hours. Customer shall pay Company an additional charge equal to one-sixth (1/6) of the daily rent for the Equipment for each additional hour or part thereof that the Equipment is returned by Customer after the expiration of the Rental Period.
- 11. Warranty and Liability. CUSTOMER ACKNOWLEDGES AND AGREES THAT: (a) COMPANY IS NOT THE MANUFACTURER, THE AGENT OF THE MANUFACTURER, OR THE SUPPLIER OR DISTRIBUTOR OF THE EQUIPMENT; (b) THE EQUIPMENT IS OF A TYPE, SIZE, DESIGN, CAPACITY AND QUANTITY SELECTED AND INSPECTED BY CUSTOMER; (c) COMPANY HAS NOT MADE, AND DOES NOT HEREBY MAKE, ANY REPRESENTATIONS OR EXPRESS OR IMPLIED WARRANTIES OF WHATSOEVER NATURE WITH RESPECT TO THE MERCHANTABILITY, CONDITION, QUALITY, DESCRIPTION, DURABILITY OR SUITABILITY OF ANY OF THE EQUIPMENT OR IN CONNECTION WITH THE PURPOSES AND USES OF CUSTOMER OR WITH RESPECT TO THE APPROPRIATE CHARACTERIZATION OF THIS TRANSACTION BY CUSTOMER FOR FINANCIAL STATEMENT, TAX OR ANY OTHER PURPOSES; AND (d) THE EQUIPMENT IS SUITABLE FOR CUSTOMER'S PURPOSES AND CONTAINS ALL SAFETY AND ENVIRONMENTAL FEATURES DEEMED NECESSARY BY CUSTOMER OR REQUIRED BY LAW.** Customer specifically waives all rights to make any claim against Company for breach of any warranty of any kind whatsoever, and with respect to Company, Customer leases the Equipment "AS IS". **CUSTOMER ASSUMES ALL RISK AND LIABILITY FOR LOSS, DAMAGE, OR INJURY TO PERSONS OR PROPERTY ARISING OUT OF THE USE, OPERATION, DELIVERY, POSSESSION, SELECTION, MAINTENANCE, CONDITION, DELIVERY OR TRANSPORTATION OF THE EQUIPMENT. THE COMPANY SHALL HAVE NO LIABILITY TO CUSTOMER FOR LOST PROFITS OR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES OF ANY KIND WHETHER ARISING IN CONTRACT, TORT, PRODUCT LIABILITY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOST PROFITS OR DAMAGES. IN NO EVENT SHALL THE COMPANY BE LIABLE TO CUSTOMER FOR ANY DAMAGES WHATSOEVER IN EXCESS OF THE ACTUAL PRICE PAID TO THE COMPANY FOR THE NON-CONFORMING OR DEFECTIVE EQUIPMENT.** This limitation of liability may not be altered except by an agreement in writing signed by a duly authorized officer of the Company.
- 12. Indemnification.** Customer does hereby assume and agree to defend, indemnify and save Company, its employees, agents, successors and assigns, harmless from any and all liability, loss, damage, causes of action, suits, claims, judgment, demands or expenses (including reasonable attorneys' and accountants' fees arising from or based upon the actual or alleged use, possession, selection, maintenance, condition, operation, delivery or transportation of the Equipment).
- 13. Assignment and Subleasing.** Customer shall not assign, sublease, transfer, pledge, hypothecate or otherwise dispose of this lease or any interest herein without Company's prior express written consent.
- 14. Default.** Each of the following shall constitute an event of default ("Event of Default") hereunder: (a) Customer shall fail to make any payment to Company when due hereunder or within five (5) days thereof; (b) shall fail to return the Equipment upon the expiration of the Rental Period; (c) shall fail to observe or perform any other term, covenant, condition or agreement made by Customer hereunder; (d) any representation or warranty of Customer contained herein or in any document furnished to Company in connection herewith shall be materially incorrect or misleading when made; (e) any default shall occur under any other agreement between Customer and Company; or (f) Customer shall cease to do business, become insolvent, make an assignment for the benefit of creditors, suffer the appointment of a receiver of any of the property of Customer or file or have filed against Customer any petition or action or commence any case under any bankruptcy, reorganization or insolvency law. If any Event of Default shall occur, Company may, at its option, take any or more of the following actions: (a) proceed by appropriate court action or actions either at law or in equity to enforce performance by Customer of the applicable covenants of this Lease or to recover damages for the breach thereof; (b) by notice in writing to Customer, terminate this lease, whereupon all rights of Customer to use the Equipment shall terminate, but Customer shall remain liable as hereinafter provided; (c) demand that Customer forthwith assemble, at Customer's expense, and return all of the Equipment to Company; (d) without notice, liability or legal process, enter upon the premises where any of the Equipment may be and take possession thereof and henceforth hold the same free from any right of Customer, its successors or assigns, Customer hereby expressly waiving any damages occasioned by such taking of possession; or (e) without notice, declare immediately due and payable all sums to become due hereunder.

Company shall be entitled to retain all rents, the deposit, any and additional sums paid by Customer hereunder as well as all insurance proceeds and other sums, if any, then in its possession which, had this lease not been so terminated, would otherwise be payable to Customer and shall be entitled to recover all rents accrued and unpaid for the period up to and including the termination date, as well as all other additional sums payable by Customer or for which Customer is liable or in respect of which Customer has agreed to indemnify Company, which may then be owing and unpaid.

Furthermore, as damages for the loss of bargain resulting from such breach, and not as a penalty, Company shall be entitled to recover from Customer an amount equal to the rental and other payments due under this lease for the remainder of the original Rental Period and any damages and expenses in addition thereto which Company shall have sustained by reason of such breach other than for payment of rent. It is expressly stipulated and understood that the liquidated damages set forth herein shall constitute the actual presumed loss to Company from such breach by Customer.

The remedies herein provided in favor of Company shall not be deemed inclusive but shall be cumulative and shall be in addition to any and all other remedies existing at law or in equity. If Customer fails to perform any of its obligation, and the expenses incurred by Company in connection therewith shall be payable to Company upon demand with interest as provided in Paragraph 8 hereof.

15. Governing Law. This lease shall be construed, interpreted and enforced in accordance with the laws of the State of Ohio. Customer agrees and submits to the exclusive jurisdiction of the courts of Fulton County, Ohio for resolution of any disputes arising hereunder.

16. Further Assurances; Financing Statements. Customer will do any further act and execute, acknowledge, deliver, file, register and record any further documents which Company may reasonably request in order to protect Company's title to the Equipment and Company's right and benefits hereunder. The filing of any financing statement or such other document relating to this lease shall not mean that this lease is a lease intended as security.

17. Notices. All demands and notices hereunder shall be in writing and shall be deemed given when personally delivered or deposited in the mail, postage prepaid, addressed to each party at the address set forth herein or at such other address as may hereafter be furnished in writing by such party to the other.

18. Entire Agreement; Waiver and Modification. This lease constitutes the entire agreement of the parties hereto and exclusively and completely states the rights of Company and Customer with respect to the leasing of the Equipment. This lease supersedes all prior agreements, oral or written, with respect to the subject matter hereof. Time is of the essence of this lease. No delay or omission to exercise any right, power or remedy accruing to Company upon any breach or default by Customer hereunder shall impair any such right, power or remedy nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein or of or in any similar breach or default thereafter occurring, nor shall any waiver of any single breach be deemed a waiver of any other breach or default. A waiver or consent by Company of or to any breach or default under this lease must be in writing specifically setting forth the nature of the breach or default.

19. Severability and Survival of Covenants. If any provision of this lease shall be invalid under any applicable law, such provision shall be inapplicable and deemed omitted, but the remaining provisions hereof shall be given effect in accordance with the manifest intent hereof. All obligations of Customer hereunder shall continue until full performance has been rendered and shall not be released by any cancellation or termination of this lease by Company; no obligation of Company hereunder shall survive the expiration or earlier termination of this lease.

20. Duly Authorized. Customer represents and warrants to Company that (a) Customer has the power to make, deliver and perform under this lease and all instruments and documents contemplated by this lease; (b) Customer has taken all necessary and appropriate action to authorize the execution, delivery and performance of this lease and all instruments and documents contemplated by this lease; (c) the person or persons executing and delivering this lease and all instruments and documents contemplated by this lease are authorized to do so on behalf of Customer; (d) this lease constitutes a valid obligation of Customer legally binding upon it and enforceable in accordance with its terms; and (e) the execution, delivery and performance of this lease and all instruments and documents contemplated by this lease do not and will not require any consent or approval which has not been obtained. At the request of Company, Customer shall provide a certificate, in form and substance satisfactory to Company, as to the foregoing representations and warranties.

TERMS AND CONDITIONS OF SALE

Agreement of Sale. Black Swamp Equipment, LLC ("Company") hereby offers to sell the Equipment described on the reverse side to Customer upon and subject to the terms and conditions hereof. The Customer accepts these terms and conditions by accepting delivery of the Equipment covered by this invoice. The terms and conditions of this offer may not be modified or altered except with the express written consent of an authorized representative of the Company. **The Company objects to and will not be bound by any terms and conditions in Customer's purchase order which are in conflict with or in addition to the terms and conditions hereof.** Shipment or delivery by the Company to Customer is not an acceptance of the terms and conditions of Customer's purchase order.

Entire Agreement. The terms and conditions set forth herein and on the reverse side hereof constitute the entire agreement between the Company and Customer for sale of the Equipment specified herein, superseding all other agreements between the Company and Customer respecting the sale of the Equipment contemplated herein. No modifications or additions to any of these terms and conditions shall be effective as against the Company unless specifically agreed to in writing by an authorized representative of the Company.

Warranties. CUSTOMER ACKNOWLEDGES AND AGREES THAT (A) COMPANY IS NOT THE MANUFACTURER, THE AGENT OF THE MANUFACTURER OR THE SUPPLIER OR DISTRIBUTOR OF THE EQUIPMENT; (B) THE EQUIPMENT IS OF A TYPE, SIZE, DESIGN, CAPACITY AND QUANTITY SELECTED BY CUSTOMER; AND (C) THE EQUIPMENT IS SUITABLE FOR CUSTOMER'S PURPOSES AND CONTAINS ALL SAFETY AND ENVIRONMENTAL FEATURES DEEMED NECESSARY BY CUSTOMER OR REQUIRED BY LAW. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE WARRANTIES PROVIDED BY THE MANUFACTURER AND THE COMPANY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

Warranty Remedies. In the event any Equipment fails to comply with the manufacturer's warranty, Customer may return the Equipment to the Company within the Warranty Period. Customer's sole and exclusive remedy for the non-conformance of any Equipment with the manufacturer's warranty within the Warranty Period shall be, at the Company's election, (i) the manufacturer's or Company's repair or correction of the non-conformance or defect, (ii) the manufacturer's or Company's furnishing Customer, without charge and FOB Archbold, Ohio, with a replacement for the non-conforming or defective Equipment, or (iii) the manufacturer's or Company's reimbursement of Customer for the prorated purchase price of the non-conforming or defective Equipment. The Company shall not be liable for defects caused by abuse or misuse of its Equipment. The Company shall not be liable for any other expense connected with the repair, correction or replacement of any Equipment or for any special, exemplary, incidental or consequential damages.

Limitation of Liability. Customer acknowledges that the price of the Equipment is predicated on the enforceability of the following limitation of liability, that the price would be substantially higher if the Company could not limit its liability as herein provided and that Customer accepts this limitation of liability in exchange for a lower price:

Failure to submit a claim within the Warranty Period shall be conclusive proof that the Equipment is as warranted and shall release the Company from any further liability with respect thereto.

Shipment and Delivery. Unless otherwise indicated on the face hereof, all Equipment and/or parts sold hereunder shall be shipped and delivered F.O.B. the Company's facility, Archbold, Ohio, and title to, right of possession and risk of loss thereof shall pass to Customer upon delivery to the carrier or Customer by the Company.

Delays in Delivery. The Company shall endeavor to meet the delivery schedule requested by the Customer. However, the Company does not guarantee specific dates of delivery and shall not be liable to Customer for delays in delivery for any reason.

Payment. Payment for Equipment sold hereunder will become due and payable in lawful money of the United States, within thirty (30) days of the date of the Company's invoice therefore. If shipment or delivery is delayed at the request of the Customer, the Company will invoice the Customer when the Equipment is ready for shipment. All amounts not paid when due shall bear interest at 1½ per month or the highest rate permitted by applicable law, if lower, from the date of Company's invoice until paid in full. Unpaid invoices subject equipment to repossession.

Setoff. Company shall have the right to credit toward the payment of any monies that may become due Company hereunder any sums which may now or hereafter be owed to Customer by Company.

Taxes. Prices indicated on the face hereof do not include applicable excise, sales, use or other taxes or import, export or customs fees or duties, which may be imposed on the sale or delivery of Equipment hereunder. All such taxes and charges, when applicable, will be charged to and are payable by Customer.

Termination. Company may delay shipment or delivery of Equipment, reduce amounts shipped, or terminate the Contract if (1) Customer fails to make any payment promptly when due under the Contract or otherwise fails to comply with the Contract, (2) Customer ceases to conduct its operations in a normal course of business, (3) Customer is or becomes unable to pay its obligations as they mature, (4) any proceeding under the Bankruptcy Code or any other insolvency laws is brought by or against Customer, (5) a receiver for Customer is appointed or an application for a receiver is filed, (6) Customer makes an assignment for the benefit of creditors, or (7) Customer fails to provide adequate assurance of future performance within thirty (30) days after demand by Company (which will be a repudiation by Customer of the unperformed portion of the Contract). In the event of such termination or reduction in the amounts shipped, Customer shall be liable to Company for any and all damages sustained by Company as a result of the defaults which gave rise to the termination or reduction in the amounts of shipment.

Force Majeure. Sales, shipment and delivery of the Equipment hereunder are subject to, and the Company shall not be liable for any delay in or impairment of performance resulting in whole or in part from any action or inaction of manufacturer, any delays by manufacturer for whatever reason, any war (whether or not declared), strike, difference with workmen, accident, fire, flood, Acts of God, delay in transportation, shortage of materials, Equipment breakdowns, laws, regulations, orders or acts of any governmental agency or body or any cause beyond the reasonable control of the Company, or if performance by Company becomes impracticable due to the occurrence of a contingency, the non-occurrence of which was a basic assumption on which the sale was made. In any such event, Company shall have such additional time to perform as may be reasonably necessary and shall have the right to apportion its products among its customers in such manner as it deems equitable.

Applicable Law. This Contract shall be deemed to have been entered into and shall be construed according to the Uniform Commercial Code as adopted in the State of Ohio. Customer agrees and submits to the exclusive jurisdiction of the courts of Fulton County, Ohio for resolution of any disputes arising hereunder.

Statutes of Limitation. Any action against the Company based on Company's alleged breach of its obligations hereunder must be commenced within one (1) year after the cause of action has accrued.