



Welding & Machine

Invoice/Rental Agreement Terms and Conditions

1. LJ Welding & Machine Inc. (the "Company") hereby rents to the Customer described on the face of this Agreement (the "Customer") the Equipment (the "Equipment") described on the face of this Agreement (the "Agreement") upon the terms and conditions described herein.
2. **RENTAL PERIOD AND RENT CALCULATION:** The Rental Period shall commence on the date that the Equipment is picked up by the Customer or the Customer's agent (including any public carrier) and shall end on the date that the Equipment is returned to the Company at its offices. Rent will be calculated on the basis of each month, week and day (or part of each day) that the Equipment is not in the possession of the Company at its offices. For clarity, "day" means one (1) calendar day, "week" means seven (7) calendar days and "month" means twenty-eight (28) calendar days.
3. If, for any reason, the Customer retains possession of the Equipment beyond the date of expiry of the Rental Period, such continued possession on the part of the Customer shall be deemed to be without consent of the Company and the Customer shall pay to the Company, by way of liquidated damages (which is not a penalty but a genuine pre-estimate of liquidated damages), an amount equal to the rent payable in respect of the Equipment pursuant to paragraph 3 hereof for the period during which the Customer retains possession of the Equipment beyond the date of expiry of the Rental Period and, notwithstanding that the Company may, in its discretion, provide cartage for the return of the Equipment, the Customer shall be deemed to be in possession of the Equipment without the Company's consent until the Equipment has been returned to the Company at its offices.
4. **PAYMENTS:** The Customer shall pay rent to the Company at the rental rates as shown on the face of this Agreement together with GST at the Company's office without deduction or set off for any reason whatever including, without limitation, failure or non-operation of Equipment or return of the Equipment prior to the expiration of the Rental Period. Overdue payments shall bear interest at the rate of 24% per annum, both before and after default, demand and judgment without prejudice to the Company's other rights or remedies, including without limitation, termination of this Agreement. The Customer shall pay, when due, all license fees, assessments, sales, use, property, rental or other taxes imposed by any governmental agency or authority upon the Equipment or in any way connected therewith.
5. **INSPECTION AND ACCEPTANCE OF EQUIPMENT:** Prior to picking up or taking possession of the Equipment, the Customer may, at its own expense, inspect the Equipment at a time and place designated by the Company. By taking possession of or picking up the Equipment, the Customer shall be deemed to have accepted that the Equipment is in good condition and running order and fit for the Customer's purpose with the effect that from the time of picking up or taking possession of the Equipment, the Customer shall be forever estopped and

prevented from claiming that as at the commencement of the Rental Period, the Equipment was not in good condition and running order or fit for the Customer's purpose. Further, the Customer's right to inspect the Equipment is accepted by the Customer in lieu of any warranties, representations or guarantees and it is agreed that the Company makes no warranties, representations or guarantees whatsoever as to the Equipment, its condition, its performance or fitness for the purpose intended. The Company, its employees and specifically authorized agents shall have the right at any time during the Rental Period to enter upon the premises or place where the Equipment is located and shall be given free access and afforded all necessary facilities for the purpose of inspecting the Equipment. The Customer acknowledges and agrees that it has selected the Equipment without relying on any warranties, representations or the guarantees of the Company. The Customer agrees that the Company may substitute for the Equipment or any item of the Equipment other substantially similar equipment in comparable condition to that of the Equipment.

6. DELIVERY: Delivery of the Equipment to the Customer shall take place when physical possession of the Equipment has been given to the Customer or to a carrier or agent for transport to the Customer and thereupon the risk of loss or damage to the Equipment shall be borne by the Customer. Return of the Equipment to the Company shall take place when physical possession of the Equipment has been given to the Company at its offices. The Company shall pay the cost, if any, of loading the Equipment at its premises for transport to the Customer and unloading it upon return to the Company. The Customer, at its own expense, shall do and/or pay for all other loading, unloading, installing, dismantling and transporting. The Customer covenants with the Company that it shall, upon the expiration or termination hereof of the Rental Period, immediately redeliver to the Company the Equipment mentioned herein. Further, the Company shall, at the Company's option, either have the right to inspect the Equipment at the Customer's shipping point prior to reshipment and shall be given sufficient notice prior to reshipment to make such an inspection or shall have the right to perform the final inspection at its yard upon the delivery of the Equipment by the Customer. If, at the request of the Customer, the Company arranges for delivery of the Equipment to a destination that is not at the Company offices, the Customer shall pay to the Company all of the costs it incurs to a carrier or agent for transport plus a 15% administration fee. When the Equipment is surrendered to the carrier or agent for transport, the Customer shall be deemed to have accepted that the Equipment is in good condition and running order and the balance of the provisions contained in paragraph 4 shall apply hereto.

7. TITLE: Title to the Equipment shall at all times remain in the Company. Nothing contained in this Agreement shall be deemed to have the effect of conferring upon the Customer any right or title whatsoever in or to the Equipment or any right to purchase the Equipment except as may be specifically described herein. The Customer shall give the Company immediate notice in the event that the Equipment or any part thereof is levied upon or becomes liable to seizure.

The Customer shall not remove, alter, disfigure or cover up any numbering, lettering or insignia displayed upon the Equipment, and shall see that the Equipment is not subject to careless or needless rough usage. The Company may require plates or markings to be affixed to or placed on the Equipment indicating the interest of the Company.

8. OTHER EQUIPMENT: If, at the request of the Customer, the Company leases other equipment for the purposes of renting such other equipment to the Customer, that other equipment will be, for the purposes of this Agreement, treated the same as the Equipment. The Customer specifically acknowledges and agrees that the rental of the other equipment will be subject to such arrangements made between the Company and the owner of such other equipment satisfactory to the Company in its discretion and that the rental of such other equipment will be subject to those arrangements in addition to the terms contained herein. The Customer will pay the Company the actual cost incurred by the Company for such other equipment plus an administration and handling fee of 20%.

9. MAINTENANCE, CARE AND USE: The Customer shall properly protect the Equipment from weather by suitable housing and return the Equipment in good repair and operating condition, normal wear and tear excepted. In the event the Equipment is not returned in a state of good repair and operating condition then the Customer shall be liable for all costs incurred by the Company in restoring the Equipment to a state of good repair and operating condition. The risk and liability for loss or damage to the Equipment from any source or cause whatsoever including, without limitation, loss or damage resulting from breakdown howsoever caused shall be borne by the Customer. Breakdown shall include, but shall not be limited to, any failure of the Equipment or part thereof to properly function, whether caused by faulty material or parts, faulty workmanship, wear and tear, unknown causes or otherwise. In the event of damage to the Equipment, the Customer authorizes the Company to effect repairs to the Equipment and agrees to pay to the Company the cost of such repairs (such cost to include overhead and profit to the extent such repairs are made by the Company) for items other than reasonable wear and tear. The Customer agrees the Declared Value is as shown on the Agreement hereof. Should the Equipment be destroyed, damaged to the extent where the cost of repair exceeds for any reason whatsoever the Declared Value, or should the Equipment be lost or stolen, the Customer shall forthwith pay the amount of the Declared Value to the Company and this Agreement shall thereupon terminate and the rent shall abate. No loss or damage to the Equipment or any part of it shall affect or impair the obligations of the Customer which shall continue in full force and effect except as may otherwise specifically be stated herein.

The Customer shall, at its own cost and expense, cause the Equipment, to be installed, maintained and operated prudently at all times and, in compliance with the manufacturer's recommendations and the terms and conditions of this Agreement and all applicable laws and regulations, by competent and qualified personnel only and for business purposes only. Further, the Customer, at its own cost and expense, shall comply with and conform to all applicable laws, regulations and legislation in any way relating to the possession, installation, testing, use, operation, repair, maintenance, servicing, transportation, storage or bailment of the Equipment throughout the Rental Period and to the complete exoneration of the Company from liability.

The Customer shall not, without the prior written consent of the Company (which consent may be exercised arbitrarily) make any alterations, additions or improvements to the Equipment. All such alterations, additions or improvements so made with the consent of the Company shall belong to and remain the property of the Company.

The Customer shall be liable for and shall indemnify and save harmless the Company of and from any and all loss and damage to all or any portion of the Equipment howsoever caused

including, without limitation, arising from fire, theft, loss, confiscation or expropriation. The appraisal of any such loss or damage shall be based upon the Declared Value.

10. INDEMNITY AND LIABILITY OF CUSTOMER: The Customer shall be liable for and shall indemnify and save harmless the Company from and against any liabilities, losses, costs, records (including legal fees on a solicitors and his own client full indemnity basis), damages, charges, fines, penalties, expenses, claims, causes of action, actions, suits, proceedings and demands, all of whatever kind or nature, which the Company may suffer or incur or be liable for including, without limitation, personal injury (including death) and property damage arising directly or indirectly:

- (a) by reason of the possession, operation, handling, transportation or use of the Equipment or any part thereof by the Customer, its servants, agents, employees or carriers; or
- (b) while the Equipment is out of the possession or control of the Company and any of its servants, agents, employees or carriers after the commencement of the Rental Period and prior to the Equipment being returned to the Company in good repair and operating condition, reasonable wear and tear excepted, or
- (c) from the breach by the Customer of any of its agreements or obligations contained herein or any of the information given by the Customer to the Company, whether herein or otherwise, being materially incorrect or untrue.

The Company shall not be responsible in any way whatsoever, directly or indirectly, for or by reason of the Equipment not being fit for the purpose of the work that it may be required to perform or for the condition of all or any portion of the Equipment or for its breakdown of any sort. The Customer hereby forever releases the Company of and from any and all claims which the Customer may have against the Company for any direct and indirect loss or damage howsoever occasioned which the Customer may suffer, either directly or indirectly (including, without limitation, consequential loss or damage whether of an economic nature or otherwise) by reason of the Equipment not being suitable for the work it may be required to perform by reason of machinery breakdown of any sort. The Customer shall not sue the Company for any such loss or damage which it may suffer. It is the intent of this Agreement and agreed to by both parties hereto that all and every cost, expense, rate, tax or charge in any way related to the Equipment, except as otherwise expressly set forth herein to the contrary, will be the responsibility of and be paid for by the Customer without any variation, set-off or deduction whatsoever.

11. INSURANCE: Without restricting the generality of Article 9, the Customer shall provide, maintain, and pay for the insurance coverages specified below from the time of delivery of the Equipment to the Customer as described above and until the Equipment is returned to the Company at its premises:

- (a) Commercial General Liability insurance with limits of not less than \$2,000,000.00 per occurrence. The insurance coverage shall be in a form satisfactory to the Company and shall cover personal injury, environmental damage, and property damage arising from the possession, operation, handling,

transportation or use of the Equipment or any part thereof while in the possession of the Customer, its servants, agents, employees, or carriers, and any other person; and

- (b) "All Risks" equipment coverage insuring not less than the Declared Value of new equipment as described on the face of this Agreement.

The Company shall be shown as additional named insured under the foregoing coverages and as first loss payable under the equipment insurance policy with respect to the Equipment. The Customer is responsible for all deductibles under the coverages listed herein.

The Customer shall, upon request, provide the Company with certificates of insurance evidencing that the coverage described herein is in force and effect. The insurers shall be required to provide 30 days prior written notice of amendment, termination or cancellation of any of the said coverages.

Where the Customer caused the Equipment to be transported by any carrier, the Customer shall ensure that such carrier maintains "all risks" cargo insurance with adequate limits of liability.

12. **COMPANY MAY REMEDY DEFAULTS:** The Company may but shall not be obliged to do all acts and things and make all expenditures which the Company shall deem necessary to remedy any default of the Customer hereunder and the Customer shall forthwith reimburse the Company for all such expenditures and the cost of performing such acts together with interest at the rate of 24% per annum, both before and after default, demand and judgment until paid.

13. **REPOSSESSION OF EQUIPMENT AND CANCELLATION:** If the Customer fails to make payment of any installment of rent when due or becomes bankrupt or insolvent or is in breach of any provision of this Agreement or if the Equipment is levied upon or becomes liable to seizure then the Company may, at its option, and without prejudice to any of its other rights at law or equity terminate this Agreement without notice to the Customer and may take possession of the Equipment and for such purpose may enter upon any land or building where the Equipment may be or where the Company has reasonable grounds to believe the Equipment may be without becoming liable for trespass and may recover all rentals due hereunder and full damage for any loss or damage to the Equipment and all expenses incurred in retaking possession of the Equipment. In the event that the Company terminates this Agreement pursuant to this clause, all rights of the Customer hereunder shall cease and become null and void. In the event the Company takes any legal steps to enforce the terms of this contract or to effect the termination thereof, the Customer agrees to pay all costs related therein including legal fees and disbursements on a solicitor and his own client full indemnity basis.

14. **EVENTS OF DEFAULT:** The occurrence or happening of any one or more of the following events shall constitute an Event of Default:

- (a) default and continuance thereof for 3 days in the payment of rent or other charge payable by the Customer under this Agreement;

- (b) default in the observation or performance of any other term, covenant or condition of this Agreement;
- (c) any representation or warranty made by the Customer, or any report, notice or other writing furnished by the Customer to the Company in connection therewith, being untrue in any material respect;
- (d) the Customer suspending business or professional practice;
- (e) if all or any part of the Equipment is, or may be in imminent danger of being confiscated, sequestered or seized under process of law;
- (f) any act by the Customer reducing the value or usefulness of the Equipment, including failure to maintain or repair the Equipment as required;
- (g) the subjection of the Equipment to any lien, levy, charge or encumbrance;
- (h) the Customer making a sale in bulk of its assets or becoming insolvent or bankrupt or unable to pay its debts as they fall due or any bankruptcy, reorganization, debt arrangement or other proceeding under any bankruptcy or insolvency law or any dissolution or liquidation proceeding being instituted by or against the Customer and, if instituted against the Customer and defended by the Customer, remaining undismissed for 30 days;
- (i) the private or court appointment of a receiver or receiver and manager or officer with similar powers over any part of the Customer's property; or
- (j) the Customer parting with possession of the Equipment.

15. **REPUDIATION:** If the Customer shall fail to make any rental payment or other payment required when due and such failure shall continue unremedied for a period of 3 days after written notice by the Company, or the Customer disposes, abandons, conceals or encumbers, or attempts or purports to dispose of, conceal or encumber, any item of Equipment, it shall be conclusively presumed and deemed that the Customer has repudiated this Agreement. The Company may, at its option, choose to accept or ignore such repudiation or any other repudiation by the Customer.

16. **REMEDIES OF DEFAULT:** Upon the happening of an Event of Default or in response to any repudiation, whether deemed or otherwise, the Company may, at its sole option:

- (a) enter upon the premises where such Equipment is located and take immediate possession thereof, whether it is affixed to realty or not, and remove the same, without order of the court and without liability to the Company for or by reason of such entry and taking of possession, whether for damage to property or otherwise, and sell, lease or otherwise dispose of the same for such consideration and upon such terms and conditions as the Company may reasonably deem fit;
- (b) in the name of and as the irrevocably appointed agent and attorney for the Customer, and without terminating or being deemed to have terminated this

Agreement take possession of the Equipment and proceed to lease the Equipment to any other person, firm or corporation on such terms and conditions, for such rental and for such period of time as the Company may deem fit and receive such rental and hold the same and apply the same against any moneys expressed to be payable from time to time by the Customer;

- (c) terminate this Agreement and, by written notice to the Customer specifying a payment date not earlier than 3 days from the date of such notice, require the Customer to pay to the Company on the date specified in such notice,
 - (i) arrears or periodic rental payments as of the date of termination;
 - (ii) as a genuine pre-estimate of liquidated damage for loss of a bargain and not as a penalty, the present worth of the aggregate of all unpaid amounts yet to become due as rental or otherwise to the expiration of the Rental Period;
 - (iii) the Company's actual and/or estimated cost and expenses (as applicable) of retaking, holding, repairing, reconditioning, reconfiguring, processing, preparing for disposition and disposing of the Equipment including the Company's legal disbursements and fees on a solicitor and his own client full indemnity basis, as specified in the Company's written notice to the Customer; and
 - (iv) the interest charges provided for in Article 3.

17. **REMEDIES CUMULATIVE:** All rights and remedies provided are cumulative and are not intended to be exclusive and in addition to any other right or remedy previously referred to or otherwise available to the Company at law or in equity, and any one or more of the Company's rights and remedies may from time to time be exercised independently or in combination and without prejudice to any other right or remedy the Company may have or may have exercised. The Customer also expressly agrees that the remedies contained in this Agreement are commercially reasonable in the circumstances. The amount received by the Company on any sale, lease or other disposition of the Equipment will be applied: first, against the Company's costs and expenses (as applicable) of retaking, holding, repairing, reconditioning, reconfiguring, processing, preparing for disposition and disposing of the Equipment including the Company's legal disbursements and fees on a solicitor and his own client full indemnity basis, bailiff's fees and charges, and sales or leasing commission or brokerage charges paid by the Company; second, against interest accrued on sums past due; third, against arrears of periodic rental payments and/or other payments which arose prior to the date of termination of this Agreement, applied in the order in which such arrears arose; fourth, against the genuine pre-estimate of the Company's damages for loss of bargain; and, fifth, the balance, if any, shall belong absolutely to the Company.

18. **AFFIXING TO REALTY:** The Customer shall not affix the Equipment to any lands or premises without the prior written consent of the Company and Equipment affixed in default hereof shall be deemed not to form part of such lands or premises and shall be deemed to retain

its character as chattels. The Customer shall be responsible for any damage done to any real estate, immovable property, building or structure by removal of the Equipment (whether removal be affected by the Company, Customer or any third party) and shall indemnify and save harmless the Company from any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities whatsoever arising out of, connected with or resulting from the removal of the Equipment. In this regard the Customer shall obtain any landlord or mortgagee waiver as the Company may require.

19. **INDULGENCE:** No relaxation, forbearance, delay or indulgence by the Company in enforcing any of the terms and conditions of this Agreement or the granting of the time by the Company to the Customer shall prejudice, affect or restrict the rights and powers of the Company hereunder nor shall any waiver by the Company of any breach operate as a waiver of any subsequent or continuing breach hereof and notwithstanding any relaxation, forbearance, delay or indulgence by the Company, time shall in all respects continue to be of the essence.

20. **LOCATION AND SUBLETTING:** The Customer shall not remove or permit the removal of the Equipment from the shipping designation shown on the Agreement hereof nor shall the Equipment be subleased or assigned by the Customer nor shall the Customer transfer any interest in this Agreement or part with possession, all without the prior written consent of the Company (which consent may be exercised arbitrarily).

21. **ALTERATION OF THIS AGREEMENT:** No alteration or amendment of this Agreement shall be valid unless the same be made in writing and signed on behalf of the Company by a duly authorized signing officer or director of the Company. No other person or employee of the Company is authorized to alter the terms of this Agreement in any manner whatsoever.

22. **ENTIRE AGREEMENT:** The Customer and the Company agree that this Agreement constitutes the entire agreement between the parties and no representations or warranties, statutory or otherwise, express or implied, have been made except as herein contained, and without limitation there is no representation or warranty as to the quality or condition of the Equipment or its fitness for the purpose intended.

23. **ASSIGNMENT BY COMPANY:** The Company may assign all or any portion of this Agreement.

24. **SUCCESSORS:** This agreement shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, executors, administrators, successors and the assigns of the Company and the permitted assigns of the Customer.

25. **TIME:** Time shall be of the essence in this Agreement.

26. **NOTICE:** Any notice to be given by one party to the other shall be in writing and may be mailed by prepaid registered post to the other party at the address shown on the face of this Agreement hereof or at such other address may be substituted therefore from time to time by proper notice hereunder, and such notice shall be deemed to have been received by the addressee on the third business day next following that of mailing the notice ("business day" meaning a day other than a Saturday, Sunday or statutory holiday).

27. **GOVERNING LAW AND SUBMISSION TO JURISDICTION:** This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the parties hereto irrevocably submit to the jurisdiction of the Courts in the Province of Alberta.

28. **UNENFORCEABLE TERMS:** If any term, covenant or condition of the Agreement or the application thereof to any party or circumstance shall be invalid or unenforceable to any extent the remainder of this Agreement or application of such term, covenant or condition to a party or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby and each remaining term, covenant or condition of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law.

29. **FURTHER ASSURANCES:** The parties hereto and each of them do hereby covenant and agree to do such things and execute such further documents, agreements and assurances as may be necessary or advisable from time to time in order to carry out the terms and conditions of this Agreement in accordance with their true intent.

30. **SINGULAR, PLURAL AND GENDER:** Wherever the singular, plural, masculine, feminine or neuter is used throughout this Agreement the same shall be construed as meaning the singular, plural, masculine, feminine, neuter, body politic or body corporate where the fact or context so requires and the provisions hereof and all covenants herein shall be construed to be joint and several when applicable to more than one party.

31. **HEADINGS:** The headings in this Agreement have been inserted for reference and as a matter of convenience only and in no way define, limit or enlarge the scope or meaning of this agreement or any provision hereof.

32. **RECEIPT OF COPY OF AGREEMENT:** The Customer acknowledges receiving an executed copy of this Agreement.

33. **SURVIVAL:** The parties acknowledge that the provisions of this Agreement shall survive the expiry or earlier termination of this Agreement and shall not be merged therein or therewith.