

## **TERMS AND CONDITIONS**

**GENERAL.** These Terms and Conditions shall apply to all orders for goods, including equipment, tools and other products (collectively "Equipment") and/or services (together with Equipment, the "Work") and constitute the entire agreement between the parties (this "Contract") and may not be amended, altered, changed or modified except in writing by an authorized representative of Black Diamond Oilfield Rentals LLC ("Black Diamond"). The failure to enforce any provision hereof will not constitute a waiver or preclude subsequent enforcement thereof. No partial invalidity of this Contract will affect the remainder. Customer shall use any Equipment provided by Black Diamond in a prudent manner in accordance with the specifications of the manufacturer of the Equipment.

**ACCEPTANCE OF TERMS AND CONDITIONS.** All work shall be subject to these Terms and Conditions. Any different or additional terms and conditions contained in any of Customer's documents are specifically rejected and shall not be binding on Black Diamond. Any conflict between these Terms and Conditions and any of Customer's documents shall not constitute an objection by Customer.

**ACCEPTANCE OF EQUIPMENT.** Customer must inspect all Equipment at the time of delivery. All Equipment shall be deemed accepted upon delivery, unless Customer notifies Black Diamond at the time of delivery. All services shall be deemed accepted upon completion, unless Customer notifies Black Diamond at the time of completion.

**PAYMENT.** Terms of payment are net thirty (30) days from the invoice date. No deductions or setoffs shall be taken. All rates and amounts are exclusive of applicable sales and use taxes, and Customer shall be responsible for the payment of any and all taxes. If Customer fails to pay timely, Black Diamond may charge Customer interest at a rate equal to the lesser of (i) 18% per annum compounded monthly, or (ii) the maximum amount permitted under applicable law. Prices quoted are not firm and may be increased without notice. Customer shall pay all costs and expenses, including reasonable attorneys' fees, incurred by Black Diamond in the collection of any amounts payable by Customer.

**HOLDING OVER.** There shall be no holding over by Customer of leased Equipment; Customer agrees to pay a rental fee for held-over Equipment equal to twice the monthly rate until the Equipment is returned.

**INSURANCE.** Customer shall, at its sole cost and expense, maintain insurance in an amount equal to or greater than the replacement cost of leased Equipment, with such carriers and in such form as shall be satisfactory to Black Diamond.

**DISCLAIMER OF WARRANTIES.** Any Equipment leased or provided is leased or provided "AS IS." **BLACK DIAMOND MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE EQUIPMENT AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

**NO CONSEQUENTIAL DAMAGES.** NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO CONTRARY, IN NO EVENT SHALL ANY MEMBER OF THE BLACK DIAMOND GROUP BE LIABLE TO ANY MEMBER OF THE CUSTOMER GROUP, FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES RELATED TO OR IN CONNECTION WITH THE WORK OR THE PERFORMANCE OF THIS CONTRACT, INCLUDING, BUT NOT LIMITED TO, ANY INJURY, LOSS OR DAMAGE TO ANY PROPERTY, AND ANY LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF BUSINESS OPPORTUNITY, LOSS OF USE OF ASSETS, BUSINESS INTERRUPTION, LOSS OF PRODUCT, DOWN-HOLE LOSS OR DAMAGE, FISHING COSTS, WORKOVER OR REMEDIATION OR RESERVOIR LOSS OR DAMAGE, IRRESPECTIVE OF THE REASON OR CAUSE OF SUCH DAMAGES, WHETHER ANY OF SUCH DAMAGES OCCUR DURING OR AFTER THE PERIOD OF THIS CONTRACT, OR THAT THE CLAIM FOR SUCH DAMAGES IS BASED ON WARRANTY, CONTRACT, TORT, STRICT LIABILITY OR OTHER THEORY OF ANY NATURE WHATSOEVER, HOWEVER SAME MAY BE CAUSED AND REGARDLESS OF THE SOLE OR CONCURRENT NEGLIGENCE OF BLACK DIAMOND OR THE BLACK DIAMOND GROUP, EVEN IF BLACK DIAMOND OR THE BLACK DIAMOND GROUP HAS BEEN ADVISED OF, OR OTHERWISE COULD HAVE ANTICIPATED THE POSSIBILITY OF SUCH DAMAGES OR LIABILITIES IN ADVANCE.

For purposes of this Contract, "Customer Group" shall mean individually or in any combination Customer, its affiliates, co-owners or co-Customers (whether of a fee, lease, mineral lease or otherwise) joint interest owners, joint ventures, partners, contractors and subcontractors (other than Black Diamond and its subcontractors) and all of their respective directors, officers, employees, representatives, agents, licensees and invitees. "Black Diamond Group" shall mean individually or in any combination Black Diamond, its affiliates, any subcontractor of Black Diamond, and their respective directors, officers, employees, representatives, agents, licensees, invitees and assignees.

**INDEMNITY.** Customer agrees to RELEASE, DEFEND, INDEMNIFY and HOLD HARMLESS the BLACK DIAMOND GROUP from and against any and all claims, losses and expenses, including, without limitation, all costs, demands, damages, suits, judgments, fines, penalties, liabilities, debts, attorneys' fees, and causes of action of whatsoever nature or character, and further including, without limitation, any and all claims, losses and expenses for property damage, bodily injury, illness, disease, death, or loss of services, wages, consortium or society (the foregoing being herein individually and collectively referred to as "Claims, Losses and Expenses") directly or indirectly arising out of or related to bodily injury, illness, disease or death of, or damage to property of, Customer Group, and their employees, in any way, directly or indirectly, arising out of, or related to, the performance of the Work or the subject matter of this Contract regardless of the cause or causes thereof, and expressly including any sole or concurrent negligence, fault or strict liability (of whatever nature or character, including unseaworthiness, preexisting conditions, and/or premises defects) of Black Diamond Group or any other person or entity. IT IS THE INTENTION OF BOTH CUSTOMER AND BLACK DIAMOND THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION IS AN INDEMNITY BY CUSTOMER TO INDEMNIFY AND PROTECT BLACK DIAMOND FROM THE CONSEQUENCES OF BLACK DIAMOND GROUP'S OWN NEGLIGENCE, FAULT OR STRICT LIABILITY, WHETHER THAT NEGLIGENCE, FAULT OR STRICT LIABILITY IS THE SOLE, JOINT OR CONCURRING CAUSE OF THE BODILY INJURIES, ILLNESS, DISEASE OR DEATH OR PROPERTY DAMAGE.

Black Diamond agrees to RELEASE, DEFEND, INDEMNIFY and HOLD HARMLESS the CUSTOMER GROUP from and against any and Claims, Losses and Expenses directly or indirectly arising out of or related to bodily injury, illness, disease or death of, or damage to property of, Black Diamond Group, and their employees, in any way, directly or indirectly, arising out of, or related to, the performance of the Work or the subject matter of this Contract and regardless of the cause or causes thereof, and expressly including any sole or concurrent negligence, fault or strict liability (of whatever nature or character, including unseaworthiness, preexisting conditions, and/or premises defects) of the Customer Group or any other person or entity. IT IS THE INTENTION OF BOTH CUSTOMER AND BLACK DIAMOND THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION IS AN INDEMNITY BY BLACK DIAMOND TO INDEMNIFY AND PROTECT CUSTOMER FROM THE CONSEQUENCES OF CUSTOMER GROUP'S OWN NEGLIGENCE, FAULT OR STRICT LIABILITY, WHETHER THAT NEGLIGENCE, FAULT OR STRICT LIABILITY IS THE SOLE, JOINT OR CONCURRING CAUSE OF THE BODILY INJURIES, ILLNESS, DISEASE OR DEATH OR PROPERTY DAMAGE.

IN THE EVENT THAT THE ABOVE DEFENSE, HOLD HARMLESS AND INDEMNITY OBLIGATIONS ARE GOVERNED BY CHAPTER 127, TEXAS CIVIL PRACTICE & REMEDIES CODE (AS THE SAME MAY BE AMENDED FROM TIME TO TIME), EACH PARTY, AS INDEMNITOR, AGREES TO FURNISH, PROVIDE AND MAINTAIN LIABILITY INSURANCE COVERAGE OR QUALIFIED SELF-INSURANCE TO SUPPORT THE FOREGOING INDEMNITY OBLIGATIONS AND SUCH COVERAGE SHALL BE IN THE AMOUNT OF TWO MILLION DOLLARS (\$2,000,000.00) PER OCCURRENCE.

The indemnities provided herein shall be limited to the extent necessary for compliance with the laws of the applicable jurisdiction, and to the extent any laws are at variance with the indemnities provided herein, such indemnities shall be deemed to be amended so as to comply with such laws.

**DAMAGE TO THE EQUIPMENT.** Customer agrees, at its own expense, to maintain, preserve, and keep any leased Equipment in good working order and condition. Upon return of the leased Equipment to Black Diamond, if Black Diamond determines that the Equipment is not in good working condition, then Black Diamond shall repair and replace parts that Black Diamond deems necessary or appropriate to restore the Equipment to good working condition. Customer shall be liable for materials and other costs of repairs, plus checkout and inspection fees.

**LOSS OF THE EQUIPMENT.** Notwithstanding anything to the contrary contained in this Contract, Customer agrees to pay for all damages to leased Equipment, resulting from Customer's use of the Equipment, Customer's failure to maintain the leased Equipment, or Customer's negligence. In addition, if any item of Equipment is lost, stolen, destroyed or so damaged that it cannot be economically repaired at Black Diamond's sole determination (a "Total Loss"), then within thirty days of a Total Loss: (i) Customer will provide written notice of the Total Loss to Black Diamond and (ii) Customer will pay its reasonable replacement value. Upon any Total Loss of any item of Equipment, Customer's obligation to make further rental payments for the affected Equipment will cease, subject to Customer's payment in accordance with (ii) above.

**CONFIDENTIALITY.** Each party shall (i) maintain any and all Confidential Information of the other party in strict confidence, and not divulge any such Confidential Information to any person or entity (other than its affiliates and its and their employees, officers, directors, and other representatives ("Representatives")) that need to know such Confidential Information in connection with this Contract) without the prior express written consent of the disclosing party; and (ii) promptly return to the other party or destroy, at any time upon the request of the other party, all Confidential Information of the other party. As used herein, "Confidential Information" of a party means any information of or concerning such party learned by the other party or Representatives of the other party or disclosed by such party or its affiliates in the course of performance of this Contract, regardless of whether such information is tangible or intangible, written or unwritten, or disclosed orally or otherwise, except to the extent such information is generally known to the public.

**DEFAULT.** Black Diamond may exercise all of its rights and remedies at law and in equity, including without limitation, (a) immediately terminating this Contract and Customer's rights thereunder as to any or all items of the Equipment, (b) declaring immediately due and payable all amounts owed, (c) suing for and recover all amounts then accrued or thereafter accruing, and (d) taking possession of and removing any or all items of any leased Equipment.

**GOVERNING LAW.** THIS CONTRACT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO THE CHOICE OF LAW RULES OR LAWS THEREOF.