



OTAY MESA SALES INC.
EQUIPMENT SALES AND RENTALS

1596 RADAR ROAD
SAN DIEGO, CA 92154

OFFICE: 619.671.1020
FAX: 619.730.7469

MASTER RENTAL AGREEMENT

Lessee Information

(Legal Business Name) _____

(Doing Business As) _____

(Ownership Type) _____

Choose One (Sole Proprietorship - Partnership Type: Limited, General, LLP - Corporation Type: "C" Corp, "S" Corp, LLC)

(Street Address) _____

(City) _____

(State) _____

(Zip) _____

(Business Phone) _____

(Business Fax) _____

(Contractor's License Number) _____

EIN _____

Main Contact Person: _____

(Phone) _____

E Mail: _____

Terms & Conditions

OTAY MESA SALES, INC. (hereinafter referred to as "OMS" or "Lessor") agrees to rent equipment, motor vehicles, and other personal property (collectively referred to as "Equipment") to Lessee only upon the following terms and conditions of this Master Rental Agreement (hereinafter referred to as the "Agreement").

- Application.** This Agreement applies to all Equipment currently or to be leased by Lessee from OMS. Each item of Equipment shall be set forth in an invoice which shall be subject to the terms and conditions of this Agreement and shall become a part of and incorporated into this Agreement, including equipment type rental term, and rental rate. Lessor agrees the Invoice(s) may be sent in the form of an email or facsimile to Lessee.
- Minimal Rental Period.** The Rental Period starts immediately upon pick up or upon delivery to Lessee of the Equipment at the location determined by Lessee and ends upon its return to Lessor's premises or when Lessee makes contact with Lessor and informs Lessor that the Equipment is no longer required, schedules with OMS to pick up the Equipment, and obtains a termination number (a.k.a. "Term Number") from OMS. The risk of loss or damage to any Equipment extends past the Minimal Rental Period and Lessee shall be responsible as set forth in Section 8 below for any loss, theft or damage to any Equipment from the time the Equipment is dropped off by Lessor or picked up by Lessee until it is returned to Lessor's premises by Lessee or picked up by Lessor.
- Receipt of Equipment:** By receiving Equipment, Lessee acknowledges the Equipment is in good working condition and repair, and that Lessee fully understands its proper use.
- Mechanical Problems.** It is Lessee's obligation to notify Lessor of any mechanical or safety problems with the Equipment immediately upon Lessee becoming aware of a problem. Lessor shall have the sole discretion to either: (1) send a service technician to make repairs; or (2) replace the Equipment with another similar unit. Lessee shall not operate any Equipment when it is in need of mechanical or safety repairs. Lessee shall provide continual inspection and daily monitoring of all Equipment rented by Lessee and/or under its care, custody, or control.
- Use of Equipment.** Lessee agrees and covenants not to abuse, harm or improperly operate the Equipment. Lessee shall operate the Equipment in strict conformity, with all applicable laws and regulations and as recommended by the manufacturer of the Equipment. If the Equipment is a motor vehicle, it shall be operated only by a duly licensed driver possessing the class of license required to operate that particular type of motor vehicle.
- Return of Equipment: Damaged Equipment:** At the expiration or sooner termination of this Agreement, at the return time stated in any invoice, or upon Lessor's demand, Lessee promises to return all of the Equipment to Lessor's premises during Lessor's regular business hours, in the condition and repair as when delivered to Lessee, subject only to reasonable wear and tear. Lessee shall be solely liable for all damages to or loss of the Equipment occurring because it was not returned within Lessor's regular business hours. If Lessor has agreed to deliver the Equipment to Lessor or to pick up the Equipment from Lessee, Lessee shall be solely responsible for all loss or damage to the Equipment from time of the delivery to Lessee's premises or until picked up by Lessor. If the Equipment is returned in a damaged or excessively worn condition, Lessee shall pay Lessor the reasonable cost of repair plus the regular rental rate until repairs have been completed. The term "*Reasonable Wear and Tear*" shall mean only the normal deterioration of the equipment caused by ordinary and reasonable use on a one shift (eight hours per day, five days per week) basis. The following shall not be deemed reasonable wear and tear; damage resulting from lack of lubrication or maintenance of necessary oil, water and air pressure levels; damage resulting from any collision, overturning, or improper operation of the equipment, including overloading or exceeding the rated capacity of the equipment; damage in the nature of dents, bending, tearing, staining, and misalignment to the equipment or any part thereof, and wear resulting from use in excess of a one shift basis. Any repairs which may become necessary to said Equipment shall be made exclusively by the Lessor unless permission has been given in writing to the Lessee to make such repairs. The cost of repairs for normal use to be borne by Lessor and all costs for repairs beyond Reasonable Wear and Tear by Lessee.

7. **California Air Resource Board ("CARB").** No Equipment subject to CARB in-use off-road vehicle regulation may idle for more than 5 consecutive minutes. The idling limit does not apply to: idling when queuing, idling to verify that the Equipment is in safe operating condition, idling for testing, servicing, repairing or diagnostic purposes, idling necessary to accomplish work for which the Equipment was designed, idling required to bring the machine system to operating temperature, as specified by the manufacturer, and idling necessary to ensure same operation of the Equipment. When refueling any "On Road" Equipment Lessee is responsible for using clear on highway #2 diesel fuel only (no red dye to be used in "On Road" Equipment). Lessee is responsible for any and all fines incurred as a result of using red dye fuel in "On Road" Equipment. Lessee shall also be solely responsible for any fines for any violation of any local, state and federal regulations, including but not limited to, the regulations stated in this section.
8. **Venue/Attorney Fees.** The parties agree and acknowledge that this Agreement is entered into in the County of San Diego and any court action by any party shall be filed and maintained by a court of competent jurisdiction in the County of San Diego. The prevailing party shall have the right to collect from the other party its reasonable costs and attorneys' fees incurred in enforcing this Agreement.
9. **Risk of Loss and Damage to Equipment.** Lessee solely bears the entire risk of loss or damage to the Equipment from any and every cause whatsoever from the time the Equipment is picked up by Lessee or dropped off at the location requested by Lessee or Lessee's agent, until safely delivered to Lessor's premises or picked up by OMS. Such losses include, but are not limited to, damage or loss, caused by vandalism, theft, malicious mischief, fire, flood, acts of god and/or nature, force majeure, an accident regardless of fault or if the Equipment is lost, misplaced or stolen. If OMS picks up and/or delivers the Equipment, OMS shall assume the risk of loss only if damage or loss occurs during the process of picking up and loading the equipment or if delivering, only if the damage or loss occurs during the process of unloading and dropping off the Equipment. No loss or damage to the Equipment or any part thereof shall impair any obligation of Lessee under this Agreement, which shall continue in full force and effect. In the event of loss, theft or damage of any kind whatsoever to any item of Equipment, at the option of OMS, Lessee shall: (a) Pay OMS in cash for OMS to cause the repairs to be made by an OMS technician at their commercial rates or by any another repair facility chosen by OMS; or (b) If the Equipment is determined to be totaled or damaged beyond repair, at the sole discretion of OMS, the Lessee shall immediately pay to OMS the fair market value to replace said Equipment. The daily Rental Rate for the damaged Equipment shall continue until Lessee has paid the cost of repairs and the repairs are actually completed. The daily Rental Rate for Equipment that is totaled or destroyed beyond repair shall terminate upon payment by Lessee to OMS for the fair market value to replace the Equipment. In the event any Equipment is lost, stolen or misplaced for a period greater than fourteen (14) days, then Lessee shall pay OMS the full fair market value of the Equipment and the daily Rental Rate shall continue until payment is made.
10. **Limitation of Liability.** Lessee, and its employees and agents, shall hold OMS, and its employees and agents harmless, for any loss, liability, cost, damage or injury to persons or property, caused by, resulting from, or in any way connected with the services under this Agreement or with the use, defect or failure of any Equipment, and/or any act, omission or breach by OMS and its agents and employees. OMS' maximum liability to Lessee under this Agreement shall be limited to the total amount of rent charged for the particular piece of Equipment that allegedly failed and/or was defective. OMS shall not be liable to Lessee for any other damages of any kind, including but not limited to, direct, indirect, general, special, consequential and/or exemplary damages.
11. **Indemnification.** Lessee agrees to indemnify, defend and hold OMS and its officers, directors, independent contractors, employees and agents harmless and not liable to Lessee and/or to any third party for any loss, claim, suit, injury, death, property damage, expense, liability, settlement, judgement, costs, including attorney fees, resulting from or related to the services to be performed under this Agreement or claimed to be caused, in whole or in part by the Equipment rented herein or by any act, omission, breach or negligence by OMS, its agents or employees, or any other person for whose acts may cause or allegedly cause liability to OMS. The parties agree that OMS shall only be liable, subject to the limitations of liability in Section 9 above, for acts of willful misconduct. In the event of an accident or collision involving any leased Equipment, Lessee shall immediately notify Lessor and will furnish Lessor with a complete copy of any police or government agency report(s) and the names, address, phone and email of any witnesses or parties involved and/or any other reports or information relating to an accident.
12. **Payment.** The parties agree that a billing cycle shall be twenty-eight (28) days from the date of delivery (or pickup) of the Equipment. Payment shall be due in full as reflected in the invoice, unless otherwise agreed-to in writing by the parties. Rates may be subject to change depending on the Equipment requested. Rates for any Equipment shall be reflected in the invoice and shall be considered the agreed-upon rate for any Equipment ordered by Lessee. OMS shall issue invoices by mail, e-mail, or facsimile at the sole discretion of OMS. Lessee agrees to notify OMS in writing of any invoice(s) error(s) within 10 days of the date of the invoice(s). If not so noticed, the invoice shall be deemed to be correct and accepted as rendered, thus no credits will be issued after 10 days from invoice date. All past due amounts shall bear a finance charge at the rate of one percent and a half (1.5%) per month at the sole discretion of OMS.
13. **Default.** In the event Lessee is in Default under any terms of this Agreement, OMS shall have the right to immediately accelerate all payments due under this Agreement or any invoice thereto, take possession of all Equipment, and Lessee shall immediately pay for all damages or any injury to the Equipment, legal expenses, costs of removal of the Equipment from the possession of Lessee and all freight, storage, repossession fees, transportation and other charges incurred in such removal and return to OMS' place of business. Lessee shall be in Default under this Agreement if Lessee attempts to rent, sell or encumber the Equipment, ceases operating, institutes or has instituted against it proceedings under any bankruptcy or insolvency law, makes an assignment for the benefit of creditors or fails to comply with any other provision of the Agreement, or if any attachment, execution, writ of process is levied against the Equipment or any of Lessee's property, or if for any reason OMS deems itself insecure or Lessee is using the Equipment in an unsafe manner. Lessee agrees to deliver the Equipment to OMS upon demand and grants permission to OMS to enter upon any job, building or place where the Equipment is located and take possession of it without notice to Lessee.
14. **Termination.** OMS has the absolute right to terminate this Agreement upon written notice (including e mail) to Lessee at which time Lessee shall pay all rent due and deliver or make the Equipment available for OMS to pick up and OMS' option.
15. **Prohibited Use/No Assignment or Sub-Lease.** Lessee shall not use nor permit anyone else to use any Equipment rented from OMS at any location not previously approved by OMS and/or employed by Lessee. Lessee shall not assign this Agreement or sublease any Equipment without the prior written consent of Lessor.
16. **No Warranties.** THE EQUIPMENT RENTED PURSUANT TO THIS AGREEMENT ARE RENTED 'AS IS' AND OMS RENTS ALL EQUIPMENT AND SERVICE PURSUANT TO THIS AGREEMENT WITHOUT WARRANTY OF ANY NATURE WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. Notwithstanding anything contained to the contrary, Lessee agrees that Lessee may not offset any payments under this Agreement or the account due to any dispute concerning warranty issues and payment on the account is absolutely due and owing without any right of offset or recoupment of any nature.
17. **Inspection and Recovery.** OMS shall have the right at any time during business hours without notice, to enter Lessee's premises or the site where OMS' rental Equipment is located for the purpose of inspecting, repairing, adjusting, or repossessing the Equipment.
18. **Preliminary Notice.** If OMS requires a Preliminary Notice, Lessee must within 3 calendar days of taking possession of the Equipment, notify OMS of the address of the job and any information needed for OMS to mail a Preliminary Notice. If Lessee moves the Equipment to a new job address, Lessee must within 2 calendar days notify OMS of the address of the new job and any information needed for OMS to mail a preliminary notice.

Initials: _____

19. **Time is of the Essence.** Time is of the essence of this Agreement. OMS's failure at any time to require strict performance by Lessee of any provisions of this Agreement will not waive or diminish OMS's right thereafter to demand strict compliance with that or any other provision. Waiver by OMS of any default will not waive any other default, whether concurrent or in the future.
20. **Authority to Contract.** Lessee, by signing this form, warrants that all information provided is true, correct, accurate, and complete and acknowledges that he/she has read same, understands its contents and expressly agrees to the terms and conditions as stated hereon. Each of the signatories herein warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she represents to sign, and each signatory agrees to indemnify and hold harmless each of the other parties against claim or demand, necessary expenses of investigation and reasonable attorneys' fees, in any action which it is successfully asserted that a signatory is not competent and/or authorized to execute this Agreement and give and receive the consideration therefore.
21. **Entire Agreement.** This is the entire Agreement between OMS and Lessee, and no oral modifications can be made. No promises, representations or agreements purporting to modify this Agreement and no revocation, partial or otherwise, or change, amendment, addition or alteration shall be valid unless the same be in writing, signed by all parties hereto or by their duly authorized agents. Waiver by OMS of any terms or conditions of this Agreement or waiver of any breach thereof shall not affect the validity or enforceability of the remaining provisions of this Agreement. A determination that any provisions of this Agreement are illegal or invalid shall not affect the validity or enforceability of the remaining provisions of this Agreement.
22. **Tracking Device.** The Equipment may be equipped with a GPS tracking device and other hardware and software that transmits information about the Equipment to Lessor ("Data Reporting Systems"). Lessor has the exclusive right to (i) access, use, collect and disclose any data generated by, collected by, or stored in, the Equipment or any hardware or devices interfacing with the Equipment ("Machine Data"); (ii) access Machine Data directly through data reporting devices integrated within, or attached to, the Equipment and (iii) update the data reporting systems software from time to time. In the event that the Machine Data includes Lessee's personal information, Lessee hereby consents to the collection, use and disclosure of such personal information, to permit OMS access and use the Machine Data as set forth herein. Lessor shall not remove, modify or disable any Data Reporting Systems without OMS's prior written consent.
23. **Waiver of Subrogation.** Lessee on behalf of any insurer providing coverage to Lessee, with respect to the Equipment, property damage, personal injury and/or any other claim, loss or peril, hereby waives any right of subrogation against any insurer providing coverage to OMS by virtue of payment of any loss or claim by Lessee's insurer.
24. **Insurance Requirements.** If requested in writing by OMS, prior to renting any Equipment, the following minimum insurance requirements must be met. OMS must receive a current "Certificate of Insurance" naming OTAY MESA SALES, INC. as "Additional Insured" for general liability with limits of liability not less than \$1,000,000.00 (one million dollars) combined single limit per occurrence (bodily injury including death and property damage) unless greater liability limits are specified, and as "Certificate Holder" or "Loss Payee" for physical damage for the full value of the Equipment. Most customers, for convenience, issue one certificate covering their policy period stating "all sites and operations" instead of obtaining a new certificate for each individual rental.
25. **Notices.** All Notices shall be submitted by personal delivery or by certified U.S. Postal Service mail to Lessor at: "Otay Mesa Sales, 1596 Radar Road, San Diego CA, 92154-7815" and to Lessee at the address identified at the top of the first page of this Agreement.
26. **Counterparts and Electronic Signature.** This Agreement may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Agreement, all of which shall constitute one agreement to be valid as of the date of this Agreement. Documents executed, scanned and transmitted electronically and electronic signatures and/or acknowledgments shall be deemed original signatures for purposes of this Agreement and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures. This Agreement and any other document necessary for the consummation of the transaction contemplated by this Agreement may be accepted, executed or agreed to through the use of an electronic signature in accordance with the Electronic Signatures in Global and National Commerce Act ("E-Sign Act"), Title 15, United States Code, Sections 7001 et seq., the Uniform Electronic Transaction Act ("UETA") and any applicable state law. Any document accepted, executed or agreed to in conformity with such laws will be binding on each party as if it were physically executed.
27. **Effective Date:** This Agreement shall become effective upon execution by all parties.

LESSEE: _____ (Company)

Date: _____

(Lessee's Signature)

(Print Name)

(Title)