

TSS Total Safety Services, Inc. - Terms and Conditions

1. Scope. Customer has agreed to rent or purchase the products (the “Products”) and/or equipment (the “Equipment”) from TSS Total Safety Services, Inc. (hereinafter “Company”) and/or has requested that Company perform the safety services (the “Services”) set forth in the proposal, invoice or other document attached hereto. These terms and conditions (the “Agreement”) shall apply to all Products, Equipment and Services provided by Company, and any purchase, service or work order issued by Customer shall be for informational purposes only, to describe the particular Products, Equipment or Services, and shall not modify or change any provision of this Agreement. Company will provide Equipment, Products and Services on an as-needed basis at the request of Customer. Any rates set forth on the attached document are subject to adjustment annually.
2. Selection of Equipment, Products and Services. Customer is responsible for selecting all Products and Equipment and ensuring that Products and Equipment are of a size, design, capacity, and manufacture adequate for Customer’s needs and, with respect to Services, for determining the experience, level of authority, and number of personnel to sufficiently comply with Customer’s safety requirements for the project. All Services will be provided pursuant to Customer’s safety policies, procedures and manuals. To the extent the Services include safety and/or health professionals to supplement or augment Customer’s existing safety or health staff, such services shall be supplied in accordance with Customer’s specifications and Customer shall be responsible for providing adequate training and supervision. Customer has selected the Services, Products and/or Equipment on the basis of its own judgment and expressly disclaims reliance upon any statements, representations or warranties made by Company.
3. Use of Equipment or Products. Customer warrants and represents that anyone using the Products and/or Equipment has received complete instructions, both in classroom and hands on, on the proper use and limitations of the Products and Equipment. Customer’s acceptance of the Products and Equipment certifies that its agents, servants, and employees have been properly and fully trained in the use and limitations of the Products and Equipment and Customer hereby agrees to assume all liability for use of the Products and Equipment. Customer is solely responsible for appropriate care and maintenance of any Equipment while being rented by Customer. Customer agrees to comply with all operating and maintenance instructions and recommendations provided by Company, including any additional operating and maintenance instructions specified from time to time and with all applicable laws governing the operation and use of the Products or Equipment, including but not limited to any applicable motor vehicle laws or OSHA regulations.
4. Ownership and Use of Rental Equipment. Title to Equipment shall at all times be and remain with Company, which shall remain the sole and exclusive owner of the Equipment. Customer shall have no right, title, or interest in the Equipment except as expressly set forth herein. Customer shall not affix the Equipment to any premises such that any Equipment becomes a fixture. Customer shall use the Equipment only at Customer’s facility and shall not assign this Agreement or remove, sublease, rent, transfer, assign, sell, alter, modify, or encumber the Equipment without Company’s prior written consent.
5. Rental Period. Equipment is rented on a daily, weekly, or monthly (4 week period) basis. The rental period includes all calendar days and shall commence on the date the Customer receives the Equipment, provided the Equipment was shipped for next business day delivery, and shall continue upon the terms of this Agreement until the date the Equipment is received by Company at the location specified by Company.

6. Rent. Customer shall pay Company for the use of the Equipment at the rates set forth on the proposal or invoice attached hereto, including applicable sales tax. The Customer will be billed by Company on a bi-weekly basis (excluding trailers) commencing two weeks after the Customer receives the Equipment, a monthly basis (28 days) commencing four weeks after Customer receives the Equipment or when the Equipment is returned, whichever comes first. If parts are shipped with the Equipment, an invoice for the parts will be generated immediately for parts only. Pricing will be at such rates as then in effect at Company. Rental rates hereunder shall not be subject to reduction on account of non-working time. Company shall not be liable for rental reductions or rebates if the Equipment is not in operating condition or is not available for use during the term of this Agreement due to matters beyond Company's control.

7. Payment. All Payments shall be made within thirty (30) days of receipt of invoice.

8. Late Charge. If any payment hereunder is not paid when due, Customer agrees to pay in addition to the amount of the overdue payment a late charge of one and one half percent (1.5%) of the amount of the overdue payment per month. In addition, Company shall have the right to terminate this Agreement and take immediate possession of any Equipment rented hereunder. In any action to collect amounts due under this Agreement, Company shall be entitled to recover its costs and reasonable attorney's fees.

9. Recalibrations/Maintenance Fees. In addition to rent, in some cases the Customer shall pay a one-time recalibration /maintenance fee. Customer will provide any necessary storage or protective covering. If Company determines that the Equipment maintenance is in excess of that required as a result of normal wear and tear, Company may charge the Customer for these additional costs.

10. Security Deposit. Prior to the rental of Equipment, Company may require that Customer deposit with Company a security deposit for all Equipment, as security for performance of all Customer's obligations hereunder. Upon termination of this Agreement and proper return of the Equipment, the security deposit shall be returned to Customer after deducting any amounts due Company from the Customer. Amounts deducted from the deposit may be charges for cleaning, recalibration, decontamination, maintenance, or replacement. A security deposit does not remove the Customer's responsibility for the timely payment of rent and is not given in lieu of rental payments, but in addition to rental payments.

11. Taxes and Indemnification. Customer agrees to pay and discharge when due any and all taxes and governmental charges of any kind or character, federal, state, county, or municipal, which may be levied and/or assessed at any time by reason of the Products, rental of the Equipment, or the Services and interest and penalties, if any, on such taxes or charges, and Customer will at all times fully protect and save Company and its successors and assigns harmless from and against any such taxes, governmental charges and interest and penalties thereon and not allow any liens to be assessed against the Equipment.

12. Delivery. Rental Equipment ("Equipment") and/or Product is provided FOB shipping. Unless Customer notifies Company to the contrary within forty-eight (48) hours after obtaining possession of the Equipment or Product, it shall be conclusively presumed that the Equipment or Product was delivered to Customer in good operating condition. Customer shall not make upgrades, install engineering changes, or perform non-routine maintenance, adjustments, or repairs to Equipment without the express written consent of Company. Company or its agent may inspect the Equipment at any time.

13. Rental Return and Maintenance. At the end of the rental period, the Equipment shall be returned to Company at Customer's cost. Customer shall return the Equipment in good operating condition, normal wear and tear accepted, and Customer shall clean and decontaminate all Equipment in accordance with all established requirements and in compliance with all federal, state or local laws, rules, regulations, or safety codes, including but limited to the Occupational Safety and Health Act (OSHA) and the Resource, Conservation and Recovery Act (RCRA). Company shall be the sole judge of the repairs

and maintenance necessary to place the Equipment in good repair and operating condition, the cost of which Customer agrees to pay.

14. Failure to Return Equipment and Late Rental Returns, Insurance. Customer will unconditionally protect, indemnify, and save Company harmless against any and all loss or damage to the Equipment during the term of this Agreement, whether by fire, flood, accident, explosion, theft, or otherwise, and for this purpose Customer shall at Customer's own expense insure the Equipment against loss that may occur or be caused by fire, flood, accident, explosion, theft or otherwise, and liability of any and every kind and provide evidence of such insurance. If Equipment is not returned for any reason, Customer shall remit the listed purchase price of such item to Company within thirty (30) days of statement of loss, or the rental rates shall continue to accrue. If an item previously designated as "lost" is found and returned within sixty (60) days of the statement of loss, the Customer shall be credited with the amount paid for that item, less a fifteen percent (15%) restocking fee and any maintenance costs.

15. Return of Product. Customer may return the Product in the same condition it was received within thirty (30) days of purchase, subject to a fifteen percent (15%) restocking fee, net cost of shipping. For custom or special Product, this return policy does not apply.

16. Default. If Customer fails to use and operate the Equipment in a prudent, safe and proper manner to avoid abuse and abnormal wear and tear, or if Customer neglects or refuses to comply with the operating standards specified by Company, or refuses to pay Company for any damage to the Equipment caused by other than ordinary wear and tear resulting from proper use and operation, or if Customer fails to make a monthly payment when due, or if Customer becomes insolvent or makes an assignment for the benefit of creditors or files a Petition in Bankruptcy or if a receiver is appointed for the Customer's business, or if a Customer fails to comply with any of the other terms and conditions of this Agreement, or otherwise breaches this Agreement, such shall constitute a default hereunder and Company may thereupon exercise all rights and remedies as are accorded hereunder or otherwise provided by law. In the event of default, Company may do any or all of the following without notice or demand: (1) declare all rental payments hereunder to be immediately due and payable, (2) terminate this Agreement and the Customer's right to possess and use the Equipment, (3) enter the premises where the Equipment may be and repossess and remove the Equipment by any method or manner permitted by law, (4) sue for and recover from Customer all rentals due hereunder and all costs and expense incident to repossession and (5) pursue any other remedy permitted by law. Customer also agrees to pay upon request all collection and legal costs, including reasonable attorney's fees and court costs, incurred by Company to the extent permitted by law.

17. Warranty. For all Product or Equipment sold under this Agreement, Company warrants that all such Product will (a) conform to Customer's written specifications, descriptions and/or samples, (b) unless otherwise specified by Customer, will be new, and (c) be free of any and all liens and other encumbrances. Further, Company assigns to Customer any and all manufacturers' product warranties and remedies thereunder applicable to such Product or Equipment. Equipment or Product found to be defective within one year of delivery will be replaced by Company provided it is returned to Company's regular place of business or such other place of business designated by Company during normal working hours. Services shall be performed diligently, efficiently, in a safe and workmanlike manner in accordance with Agreement and generally consistent with practices applicable to such Services in the area in which the Services are to be performed. Defective Services shall be reperfomed. Other than as set forth herein, Company makes no warranties whatsoever in respect to the Services, Product or Equipment and Customer expressly waives any other warranty or representation, either express or implied, including without limitation, any warranty or representation as to the design, quality, or condition of the Product or Equipment or any warranty of merchantability or fitness for any particular purpose, and all other warranties, implied, and statutory, or as to any other matter relating to the Product or Equipment or any part thereof, are expressly disclaimed.

18. Exclusive Remedy. Customer's sole and exclusive remedy for breach of warranty, tortious conduct, breach of contract, or any other cause of action against Company or its officers, agents or employees, if any, shall be limited to the warranty set forth herein. Customer specifically understands and agrees that no other remedy (including but not limited to

claims for incidental, special, consequential, or punitive damages for any cause whatsoever or injury to persons or property or any other consequential, economic, special or incidental loss) shall be available to Customer.

19. Mutual Indemnification. With respect to all Services provided by Company, each of Company and Customer shall, to the extent permitted by law, indemnify, defend, and hold harmless the other from and against any and all claims, demands, complaints or actions of third parties (including employees of the parties or government agencies) arising from or relating to the Services (including personal injury, death, property damage or damage to the environment), to the extent caused or arising out of the negligence, willful misconduct, breach of this Agreement, or violation of law of or by the Indemnitor. Further, in the event the parties are jointly at fault or negligent, they agree to indemnify each other in proportion to their relative fault or negligence. The claims, demands, complaints, and actions covered hereunder include all settlements, losses, liabilities, judgments, court costs, reasonable attorney's fees, fines, penalties and other litigation costs and expenses arising from or related to such claims, demands, complaints or actions. In no event shall either Party have any liability to the other Party for any lost profits, loss of use, costs of procurement of substitute goods or services, or for any indirect, special, incidental, punitive, or consequential damages, however caused, and whether in contract, tort, or under any other theory of liability.

20. Limitation of Liability. The total liability of Company for all claims, whether in tort, contract or otherwise, arising out of or relating to the performance or breach of this Agreement or use of any Services shall not exceed, on a per order basis, the price of the Work Order giving rise to the claim.

21. Insurance. With respect to any Services provided by Company, upon request of Customer, Customer shall be named as an additional insured on Company's policies of insurance to the extent of Company's indemnity obligations under this Agreement.

22. Indemnification of Company. WITH RESPECT TO THE PURCHASE OR RENTAL OF ALL PRODUCTS AND EQUIPMENT, CUSTOMER SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND COMPANY FROM ANY AND ALL CLAIMS, ACTIONS AND DAMAGES, INCLUDING REASONABLE ATTORNEY'S FEES, ARISING OUT OF THE PRODUCTS AND/OR EQUIPMENT AND THEIR RESPECTIVE USE, POSSESSION, OPERATION, CONDITION, MAINTENANCE, OR RETURN, INCLUDING WITHOUT LIMITATION, ANY CLAIMS ARISING OUT OF THE ALLEGED NEGLIGENCE OR STRICT LIABILITY OF COMPANY OR CONDITIONS CAUSED OR CREATED IN WHOLE OR IN PART BY TOTAL SAFETY, WHICH OBLIGATIONS SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

23. Packaging. Company endeavors to pack or prepare all shipments so that they will not break, rust or deteriorate in transit, but does not guarantee against such damage. Unless requested in writing by the Customer, no shipments are insured by Company against damage or loss in transit. Company will place insurance as nearly as possible in accordance with Customer's written instructions but in such case Company acts only as agent between insurance company and the Customer, and assumes no liability whatsoever.

24. Drawings. All drawings, diagrams, specifications and other material furnished by Company and identified as confidential relating to the use and service of articles furnished hereunder and the information therein are proprietary to Company. Such material has been developed at great expense and contains trade secrets of Company Customer may not reproduce or distribute such materials except to Customer's employees who may use the articles as part of their duties. All such materials relating to the articles supplied directly by Company (except information as may be established to be in the public domain or disclosed pursuant to judicial government action) shall be received in confidence and Customer shall exercise reasonable care to hold such information in confidence.

25. Force Majeure. If either Party is unable to perform its obligations under this Agreement or any Service Order as a result of a Force Majeure Event and the affected Party notifies the other Party, the Service Order or a particular Service may be terminated by the affected Party giving notice to the other Party that the Force Majeure Event is of sufficient duration to

substantially diminish the affected Party's ability to perform under this Contract. For purposes of this paragraph, a Force Majeure Event shall be defined to mean any event beyond the control of the affected Party which prevents the performance of that Party's obligations under this Agreement, including, without limitation, epidemic, pandemic, shelter-in-place orders, quarantines, major food shortages, government shutdowns, substantial interruption to air travel, substantial interruption in supply chains and other economic ripples caused by the response to an epidemic or pandemic, national or global health emergencies, acts of God, earthquakes, hurricanes, tornadoes, floods, a named storm, fires, and other physical natural disasters; acts of war, terrorism, riot, civil war, blockade, strikes, insurrection or civil disturbances; acts of a governmental entity, agency or other authority that prevents or makes unlawful performance under this Agreement; the compliance of any applicable law that makes continuance of the Services impossible; or any other cause beyond the reasonable control of a Party. The term "Force Majeure" includes the effects of the Force Majeure Event. For the avoidance of doubt, Force Majeure shall not include any of the following: (i) economic hardship unless such economic hardship was otherwise caused by Force Majeure; (ii) changes in market conditions unless any such change in market conditions was otherwise caused by Force Majeure; (iii) industrial actions and strikes involving only the employees of Contractor or any of its subcontractors; (iv) nonperformance or delay by Contractor or its subcontractors unless nonperformance or delay was otherwise caused by Force Majeure; or (v) financial difficulty unless such financial difficulty was otherwise caused by Force Majeure.

26. Entire Agreement. The terms set forth herein constitute the entire Agreement between Company and Customer with respect to the Products, Equipment and the Services, and shall not be amended except in a writing signed by both Parties.

27. Governing Law, Venue and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein. Each Party irrevocably attorns to the exclusive jurisdiction of the courts of the Province of Alberta with respect to any matter arising under or relating to this Agreement.