



830 East Southern Avenue, Mesa, AZ 85204 *Phn: (480) 907-7315 Fax: 480-459-5925

EQUIPMENT CONSIGNMENT AGREEMENT

This Agreement was made and entered into as of this _____ day of _____ 2019, by and between Customer _____ located at _____, phone (____) _____, and Dealer **Action Concrete Pumping Supply** located at 830 East Southern Avenue, Mesa, Arizona 85204.

In consideration of the mutual obligations and undertakings hereafter set fourth, Customer and Dealer hereby covenant and agree as follows:

1. Consignment. Customer hereby delivers to Dealer on consignment basis. All of the equipment individually identified on Exhibit A, attached hereto, and incorporated herein (collectively the "Equipment"). This means that Customer owns the Equipment and is responsible for all expenses of the Equipment until sold to a third-party purchaser. In no event shall Dealer own the Equipment but will have the right to sell such Equipment on behalf of Customer.

2. Retention of Title. In no event shall title to any of the Equipment be deemed to be transferred to Dealer, and the title to the Equipment shall be retained by Customer until such time as the Equipment is sold to a third-party purchaser.

3. Listing Fee. Upon delivering Equipment to Dealer, Customer shall pay Dealer a nonrefundable fee of _____ per Equipment item for the cost of listing an Equipment item for sale, including but not limited to, costs associated with storing and advertising the Equipment for sale ("Listing Fee").

4. Sale of Equipment; Allocation of Proceeds: Payments to Customer Upon Sale. _____ hereby authorizes Dealer to sell any, or all, of the Equipment listed on Exhibit A, attached hereto, in the ordinary course of Dealer's business on Customers behalf. Customer further agrees that Dealer shall retain a _____% of the sale as a consignment fee for Dealer's sale of such Equipment item. Promptly after Dealer's receipt of payment for the sale of such Equipment item, Dealer shall subtract its consignment fee and remit the remaining amount to the Customer. Initial here: _____

5. Financing the Sale of Equipment. Dealer may provide third-party financing through a financial institution for the sale of any Equipment item. Notwithstanding anything herein, Dealer may sell an Equipment item to a third-party purchaser with third-party financing.

6. Delivery; Repairs; Maintenance. Customer shall be solely responsible for the performance of, or any costs associated with, the delivery of an Equipment item to a third-party purchaser or any repair work required as a condition to the sale of such Equipment item. Customer shall be responsible for the maintenance of the Equipment at its sole cost and expense. If in the event that Customer and Dealer agree that Dealer is to make any repairs to any Equipment item or make any delivery arrangements, the Base Net Price for the Equipment item may be reduced by any delivery costs or repair costs incurred by Dealer with respect to the Equipment.

7. Risk of Loss or Damage. Customer shall assume all liabilities associated with the Equipment during the term of this Agreement until such Equipment item is sold. Customer shall hold Dealer harmless from loss of Equipment by theft, fire, vandalism, deterioration, or other/any damage to the equipment, etc.

8. Representation and Warranties by Customers. Customer has good and marketable title to the Equipment, none of which will be subject to any liens or other encumbrances, including blanket liens, except any that may be listed on Exhibit A.

9. Warranties. Dealer shall not offer any warranties on the sale of an Equipment item except to the extent a warranty is required by law and cannot be disclaimed. The following language shall appear in all bold capital letters on each bill of sale, purchaser order, or other contract for sale used in connection with a sale of an Equipment item:

“TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE ITEM SOLD IS BEING SOLD ON AN “AS IS – WHERE IS” BASIS, WITHOUT ANY WARRANTY, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER SHALL NOT BE LIABLE FOR LOSS OF REVENUES OR PROFITS, INCONVENIENCE, EXPENSE FOR SUBSTITUTE EQUIPMENT OR SERVICE, STORAGE CHARGES, LOSS OR ANY OTHER SPECIAL INCIDENTAL OR CONSEQUENTIAL DAMAGES CAUSED BY THE USE OR MISUSE OF, OR INABILITY TO USE THE ITEM SOLD. IN NO EVENT SHALL SELLER’S LIABILITY EXCEED AMOUNT BUYER PAID TO SELLER TO PURCHASE THE ITEM SOLD. BUYER ASSUMES ALL RISK AND LIABILITY FOR LOSS, DAMAGE OR INJURY TO BUYER AND BUYER’S PROPERTY AND TO OTHERS AND THEIR PROPERTY ARISING OUT OF USE OR MISUSE OF, OR INABILITY TO USE THE ITEM SOLD.

AS SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR DO NOT ALLOW LIMITATION ON IMPLIED WARRANTIES, THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO YOU. YOU MAY HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE.”

All statement required by this section shall be printed in a font size of 10 point or higher.

10. Transfer of Title. Customer and Dealer agree to cooperate with one another to execute such document and take such actions as may be reasonably required to transfer title to an Equipment item to a third-party purchaser. Customer hereby appoints Dealer as its attorney-in-fact for the limited purpose of transferring title to Equipment items sold to third-party purchasers in accordance with the terms of this agreement. Customer’s appointment of Dealer as its attorney-in-fact shall be deemed to be revoked with no further action upon the transfer of the last Equipment item.

11. Sales Tax. Dealer agrees that it is responsible for the collection of all sales, use, or other transfer tax owed on the sale of the Equipment. Dealer agrees to collect the applicable taxes and report the same on its applicable sales, use or transfer tax returns.

12. Insurance. During the term of this Agreement, Customer shall be responsible for maintaining any and all insurance or paying any insurance premium for the Equipment.

13. Amendment. This Agreement may not be altered or amended, and no right hereunder shall be waived, except by an instrument in writing duly executed by the party or parties to be charged with such amendment or waiver. No waiver of any of the provisions of this Agreement shall be deemed or constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

14. Termination. Upon fifteen (15) days written notice to the other party, either party may terminate this Agreement. Upon termination of this Agreement, Customer shall, at its sole expense, remove all of the Equipment delivered to Dealer from Dealer’s premises and Dealer shall afford Customer reasonable access and time to remove the Equipment.

15. Notices, etc. All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed to have been duly given when actually (i) received by the party to whom it is addressed if hand delivered, or (ii) sent by registered or certified mail (return receipt requested), or telecopy (if transmission is confirmed):

(a) If to Dealer, to:

Action Concrete Pumping Supply

830 East Southern Avenue

Mesa, Arizona 85204

Phone number: (480) 907-7315

(b) If to Customer, to:

16. Parties in Interest. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Except as expressly set forth herein, no party hereto shall assign, delegate or transfer, or grant a security interest in, its rights, duties or obligations hereunder to any third-party.

17. Arbitration. Any controversy or claim arising out of or relating to this Agreement, or any breach hereof except as set forth below, shall be decided and settled by binding arbitration in accordance with Title 9 of the U.S. Code (United States Arbitration Act) and the commercial Arbitration Rules of the American Arbitration then in effect. The place of Arbitration shall be Arizona.

18. Governing Laws. This Agreement shall be construed and enforced in accordance with the laws of the state of Arizona without regard to the provisions thereof regarding conflicts of laws.

19. Entire Agreement; Prior Agreements. This Agreement represents the entire agreement of the parties with respect to the matters contemplated herein. All prior agreements, representations, warranties, covenants or understandings, verbal or written, regarding the subject matter hereof are hereby terminated and superseded by the execution and delivery of this Agreement and shall be of no further force or effect.

20. Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. But if any provision of this Agreement shall be prohibited by or invalid under

applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

Customer: _____

By: _____
Printed Name: _____
Signature: _____
Title: _____

Dealer: Action Concrete Pumping Supply

Printed Name: **Scott Neely** _____
Signature: _____
Title: **President** _____

Action Concrete Pumping Supply (Dealer)

830 East Southern Avenue, Mesa, Arizona 85204 *Phone (480) 907-7315

EXHIBIT A (Equipment)

Customer Name: _____
Address: _____
Phone: _____

Items Consigned

Make	Model	Description	Selling Price

Additional Information: _____

Check one of the following and sign below:

- There are NO Liens or indebtedness on the equipment listed above.
- I do have liens and indebtedness on the equipment listed above.
Please specify which equipment have liens/indebtedness, lender name and address.

Signed by: _____