



# BOBCAT® of Helena

## RENTAL AGREEMENT

WO#: \_\_\_\_\_

<b>Customer Name:</b>		<b>DL#:</b>		
<b>Physical Address:</b>		<b>City:</b>	<b>State:</b>	<b>ZIP:</b>
<b>Phone Number:</b>		<b>Insurance Policy #(if applicable):</b>		
<b>Equip No.</b>	<b>Machine Model / Serial No.</b>	<b>Scheduled Rental Dates</b>	<b>Hours Out</b>	<b>Fuel</b>
<b>Attachment(s) and Trailers</b>		<b>Serial Number</b>		<b>Scheduled Rental Dates</b>

**IMPORTANT. PLEASE READ CAREFULLY BEFORE SIGNING:**

Any use over the allotted hours will be assessed at 1.5 times the standard rate. Weekend rentals must be returned by 9:00 am Monday morning. Machine(s) must be returned at the same or higher fuel level or charges will be added. Customer is responsible for loading, unloading, and securing the machine on the trailer. If excessive cleaning is required upon return, a \$100 fee will be assessed. Any smoking inside the cab of the machine will result in a \$100 fee. Late fees will be assessed at dealer's discretion. Customer is responsible for all damages, including but not limited to cosmetic damage, damages to tires, glass, tracks, and hydraulics. Cargo on rented trailers must not exceed 10,700 lbs. In the event of an insurance claim, the customer is responsible for the insurance deductible of \$500. **CUSTOMER INITIALS:** \_\_\_\_\_

DELIVERY: \$ \_\_\_\_\_ FUEL: \$ \_\_\_\_\_ INSURANCE: \$ \_\_\_\_\_ TOTAL: \$ \_\_\_\_\_

**PLEASE READ INFORMATION BELOW AND ON NEXT PAGE BEFORE SIGNING CONTRACT**

Every Day is a rental day. We charge for all time out. Powered equipment has limited working hours.

Return equipment during business hours only.  
Customer is responsible for equipment left unattended.

Customer is responsible for returning equipment and/or attachments full of fuel and clean. If not, Bobcat of Helena will charge \$12.00/ga for fuel. Clean up will be based on a labor rate of \$85.00/hr.

MONTANA LAW PROVIDES FOR CRIMINAL PENALTIES FOR FAILURE TO RETURN RENTED OR LEASED PERSONAL PROPERTY SEE SECTION 45-6-309, MONTANA CODE ANNOTATED AS PRINTED ON NEXT PAGE.

**IMPORTANT. PLEASE READ CAREFULLY BEFORE SIGNING:**

This is a legally binding Contract. Important Terms and Conditions appear on page 2, hereof (including Lessor's disclaimer of all liability for personal injuries and property damage, and details of your obligations). You, for yourself and for the "Lessee" identified herein, acknowledge and agree forth on the front and reverse sides of this Rental Contract, that you have received a complete and legible copy of this Contract and that you have carefully reviewed, fully understand, and agree to all of the terms and agreements set, and that you personally guarantee the Lesser's prompt payment and Performance of its obligations hereunder. ANY DIFFERENT OR ADDITIONAL TERMS, WHETHER ORAL OR WRITTEN, ARE HEREBY OBJECTED TO AND SHALL NOT BE ENFORCEABLE UNLESS SEPARATELY (AND SPECIFICALLY) APPROVED IN WRITING BY LESSOR. By signing below I authorize Bobcat of Helena to make appropriate charges to my credit card. By signing below I understand the terms above.

Name (Printed) \_\_\_\_\_ Customer Signature \_\_\_\_\_ Date: \_\_\_\_\_

RENTER MUST CALL WITHIN 30 MINUTES OF EQUIPMENT FAILURE - BOBCAT OF HELENA WILL ONLY SERVICE/DELIVER WITHIN 50 MILES.

## TERMS AND CONDITIONS OF RENTAL AGREEMENT

(1) **DEFINITIONS** As used herein, "Page 1" refers to the first page or "face" of this contract; "Rented Item(s)" means the items rented to you, as identified on Page 1 (including any "Instructions" provided per the terms of Section (4) below), "Lessee," "Customer," "you" and "your" mean the customer or "Lessee" identified on Page 1 and "SG," "Lessor," "we," "us" and "our" mean Shepherd's Garage, A Montana corporation, located in Dillon and Jackson, Montana.

(2) **RENTAL** You agree to rent the Rented Item(s) from SG for the period(s) specified on Page 1 (the "Term") and to pay us our stated rental rate(s) (the "Rent"), together with any other charges accruing hereunder, without proration, reduction or setoff, until all the Rented Item(s) is/are returned to and accepted by SG. Unless otherwise specifically agreed by SG, all rental rates are for normal use of the Rented Item(s) on a single-shift basis during the Term, not exceeding 8 hours per day, 40 per week, and/or 160 hours per month. The Rent will be increased for any additional time or use. No allowance will be made for weekends, holidays, time in transit or any other period of nonuse. We have estimated the Rent based on your estimate of the length of the Term (the "Estimated Rent"). You agree: (a) to pay SG: (i) the Estimated Rent, together with any deposit specified on Page 1 prior to commencement of the Term (the "Prepayment"); and (ii) any additional amounts coming due hereunder upon demand; and (b) that (i) SG may deduct any amount you owe us from any Prepayment; (ii) no interest will accrue on any Prepayment; and (iii) no Prepayment will be deemed a limit of your liability to SG. Anything remaining with, in or on any Rented Item(s) upon return will, at our option, be deemed surrendered and become the property of SG.

(3) **DELIVERY/RETRIEVAL** If we agree to deliver and/or retrieve any Rented Item(s), you agree to: (a) pay our stated charge(s) for delivery, retrieval and time spent awaiting access to the Site; (b) be present at the Site at the agreed time(s); and (c) ensure all delivery personnel have reasonable access to the Site. SG will not be responsible for any delay(s) caused by the acts or omissions of any other parties, including any providers of other equipment, products or services ("Other Providers") for which you hereby release and agree to indemnify, defend and hold harmless SG. If you are not present upon delivery and/or retrieval of the Rented Item(s), you agree to accept the statements of our representatives regarding the same (including status, condition and quantities).

(4) **INSPECTIONS/SAFETY** Upon your execution of this Contract (or upon later delivery of the Rented Item(s), unless you immediately reject it/them), you represent, warrant and agree that: (a) each Rented Item (i) is in good repair and operating condition and is in all ways acceptable to you; (ii) is appropriate for your purposes; and (iii) was selected solely by you, not based on any recommendation by SG; and (b) you; (i) have received, read and understood the training, instructions, user manuals, maintenance requirements, and other information, if any (including all training required under applicable EPA, OSHA and/or ANSI Standards if any) regarding the proper and safe transportation, installation, fueling, use, maintenance and storage of the Rented Item(s), (collectively, "Instructions"); (ii) will fully comply therewith (including by using only ultra-low sulfur diesel fuel in all "Tier-4" diesel engines in compliance with the EPA's Tier 4 regulations); (iii) have been made aware of the need to use all recommended and required safety equipment; (iv) will use each Rented Item only for its intended purpose, in a reasonable and safe manner; (v) will give any required notice(s) to governmental authorities; (vi) will timely obtain all necessary licenses, authorizations and approvals; (vii) will advise all local utilities and cable companies before using any Rented Item(s) to dig or disturb the ground surface to do so, call 811 or 800-424-5555, or go to montana811.org, at least two (2) full business days prior to doing so; (viii) will immediately cease using any Rented Item that malfunctions or proves defective (a "Malfunction"); and (ix) will ensure that all others comply herewith.

(5) **USE** You will ensure that each Rented Item is used safely and only: (a) for its intended purpose(s); (b) within its rated capacity; (c) unless otherwise specifically agreed by SG on a case-by-case basis, at the address set forth on Page 1 (the "Site"); (d) by properly qualified, certified and/or licensed (as applicable) operators; and (e) otherwise in full compliance with the "Instructions" as well as all applicable laws, rules, and regulations, at all times. You will not, nor will permit anyone else to: (i) abuse, misuse, overuse, remove, conceal, repair, modify, damage or destroy Rented Item; (ii) violate any applicable policy of insurance or warranty; or (iii) take possession of or exercise control over any Rented Item without our prior consent, granted, conditioned or withheld in our sole discretion.

(6) **PROTECTION/RETURN** You will protect each Rented Item at all times, keep it safely and securely stored and locked when not in use, and return it to SG on time, clean and otherwise in good order, condition and repair, properly serviced and maintained, and full of the appropriate fuel, fluid and lubricants. If you fail to do so, you will pay SG: (a) Rent for each succeeding full rental period until all Rented Item(s) have been returned or replaced as required above; and (b) all associated costs and expenses, both direct and indirect, incurred by SG.

(7) **MALFUNCTIONS** In the event of a Malfunction (as defined in Section (4) above), you will immediately notify SG, and we will (at our option): (a) repair the subject Rented Item; (b) provide you with a replacement; (c) make a comparable item available as soon as reasonably possible; or (d) return the unused portion of the Rent previously received from you and cancel this Contract. The foregoing remedy is **EXCLUSIVE**. SG will have no obligation other than as set forth herein regarding Malfunctions, and you hereby waive and relinquish any and all claims and damages, both direct and indirect, arising therefrom or in connection therewith against SG.

(8) **INHERENT DANGERS WARNING: CERTAIN RENTED ITEMS (INCLUDING WITHOUT LIMITATION, EQUIPMENT USED FOR EXCAVATING, LOADING, MOWING AERATING, LIFTING, SAWING, CUTTING, GRINDING, COMPACTING, DIGGING, NAILING, HAMMERING, WELDING, SPRAYING, BREAKING, BORING, AND/OR TOWING) IS/ARE INHERENTLY DANGEROUS AND SHOULD BE USED, TRANSPORTED, MAINTAINED AND REPAIRED WITH GREAT CARE ONLY BY PROPERLY QUALIFIED, INSTRUCTED, AND IF APPLICABLE, LICENSED INDIVIDUALS.**

(9) **INSURANCE** You will maintain any and all insurance we deem necessary, but in any event, (unless we otherwise agree) at least: (a) commercial general liability insurance with minimum limits of \$1,000,000 per occurrence; and (b) "all-risk" or inland marine insurance (or the equivalent), including coverage for property in transit, covering all loss of, and damage to, the Rented Item(s) for the full (new) replacement value thereof. All such policies shall: (i) name SG as an additional insured and loss payee on a closed clause basis; (ii) waive subrogation against SG; and (iii) be primary. If we require you to provide such insurance, you will: (A) provide us with copies of the proper endorsements for such coverages specifying that they will not be cancelled during the Term; and (B) notify us immediately in the event of any accident, loss, damage to or destruction of any Rented Item(s).

(10) **DAMAGE WAIVER** If we have offered, and you have purchased, an Operational Damage Waiver (identified on Page 1 if available), you will have no liability to SG for physical damage to the applicable Rented Item(s), except as provided in our separate Damage Waiver Addendum. **DAMAGE WAIVER IS NOT INSURANCE, NOR IS IT WARRANTY.**

(11) **DEFAULT** If you: (a) fail to fully and timely comply with any provision of this Contract; (b) provide any incorrect or misleading information to SG; (c) become insolvent; (d) make an assignment for the benefit of creditors or suffer or acquiesce to the appointment of a trustee, receiver or liquidator, or (e) cease conducting business; you will be in default, whereupon, SG may, without notice or liability to you: (i) discontinue your rental of any or all Rented Item(s); (ii) seek relief from any automatic stay; (iii) recover, lock or disable any Rented Item(s) without being guilty of breach or trespass; (iv) perform any or all your obligations hereunder on your behalf, without being obligated to do so; (v) purchase replacement (new or used, in our sole discretion) Rented Item(s) as necessary; (iv) recover from you our associated direct, indirect, incidental and consequential damages, costs and expenses (including without limitation, reasonable attorneys' fees, Rent for the remainder of the Term and/or anticipated profit); (vii) appear in court and confess judgement on your behalf; and/or (viii) pursue any and all other rights and/or remedies available hereunder, at law and/or in equity.

(12) **OWNERSHIP** Except with respect to Rented Items which SG rents from one or more third parties (each, an "Owner") and then re-rents to you ("re-rented items"), SG alone owns and will retain title to all Rented Items. Your only right with respect to the Rented Item(s) (including re-rented item(s)) is to use it/ them in full compliance with this Contract during the Term. You will not permit the taking or existence of any lien, claim or encumbrance on any Rented Item.

(13) **ASSIGNMENT/SUBLEASING** You may not transfer, sublease or assign any Rented Item or this Contract (a transfer of over 50% of the equity or voting control of the Customer will be deemed a "transfer") without the prior written consent of SG, and if applicable, the Owner of any re-rented item(s). SG may sell and/or assign all or any part of its interests in the Rented Item(s) and/or this Contract. You agree that UPON NOTICE OF SUCH ASSIGNMENT, YOU SHALL ATTORN TO THE ASSIGNEE AND SHALL PAY DIRECTLY TO SUCH ASSIGNEE (UNLESS OTHERWISE DIRECTED BY SG) WITHOUT ABATEMENT, REDUCTION OR SETOFF, ALL AMOUNTS THEREAFTER COMING DUE HEREUNDER. Upon such assignment and except as may otherwise be provided therein: (a) such assignee shall have and be entitled to exercise any and all rights and remedies of SG hereunder (including without limitation, all rights to insurance and indemnity protection described in this Contract); (b) all applicable references in this Contract to "Lessor" or "SG" shall, with respect to all future rights and obligations, thereafter be deemed to mean such assignee; and (c) such assignee shall not be chargeable with, or responsible for the payment or performance of, any obligations or liabilities of SG which accrued prior to the effective date of the subject assignment.

(14) **NO WARRANTIES** SG IS NOT THE MANUFACTURER OR DESIGNER OF ANY RENTED ITEM(S). ACCORDINGLY, ALL RENTED ITEMS ARE PROVIDED "AS-IS". NEITHER SG NOR ANY OWNER, MAKES ANY WARRANTY, EXPRESS OR IMPLIED (INCLUDING ANY WARRANTY OF MERCHANTABILITY, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, FUNCTION, DESIGN, CAPACITY, FREEDOM FROM DEFECTS OR WORKMANLIKE PERFORMANCE) REGARDING ANY RENTED ITEM(S) OR SERVICE(S) THAT MAY BE PROVIDED BY SG OR ANY OWNER, NOR DOES SG OR ANY OWNER MAKE ANY WARRANTY AGAINST INTERFERENCE OR INFRINGEMENT, ALL OF WHICH YOU WAIVE. NO DESCRIPTIONS OR ADVERTISEMENTS BY SG OR ANY OWNER CONSTITUTE REPRESENTATIONS OR WARRANTIES.

(15) **INDEMNITY AND HOLD HARMLESS** YOU ASSUME ALL RISK OF INJURY, LOSS, DAMAGE, DESTRUCTION AND ENVIRONMENTAL CONTAMINATION OF, TO, AND/OR ARISING IN CONNECTION WITH THE RENTED ITEM(S), INCLUDING WITHOUT LIMITATION, ANY AND ALL LIABILITIES, CLAIMS AND DAMAGES ARISING FROM IN CONNECTION WITH THE SELECTION, INSPECTION, DESIGN, MANUFACTURE, USE, LOADING, UNLOADING, TRANSPORTATION, STORAGE, MAINTENANCE, REPAIR, AND/OR RETAKING OF THE RENTED ITEM(S), WHETHER OR NOT YOUR FAULT. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YOU HEREBY RELEASE AND DISCHARGE SG AND ALL OWNER(S) FROM AND AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS SG AND SUCH OWNER(S), AND THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, OWNERS, REPRESENTATIVES, INSURORS, SUBROGEEES, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL LIABILITIES, CLAIMS, DAMAGES, LOSSES, COSTS AND EXPENSES (INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES) ARISING FROM OR ASSOCIATED WITH AND/OR ALL OF SUCH RENTED ITEM(S) AND SERVICES.

(16) **UCC** You waive and all right and remedies conferred upon you under the Uniform Commercial Code, as well as any and all incidental, consequential, special and punitive damages against SG and each Owner. Your duties hereunder are UNCONDITIONAL.

(17) **MISCELLANEOUS** This Contract, and any Addenda signed or provided by SG, represent the entire agreement between you and SG. This contract supersedes all other agreements and representations (including SG's website and advertising). The terms of this Contract are severable. If any provision hereof is deemed invalid or unenforceable by any court of competent jurisdiction, such provision will be deleted, and the remainder of this Contract, will remain valid and in full force and effect. Time is of the essence. There are no third-party beneficiaries hereto. SG may, without notice or liability to you, inspect any Rented Item(s) at any time. If any performance required of SG is rendered impractical as a result of any omission of any Other Provider(s) or any "Act of God" (e.g. any event, fact or circumstance beyond SG's reasonable control), SG will be excused from such performance. You waive the benefits of any and all statutes of limitations regarding SG's rights and remedies. All amounts due hereunder but not timely paid will bear interest at the highest rate permitted under applicable law until paid. You authorize SG to submit all amounts coming due hereunder for payment on your debit or credit card and hereby waive all claims to the contrary. You agree to pay SG the maximum lawful charge for any check you write which is returned unpaid. This Contract (a) is a true (operating) lease, and not a financing arrangement; and (b) cannot be further amended or extended except in a writing signed by both you and SG. SG's maximum liability in connection with this Contract is limited to the Rent actually paid by you hereunder. This Contract allocates to you the risk of injury, loss of, or damage to, persons or property arising in connection with the Rented Item(s), and that allocation is reflected in a reduced Rent. This Contract will be deemed to apply not only to all Rented Item(s) identified on Page 1, but also to all other items you rent from SG at any time (except only as otherwise agreed by SG). You will pay: (a) SG's attorneys' fees and other costs of enforcing this Contract, and (b) all taxes (including state sales taxes), fines, fees, assessments, and other charges related to each Rented Item. Neither SG's exercise, nor its failure or delay in the exercise, of any rights or remedies will constitute an election of remedies or a waiver of any right remedy SG may have. This Contract shall be interpreted under the laws of Montana, and proper venue for all legal proceedings commenced in connection herewith shall lie solely and exclusively in Beaverhead County, Montana. Your handwritten, digital, electronic, photocopied or facsimiled signature on this Contract will be enforceable as an original for all purposes. By signing this Contract, you personally guarantee the Customer's full and prompt payment and performance of all obligations of Lessee hereunder.

(18) **SALE TERMS** Any item(s) sold to you ("Sale Items"), as provided on Page 1 are provided "As Is" and "With All Faults," and are subject to the terms of Paragraph 4, 5, 8, 14, 15, 16 and, as appropriate 17 hereof. All item(s) not specifically identified as Sale Items on Page 1 will be deemed to be "Rented Item(s)" for the purpose of this Contract.

(19) **WARNING** A person commits theft if he/she obtains the temporary use of property, of another which is available only for hire, by means of threat or deception, or knowing that the use is without the consent of the person providing the property, labor or services. Per Montana Code, Section 45-6-309, a person convicted of failure to return rented or leased personal property not exceeding \$1,500 in value shall be finned not to exceed \$1,500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of failure to return rented or leased personal property exceeding \$1,500 in value shall be imprisoned in the state prison for a term not to exceed 10 years.