

## Rental Terms and Conditions

These Rental Terms and Conditions (these "**Terms**") are, together with the rental agreement delivered by Lessor to Lessee that refers to these Terms (if any) (the "**Rental Agreement**"), the only terms that govern the rental of Equipment (defined below) and provision of Services (defined below) by West Coast Energy Systems, LLC d/b/a Energy Systems, a California limited liability company ("**Lessor**") to the Lessee named in the applicable Rental Agreement ("**Lessee**").

- Certain Definitions.** As used in these Terms: (a) "Equipment" shall mean the machinery, equipment, products (including fluids used in machinery and equipment), parts and other tangible property that are rented by Lessor to Lessee; and (b) "Services" shall mean the labor to be provided by Lessor's technicians, laborers or subcontractors at the Lessee's designated location, including for the purpose of maintenance, fueling, installations delivery and/or pick-up activities.
- Related Documents.** Lessor's performance hereunder is expressly conditioned upon Lessee's agreement to be bound by these Terms. *Lessor hereby specifically objects to any additional or contrary terms and conditions in any document used by Lessee that conflicts with these Terms and none of Lessee's terms and conditions shall apply to these Terms unless reasonably requested by Lessee and expressly agreed to in writing by Lessor.*
- Price.** All prices for Equipment and the flat or hourly labor rates for Services are in U.S. Dollars. Labor rates for Services will be as quoted and, subject to any applicable Federal and State laws. Services will be performed during normal business hours unless otherwise agreed, and labor rates for Services at Lessee's request that extend beyond normal business hours or are performed on Saturday, Sunday or holidays are subject to higher rates. Prices quoted and invoiced *do not* include taxes unless specifically stated. Lessee shall pay Lessor all taxes and fees imposed by applicable law in connection with the sale of Equipment and Services, and Lessor shall remit the same to the applicable taxing authority as required by law. If Lessee is exempt from taxes, it must provide Lessor with the appropriate exemption certificate prior to invoicing.
- Payment Terms.** All payments due from Lessee shall be in U.S. Dollars, without offset, back charge, retention or withholding of any kind unless otherwise agreed to in writing by Lessor. If the rental period set forth in the Rental Agreement (the "**Rental Period**") is 28 days or less, then Lessor will deliver an invoice to Lessee for all amounts due hereunder at the end of the Rental Period. If the Rental Period is longer than 28 days, then Lessor will deliver an invoice to Lessee once every 28 days during the Rental Period for all unpaid amounts due hereunder as of the date of such invoice, provided that the final invoice of the Rental Period will be delivered at the end of the Rental Period. Additionally, Lessor may require a down payment from Lessee for any payments due hereunder prior to the delivery or pick of Equipment or start of Services. For any Equipment or Services that are not paid for at the commencement of the Rental Period or prior to the start of Services, as applicable, Lessee shall pay all invoiced amounts due to Lessor within thirty (30) days from the date of receipt of Lessor's invoice unless Lessor has agreed in writing to extend credit to Lessee and provide other payment terms as agreed to separately. Subject to the good faith resolution of *bona fide* disputes between the parties within a reasonable period of time that the dispute arises, the failure to pay any amounts due under these Terms will be construed as a default under these Terms. In the event of such a default in payment, Lessor will be entitled to collect additional charges for interest on the unpaid balance at the rate of 1% per month or the highest non-usurious rate permitted by applicable law, whichever is lower, as well as reasonable collection fees.
- DISCLAIMER ON WARRANTIES.** LESSOR MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS OR SERVICES, WHETHER EXPRESS, IMPLIED OR STATUTORY, AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- Delivery or Pick Up; Return.** Subject to Lessor's consent, Lessee shall elect to either (a) pick up the Equipment from the applicable office of Lessor or (b) have the Equipment delivered by Lessor to the site designated by Lessee. If the Equipment is delivered by Lessor, then Lessor shall be responsible for delivering the Equipment to the site designated by Lessee and connecting the Equipment at the site (and such delivery and connection shall be included as Services and subject to the applicable labor rates for Services). Lessee hereby acknowledges and agrees that, prior to taking possession of the Equipment (whether the Equipment has been delivered by Lessor or picked up by Lessee) it will inspect the Equipment. By taking possession of the Equipment (whether the Equipment has been delivered by Lessor picked up by Lessee), Lessee acknowledges and agrees that it has inspected and accepted the Equipment and that it finds the Equipment to be in good working order and suitable for Lessee's needs. If Lessor has included pick up services in its offer to Lessee, then Lessor will perform such pick up promptly following the expiration of the Rental Period (and such pick up shall be included as Services and subject to the applicable labor rates for Services). If Lessor has not included pick up services in its offer to Lessee, then, at the expiration of the Rental Period, Lessee will return the Equipment to the applicable office of Lessor that is

designated by Lessor. When the Equipment is picked up by or returned to Lessor, the Equipment shall be in the same condition and repair as it was when Lessee took possession of the Equipment, subject to reasonable wear and tear. Prior to surrendering possession of the Equipment, Lessee shall refill the Equipment to the same level of fuel as the Equipment had when Lessee took possession of the Equipment. If Lessee returns (or Lessor picks up) the Equipment with less than the required level of fuel, Lessee shall pay a fuel service charge equal to the cost of fuel plus \$2.00 per gallon. If Lessor has included pick up services in its offer to Lessee, Lessor shall use commercially reasonable efforts to pick up the Equipment within a commercially reasonable period of time after the end of the Rental Period, and Lessee shall not use the Equipment after the end of the Rental Period, whether or not Lessor has picked up the Equipment. Lessee shall be liable for all damages to or loss of the Equipment from the time the Equipment is picked up by or delivered to Lessee until the time that the Equipment is returned to or picked up by Lessor. Lessee agrees that, if either (i) Lessor has not offered pick up services and Lessee fails to return the Equipment by the end of the Rental Period or (ii) Lessor has offered pick up services and Lessee fails to surrender possession of the Equipment when Lessor attempts to pick up the Equipment, Lessor may, in its sole discretion, retake possession of the Equipment without any notice or legal process whatsoever (and Lessee agrees to indemnify, defend and hold Lessor harmless from any and all Claims and Losses arising from such retaking) and/or Lessor may, in its sole discretion, require Lessee to do any of the following: (a) continue to pay the rental rate(s) applicable to the Equipment as specified in the Rental Agreement, (b) for periods less than 24 hours, pay the full daily rental rate applicable to the Equipment, or (c) pay any increased rental rate(s) in effect at the time of, or after, the expiration of the Rental Period. If Lessee desires to extend the Rental Period, Lessee must provide Lessor with written notice of its request to extend the Rental Period no later than 5 business days prior to the expiration of the Rental Period, and Lessor may accept or deny such request in its sole discretion.

#### **7. Services Performed at Lessee Locations.**

**(a) Lessee Obligations.** When performing Services at Lessee's designated location(s), Lessor's employees and subcontractors (if any) shall have free and unobstructed access to the site at which Services are to be performed. Lessee is responsible for the site where Services shall be performed and shall furnish safe and proper equipment, parts, tools (not otherwise provided by Lessor), safe working conditions, safe storage of Lessor's tools, supplies and equipment, and shall furnish or arrange to furnish by others all necessary lifting equipment, electricity, gas, oil, water and other utilities necessary to perform the Services as well as fuel necessary to operate the Equipment during the performance of Services. Operation of the Equipment is the responsibility of Lessee and Lessor has no responsibility or liability for any maintenance performed by others. Lessee shall obtain all licenses, registrations, and permits necessary for Lessor to perform the Services on Lessee designated location(s).

**(b) Lessor Obligations.** When performing Services at Lessee's designated location(s), Lessor agrees at all times that its employees and subcontractors (if any): (i) shall work in a safe manner and comply with the site rules provided in writing by Lessee that govern safety and conduct work on the premises; (ii) shall comply with the requirements of the licenses, registrations and permits obtained by Lessee; and (iii) shall leave the premises after completion of the Services in a clean and orderly condition and as otherwise was found at the commencement of the Services.

**8. Insurance.** Lessor agrees to maintain workers' compensation insurance coverages as required by the laws of the state where Services are performed, as well as commercial general liability and automobile liability insurance coverages consistent with industry practices and when performing Services at Lessee's designated location(s) and, as reasonably requested by Lessee, will provide Certificates of Insurance that name Lessee and other appropriate parties designated by Lessee as additional insureds. Lessee shall provide a proof of insurance (Certificate of Liability) prior to taking possession of the Equipment. If Lessee does not provide sufficient proof of insurance in an adequate amount (as reasonably determined by Lessor), then Lessee shall pay a 15% damage fee waiver.

**9. Indemnity.** To the fullest extent permitted by law, Lessee shall indemnify, defend and hold harmless Lessor and its affiliates and their respective agents, representatives, officers, directors, managers, members and employees from and against all damages, losses, liabilities, obligations, costs, fines, judgments, penalties and expenses (including, but not limited to reasonable fees and charges of attorneys) ("**Losses**") relating to arising out of or resulting from any claim, demand, suit or action of Lessor or any third party (collectively, "**Claims**") to the extent such Claims arise out of or result from Lessee's (or any of its affiliates or their respective agents, representative's, officer's, director's, manager's, member's or employee's): (i) breach of these Terms or the Rental Agreement; (ii) negligent or wrongful acts or omissions; and (iii) failure to abide by applicable laws.

**10. Environmental and Health & Safety.** Lessee shall provide and maintain safe working conditions at Lessee's designated location(s), including, without limitation, by implementing appropriate procedures regarding arsenic, asbestos, lead or any other waste material or hazardous substances as defined by any legislation or international convention ("**Hazardous Materials**") relevant or applicable to the Services as well as confined space entry affixing labels or signs containing warnings and safety and operation procedures and instructions as required by applicable laws and regulations. Lessee shall timely advise Lessor in writing of all health, safety, security and

environmental requirements procedures and instructions applicable at the work site, and of the existence of any Hazardous Materials or other conditions that may affect Lessor's work or personnel at the work site. Without limiting Lessee's responsibilities under this Section 10, the Lessor has the right, but not the obligation to, from time to time, review and inspect applicable health, safety, security and environmental documentation, procedures and conditions at the work site. If, in Lessor's reasonable opinion, the health, safety, or security of personnel or the work site is, or is apt to be, imperiled by security risks, terrorist acts or threats, the presence of or threat of exposure to Hazardous Materials or unsafe working conditions, Lessor and its representatives have the same responsibility and authority as Lessee to stop performance of the Services and leave the designated location(s).

11. **Use of Equipment.** Lessee shall use reasonable care to ensure that the Equipment is in proper working condition before each use of the Equipment by Lessee. Lessee agrees to care for the Equipment properly, to use it within its rated capacity, to restrict use to Lessee's authorized personnel and to prohibit anyone other Lessee's or Lessor's authorized personnel from maintain, repairing or using the Equipment. Lessee agrees to notify Lessor immediately of any accident involving the Equipment or any failure of the Equipment. Lessee agrees not to perform any maintenance on the Equipment. Lessee shall deliver to Lessor a weekly notice indicating the number of hours that Lessee has run the Equipment. Lessee acknowledges and agrees that the Equipment requires maintenance for every 250 hours of operation, and Lessee shall grant Lessor access to the Equipment in order to provide such maintenance. Unless otherwise agreed, such maintenance will be performed by Lessor during normal business hours and upon no less than 24 hours' prior notice from Lessor to Lessee. In the event the Equipment is damaged or is not operational, the Rental Period shall continue and all payments due shall continue to be paid. Lessee agrees to operate the Equipment in accordance with all applicable laws and regulations.

12. **Limitation of Liability.** Except for Losses or Claims covered by the indemnification obligations set forth in Section 9 or to the extent Losses or Claims arise out of or result from the gross negligence or willful or illegal misconduct of either party, the liability of Lessor and Lessee for Losses or Claims shall be limited to the amounts payable under the Rental Agreement. Notwithstanding any other provision in these Terms, in no event shall either the Lessee or the Lessor be liable to the other for consequential, special, punitive or indirect damages, including, without limitation, damages or losses in the nature of business or service interruption, loss of reputation, loss of anticipated profits or anticipated revenue, or cost of capital.

13. **Timely Delivery and Excused Delays.** Lessor agrees to use best efforts to deliver the Equipment and Services covered under these Terms in accordance with the agreed schedule. Lessor shall have no liability for any Losses to or Claims by Lessee for any failure to deliver the Equipment or perform Services to Lessee in accordance with the agreed schedule if such failure arises from causes beyond the reasonable control of Lessor, including but not limited to, delays attributable to the Lessee or Lessee's other vendors, delays of suppliers or carriers, government actions, shortages of materials, fuel or power, strikes or other labor disturbances, pandemics, epidemics, fires, floods, acts of God, war, acts of terrorism, and the effects of civil disobedience.

14. **Scope of Supply and Changes.** Details about the scope of supply of Equipment or Services will accompany these Terms as part of the Rental Agreement, proposal or quotation or in a separate attachment. All designs and specifications with respect to Equipment sold which may have been shown in catalogues or product descriptions are subject to change without notice. As a flow down provision from the manufacturers of Equipment, Lessor reserves the right to change the details of any Equipment provided that such change shall not impair the performance or critical dimensions of such Equipment. Changes in the scope of supply of Equipment and/or Services as mutually agreed or as required by changes in applicable laws, codes, rules and regulations, may result in a change in the price and delivery schedule, but require the written agreement of both Lessor and Lessee by change order or other amendment to these Terms.

15. **Cancellation.** Confirmed and accepted orders for Equipment and/or Services may not be cancelled by Lessee after acceptance by Lessor unless agreed to by Lessor, in which case Lessor will be entitled to reasonable cancellation charges including, without limitation, payment for performance up to and through the date of termination.

16. **Choice of Law; Waiver.** All matters arising out of or relating to these Terms or the Rental Agreement are governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule. No failure to exercise, or delay in exercising whether in part or full, any rights, remedy, power, or privilege arising from these Terms operates or may be construed as a waiver thereof.

17. **Severability; Assignment.** If any term or provision of these Terms or the Rental Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of these Terms or invalidate or render unenforceable such term or provision in any other jurisdiction. Lessee shall not sublease, sub-rent, re-rent, assign or loan the Equipment without first obtaining the written consent of Lessor, and any such action by Lessee, without Lessor's written consent, shall be void. Unless otherwise agreed by Lessor in writing, Lessee agrees to keep the Equipment at the address of Lessee that is set

forth in the Rental Agreement. Lessor may, at any time, assign to any person the Rental Agreement, any rights thereunder or hereunder or the Equipment.

18. **Survival.** Provisions of these Terms and the Rental Agreement, which by their nature should apply beyond the completion or termination of the Rental Period, will remain in force after any such completion or termination.

19. **Force Majeure.** Any delay or failure of either party to perform its obligations under this Agreement (other than failure to pay in any amounts due) will be excused to the extent that the delay or failure was caused directly by an event beyond such party's control, without such Party's fault or negligence and that by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable (which events may include natural disasters, embargoes, explosions, riots, wars, acts of terrorism, outbreaks of disease, pandemics, epidemics, local or national emergencies, supply chain disruptions, strikes, labor stoppages or slowdowns or other industrial disturbances, and shortage of adequate power or transportation facilities).

20. **Compliance with Applicable Laws.** Lessor and Lessee shall be in compliance with and shall comply with all applicable laws, regulations and ordinances, including without limitation export control and compliance laws, tax laws and anti-bribery & corruption laws. Each party shall have and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under these Terms.

21. **Entire Agreement.** These Terms, together with the Rental Agreement, constitute the entire agreement of the parties and supersede all prior discussions, arrangements, negotiations, representations and warranties, if any, relating to the Equipment or Services between Lessor and Lessee. These Terms may only be amended or modified in a writing signed by an authorized representative of each party.

22. **Title / No Purchase Option / No Liens.** Neither the Rental Agreement nor these Terms are a contract of sale, and title to the Equipment shall at all times remain with Lessor. Lessee has no option or right to purchase the Equipment. Lessee shall keep the Equipment free and clear of all liens and encumbrances.

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