

## EQUIPMENT LEASE

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THIS EQUIPMENT LEASE ("Lease") is made by and between **SMS Precision Tech** ("Lessor"), a limited liability company organized under the laws of the State of Texas, and Lessee, as designated on the associated Quote or Sales Order (each a "Party", and together "Parties").

In consideration of the use of the Equipment, the Lease Payments, the mutual covenants and promises in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Lessor leases the Equipment to the Lessee, and the Lessee leases the Equipment from the Lessor on the following terms:

**1.0 Definitions.** The following terms shall have the meanings set forth below:

**"Effective Date"** is the date the custody and possession of the equipment passes between the Lessor and the Lessee.

**"Equipment"** means the equipment subject to the Lease as designated on the face of the Quote or Sales Order and incorporated herein by reference as though set forth in its entirety.

**2.0 Lease Payments.** The daily/monthly lease charge is specified on the associated quote document. Lease charges will be invoiced on the last day of each month for the activity of that month. Lessee shall pay the amounts due within thirty (30) days after the invoice date, unless otherwise agreed in writing.

**3.0 Term and Termination.**

3.1 **Term.** This Lease shall be effective as of the Effective Date. This Lease shall remain in effect for an initial term of thirty (30) days (the "Initial Term") and shall automatically renew for successive thirty (30) day terms (each a "Renewal Term") (collectively, the "Lease Term"), unless earlier terminated as provided herein.

3.2 **Termination.** Either Party may terminate this Agreement by providing thirty (30) days prior written notice of termination to the other Party. Following notice of termination, the Lessee may return the Equipment at any point, but shall remain obligated to pay any amounts owed through the end of the Lease Term, as well as any other charges due and owing under this Lease.

**4.0 Transport.** Lessee shall be responsible for transporting the Equipment, and Lessee shall be responsible for equipment beginning with pick up. Lessee is responsible for all shipping charges and shall provide insurance to cover the equipment beginning at pick up (see Section 14.0 below). If Lessee requests Lessor to arrange for transport the Equipment and Lessor agrees, then Lessor will invoice Lessee for such delivery, and Lessee shall pay the invoice within fifteen (15) days after the date of the invoice. Lessee acknowledges that, if Lessor agrees to arrange for transport, Lessee's obligations under this provision shall remain in full force and effect.

**5.0 Inspection and Acceptance.** Lessee shall inspect each item of Equipment upon each delivery. Lessee shall immediately notify Lessor in writing of any damages, defects, or other problems relating to the Equipment. If Lessee fails to provide such notice within twenty-four (24) hours of delivery of the Equipment, Lessee will be conclusively presumed to have accepted the Equipment in good working order.

## **6.0 Use of Equipment.**

6.1 Location. The Equipment shall be located and used at various locations within the Continental United States as determined by the Lessee during the Lease Term. Lessee shall notify Lessor in writing of the initial location and any movements in location and the associated movement dates within twenty-four (24) hours of the Equipment's movement. Any transportation costs associated with the Equipment's movement shall be borne solely by Lessee.

6.2 Operation and Maintenance. Lessee shall at its sole cost maintain the Equipment in good working condition and use and operate the Equipment in a careful and appropriate manner, including providing any necessary training to employees or end users for the safe and compliant operation of the Equipment, for the purpose for which it was designed and not for any other purpose, safely and in compliance with all laws, ordinances, and regulations relating to the possession, use, and maintenance of the Equipment. Lessee shall at its sole cost furnish all labor, parts, and materials required to keep the Equipment in good and safe mechanical working order during the Lease Term.

6.3 Taxes and Fees. Lessee shall be responsible for all taxes, registration, permitting, and licensing requirements, if any, on the Equipment or related to its use that arise during the Lease Term. Lessee shall be responsible for all governmental charges in connection with the Equipment. Lessee shall immediately reimburse Lessor for any damages or expenses resulting from Lessee's failure to pay or discharge obligations under this section.

6.4 Alterations. Lessee shall make no alterations to the Equipment without the prior written consent of Lessor. Any alterations made shall be the property of Lessor and subject to the terms of this Lease.

6.5 Right of Inspection. Lessor shall have the absolute right to inspect the Equipment during Lessee's normal business hours.

**7.0 Custody and Return.** Lessee shall be deemed to have custody and possession of the Equipment when (i) it is first handled by the freight operator for transport to Lessee, if delivered by a third party or Lessee, or (ii) immediately after being delivered to Lessee's location, if delivered by the Lessor. Lessee's right of custody and possession shall terminate at the end of the last day of the Lease Term, and Lessee, at the end of the Lease Term, shall return the Equipment to Lessor at Lessee's expense in good repair, condition, and working order, ordinary wear and tear resulting from proper use thereof alone excepted ("Required Condition"). If the Equipment is not returned in the Required Condition, then Lessor shall repair or cause to be repaired by a third party, the Equipment to the Required Condition and shall invoice Lessee for such repairs which shall be paid by Lessee within thirty (30) days of receipt of the invoice. The Equipment shall be deemed to have passed into the custody and possession of Lessor after signing of the bill of lading or similar certificate by Lessor's representative at the place and time designated by Lessor in writing, and if not so designated, Lessor's primary place of business during normal business hours.

**8.0 Holding Over.** There shall be no holding over by Lessee of the Equipment; however, in the event that Lessee fails to return the Equipment to Lessor as required in Section 9.0, in addition to any other remedies available to Lessor in law or under the Lease, for such holdover period, Lessee shall pay Lessor a monthly lease payment equal to 2.0 times the monthly Lease Payment prescribed in this Lease.

**9.0 Ownership and Legal Status of Equipment.** The Equipment will be deemed to be personal property, regardless of the manner in which it may be attached to any other property. Lessor shall be deemed to have retained title to the Equipment at all times, unless Lessor transfers the title by sale. Lessee shall immediately advise Lessor regarding any notice of any claim, levy, lien, or legal process filed or issued against the Equipment.

**10.0 “AS IS” -- No Warranty.** Buyer acknowledges and agrees that Lessor has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, leases, or guaranties of any kind or character whatsoever, either express or implied, oral or written, past, present, or future, of, as to, concerning, or with respect to the Equipment leased, including the suitability, merchantability, marketability, profitability, or fitness for a particular purpose of the of the Equipment, the manner, quality, state of repair, or lack of repair of the Equipment, the Equipment’s compliance with any applicable laws, rules, ordinances, or regulations of any applicable governmental authority, or any other matter with respect to the Equipment. Additionally, no person acting on behalf of Lessor is authorized to make, and by Lessee's execution hereof, Lessee acknowledges that no person has made any representation, lease, statement, warranty, guaranty, or promise regarding the Equipment or the transaction contemplated by this Lease; and no such representation, warranty, lease, guaranty, statement, or promise, if any, made by any person acting on behalf of Lessor shall be valid or binding upon Lessor. Subject to Lessee’s inspection upon delivery, Lessee accepts the Equipment “as is” and “with all faults” and assumes the responsibility for the condition of the Equipment. No defect regardless the cause or consequence shall relieve Lessee from performance under this Lease, including Lease Payments.

**11.0 Risk of Damage or Loss.** Lessee shall be responsible for any loss, theft, or damage to the Equipment from any cause, whether or not insured, while the Equipment is in the custody and possession of Lessee or which loss, theft, or damage arises from Lessee’s use or handling of the Equipment. If the Equipment is lost, stolen, or damaged, Lessee will promptly notify Lessor of such event. In addition, Lessor shall have the option to require Lessee to: (a) promptly repair the Equipment to return it to good working order; (b) replace the Equipment with like equipment of the same or later model, in good condition and working order, free and clear of all liens and encumbrances; or (c) pay Lessor the value of the Equipment as determined by the Lessor. In no event shall such loss, theft, or damage to the Equipment or any part thereof impair or relieve any obligation of Lessee, including the obligation to make the Lease payments, which shall continue in full force and effect throughout the Lease Term.

**12.0 Insurance.** Lessee shall procure and continuously maintain and pay for at all times during the Lease Term: (a) all risk insurance against loss, theft, and damage to the Equipment for not less than the full replacement value of the Equipment, naming Lessor as loss payee; such insurance shall include coverage for down hole loss of the Equipment, and (b) combined public liability and property damage insurance with limits as approved by Lessor, naming Lessor as additionally named insured and a loss payee. The insurance shall be in such form and with such company or companies as shall be reasonably acceptable to Lessor, shall provide at least thirty (30) days' advance written notice to Lessor of any cancellation, change, or modification, and shall provide primary coverage for the protection of Lessee and Lessor without regard to any other coverage carried by Lessee or Lessor protecting against similar risks. Lessee shall provide Lessor with an original policy or certificate evidencing such insurance. Lessee hereby appoints Lessor as Lessee’s attorney in fact with power and authority to do all things, including,

but not limited to, making claims, receiving payments, and endorsing documents, checks, or drafts necessary or advisable to secure payments due under any policy of insurance required under this Lease. The cost of making and prosecuting insurance claims under this section shall be for the account of the Lessee.

**13.0 LIABILITY AND INDEMNITY. TO THE FULLEST EXTENT PERMITTED BY LAW, LESSEE SHALL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY LESSOR, AND HOLD HARMLESS LESSOR AND ITS RESPECTIVE AFFILIATED ENTERPRISES, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES, AND AGENTS, FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES), AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION BY ANY PERSON OR ENTITY, ARISING OUT OF, CAUSED BY, OR RESULTING FROM LESSEE'S USE OF THE EQUIPMENT AND/OR LESSEE'S PERFORMANCE UNDER THIS LEASE, INCLUDING THE SELECTION, DELIVERY, POSSESSION, USE, OPERATION, REPAIR, OR TRANSPORTATION OF THE EQUIPMENT AND ANY PAYMENTS DUE HEREUNDER, INCLUDING TAXES. THE PROVISIONS OF THIS SECTION SHALL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH LESSOR MAY HAVE BY LAW.**

**14.0 Limitation of Damages.** IN NO EVENT SHALL LESSOR BE LIABLE TO THE LESSEE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS LEASE.

**15.0 Liens and Encumbrances.** Lessee shall not permit any lien or encumbrance of any kind to be placed against the Equipment, and it is specially agreed that no such lien or encumbrance made or attempted by Lessee shall be binding on Lessor. Any such attempted lien or encumbrance shall be in all things subordinate to the right of Lessor. Lessee shall promptly at its own expense take all necessary action to discharge any and all such mortgage, pledge, lien, charge, encumbrance, or claim if the same shall arise.

**16.0 Default.** The occurrence of any of the following shall constitute a default under this Lease and Lessor shall have and may exercise any one or more of its rights upon default under this Lease:

- (a) Lessee's failure to make a required payment under this Lease when due;
- (b) Lessee's violation of any other provision or requirement that is not corrected within ten (10) days after written notice of the violation is given;
- (c) A proceeding under the Bankruptcy Act, as amended, is commenced by or against Lessee;
- (d) Lessee is adjudged insolvent;
- (e) Lessee makes any assignment for the benefit of creditors; or
- (f) The subjection of any of Lessee's equipment or property to any levy, seizure, assignment, or application.

## **17.0 Remedies.**

19.1 Upon default, Lessor shall have the right to: (a) declare the entire remaining total amount of lease under this Lease immediately due and payable without notice or demand to Lessee; (b) sue for and recover all leases, payments, and balances then accrued or thereafter accruing; (c) immediately take possession of the Equipment, without demand or notice, wherever same may be located, without any court order or other process of law; Lessee agrees to compensate Lessor for all costs incurred by Lessor in the process of taking possession and waives any and all damages occasioned by such taking of possession; (d) terminate this Lease; or pursue any other remedy at law or in equity. Notwithstanding any repossession or any other action which Lessor may take, Lessee shall be and remain liable for the full performance of all obligations on the part of Lessee to be performed under this Lease. All repair, maintenance, part, and similar charges will be invoiced on the date of repair or similar activity. This invoice will be due thirty (30) days after the invoice date, but the Lessor reserves the right to have other payment terms. Such terms, if any, will be on the face of the invoice. All of Lessor's remedies are cumulative and may be exercised concurrently or separately.

17.2 In addition to the remedies available in 19.1, if Lessee fails to make any payment or fails to perform or comply with any of its covenants or obligations, including failure of Lessee to procure or maintain insurance or to pay fees, assessments, charges, and taxes, all as specified in this Lease, Lessor, at its election, may make such payment or perform or comply with such covenants and obligations, and the amount of such payment and the expenses incurred by Lessor in performing or complying with such covenants and obligations, as the case may be, together with interest thereon at the maximum rate permitted by law or the rate of fifteen percent (15%) per annum, whichever is the lesser, shall be deemed an additional lease payment, payable by Lessee upon demand. Lessor's action under this provision does not waive or limit its right to pursue or enforce any other remedy available to Lessor under this contract or at law, and no election to perform or pay by Lessor shall constitute waiver of any covenant or obligation of Lessee or of any future default.

## **18.0 Miscellaneous Terms.**

18.1 **Information Provided by Lessee.** Lessee agrees that any and all information provided by it to Lessor, including any applications, statements, references, or reports given by Lessee to Lessor, are material inducements to the granting of this Lease and that any material misrepresentation shall constitute a default under this Lease. Lessee certifies that all information, including credit and financial information, submitted is true and correct and authorizes Lessor, its agents, and its representatives, to investigate Lessee's credit worthiness and disclose information and investigation results to each other.

18.2 **Entire Agreement.** This Lease represents the complete and exclusive statement of the entire agreement between Lessor and Lessee with respect to the subject matter hereof and supersedes all prior and contemporaneous promises and agreements of any kind, as well as all negotiations between Lessor and Lessee hereto with respect to the subject matter covered hereby.

18.3 **Succession and Assignment.** Without Lessor's prior written consent, Lessee shall not (a) assign, transfer, pledge, or otherwise dispose of this Lease, the Equipment, or any interest therein or (b) sublet or lend the Equipment or permit it to be used by anyone other than Lessee or Lessee's employees. Lessor may assign this Lease or grant a subsidiary interest in the Equipment in whole or part without notice to Lessee and Lessor's assignee or secured party may then assign this Lease or the security

agreement without notice to Lessee. Each such assignee or secured party shall have all the rights, but none of the obligations, of Lessor under this Lease. Lessee shall recognize such assignments or security agreements and shall not assert against the assignees or the secured parties any defense counterclaim or offset Lessee may have against Lessor. Subject to the foregoing, the Lease inures to the benefit of and is binding on the respective heirs, legatees, personal representatives, successors, and assigns of Lessor and Lessee.

18.4 **Choice of Law and Venue.** This Lease shall be governed by and interpreted in accordance with the substantive laws of the State of Texas, excluding conflicts of law and choice of law principles. Any dispute, controversy, or claim arising out of or relating to this Lease shall be resolved exclusively in the state or federal courts of Harris County, Texas, as appropriate.

18.5 **Amendments.** This Lease may be amended within the Lease period by mutual consent of Lessor and Lessee. No modification or amendment to this Lease shall become valid unless in writing and signed by Lessor and Lessee.

18.6 **Severability.** If one or more provisions of this Lease, or the application of any provision to any party or circumstance, is held invalid, unenforceable, or illegal in any respect, the remainder of this Lease and the application of the provision to other parties or circumstances shall remain valid and in full force and effect.

18.7 **Non-Waiver of Defaults.** Any failure of Lessor at any time to enforce or require the strict keeping and performance of any of the terms and conditions of this Lease, or to exercise a right hereunder, shall not constitute a waiver or impairment of such rights.

18.8 **Notices.** Any notice or other communication given or made under or pursuant to this Lease shall be by letter or by electronic or facsimile transmission and may be delivered personally or by courier to Lessor or Lessee to the address, email, or facsimile transmission number of Lessor or Lessee or such other address or number as may be notified by such Party from time to time.

18.9 **Prevailing Party.** If any legal action or other proceedings is brought for a breach of this Lease, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and other costs incurred in bringing or defending such action or proceeding, in addition to any other relief to which such Party may be entitled.

18.10 **Counterparts.** Lessor and Lessee may execute this Lease in any number of counterparts, each of which when executed and delivered, shall be an original, but all of which when taken together shall constitute one and the same instrument.