

XYLEM RENTAL QUOTATION AND CONTRACT TERMS AND CONDITIONS

1. DEFINITIONS

- (a) "Owner" is the affiliate of Xylem Inc. that is party to this rental Contract and includes its subsidiaries, affiliates, successors, assigns or personal representatives.
- (b) "Customer" is the company, firm, person, corporation or public authority taking the Owner's Equipment on rent and includes their successors or personal representatives.
- (c) "Parties" refers collectively to Owner and Customer.
- (d) "Rental Fees" means the Owner's charges as consideration for the Customer's right of possession of Equipment.
- (e) "Equipment" covers all classes of equipment, machinery, products and accessories thereof which the Owner agrees to rent to the Customer.
- (f) "Contract" means the Contract between the Owner and the Customer for the rent of Equipment and shall include these quotation terms and conditions for renting together with any supplemental contract terms and conditions and any other special conditions referenced herein or subsequently agreed in writing by the Parties.

2. OWNER'S QUOTATION TERMS AND CONDITIONS

- (a) The Parties hereby acknowledge that they have expressly required the Contract and all other documents required or permitted to be given or entered into pursuant hereto to be drawn up in the English language only.
- (b) Owner's quotation is valid for 30 days; however, prices may change without written notification. Quotations for sales of HDPE pipe are valid for seven (7) days.
- (c) Changes in specifications requested by Customer are subject to approval in writing by Owner. In the event such changes are approved, the price for Equipment and the delivery schedule shall be changed to reflect such changes.
- (d) All drawings are the property of Owner. Owner does not supply detailed or shop working drawings of Equipment; however, Owner will supply necessary installation drawings. Drawings and illustrations submitted with Owner's quotation show general type, arrangement and approximate dimensions of Equipment to be furnished are for Customer's information only and Owner makes no representation or warranty regarding their accuracy. Unless expressly stated to the contrary within the quotation or sales form, all drawings, illustrations, specifications or diagrams form no part of this Contract. Owner reserves the right to alter such details in design or arrangement of Equipment which, in its judgment, constitute an improvement in construction, application, or operation. All engineering information necessary for installation of Equipment shall be forwarded by Owner to Customer upon Customer's acceptance of this Contract. After Customer's acceptance of this Contract, any changes in the type of goods, the arrangement of Equipment, or application of Equipment requested by Customer will be made at Customer's expense.
- (e) The Equipment is offered subject to it being available to Owner when Customer's acceptance of the Contract is received by Owner.
- (f) This quotation is Owner's estimate of equipment and material required. Actual installation may vary in cost due to site requirements. Additional equipment or time to set-up will be charged at the itemized rates herein or based upon Owner's published rental rate schedule.
- (g) Payment terms: Net 30 based on credit approval.
- (h) Taxes are not included in any rental, sale or labor quotes. Customer is responsible for paying applicable taxes on Equipment and services, including sales and use tax. If applicable, Customer will only be considered exempt when a valid Sales Tax Exemption Certificate is received when ordering any Equipment, pumping services and/or sale goods.
- (i) Delivery and Pick-Up available at Customer's request via Owner's truck for an additional charge.
- (j) Customer is responsible for the following requirements to be completed and/or provided by Customer with no obligation or additional cost to Owner:
 - (i) Providing adequate labor and material handling equipment onsite to unload/load and setup/breakdown Equipment, including chains or cables of sufficient capacity along with cribbing material to support pumps, piping and accessories.
 - (ii) Monitoring daily all equipment on site, including but not limited to cleaning of suction screen(s) as necessary. Diesel driven pumps require routine service including changing oil, oil filter, fuel filter, and performing general maintenance every 250 hours of running time, and also replacing the air filter every 500 hours of running time. As requested, Owner will service Equipment for an additional charge.
 - (iii) Construction and maintenance of: berms, dikes, ditches, equipment pads, excavations, shoring, ramps, sumps, trenches, well sites and all other reasonable and necessary site preparation.
 - (iv) Providing and monitoring any required secondary containment around and under each pump to contain possible spills during operation or refueling of the equipment.
 - (v) Access to water and the provision of stand-by power.

- (vi) Adequate cold weather freeze protection of Equipment.
- (vii) Compliance with permitting, licensing or other regulatory requirements associated with setup, installation, or operation of Equipment.
- (viii) Acquisition and maintenance of all permits and licenses required for the completion of project-related work.
- (ix) Installation and maintenance of: area lighting, jobsite security, access to adequate sanitation facilities, communications, emergency services, and pedestrian and traffic control.
- (x) Control of water accumulating as perched or trapped water, overtopping water, runoff, seepage, surface water and/or interface water in any other form not otherwise contemplated in this quote.
- (xi) Control of erosion and/or sedimentation caused by discharge or other water runoff.
- (xii) Monitoring, sampling, testing, containment, treatment and disposal of discharge water, as required and not covered by the Owner's quote.
- (xiii) Containment, treatment and disposal of all drilling cuttings, excavation spoils, and spent drilling and jetting fluids.
- (xiv) Access to areas and facilities for the cleaning and decontamination of Equipment.
- (xv) Start-up and testing of any Equipment supplied under this Contract, if not included in the quote. Customer is responsible for the co-ordination of start-up and testing.

3. RENTAL PERIODS AND DEFINITIONS

- (a) **Rental Day:** One Calendar day; for diesel pumps, not exceeding eight (8) hours running.
- (b) **Rental Week:** Seven (7) calendar days; for diesel pumps, not exceeding 48 hours running in aggregate during a Rental Week.
- (c) **Rental Month:** Twenty-eight (28) calendar days; for diesel pumps, not exceeding 192 hours running.
- (d) **Standby Rate:** The Standby Rate is 75% of the scheduled rate. Standby is for a "second" or additional back-up pump to be run in the event the primary pump cannot. If the standby pump operates for any reason other than failure of a primary pump, the standard rate will apply.
- (e) **Overtime Running:** For diesel units, all scheduled rates are based on an 8 hour per day shift. If diesel Equipment is used for a double shift, the 8-hour rate will be multiplied by 1½ times the schedule rate. If used for a triple shift, the rate will be multiplied by 2 times the schedule rate.
- (f) **Billing Cycles Based**

3 - 7 Days	=	1 Week
<u>on Open Terms</u>		
8 Days	=	1 Week and 1 Day
<u>Approval:</u>		
9 Days	=	1 Week and 2 Days
10 - 14 Days	=	2 Weeks
15 Days	=	2 Weeks and 1 Day
16 Days	=	2 Weeks and 2 Days
17 - 28 Days	=	1 Month
- (g) **Billing Cycle – COD** 3 – 7 Days = 1 Week
Customers:
- (h) **Off Rent:** It is the responsibility of the Customer to call into the Owner's local branch office and obtain an Off Rent Call Confirmation Number. This call serves as notification that Equipment is disassembled, properly decontaminated, and stockpiled in one readily-accessible area available for immediate pick-up. Rental and/or labor charges will accrue if Equipment is not cleaned and staged for removal. IMPORTANT: Obtaining an Off Rent Call Confirmation Number does not release Customer from its obligations to safeguard and secure Equipment, including maintaining required insurance coverages, while Equipment remains under Customer's care, custody or control pending return of all rented equipment to Owner. Customer shall remain responsible for all loss or damage arising from Customer's failure to safeguard and secure Equipment while awaiting pick up.

4. SUPPLEMENTAL CONTRACT TERMS AND CONDITIONS: Owner and Customer agree that Owner's quotation and the supplemental terms and conditions printed below are material elements of this Contract.

- (a) **OWNERSHIP:** FOR EQUIPMENT, RIGHTS AND TITLE SHALL REMAIN WITH THE OWNER AT ALL TIMES. FOR SALE GOODS, RIGHTS AND TITLE SHALL PASS TO CUSTOMER ON THE EARLIER OF OWNER'S RECEIPT OF PAYMENT IN FULL OR CUSTOMER'S RECEIPT OF GOODS AT THE SHIPMENT POINT SPECIFIED IN THIS CONTRACT.
- (b) **ACCEPTANCE/MODIFICATION:** Customer's notice of possession of Equipment shall be deemed Contract to and acceptance of the Contract. Acceptance by Buyer is expressly limited to these terms and conditions. Any purchase order or other document submitted by Customer with differing terms or conditions applicable to Equipment is hereby rejected. This Contract contains the entire Contract between the Owner and the Customer. These terms and conditions may only be modified by the

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Owner's quotation; however, no modification of this Contract shall be binding upon Owner unless such modifications are in writing and signed by both parties.

(c) **SHIPMENT:** Customer shall obtain Equipment at Owner's facility unless Owner agrees to ship Equipment or to make delivery. If Equipment is to be shipped or delivered by Owner, prices are exclusive of the costs thereof, and unless different terms are stated by Owner in this Contract all trade terms shall be EXW, Owner's facility and construed in accordance with the INCOTERMS in force at the formation of the Contract.

(d) **REMOVAL:** Customer agrees not to remove Equipment from the original delivery location without the prior written consent of the Owner, which shall not be unreasonably withheld.

(e) **RENTAL CHARGES:** Customer will be charged rental from delivery date up to and including date Customer obtains an Off Rent Call Confirmation Number from Owner. All rental charges are based on the quoted rates and no reduction in rental charges will be made for any time Equipment is not used while in Customer's possession and control. Customer agrees to report and pay for any overtime use of Equipment in any day, or week or month, at the proportional rental charge specified in this Contract. If no time is fixed for rental period, or if rental is extended beyond the fixed period of time, the Customer agrees to give the Owner four (4) full business days notice of termination of rental in writing. The rented goods are furnished EXW, Owner's facility and all handling and transportation charges to and from Owner's facility, unless otherwise specified herein, shall be paid by Customer.

(f) **CREDIT/PAYMENT TERMS:** Credit terms are subject to the approval of Owner's credit department and such terms are incorporated by reference herein. If credit terms are not approved, sale will be cash on delivery. Rentals shall be payable in advance for each rental period, and, after the expiration of the minimum guaranteed rental period, rents shall be payable per the Contract until the Equipment is returned by Customer. Standard terms of payment are net 30 days from date of invoice. A late fee of 1/2 percent per month shall be charged on all balances over 30 days. Customer agrees to pay all costs, including reasonable attorneys' fees, incurred as a result of Customer's breach of this Contract including the failure to pay any amounts due hereunder.

(g) **INSURANCE:** Customer must maintain specific insurance coverages when renting Equipment from Owner: Statutory Workers' Compensation and Employers' Liability in compliance with country and/or state laws; Automobile Liability including owned, hired, and non-owned vehicles; and Commercial General Liability on a primary and non-contributory basis including broad form contractual liability coverage. Minimum per occurrence limits of \$1MM must be per location/job and defense cost must be supplementary payments. Claims-made policies are not acceptable. Equipment must be covered by a Contractor's Equipment policy for the full replacement value of the equipment. Customer must provide a Certificate of Insurance with endorsements naming Owner as the Certificate Holder and must state that Owner is named as additional insured and loss payee. Expiration dates, limits, and deductibles for each policy must also be noted, along with a provision for notice of cancellation, non renewal, or material change to the certificate holder of not less than 30 days. Customer shall provide a Certificate of Insurance with endorsements as evidence of coverage before Owner will release Equipment. Failure to maintain adequate insurance will result in an additional automatic surcharge of 15% to the total Equipment charge and Customer shall remain subject to the Loss/Damages provisions herein whether insured or not.

(h) **LOSS/DAMAGES:** Customer shall be responsible for all loss or damage to Equipment occurring in excess of ordinary wear and tear, or by theft or fault, negligence or shortages up to the full replacement value of the Equipment. Owner's pick-up receipt for Equipment shall not be construed as Owner's final clearance to Customer. Customer may be invoiced separately for loss or damages to Equipment.

(i) **OPERATION/INSPECTION:** Customer agrees to operate the equipment in accordance with Owner's manuals and instructions. Customer further agrees to place a competent operator in charge of the Equipment. The operator shall be responsible for conducting a personal inspection of the Equipment to reveal any apparent defects in the Equipment and shall immediately notify Owner of such defects to allow for repair or replacement of Equipment at Owner's sole discretion. Customer shall operate Equipment at Customer's own risk.

(j) **SERVICE/MAINTENANCE:** Customer shall be responsible for all fuel and add oils necessary to operate Equipment, and to check same daily to ensure proper operation of Equipment. Normal Equipment maintenance is completed after 250 hours of running time, which can be provided by Owner for an additional charge. Owner shall have the right to enter the premises where Equipment is located and be given free access thereto and afforded necessary services and facilities for safely and readily inspecting it. Owner reserves the right to conduct Equipment maintenance if Customer has not completed maintenance by a qualified individual. Customer expressly agrees to maintain Equipment and return it in the same condition as when received, normal wear and tear accepted, or to pay for any repairs that may be necessary, including cleaning.

(k) **CUSTOMER'S WARRANTY:** Customer warrants the accuracy of any and all information relating to the details of its operating conditions, including temperatures, pressures, and where applicable, the nature of all hazardous materials. Owner can justifiably rely upon the accuracy of Customer's information in its performance. Should Customer's information prove inaccurate, Customer agrees to reimburse Owner for any losses, liabilities, damages and expenses that Owner may have incurred as a result of any inaccurate information provided by Customer to Owner.

(l) **OWNER'S WARRANTY:** TO THE FULLEST EXTENT NOT PROHIBITED BY LAW AND EXCEPT FOR WRITTEN WARRANTIES ON GOODS SOLD, OWNER MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING AS TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

(m) **INDEMNIFICATION:** TO THE FULLEST EXTENT NOT PROHIBITED BY LAW, CUSTOMER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS OWNER FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, DEMANDS, SUITS, JUDGMENTS, AND ASSOCIATED EXPENSES (INCLUDING REASONABLE ATTORNEYS' AND/OR EXPERTS' FEES) OWNER MAY INCUR, BECOME RESPONSIBLE FOR OR PAY OUT AS A RESULT OF: DEATH OR PERSONAL INJURY TO ANY PERSON OR DESTRUCTION OF OR DAMAGE TO ANY PROPERTY CAUSED IN WHOLE OR IN PART BY THE OPERATION, MONITORING, MAINTENANCE, HANDLING OR TRANSPORTATION OF THE EQUIPMENT; OR ANY ECONOMIC LOSS SUCH AS LOSS OF USE, BUSINESS INTERRUPTION OR EXTRA EXPENSE WHILE THE EQUIPMENT IS IN THE CUSTOMER'S CARE, CUSTODY OR CONTROL WHETHER DUE TO EQUIPMENT BREAKDOWN OR OTHERWISE DUE TO UNAUTHORIZED POSSESSION. THESE PROVISIONS SHALL SURVIVE TERMINATION OR EXPIRATION OF THE CONTRACT.

(n) **LIMITATION OF LIABILITY:** TO THE FULLEST EXTENT NOT PROHIBITED BY LAW, OWNER'S LIABILITY, IF ANY, SHALL BE LIMITED TO THE VALUE OF RENTAL FEES PAID BY CUSTOMER AND RECEIVED BY OWNER UNDER THIS CONTRACT OR \$100, WHICHEVER IS GREATER, AND OWNER SHALL HAVE NO LIABILITY TO CUSTOMER OR ANY THIRD-PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

(o) **USED EQUIPMENT.** NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, USED EQUIPMENT IS SOLD IN AN AS IS, WHERE IS CONDITION. SELLER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE NATURE, QUALITY OR CONDITION OF THE EQUIPMENT, OR ITS SUITABILITY FOR ANY USE, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, UNLESS EXPRESSLY AGREED UPON IN WRITING BETWEEN THE PARTIES. SELLER SHALL HAVE NO LIABILITY TO BUYER HEREUNDER OR IN CONNECTION WITH THE EQUIPMENT, INCLUDING WITHOUT LIMITATION, FOR LOSS OF PROFIT, LOSS OF INCOME, LOSS OF PRODUCTION, LOSS OF OPPORTUNITY, LIQUIDATED, DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES. THE FOREGOING TERMS AND CONDITIONS SHALL BE DEEMED ACCEPTED UPON PAYMENT FOR THE EQUIPMENT.

(p) **STATUTORY RIGHTS.** Certain legislation, including state-specific or country-specific consumer laws, may imply warranties or conditions or impose guarantees or obligations on Owner which cannot be excluded, restricted or modified or cannot be excluded, restricted or modified except to a limited extent. The warranty and limitation of liability clauses herein must be read subject to these statutory provisions. If these statutory provisions apply, to the extent to which Owner is entitled to do so, Owner limits its liability in respect of any claim under those provisions to (i) in the case of Equipment, at Owner's option, the replacement of Equipment or the supply of equivalent goods; the repair of Equipment; the payment of the cost of replacing Equipment or of acquiring equivalent goods; or the payment of the cost of having Equipment repaired; and (ii) in the case of services, at Owner's option, the supplying of the services again; or the payment of the cost of having the services supplied again.

(q) **FORCE MAJEURE.** Owner may cancel or suspend this Contract and shall have no liability for any failure to deliver or perform, or for any delay in delivering or performing any obligations due to circumstances beyond Owner's reasonable control including but not limited to acts of God, fire, flood or other natural disasters, war, civil disturbance, government acts, labor shortages or disputes, unavailability of materials, fuel, power, transportation, or failures of suppliers or subcontractors to effect deliveries.

(r) **DEFAULT/DAMAGES:** If Customer is in breach of or default in any terms and conditions of this Contract, Owner may terminate this Contract and without demand or notice take immediate possession of, and remove any or all of, the Equipment and return it to Owner's facility, without liability for damages in trespass or otherwise, and without thereby waiving any claim Owner may have against Customer. Customer shall be responsible for all direct and indirect costs along with general and consequential damages, including reasonable attorneys' fees and court costs, from Customer's breach of or default in any of the terms and conditions of this Contract.

(s) **PROPRIETARY INFORMATION, INJUNCTION.** Owner's designs, illustrations, drawings, specifications, technical data, catalogues, "know-how", pricing, economic or other business or manufacturing information (collectively "Proprietary Information") disclosed to Customer shall be deemed proprietary and confidential to Owner. Customer agrees not to disclose, use, or reproduce any Proprietary Information without first having obtained Owner's express written consent. Customer's Contract to refrain from disclosing, using or reproducing Proprietary Information shall survive completion of the work under this Contract. Customer acknowledges its improper disclosure of Proprietary



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Information to any third party will result in Owner's suffering irreparable harm. Owner may seek injunctive or equitable relief to prevent Customer's unauthorized disclosure.

(t) **GOVERNING LAW AND DISPUTE RESOLUTION**: The Contract shall be governed by and construed in accordance with the substantive law of Owner's country, excluding application of Convention on International Sales of Goods (CISG). The Parties shall attempt to settle any disputes involving this Contract by direct discussion between corporate officers not directly involved in the disputed transaction(s), and if not resolved, then by litigation subject to the exclusive jurisdiction of a court in the Owner's country. Owner may however, at its option, initiate litigation directly for any overdue payment(s).

(u) **WAIVER**: Owner's waiver of any right under this Contract shall not affect future application of any such provision or any other provision.

(v) **SEVERABILITY**: The provisions of this Contract shall be severable so that the invalidity, unenforceability or waiver of any provision shall not affect the remaining provisions.