

TERMS AND CONDITIONS OF RENTAL CONTRACT – 360 POWER SOLUTIONS
LARGE PRINT VERSION

For good and valuable consideration, you and 360 Power Solutions, LLC, a Texas Limited Liability Company (hereinafter also referred to as “360PS,” “Lessor,” “we,” “us” and “our”) agree as follows:

1. As used herein, “P.1” means the first page of this Contract or “Estimate”; “Contract” means P.1 together with these Terms and Conditions of Rental Contract; “Rented Item(s)” or “Item(s)” means the item(s) rented to you, as identified on P.1 (including any “Instructions” as described in Section [or “§”] 5 below; “Site” means the address where the Item(s) will be delivered and/or used, as set forth on P.1; and “Customer,” “Lessee,” “you” and “your” mean the customer or lessee identified on P.1.
2. You agree to rent from 360PS the Rented Item(s) for the period(s) specified on P.1 (the “Term”). You shall pay 360PS the rent therefor set forth on P.1 (the “Rent”), together with any other charges accruing hereunder, without proration, reduction or setoff, and remain liable for all loss of and damage to the Rented Item(s), until all Rented Item(s) is/are returned to and accepted by 360PS in the condition required under this Contract (including § 4). Unless otherwise specifically agreed by 360PS, all rental rates are for normal use of the Rented Item(s) during the Term (and with respect to generators, on a single-shift basis, not exceeding the least of 8 hours per Rental Day, 40 hours per 7-Rental Day period, and 160 hours per 28-Rental Day period (zero for uncharged for periods)), and otherwise in accordance with the terms hereof and the “Instructions” described in § 5. Additional amounts will be due for overuse, misuse and late returns. No allowance will be made for weather delays, time in transit or any other period(s) 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 us: (i) any deposit, together with prepaid Rent specified on P.1 in advance of the Term (the “Prepayment”); and (ii) all other amounts coming due hereunder on the earlier of (A) the 30th day following the date of each invoice we provide or (B) upon our demand; and (b) that: (i) we 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 us. Unless otherwise agreed in writing by 360PS, all Prepayments are **NON-REFUNDABLE**. Anything remaining with, in or on any Item(s) upon return to 360PS will, at our option, be deemed surrendered and abandoned.
3. If we agree to provide any services (e.g., delivery, installation, setup, cleaning, retrieval, etc.) you agree to: (a) pay our regular charge(s) for the same, and for all waiting time; (b) be present at the Site at the agreed time(s); and (c) ensure our personnel have full access to the Site. We will not be responsible for delay(s) caused by any other parties, including you, your agents, employees or contractors and/or any other providers of goods or services (“Other Providers”) for which you agree to indemnify, defend and hold harmless 360PS. If you are not present upon delivery and/or retrieval of any Item(s), you agree to accept the statements of our representatives regarding the same (including the quantity(ies), quality, status and condition of the Rented Item(s) and the Site).
4. You agree: (a) to: (i) ensure the Site is fit for delivery, installation and use of the Rented Item(s); (ii) ensure that each such Item is supplied with proper power (e.g., **phase, voltage, wattage and amperage**) and/or surge protection (as applicable); (iii) protect, properly maintain and care for each Rented Item at all times; (iv) keep each Rented Item safely and securely stored and locked when not in use; and (v) return each such Item to us on time, complete, clean, free of damage and contamination, and otherwise in good order, condition and repair, properly serviced and maintained; and (b) that we may at any time and from time to time: (i) substitute for any Rented Item(s) other Item(s) of substantially the same utility; and/or (ii) sell and/or assign all or any part of our interests in such Item(s) and/or this Contract, in which event, you shall attorn to our assignee(s), who will not be responsible for any pre-existing obligations or liabilities of 360PS. If you fail to do so, you will pay us: (A) Rent for each succeeding full rental period until all Rented Item(s) have been returned or replaced as required in this § 4; and (B) all costs and expenses we incur in connection with such failure. Certain Items may be delivered on pallets, or in crates, cartons or boxes, and may be stacked, bagged,

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AVAILABLE TO LESSEE

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racked, folded, rolled and/or strapped ("Packed"). Upon return, you will ensure that all such Items are properly Packed.

5. Upon your execution of this Contract (or upon later delivery of the Item(s), unless you immediately reject it/them), you represent, warrant and agree that: (a) each Item: (i) is complete, in good repair and operating condition and is in all ways acceptable to you; (ii) is appropriate for your purposes; and (iii) was selected (not based on any recommendation by 360PS), examined and inspected solely by you or your agents; and (b) you: (i) have received, read and understand all training, instructions, user manuals, maintenance requirements, and other information, if any (including without limitation, connection, disconnection and safe use procedures and instructions, as well as all EPA, OSHA, NFPA, IBC, IFC, IEEE, ASSE, ASME, UL, ANSI and other standards) pertaining to the Rented Item(s) (collectively, "Instructions"); (ii) will fully comply therewith at all times; (iii) have been made aware of the need to use all applicable safety devices (INCLUDING WITHOUT LIMITATION, SWITCHES, FUSES, ISOLATORS, BREAKERS, RELAYS, INTERRUPTERS, RESISTORS, AND OTHER PROTECTIVE DEVICES); (iv) will give all required notice(s) to, and obtain all necessary licenses, authorizations and permits from, the appropriate authorities as well as the Site's owner(s); (v) will immediately cease using any Item that breaks down, malfunctions or proves defective (a "Malfunction"); and (vi) will ensure that all others who use or otherwise deal with any Rented Item(s) comply herewith at all times.

6. In the event of a Malfunction, you will immediately notify us, and provided such Malfunction did not result from or in connection with any wrongful or negligent act or omission of, or any breach of this Contract by, you or your agent(s), employees and/or contractor(s), we will, at our option: (a) repair the Malfunctioning Item; (b) provide you with a comparable item; or (c) with respect to such Malfunctioning Item, return the unused portion of the Rent and cancel this Contract. The foregoing remedies are **EXCLUSIVE**. 360PS will have no other obligation(s) regarding Malfunctions, all of which you hereby waive, together with all associated incidental and consequential damages.

7. Except with respect to Rented Items which we rent from one or more third parties (each, a "TPO") and then re-rent to you ("Re-Rented Item(s)"), 360PS owns and will retain title to all Rented Items at all times. You will have exclusive control over the Rented Item(s) during the Term; subject however, to your obligation to fully and timely comply with this Contract at all times. No Rented Item(s) shall be deemed permanently affixed to, or a part of, any real estate or building(s) to which it/they may be attached. You agree to obtain written confirmation of the foregoing, as well as any release(s) we may require, upon our request. **You SHALL NOT:** (a) permit the taking or existence of any lien, claim, security interest or encumbrance on any such Item; or **loan, transfer, sublease, share, surrender or assign any Rented Item or this Contract without the prior written consent of 360PS (in its sole discretion).**

8. YOU AGREE TO PROVIDE ALL APPLICABLE FAMILIARIZATION, TRAINING, INSTRUCTIONS AND WARNINGS TO ALL USERS AND OPERATORS OF THE RENTED ITEM(S), and ensure that each Rented Item is used reasonably, safely and only: (a) **for its intended purpose(s)**; (b) within its rated capacity; (c) unless otherwise specifically agreed by 360PS, at the Site; (d) BY PROPERLY TRAINED, QUALIFIED, CERTIFIED AND/OR LICENSED (AS APPLICABLE) ADULTS; 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 you permit anyone else to: (i) abuse, misuse, overuse, remove from the Site, reposition, conceal, repair, modify, disconnect, reconnect, damage or destroy any Rented Item; (ii) violate any applicable law, policy of insurance or warranty; (iii) expose any Rented Item to any harmful or hazardous substance or circumstance; or (iv) take possession of or exercise control over any Rented Item without our prior written consent (in our sole discretion).

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9. WARNINGS: POWERED AND POWER GENERATING AND/OR CONDUCTING EQUIPMENT CAN BE **DANGEROUS**, AND MAY EXPOSE YOU AND/OR OTHERS TO CERTAIN RISKS, INCLUDING FIRE, EXPLOSION AND/OR ELECTROCUTION HAZARDS, PARTICULARLY DURING SEVERE WEATHER. **EXERCISE EXTREME CARE WHEN DEALING WITH SUCH ITEM(S).**

10. 360PS IS NOT THE MANUFACTURER OR DESIGNER OF ANY OF THE RENTED ITEM(S), ALL OF WHICH ARE PROVIDED **“AS-IS”**. NEITHER 360PS NOR ANY TPO, MAKES ANY WARRANTY(IES), EXPRESS OR IMPLIED (INCLUDING ANY WARRANTY(IES) OF **MERCHANTABILITY, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE**, FUNCTION, DESIGN, QUALITY, CAPACITY, FREEDOM FROM DEFECTS AND/OR GOOD AND WORKMAN-LIKE PERFORMANCE, AS WELL AS ANY WARRANTY(IES) ARISING IN CONNECTION WITH ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE) REGARDING ANY ITEM(S) OR SERVICE(S) PROVIDED BY 360PS OR ANY TPO, NOR DOES 360PS OR ANY TPO MAKE ANY WARRANTY(IES) AGAINST INTERFERENCE OR INFRINGEMENT, ALL OF WHICH YOU WAIVE. **NO DESCRIPTIONS, SPECIFICATIONS, DEPICTIONS, OR ADVERTISEMENTS CONSTITUTE REPRESENTATIONS OR WARRANTIES BY 360PS OR ANY TPO.**

11. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, YOU: (A) ASSUME ALL RISK OF PERSONAL AND BODILY INJURY, LOSS, PROPERTY DAMAGE, DESTRUCTION AND CONTAMINATION OF, TO, AND/OR ARISING IN CONNECTION WITH, THE ITEM(S) AND SERVICE(S) REFERENCED IN THIS CONTRACT, INCLUDING WITHOUT LIMITATION, ALL LIABILITIES, CLAIMS, DAMAGES, LOSSES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES) ARISING FROM AND/OR IN CONNECTION WITH THE SELECTION, PROVISION, INSPECTION, DESIGN, MANUFACTURE, USE, LOADING, UNLOADING, TRANSPORTATION, DEMONSTRATION, INSTALLATION, CONNECTION, DISCONNECTION, STORAGE, SERVICING, MAINTENANCE, REPAIR, DELIVERY AND/OR RETRIEVAL OF SUCH ITEM(S) AND/OR SERVICE(S), WHETHER OR NOT YOUR FAULT (COLLECTIVELY, “RISKS”); **(B) RELEASE AND DISCHARGE, AND AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS, 360PS AND EACH TPO,** and their respective owners, shareholders, managers, officers, directors, agents, employees, insurers, subrogees, representatives, successors and assigns (each, an “Indemnitee”), for, from and against all such RISKS, as well as all liabilities, claims, damages, losses, costs and expenses (including attorneys' fees) arising from and/or in connection with your breach of this Contract; and except only as specifically provided in § 6, **(C) WAIVE all rights and remedies available under the Uniform Commercial Code, as well as all direct, indirect, incidental, consequential, general, special, exemplary and punitive damages, against each Indemnitee.**

12. You agree to maintain all **INSURANCE** 360PS may require, including: (a) public liability insurance with minimum limits of \$1,000,000 per occurrence; and (b) property damage/inland marine insurance covering all Rented Items for the full (new) replacement cost thereof. All such policies shall, as applicable: (i) name 360PS as an additional insured and loss payee; (ii) be primary and non-contributory; (iii) waive subrogation against us; and (iv) include a severability of interests provision and such other terms as we may require. You irrevocably appoint 360PS as your agent and attorney-in-fact for purposes of submitting and negotiating claims on all such policies.

13. To the maximum extent permitted under applicable law, you grant us a lien on all real and personal property placed in or on, affixed to, and/or improved with, any Rented Item(s). We may, without notice or liability to you, inspect and/or monitor (in person and/or electronically) any Rented Item(s) at any time, and all information thereby obtained will be our property. If any performance required of us is delayed or impaired as a result of any act or omission of/by you, any Other Provider(s) or any **“Act of God”** (any event, fact or circumstance beyond our reasonable control), we will be excused from such performance. You waive the benefits of all statutes of limitations regarding our rights and remedies. All amounts due hereunder but not

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timely paid will bear interest at the lesser of: (a) 18% per annum; or (b) the highest rate permitted under applicable law until paid. You authorize us to charge all amounts due and coming due hereunder to any debit and/or credit card(s) you provide. You agree to pay us the maximum lawful charge for any check you write which is returned unpaid. Our maximum liability in connection with this Contract is limited to the amount(s) we actually receive from you hereunder. You agree to pay all sales, use and other taxes, as well as all tolls, fines, fees, assessments and other charges related to each Item. In the event any legal action is commenced in connection with this Contract, we will be entitled to recover from you our associated costs and expenses (including attorneys' fees and collection costs) if we prevail. Neither our exercise, nor our failure or delay in the exercise, of any rights or remedies available under or in connection with this Contract will constitute an election of remedies or a waiver of any of our rights or remedies.

14. This Contract, and any Addenda we may provide (including as applicable, our form(s) of Rental Purchase Option, Insurance and Services Addenda), each of which, if provided, shall be deemed incorporated herein, constitute (a) a true "operating" lease, and not a "financing;" (b) shall be enforceable only by you, 360 Power Solutions, LLC and the other Indemnitees; and (c) represent(s) the entire agreement between you and 360PS, superseding all other oral and written agreements and representations, including our website and advertising. The terms of this Contract are severable. If any provision hereof shall be 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. Except only as expressly provided herein, this Contract cannot be modified without our written consent. Time is of the essence. There are no third-party beneficiaries hereto, other than the applicable Indemnatee(s) with respect to your obligations arising hereunder. These Terms and Conditions apply to all Item(s) identified on P.1 and to all other items you obtain from 360PS at any time (except only as we may otherwise agree in writing). This Contract shall be interpreted under the laws of Texas, and proper venue for all civil legal proceedings commenced in connection herewith shall lie solely and exclusively in the federal, state and local courts located in or nearest to Travis County, TX (unless waived by 360PS). You consent and submit thereto, and waive all claims that such venue lies in an inconvenient forum. Digital, electronic, photocopied and facsimiled signatures and initials included on this Contract and/or any Addenda(um) we provide shall be deemed originals.

15. Any item(s) sold to you ("Sale Items"), as provided on P.1, are provided "**AS-IS**" and "**WITH ALL FAULTS**," and are subject to the terms of this Contract (modified as necessary to address sales). All Items not specifically identified as Sale Items on P.1 will be deemed "Rented Item(s)."

16. Your duties hereunder are unconditional. If you or any guarantor shall: (a) fail to timely pay or perform any of your obligations under this Contract; (b) provide any incorrect or misleading information to 360PS; (c) become insolvent or declare bankruptcy; or (d) die or cease conducting business, or if any Item(s) shall be damaged or lost, you will be in default, whereupon, we may with or without legal process or notice (and without liability to you), to the maximum extent permitted under applicable law: (i) terminate your rental(s); (ii) seek relief from stay; (iii) recover, disconnect, lock and/or disable any Item(s) without being guilty of breach or trespass, or liable for any injuries or property damage (for which you agree to indemnify, defend and hold harmless the Indemnitees); (iv) perform your obligations hereunder on your behalf, without being obligated to do so; (v) purchase one or more replacement Item(s); (vi) recover from you and/or any guarantor our associated damages, losses, costs and expenses (including without limitation, Rent for the balance of the Term, loss of use, interest, attorneys' fees and collection costs); and/or (vii) pursue any other rights and/or remedies available hereunder and/or in connection herewith, at law and/or in equity, all of which shall be cumulative.

17. Warning: Wrongfully obtaining or withholding property and/or services of another available only for compensation may be deemed **THEFT**. See TX Penal Code § 31.04, *et seq*,