

45-6-309, Montana Code Annotated. Failure to return rented or leased personal property. (1) A person commits the offense of failure to return rented or leased personal property if, without notice to and permission of the lessor, he purposely and knowingly fails to return such property within 48 hours after the time provided for such return in the rental agreement, provided that clear written notice, in bold print, of the date and time when the return of the property is required and of the penalty, prescribed in this section is stated in the rental or lease agreement. (2) Presentation to the lessor by the lessee of identification that is false for the purpose of obtaining a rental or lease agreement constitutes prima facie evidence of commission of the offense. (3) After the rental or lease period specified in the rental or lease agreement has expired, failure to return rented or leased personal property within 72 hours of written demand by the lessor sent by certified mail to the renter or lessee at the address given at the time of entering the rental or lease agreement, constitutes prima facie evidence of commission of the offense. (4) (a) A person convicted of failure to return rented or leased personal property not exceeding \$300 in value shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. (b) A person convicted of failure to return rented or leased personal property exceeding \$300 in value shall be imprisoned in the state prison for a term not to exceed 10 years.

### **Terms and Conditions of Rental:**

**1. Nature of this Agreement and Definitions:** The terms and conditions of this agreement (the "Agreement") are for the rental by Ruby Valley Rentals, LLC." Ruby Valley Rentals") of the equipment or products described on the front side of this page, including all parts and accessories (the "Equipment"), or the servicing of any equipment ("Services"). The following information is found on the front side: the customer ("Customer"), the Ruby Valley Rentals store where the Equipment is rented (the "Store"), and the job site where the Equipment may be delivered or used (the "Site").

**2. Priority of this Agreement:** Customer agrees that its rental of Equipment is conditioned upon complying with these terms and conditions. Any person signing this Agreement represents that he or she is of legal age, and has the authority and power to sign this Agreement and bind Customer to its terms. Customer agrees that this Agreement supersedes and controls over all other communications or agreements with Ruby Valley Rentals. Any written or oral terms of conditions or other provisions different from or varying these terms and conditions, wherever found, are rejected and not binding on Ruby Valley Rentals.

**3. Rental Period:** The "Rental Period" begins when the Equipment is picked up by

Customer at the Store, or is delivered to Customer or the Site, and ends as provided for in Section 9 below. During the Rental Period Ruby Valley Rentals may have access to and may inspect the Equipment and perform maintenance without notice..

**4.Pick Up, Delivery and Risk of Loss:** Risk of loss and damage to the Equipment or caused by the Equipment passes to Customer when Customer has possession or control of the Equipment, either at the time of pick up from the Store or delivery to the Site, and passes back to Ruby Valley Rentals once it is in possession of the Equipment Customer acknowledges having examined (or had the opportunity to examine) the Equipment at the time of pick up or delivery. Customer authorizes Ruby Valley Rentals to deliver the Equipment to the Site without obtaining a written delivery receipt. After delivery, the Customer is responsible for the return of the Equipment (see Section 9 below), and for any loss or damage to the Equipment or caused by the Equipment, including Ruby Valley Rentals cost to repair or replace the Equipment and related costs, which may include an administrative fee, loss of use, appraisal fees and costs of recovery.

**5. Availability of Equipment or Services:** Ruby Valley Rentals will use reasonable efforts to deliver the Equipment at the time requested. Ruby Valley Rentals is not liable for delay, damage or loss if it is unable to provide or maintain the Equipment or provide Services for any reason, including a force majeure event (forces of nature/acts out of our control). Ruby Valley Rentals will use reasonable efforts to minimize the duration and consequences of any delay, and may allocate Equipment among its customers in its sole discretion.

**6. Operators of Equipment:** Customer is responsible for ensuring each operator of the Equipment is properly trained and qualified, and ensuring that all operators are of legal age, have a valid operator's license, are not under the influence of drugs or alcohol, and are in compliance with all applicable laws, rules and regulations. Only the Customer, its agents, representatives or employees acting in the course of their employment, may use or operate the Equipment. Except for any training required by law, Ruby Valley Rentals is not responsible for providing operator training unless Customer requests and pays for that training.

**7. Condition of Equipment:** Notice of Unsafe Condition. Prior to each use, Customer will inspect the Equipment to confirm that it is safe and in good operating condition, without defects, with readable decals and operating and safety manuals, and that it is suitable for Customer's intended use. Use of the Equipment is an acknowledgment that it is safe and in good working order and that Customer has received all safety and other

information necessary to operate the Equipment. Customer will immediately notify Ruby Valley Rentals if there is an accident involving the Equipment or if it is defective, malfunctioning, lost, damaged, stolen or unsafe, and must immediately discontinue its use. Ruby Valley Rentals will, at its option and without any further liability or responsibility to Customer (a) repair or replace the Equipment within a reasonable time, with the Rental Period adjusted for the time the Equipment is not operational; or (b) pick up the Equipment and refund or credit the rental charges, if any, for the time the Equipment is not operational, less any amount due Ruby Valley Rentals for damage to or maintenance of Equipment that is Customer's responsibility. Customer will provide access to the Equipment by Ruby Valley Rentals representatives to enable Ruby Valley Rentals to meet its obligations under this.

**8. Equipment Use:** The Equipment may only be used: (a) at Customer's designated Site; (b) outside of any contaminated area or exposure (the use around or with any hazardous materials, wastes, substances, toxins or biomedical hazards is prohibited); and (c) in accordance with manufacturer's rated capacity and operating instructions. The Equipment must be protected and kept in a secure location while in Customer's possession or control. Customer may not (1) alter, disfigure, or cover up any numbering, lettering, decals, or insignia on the Equipment or remove any operation or safety manuals; (2) sublet, loan or dispose of the Equipment; (3) move the Equipment from the Site without Ruby Valley Rentals written consent; (4) use the Equipment in a negligent, reckless, illegal, unauthorized or abusive manner or to transport any explosives or hazardous materials; or (5) allow the operation of the Equipment for an illegal purpose or by any unauthorized operator.

**9. Return of Equipment:** At the end of the Rental Period, the Equipment must be returned to Ruby Valley Rentals in the same condition it was received, less ordinary wear and tear, properly cleaned and free of any hazardous materials and contaminants. The Rental Period will not terminate and rental charges will continue to accrue if the Equipment is not returned in this condition. For Equipment that is to be picked up, Customer must notify Ruby Valley Rentals at the time the Equipment is ready to be picked up at the Site. Any loss of or damage to the Equipment resulting from a return other than as set forth above is Customer's responsibility. If the Equipment is not returned or called off rent by the estimated end of the Rental Period specified on the front, in addition to the charges set forth in this Agreement, Customer agrees to pay the applicable rental rate for the Equipment until the end of the Rental Period.

**10. Compliance with Law and Safety Regulations:** Customer agrees to comply with all laws and regulations, including the Occupational Safety and Health Administration

Act and all other Federal, state, provincial and local laws, regulations, and ordinances, as applicable, which may affect the Equipment or its use while in the possession of Customer. Customer may not disable or alter any safety device on the Equipment

**11. Disclaimer of Warranty:** Limitation of Liability. All Equipment rented or to Customer, whether new or used, is rented AS IS, WHERE IS. The term "AS IS, WHERE IS" means that Customer has received and accepts the Equipment in its then current condition, with all faults, and without any representation or warranty by Ruby Valley Rentals, express or implied. Ruby Valley Rentals passes through to Customer the manufacturer's warranty, if applicable, and no oral representations or warranties are binding on Ruby Valley Rentals. RUBY VALLEY RENTALS MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE EQUIPMENT FOR ANY PARTICULAR USE OR PURPOSE, EITHER EXPRESSED OR IMPLIED, STATUTORY OR OTHERWISE, OR THAT IT IS FREE OF LATENT DEFECTS. Customer acknowledges that Ruby Valley Rentals is not a manufacturer of the Equipment, and waives all claims for damages for breach of warranty, including claims for injury, property damage, parts, labor, delay or business interruption to the customer or third parties. Under no event is Ruby Valley Rentals responsible for special, indirect, incidental or consequential damages

**12. Services:** If Ruby Valley Rentals provides Services to Customer, including training, repair or maintenance, it will use professional skill and judgment in accordance with normally accepted industry standards. If Ruby Valley Rentals fails to do so, and as its only obligation to Customer for defective Services, Ruby Valley Rentals will perform those Services again at its expense.

**13. Customer's Indemnification:** Customer at its expense will reimburse, indemnify, and hold harmless, Ruby Valley Rentals, its agents, officers, directors and employees, against all losses, liabilities, damages, injuries, demands, costs, expenses (including legal and investigative fees), claims, fines, settlements or penalties, including bodily injury, death, property or other damage arising out of or related to any breach of this Agreement and Customer's use of the Equipment. This indemnification includes improper use, possession, operation, erection, dismantling, servicing or transport of the Equipment, and the disabling or altering of any safety device. Customer must present a claim to its insurance carrier for any loss, damage or injury.

**14. Customer Insurance Obligations:** Customer agrees to maintain appropriate insurance protecting Ruby Valley Rentals from all loss, damage, expense, or penalties arising from or related to the use of the Equipment during the Rental Period. This

insurance must include bodily injury, property damage, general liability, and automobile liability coverages, for each person and each occurrence. Customer agrees to name Ruby Valley Rentals as an additional insured. Customer must elect to name Ruby Valley Rentals as loss payee evidencing coverage for theft or physical damage to the Equipment in an amount equal to the greater of the aggregate value of all Equipment, the Customer must have a certificate of insurance on file with Ruby Valley Rentals or provide a certificate of insurance evidencing all required coverage at the time of rental. Ruby Valley Rentals does not provide, extend or afford any insurance coverage to Customer, or any passenger or operator of the Equipment. The insurance coverage provided for above will not act to limit Customer's liability under this Agreement, the Customer will be responsible for any loss or damage to the Equipment until it is returned pursuant to Section 9 of this Agreement..

**15. Overtime, Refueling and Other Charges:** Customer will pay all rental time, mileage, delivery charges, surcharges, service, transportation, refueling, and environmental fees, taxes, and all other charges for the Equipment. The basic daily, weekly and 4 week rental entitles Customer to a maximum of one-shift use based on an 8 hour day, 40 hour week, 160 hours for 4 weeks. In the event the Equipment is used for a longer period, overtime rental will accrue at the hourly rate of 118 of the daily charge (daily rental), 140th of the weekly charge (weekly rental) and 1/160th of the 4 week charge (4 week rental), plus applicable taxes. Customer must return the Equipment with full fuel tanks or be subject to a refueling charge.

**16. Payment:** Payment of all rental and service expenses, stated on the front of this Agreement, and payment for any loss of damage to the Equipment is due in full upon receipt of invoice by Customer. All amounts unpaid after 30 days will accrue interest from the date due at the lesser of 18% per annum, or the maximum amount permitted by law, plus costs, attorney's fees and all expenses of collection and repossession of the Equipment. Ruby Valley Rentals may offset amounts due under this Agreement against any amounts Ruby Valley Rentals owes to Customer.

**17. Events of Default:** It will be an event of default under this Agreement if Customer fails to make payments when due; breaches any provision of this Agreement; becomes insolvent, ceases doing business, if a petition for bankruptcy is filed by or against Customer; or if Customer is in default of any other agreement with Ruby Valley Rentals.

**18. Remedies of Ruby Valley Rentals:** In the event of default, or if Customer fails to return the Equipment on the date due for any reason, Customer agrees that Ruby Valley Rentals may enter without notice the Customer's premises to repossess or

render the Equipment inoperable. Ruby Valley Rentals may also terminate this Agreement without notice and without prejudice to any other claim Ruby Valley Rentals might have against Customer. Customer is liable for any loss or damage to the Equipment or caused by the Equipment, or for a breach of this Agreement, notwithstanding the termination (including all attorney's fees and costs). Ruby Valley Rentals remedies under this Agreement are cumulative and in addition to all other remedies existing at law or in equity. Ruby Valley Rentals may establish a security interest, which allows Ruby Valley Rentals to collect, outside of this contract, what is owed to them; per the Uniform Commercial Code ("UCC").

**19. Dispute Resolution:** This Agreement is governed by Montana law and any dispute between the parties will be resolved under Montana law in Madison County, MT, and Customer consents to jurisdiction and venue in Madison County, MT. If there is any litigation between the parties, the prevailing party is entitled to its costs and legal fees.

**20. Privacy Consent:** The Customer consents to the collection and use of personal information by Ruby Valley Rentals, its affiliates, agents or service providers for any purpose permitted by law.

**21. Miscellaneous:** This Agreement constitutes the complete and exclusive statement of the terms and conditions between the parties, and may be modified only by a writing executed by both of them. Customer may not assign this Agreement without Ruby Valley Rentals prior written consent.

**22. Acceptance:** The terms and conditions of this Agreement will be deemed accepted upon the signature by Customer or commencement of the Rental Period.