



WAR HORSE
FISHING + RENTAL TOOLS

General Terms and Conditions

September 2015 Revision

These General Terms and Conditions supersedes all previous revisions.

The following terms and conditions (the “Terms”) shall control the agreement between War Horse Fishing and Rental Tools, Inc. (“War Horse”) and the Customer regarding all tools, services, and equipment (“Tools”) to be provided by War Horse. These Terms do not require Customer to request nor War Horse to agree to provide any Tools.

1. **Acceptance of Terms:** The Customer agrees that the prices charged by War Horse for the Services take into consideration and are predicated on the Customer assuming and releasing War Horse from certain liabilities and responsibilities. If Customer’s quotation, acknowledgment, confirmation, invoice, or other form states terms additional to or different from those set forth herein, these Terms shall have priority and control.
2. **Independent Contractor:** In the performance of any Services by War Horse for Customer, War Horse is and shall be deemed to be an independent contractor, with the authority and right to direct and control all of the details of the work, Customer being interested only in the results obtained. Customer shall have no right or authority to supervise or give instructions to the employees, agents, or representatives of War Horse, but such employees, agents, or representatives at all times shall be under the direct and sole supervision and control of War Horse. In no instance shall War Horse and Customer intend to be partners, affiliates, or joint venturers. It is the understanding and intention of the parties hereto that no relationship of master and servant, principal and agent, or employer and employee shall exist between Customer and War Horse, its employees, agents, or representatives.
3. **Custody and Control of Well:** The Customer recognizes and accepts that at all times it has full care, custody, and control of the well and all conditions and equipment situated on or at the well site and has sole responsibility for all decisions regarding the drilling, abandonment, completion, stimulation, workover, production procedure, and all other activities at the well site.
4. **Basis of Charges for Tools and Equipment Rented from War Horse:**

- a. **Equipment Rental:** Equipment used will be charged at the posted rental prices and are subject to change without notice. The first calendar day used, or any part thereof, constitutes the first day rental. Additional calendar days of usage, or any part thereof, constitutes additional rental days. Equipment obtained from an outside source is subject to the conditions if any, established by the supplier. A competitive mark-up will be applied to the prices established by the supplier for such equipment. All charges associated with moving equipment will be the responsibility of the Customer.
- b. **Special Equipment:** Special equipment ordered and built for a specific job will be charged on the basis of the shop charges (time and material) plus applicable rental charges. If the equipment is not used, a minimum rental will be charged in addition to the shop charges. Some equipment is available with left hand treads or connections. If such equipment is not routinely manufactured or does not have specific left hand prices published in this book, then an additional 50% shall be added to the published price of the equipment with right hand threads or connections.
- c. **Stand-by Rental:** Equipment will be charged on the basis of the days used. Most conventional fishing equipment may be rented on a stand-by basis. See individual equipment listing for the applicable stand-by rental charge. When obtained on a stand-by basis, and the equipment is used, regular rental rates will apply, in addition to the stand-by charge, for the days used. IN NO INSTANCE WILL STAND-BY CHARGES TAKE THE PLACE OF THE ACTUAL USAGE CHARGES.
- d. **Inspection and Repairs:** All inspection charges will be charged to the Customer. In addition, repairs to damaged equipment or parts thereof will also be charged to the Customer.
- e. In the event that the Tools do not include the provision of an employee of War Horse to assist the Customer in operating rental equipment, such equipment rented in excess of thirty (30) days will be invoiced at the end of each thirty (30) day period until the equipment is returned. Customer will specify the location where equipment will be used. Equipment may not be transferred to another location without the prior written consent of War Horse, which consent shall not be unreasonably withheld. Each time equipment is transferred to another location, a first day charge or minimum rental charge will be assessed plus any additional day's rental until the equipment is returned.
- f. Should any equipment be sold to Customer, and later returned to, and accepted by War Horse, War Horse will credit the Customer's account for no more than seventy-five percent (75%) of the original sale price based on usage and wear and tear. At the same time, War Horse will charge the Customer for the applicable rental rates for the time the equipment was not in War Horse's possession up to the sale price of the tool.

- g. All third party items such as, but not limited to, inspections, transportation, sub-rentals, and sub-contracted repair and manufacture will be charged to the Customer. As such, at the sole discretion of War Horse, a competitive mark-up may be applied.
- h. War Horse is committed to operating environmentally safe facilities and providing environmentally safe products and services. However, in the event tools and equipment are returned in an abnormally dirty condition, War Horse may elect to charge for extra clean up. Additional charges may apply if the material must be cleaned and removed by a third party.

5. Indemnifications: All Tools are supplied by War Horse subject to the following terms:

- a. For the purposes of this Section 6, "Customer Group" shall mean the Customer, its parent, subsidiaries and affiliated companies, and each of their respective officers, directors, employees, joint owners, invitees
- b. For the purposes of this Section 6, "War Horse Group" shall mean War Horse, its affiliates, parent, and subsidiaries, any subcontractor employed by War Horse and each of their respective officers, directors, employees, joint owners, invitees, and agents.
- c. War Horse shall protect, defend, indemnify, and hold harmless Customer Group from and against all claims, demands, and causes of action of every kind and character, without limit and without regard to the cause or causes thereof or the negligence of any party or parties, arising in connection herewith in favor of War Horse's employees, subcontractors or their employees or War Horse's invitees on account of bodily injury, death, or damage to property, EXCEPT TO THE EXTENT customer is required to reimburse War Horse for loss or damage under other provisions of this Agreement. War Horse's indemnity under these Terms shall be without regard to and without any right to contribution from any insurance maintained by Customer Group. **IT BEING THE EXPRESS INTENT OF THE PARTIES THAT CUSTOMER BE INDEMNIFIED UNDER THIS PROVISION FOR ITS OWN NEGLIGENCE WITHOUT REGARD TO CAUSE.**
- d. Customer shall protect, defend, indemnify, and hold harmless War Horse Group from and against all claims, demands and causes of action of every kind and character, without limit and without regard for the cause or causes thereof or the negligence of any party or parties, arising in connection herewith in favor of Customer's employees, subcontractors or their employees or Customer's invitees on account of bodily injury, death, or damage to property. Customer's indemnity under these Terms shall be without regard to and without any right to contributions from any insurance maintained by War Horse Group. **IT BEING THE EXPRESS INTENT OF THE PARTIES THAT WAR HORSE BE INDEMNIFIED UNDER THIS PROVISION FOR ITS OWN NEGLIGENCE WITHOUT REGARD TO CAUSE.**

- e. Customer shall protect, defend, indemnify, and hold harmless War Horse Group from and against all claims, demands, and causes of action of every kind and character, including costs and reasonable attorneys' fees, arising from the acts of Customer in favor of persons or entities not covered by Section 6(c) or 6(d) on account of bodily injury, death, or damage to property.
- f. If it is judicially determined that the monetary limits of insurance required hereunder or of the indemnities voluntarily assumed under these Terms (which War Horse and Customer hereby agree will be supported either by available liability insurance, under which the insurer has no right of subrogation against the indemnities, or voluntarily self-insured, in part or in whole) exceed the maximum limits permitted under applicable law, it is agreed that said insurance requirements or indemnities shall automatically be amended to conform to the maximum monetary limits permitted under such law.
- g. Each party shall notify the other party immediately of any claim, demand, or suit that may be presented to or served upon it by any party arising out of or as a result of Tools provided, affording such other party full opportunity to defend or assist in the defense of such claim, demand, or suit and to protect itself under the obligations of this Section 6, if such party desires to do so.
- h. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT NOR CONSEQUENTIAL DAMAGES (OR EQUIVALENTS THEREOF NO MATTER HOW CLAIMED, COMPUTED OR CHARACTERIZED) ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR SUCH PARTY'S PERFORMANCE OR BREACH THEREOF, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFIT OR BUSINESS INTERRUPTIONS INCLUDING LOSS OR DELAY OF PRODUCTION, REGARDLESS OF WHETHER ANY SUCH LIABILITY SHALL BE CLAIMED IN CONTRACT, WARRANTY, EQUITY, OR TORT (INCLUDING NEGLIGENCE, GROSS NEGLIGENCE AND STRICT TORT LIABILITY).
- i. Any action resulting from any breach of these Terms on the part of War Horse as to the adequacy and performance of Tools shall be deemed settled and forgiven in full unless commenced within one (1) year and one day after the cause of action has accrued.
- j. Except as otherwise expressly limited herein, it is the intent of the parties hereto that all indemnity obligations and liabilities assumed by such parties under these Terms, including without limitation, Section 6 hereof, be without limit and without regard to the cause or causes thereof (including pre-existing conditions), the unseaworthiness of any vessel or vessels, strict liability, or the negligence of any party or parties, whether such negligence be ordinary or gross; sole, joint, or concurrent; or active or passive. The indemnities, releases and assumptions of liability extended by the parties hereto under the provision of Section 6 shall inure to the benefit of the Customer Group and War Horse Group.

- k. Customer shall protect, defend, indemnify, and hold harmless War Horse Group from and against any and all claims, demands, damages, liens, losses, suits, judgments, liabilities, expenses (including attorney's fees and associated costs) and causes of action of whatever kind and nature and without limit and without regard to the cause or causes thereof or the negligence or fault of any party including but not limited to the sole, concurrent, active or passive negligence of War Horse Group, arising from (1) personal injury, death or property injury that results from radioactivity, (2) property injury that results from pollution, including clean up and control of pollutant, or (3) property injury that results from reservoir or underground damage, including loss of oil, gas or mineral substance, or water or the wellbore itself. **IT BEING THE EXPRESS INTENT OF THE PARTIES THAT WAR HORSE BE INDEMNIFIED UNDER THIS PROVISION FOR ITS OWN NEGLIGENCE WITHOUT REGARD TO CAUSE.**
 - l. Customer understands and agrees that if War Horse should be found liable to Customer for loss or damage relating to or concerning the Tools, War Horse's liability to Customer shall be limited to the total sum paid by Customer to War Horse under these Terms, as liquidated damages and not as penalty and this liability shall be exclusive.
6. No Warranty: War Horse does not guarantee results, nor does it make any representations or warranties concerning the goods and Tools it provides. THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED OF MERCHANTABILITY, FITNESS, OR OTHERWISE.
 7. Well site and Return of Equipment: Customer shall be responsible for and pay the entire cost of any repairs to roadbeds and bridges damaged during an attempt by War Horse to gain access to any well site to provide Tools, whether such attempt was successful or not. Furthermore, Customer shall arrange and pay the entire cost of the use of any vehicles, aircraft, or other special means of transportation or services for War Horse equipment or personnel to gain access to and return from any well site to or from the point of origin or other mutually agreed location. Where War Horse equipment is transported by a conveyance belonging to or arranged for by the Customer or while War Horse equipment is at the well site or is in the well or is in the custody of the Customer, the Customer shall be responsible for the undamaged and safe return of such equipment to the point of origin or other mutually agreed location in the same condition the equipment was in at the time it was delivered to the Customer, ordinary wear and tear excepted. If however, such equipment of War Horse is lost, damaged, destroyed, or stolen or if any such equipment of War Horse is expropriated, nationalized or lost due to force or otherwise then, regardless of cause of loss, damage, or destruction, the Customer shall: (i) at its sole risk and expense, recover or attempt to recover such equipment for War Horse; (ii) reimburse War Horse at rates equal to the current replacement cost of such equipment if not recovered or destroyed; (iii) reimburse War Horse for the cost of repair of such equipment if the equipment is repairable; and/or (iv) be responsible at its sole expense for the return of the damaged equipment or lost equipment subsequently recovered to War Horse, without opening or inspecting same. To the extent required and at its sole expense Customer shall acquire all necessary permits and licenses and provide safe transportation to and proper storage space at the well s for War Horse's

explosives and radioactive materials and such storage and transportation shall meet all applicable safety requirements and be consistent with good industry practices. Customer shall advise War Horse in advance of the quantities of such materials to be located at the well site.

8. Unusual Wellbore Conditions: The Tools are designed to operate under conditions normally encountered in the wellbore. Where certain wellbore conditions and substances exist including but not limited to gas cut drilling mud, corrosive gases, chemicals, fluids excessive temperature and pressure and deviated hole, the Tools may be seriously damaged. The Customer shall notify War Horse in advance of such hazardous and unusual conditions and make special arrangements necessary to safely complete the Services. For all Tools subjected to any hazardous conditions, the Customer shall pay the cost of repair to all damaged Tools or, if the Tools are damaged beyond repair, the Customer shall pay the current replacement cost thereof.
9. Fishing Operations: In the event any of War Horse's Tools are damaged or lost in the well, the Customer shall either recover same without cost to War Horse or pay for any damage or loss of such Tools. In the event it is necessary for the Customer to fish for any of War Horse's downhole Tools, the Customer will inform War Horse immediately of the situation and the Customer assumes all responsibility for such operations. War Horse will however, if so requested by Customer but without any responsibility or liability on War Horse's part, render assistance in an advisory capacity for the recovery or fishing of such Tools. None of War Horse's employees are authorized to do anything other than advise and consult with Customer in connection with such fishing operations and any fishing tools furnished by War Horse are furnished solely as an accommodation to Customer. The Customer further agrees that War Horse shall not be liable or responsible in any way for any damage that Customer may incur or sustain by reason of any equipment supplied or advice or assistance rendered in respect of such fishing operations.
10. Hazardous Devices: Customer acknowledges that it is aware that the chemicals used in chemical cutters and the shaped charges used in perforating equipment are all potentially dangerous to persons and property. Should any of these be lost in the well, special precautions during fishing operations need to be taken in order that the tool not be broken and if not recovered, the Customer shall be responsible for the abandonment of the tool according to all applicable regulations in force at that time. In accepting an order to perform or attempt to perform any service involving the use of perforating equipment or chemical cutters, the Customer does so with the understanding that War Horse does not guarantee results and that War Horse shall not be liable or responsible for injury or death of persons or damage to property (including but not limited to injury to the well) or any damages whatsoever, irrespective of the cause, growing out of or in any way connected with the use of perforating equipment or chemical cutters. Customer shall indemnify and hold War Horse harmless from and against any and all claims, demands, damages, losses, suits, judgments, liabilities, expenses (including attorney's fees and associated costs) and causes of action of whatever kind and nature or incurred or sustained by Customer or any third party,

irrespective of the cause resulting from any such use of perforating equipment and chemical cutter. **THE RELEASE AND INDEMNITY OBLIGATIONS CONTAINED IN THIS SECTION SHALL APPLY WITHOUT REGARD TO THE CAUSE OR CAUSES OR LOSSES, COSTS, DAMAGES OR EXPENSES WITHOUT REGARD TO THE NEGLIGENCE, IF ANY, OF WAR HORSE.**

11. Log Interpretation: Any interpretation of logs or surveys, either through optical or electronic processing means or otherwise, or any recommendation or description of any reservoir based on such interpretations or other data are opinions based upon measurements, assumptions and empirical relationships, which inferences and assumptions are not incapable of error. War Horse cannot and does not guarantee the accuracy, correctness or completeness of such interpretations, recommendations or descriptions and the Customer agrees that War Horse shall not be liable or responsible for any loss, cost, damage or expense incurred or sustained by Customer resulting directly or indirectly there from. Under no circumstances should any such interpretation, recommendation or description be relied upon as the basis for any procedure conducted in or on a well which involves any risk to the safety of any personnel, equipment or venture. The Customer shall always have full responsibility for such decisions and for all decisions concerning other procedures relating to drilling or production operations.
12. Accuracy of Log Data, Data Transmission and Storage: War Horse does not warrant or guarantee the accuracy of log or survey data, specifically including, but not limited to, the accuracy of log or survey data transmitted by electronic process and War Horse will not be responsible for the accidental or intentional interpretation of such data by third parties. War Horse does not guarantee and will not be responsible for the safe storage or the length of time of storage of any digital tapes, optical prints, or transparencies or other similar products or material or information contained therein.
13. Malfunction of Equipment: Customer agrees that War Horse is not responsible for the performance or construction of the Tools other than the equipment and tools manufactured by War Horse and any adjustment for malfunction of such other equipment and tools must be made by supplier.
14. Prices and Currency: The Customer shall pay War Horse and provide any specialized facilities in accordance with the schedule of prices ("Price List") applicable to the geographic area in which the Services are performed or the equipment is furnished, or such prices as may otherwise be agreed upon by the Customer and War Horse. Prices and conditions of payment of such Price List are subject to change with one month's prior written notice. The currency applicable to the Price List shall be U.S. Dollars.
15. Terms of Payment: Terms of payment for Services rendered by War Horse are net cash in U.S. Dollars at the time of service. Net thirty (30) days may be available, subject to credit approval and payment instructions written on the invoice. Invoices not paid in thirty (30) days can be charged a finance charge equal to one and one-half percent (1 1/2%) per month

of unpaid balance (but in no event to exceed the highest lawful rate). All prices are exclusive of any taxes imposed on the sale or use of the merchandise and Services listed, which tax will be added to quoted prices where applicable. For unpaid amounts collected through legal proceedings or by a collection agency, the Customer shall pay attorney and agency fees and reasonable costs thereof incurred by War Horse in addition to the amount of the invoice and any accrued interest.

16. Confidential Information: Information derived from the Services rendered by War Horse will be held in strictest confidence and will be released only upon approval of Customer unless such information is part of the public domain or except where its divulgence is required by law or is otherwise demanded by legal process. The design, construction, application, and operation of War Horse's Services, equipment, and products embody proprietary and confidential information. Customer shall maintain this information in strict confidence and shall not disclose it to others.
17. Safety: Customer shall, either by itself or through contract with its subcontractors, ensure that adequate safety apparatus complying with all applicable laws and regulations and written safety instructions are available at the worksite. Customer shall be responsible for regular emergency drills and means for emergency evacuation from the well site.
18. Taxes: Customer shall pay War Horse for Tools provided as contemplated herein and shall pay all taxes or other levies (other than U.S. Federal and State income taxes) imposable or imposed by any government, governmental unit, or similar authority with respect to the charges made or payments received in connection with War Horse products or Tools.
19. Force Majeure: War Horse shall not be liable for delay or nonperformance due to governmental regulations, strikes, hostile actions, weather, acts of God or any other cause beyond the reasonable control of War Horse (any and all of which are referred to herein as "Force Majeure"). Force Majeure shall not however excuse payment for rental of Tools.
20. Amendments, Severability, and No Waiver: These Terms constitute the entire agreement between the parties with respect to provision of Tools and supersedes all other Terms either expressed or implied by law. Except as otherwise provided in these Terms, these Terms may not be amended except in a writing signed by the duly authorized representative of each party. Failure to enforce any or all of these Terms in a particular instance shall not constitute a waiver of or preclude subsequent enforcement of any or all such Terms. In the event of any part or parts of these Terms being held invalid, such holding shall not invalidate the remainder.
21. Suppliers and Manufacturers: All of these Terms shall also apply in favor of any supplier of War Horse which designs, manufactures, and/or supplies any equipment or components thereof which War Horse may use in the provision of Tools and in favor of the contractors and subcontractors of such suppliers.

22. Governing Law: The Terms of this agreement shall be constructed in accordance with laws of and applicable to the State of Texas, without regard to its conflict of laws rules.
23. Insurance: Customer agrees to carry and maintain through the term of these Terms the following:
- a. Employer's Liability insurance specifically endorsed to cover indemnity agreements contained in these Terms, with limits of \$1,000,000 for each accident;
 - b. Workers Compensation insurance specifically endorsed to cover indemnity agreements contained in these Terms, with limits of \$1,000,000 for each accident;
 - c. Automobile Liability insurance specifically endorsed to cover indemnity agreements contained in these Terms, with limits of \$1,000,000 for each accident; and
 - d. Comprehensive General Liability insurance, specifically endorsed to cover the indemnity agreements contained in these Terms with limits of \$1,000,000 for each accident for bodily injury and property liability combined. All insurance policies of Customer, including but not limited to those described herein, shall expressly waive subrogation as to Customer. The insurance required hereunder shall not void or limit Customer's indemnity obligations as contained in these Terms.