

# HORIZONTAL TECHNOLOGY, INC.

## APPLICATION FOR CREDIT

### TO: HORIZONTAL TECHNOLOGY, INC.

(HEREAFTER REFERRED TO AS "HORIZONTAL TECHNOLOGY")

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These Terms and Conditions ("**Agreement**") entered into by and between Horizontal Technology, Inc., or Horizontal Technology of Canada, Inc., ("**HTI**"), and \_\_\_\_\_ ("**Customer**"). The terms & conditions of this agreement remain in effect as long as HTI and customer are doing business or until a new Terms & Conditions are agreed to and signed. These Terms and Conditions apply to all work and equipment provided to any customer by HTI regardless if a signed Terms & Conditions are on file.

- 1) **OWNERSHIP OF EQUIPMENT:** Customer shall pay HTI fees for services and rental for Equipment as referenced within each of HTI's invoices ("Equipment"). Title to all Equipment delivered to the Customer pursuant to this Agreement shall remain at all times with HTI. All Equipment must remain in the possession, custody or control of Customer and shall be delivered to HTI upon demand.
- 2) **OPERATION OF EQUIPMENT:** It is agreed that at all times it is the Customer's sole responsibility for any and all decisions relative to the Customer's project. Only the Customer will operate the Equipment. If an Equipment technician is provided by HTI, the technician is only provided in an advisory capacity, and HTI or the technician cannot be held responsible. All tools are operated at the Customer's sole risk, and Customer expressly assumes full responsibility and all liability for the use and operation of the Equipment. Any conditions which prevent satisfactory operation of the Equipment do not relieve Customer of its responsibility to pay HTI for rental or sales charges of the Equipment.
- 3) **INDEMNIFICATION:** The parties agree as follows:
  - A) Customer assumes the entire responsibility and liability for all losses, expenses, damages, demands and claims based on any injury or alleged injury to persons (including death) or damage or alleged damage to property sustained, or alleged to have been sustained in relation to the performance of this Agreement including losses, expenses, or damages sustained by HTI with respect to this Agreement.
  - B) In no circumstances shall HTI be responsible for any special, indirect, punitive, damages to property or consequential damages arising from, but not limited to, the following incidents: loss of hole, seepage and pollution, re-drilling expenses, striking of line or other objects, replacement lines, resource damage, cost control, lost revenue, fishing for Equipment and remedial works. The Customer shall indemnify and hold HTI harmless against all such claims of these types of damages from any party.
  - C) For HTI's Negligence:
    - i) HTI its directors, officers, agents, servants, employees, insurers and representatives shall not be liable or responsible for, and shall be saved and held harmless by Customer from and against any and all suits, actions, losses, damages, claims, or liability of any character, type, or description, including all expenses of litigation, court costs, and attorney's fees for injury or death to any person, or injury to any property, received or sustained by any person or persons or property, arising out of, or occasioned by, directly or indirectly, the performance of Customer under this Agreement, including claims and damages arising in whole or in part from the negligence of HTI.
    - ii) It is the expressed intent of the parties to this Agreement that the indemnity provided for in this section is an indemnity extended by Customer to indemnify and protect HTI from the consequences of HTI's own negligence, whether that negligence is the sole or contributory cause of the resultant injury, death, or damage or provided, however, that the indemnity provided for in this section shall apply only when the negligent act of HTI is a contributory cause of the resultant injury, death, or damage, and shall have no application when the negligent act of HTI is the sole cause of the resultant injury, death, or damage, unmixed with the legal fault of another person or entity.
    - iii) Customer further agrees to defend, at its own expense, and on behalf of HTI and in the name of HTI, any claim, demand or litigation brought in connection with any such injury, death, or damage. HTI shall have the right to select its own legal counsel, and Customer shall be responsible for those legal costs in addition to all other costs set forth in this Agreement.
    - iv) Customer agrees to indemnify HTI from and against any and all claims and causes of action arising out of the subject matter of this Agreement, regardless of whether those claims or causes of action are asserted against in whole or in part out of HTI's negligence, gross negligence, strict liability, products liability, or premises liability.
- 4) **WARRANTY:** Customer will at all times have complete care, custody, supervision, and control of the Equipment provided under this Agreement, and the recommendation of HTI, if any, are only advisory and without representations as to results. HTI warrants only that Equipment will be in good working order on the day delivered and that the Equipment will conform to industry standards. The Customer's sole remedy shall be the replacement of, or the allowance of credit for, any Equipment determined by HTI to be defective and such replacement or allowance shall be at the sole discretion of HTI. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATIONS, SUITABILITY, DURABILITY, FITNESS FOR PARTICULAR PURPOSE, OR MERCHANTABILITY.
  - A) **Limitation of Liability:** NEITHER CUSTOMER, HTI NOR HTI'S SUBCONTRACTORS WILL BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE SERVICES PROVIDED BY HTI EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. HTI SHALL NOT HAVE LIABILITY FOR (i) LOSS OF INCOME, PROFIT, OR SAVINGS, WHETHER DIRECT OR INDIRECT, OR (ii) PRODUCTS NOT BEING AVAILABLE FOR USE. HTI'S TOTAL LIABILITY ARISING OUT OF, OR IN CONNECTION WITH, ANY SERVICES PURCHASED PURSUANT TO THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS PAID BY CUSTOMER FOR THE SPECIFIC SERVICE(S) GIVING RISE TO SUCH CLAIM DURING THE PRIOR TWELVE MONTH PERIOD.
  - B) **OTHER EQUIPMENT MANUFACTURERS:** HTI MAKES NO REPRESENTATIONS OR WARRANTIES OF WHATSOEVER NATURE, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO SUITABILITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY WITH RESPECT TO OTHER MANUFACTURER'S EQUIPMENT.

# HORIZONTAL TECHNOLOGY, INC.

## TERMS & CONDITIONS

Continued

- 5) **TERMS OF PAYMENT:** Payment shall be made within 30 days of receipt of invoices. If payment is not made within 30 days, interest will run at a rate of the lesser of 2% per month, or the maximum rate permitted by law from the date the invoice was rendered. Should the services of an attorney be necessary to collect unpaid amounts, then HTI may recover reasonable attorney's fees, and court costs in addition to the amount of unpaid invoices.
- 6) **TRANSPORTATION AND DELIVERY CHARGES:** All transportation charges shall be paid by Customer. Common carrier rates shall apply. When tools and equipment are delivered by HTI, common carrier rates do not apply, and charges shall be in accordance with the current HTI price list.
- 7) **LOST/DAMAGED EQUIPMENT AND PARTS:** All Equipment shall be returned to HTI in the same condition as when the Equipment was initially delivered to Customer. If any such Equipment shall be lost or damaged beyond repair, then Customer will be invoiced at the current sale Price\*\*. Repair costs will be billed to the Customer for damages. All costs regarding Equipment that are lost or damaged shall be billed by HTI to the Customer without any regard to the depreciation of the Equipment. Accrued rental charges to the date of loss must also be paid. No accrued rental shall be applied to the sale of the Equipment. HTI shall retain title to all damaged or lost Equipment and no title or other interest if damaged or lost Equipment shall accrue to the Customer.
- 8) **MODIFICATION:** The customer will not modify, disassemble or attempt to repair Equipment.
- 9) **ASSIGNMENT:** The Customer shall not assign this Agreement in whole or in part to any party without the written authorization of HTI
- 10) **TAXES:** The Customer shall pay all sales, rental or other taxes (federal, state or territorial) or will furnish HTI applicable tax exempt certificates. All tax liability will be the responsibility of the Customer, and this responsibility shall survive termination of this Agreement no matter when the liability is first presented.
- 11) **PATENT:** The Equipment is protected by a number of United States and foreign patents which are exclusively licensed to HTI. The rental includes a sublicense under the patents to use the Equipment, but only in accordance with the subject to the terms of this Agreement. HTI will retain exclusive ownership in all Equipment supplied by HTI hereunder and will own all intellectual property rights, title and interest in any ideas, concepts, know how, documentation or techniques developed by HTI under this Agreement.
- 12) **AGREEMENT:** This Agreement supersedes all other agreements and conditions relating to the Equipment and prevails over other conditions. This Agreement shall not be amended or modified without the express written authorization of all parties.
- 13) **CONFIDENTIALITY:** All information relating to the Equipment is property of HTI and the Customer shall keep all such information confidential.
- 14) **THE LAW:** This Agreement shall be governed and controlled in accordance with the laws of the State of Texas and all the obligation and undertakings of each of the parties to this Agreement shall be performable at Houston, Harris County, Texas. Each party hereto agrees to the personal jurisdiction and venue of the federal or state courts having jurisdiction over Harris County, Texas, for a resolution of all matters related with the interpretation, construction, or enforcement of this Agreement, and hereby waives the claim or defense therein that such Harris County, court constitute an inconvenient forum.
- 15) **WAIVER OF BREACH:** Failure of HTI to enforce any of the above terms and conditions shall not prevent a subsequent enforcement of such term or condition or be deemed waiver of any subsequent breach.
- 16) **CUSTOMER'S COMPLIANCE WITH APPLICABLE STATUTES:** Customer represents and warrants that it is capable of utilizing the Equipment, that Customer shall comply with all necessary applications, fees, license(s) or other applicable federal, state or foreign country=s regulations related in any way to the Equipment.
- 17) **TECHNICIAN:** Technician's time is charged at the standard rate. Technician's time starts when technician leaves HTI's nearest facility and continues until his return thereto. Twenty- four hours, or any part thereof, constitutes the first day. Additional days begin at the expiration of the first calendar day; thereafter, each additional day, part thereof, constitutes an additional day.
- 18) **TECHNICIAN'S ROOM AND BOARD:** Technician's room and board will be charged to, or paid directly by the Customer.
- 19) **TECHNICIAN'S TRANSPORTATION:** Technician's travel cost will be charged to or paid direct by the Customer. This includes airfare, car rental, etc.
- 20) **AUTHORIZATION:** As a duly authorized representative for the Customer indicated below, the signatory warrants and represents to HTI that a thorough review of this Agreement has been made, and that said signatory is unconditionally authorized on behalf of the Customer to execute and to accept the terms of this Agreement.

\*\*Accrued rental charges to the date of loss must also be paid. No accrued rental shall be applied to the sale of the Equipment. HTI shall retain title to all damaged or lost Equipment and no title or other interest if damaged or lost Equipment shall accrue to the Customer.

**Customer Name:**

**Effective Date:**

**Officer's Signature:**

**Print Officer's Name:**