

TERMS AND CONDITIONS OF RENTAL CONTRACT
(Enlarged Version)

(1) **Definitions.** As used in this Contract, “Page 1” refers to the first page or “face” of this Contract; “Rented Item(s)” means the “Item(s) Rented” as identified on Page 1, “Customer,” “you” and “your” mean the customer or “Lessee” identified on Page 1, and “Lessor,” “ABC,” “we,” “us” and “our” mean ABC Rental of Strongsville, Inc., an Ohio corporation, d/b/a “ABC Equipment Rental & Sales.”

(2) **Rental.** You agree to rent the Rented Item(s) from ABC for the period(s) specified on Page 1 (the “Term”), and to pay ABC our stated rental rate(s) (the “Rent”), together with any other charges accruing hereunder, without proration, reduction or setoff, until the Rented Item(s) is/are returned to and accepted by ABC (even if the rental is called off before ABC’s acceptance of return). Rental rates are for normal use of the Rented Item(s) on a single-shift basis during the Term, not exceeding 8 hours per day, 5 days per week. The Rent will be increased for any additional time or use. No allowance will be made for weekends, holidays, time in transit or any other period of nonuse. We have estimated the Rent based on your estimate of the length of the Term (the “Estimated Rent”). You agree to pay us: (a) the Estimated Rent prior to commencement of the Term (the “Prepayment”); and (b) any additional amounts coming due hereunder upon demand by ABC. Anything remaining in or on any Rented Item(s) upon return will, at our option, be deemed surrendered and immediately become the property of ABC.

(3) **Use.** You will ensure that the Rented Item(s) is/are used safely and only: (a) for its/their intended purpose(s); (b) within its/their rated capacity(ies); (c) at the address set forth on Page 1 (the “Site”); and (d) otherwise in full compliance with the “Instructions” (identified in Section (7) below) as well as all applicable laws, rules and regulations, at all times during the Term. You will not, nor will you permit anyone else to abuse, misuse, overuse, remove, conceal, repair, modify, move, damage, destroy, take possession of or exercise control over, any of the Rented Item(s) without ABC’s prior consent (granted or denied in the sole discretion of ABC).

(4) **Delivery and Retrieval.** If we agree to deliver and/or retrieve any Rented Item(s), you agree to: (a) pay our delivery and/or retrieval charge(s); (b) be present (or ensure your representative is present) at the Site at the agreed time(s); (c) ensure all representatives of ABC have reasonable access to the Site; (d) give any required notice(s) to governmental authorities; and (e) obtain all necessary licenses, authorizations and approvals. **ABC will not be responsible for any delay(s) caused by the acts or omissions of any other parties**, including any providers of other equipment, products or services related to your planned use of the Rented Item(s) (“Other Providers”) for which you agree to indemnify, defend and hold harmless ABC. If you are not present upon delivery and/or retrieval of the Rented Item(s), you agree to accept the statements of ABC’s representatives regarding the same (including the status, condition and quantities of all Equipment delivered and/or retrieved).

(5) **Protection and Return.** You will protect the Rented Item(s) at all times and keep them safely and securely stored and locked when not in use. You will return the Rented Item(s) to ABC on time, clean and otherwise in good order, condition and repair, and full of the appropriate fuel. Otherwise, you will pay to ABC: (a) Rent for each succeeding full rental period until the Rented Item(s) is/are returned or replaced as required; and (b) all costs and expenses (both direct and indirect) that ABC may incur in (i) doing so, or at ABC’s option, (ii) replacing the subject Rented Item(s).

(6) **Deposits.** You agree that (a) we may deduct any amount you owe ABC from any deposit or Prepayment we receive; (b) no interest will accrue thereon; and (c) no deposit or Prepayment will be deemed a limit of your liability to ABC.

(7) **Inspections/Safety.** Upon your execution of this Contract (or upon subsequent delivery of the Rented Items, unless you immediately reject it/them), you represent, warrant, acknowledge and agree that: (a) each of the Rented Item(s): (i) has been carefully selected, examined, counted and tested by you; (ii) is in good repair and operating condition and is in all ways acceptable to you; (iii) has been delivered to you full of fuel and all necessary fluids and lubricants (as applicable); and (iv) is appropriate for your purposes, not based on any recommendation by ABC; and (b) you: (i) have received, read and understood the training, instructions, user manuals, maintenance requirements, and other information, if any (including all training required under applicable EPA, OSHA and/or ANSI Standards, if any) regarding the proper and safe transportation, installation, use, maintenance and storage of the Rented Item(s), (collectively, "Instructions"); (ii) will fully comply therewith; (iii) have been offered all recommended and required safety equipment; (iv) will use each Rented Item only for its intended purpose, in a reasonable and safe manner; (v) **will advise the Ohio Utilities Protection Service (800-362-2764) and obtain all necessary licenses, authorizations, permits and approvals prior to using any Rented Item for digging, driving stakes or otherwise disturbing the soil or any ground surface**; (vi) will immediately cease using any Rented Item that malfunctions or proves defective (a "Malfunction"); and (vii) will cause all other parties to comply with this Section.

(8) **Replacement.** In the event of a Malfunction, you will immediately notify ABC, and ABC will (at its option): (a) repair the subject Rented Item; (b) provide you with a replacement; (c) make a comparable item available as soon as reasonably possible; or (d) return the unused portion of the Rent previously received from you and cancel this Contract. The foregoing remedy is EXCLUSIVE. ABC will have no obligation other than as set forth herein regarding Malfunctions, and you hereby waive and relinquish any and all claims with respect thereto.

(9) **Ownership/Transfers.** ABC alone owns and will retain title to all Rented Item(s) at all times. Your only right with respect to the Rented Item(s) is to use it/them in full compliance with this Contract during the Term. You will not permit the taking of any lien, claim or encumbrance on any Rented Item(s). You may not transfer, sublet or assign any Rented Item(s) or this Contract (a transfer of more than 50% of the equity or voting control of the Customer or any guarantor will be deemed a "transfer" for these purposes) without ABC's prior written consent.

(10) **Insurance.** You will maintain all insurance we deem necessary, but in any event, (unless we otherwise agree) at least: (a) commercial general liability insurance with minimum limits of \$2,000,000 per occurrence; and (b) inland marine insurance or the equivalent (including coverage for property in transit), covering all loss of or damage to the Rented Item(s) for the full replacement value thereof. All such policies shall: (i) name ABC as an additional insured and loss payee on a closed clause basis; (ii) waive subrogation against ABC; and (iii) be primary (ABC's insurance will be excess). You agree to provide us with copies of the proper endorsements for such coverages specifying that they will not be cancelled during the Term.

(11) **Default/Remedies.** If you or any guarantor: (a) fail to fully and timely comply with any provision of this Contract; (b) provide any incorrect or misleading information to ABC; (c) become insolvent; (d) make an assignment for the benefit of creditors or suffer or acquiesce to the appointment of a trustee, receiver or liquidator; or (e) die or cease conducting business; you will be in default, whereupon, ABC may without notice or liability to you: (i) terminate your rental; (ii) seek relief from any automatic stay; (iii) recover, lock or disable the Rented Item(s) without being guilty of trespass or other transgression; (iv)

perform any or all of your obligations hereunder on your behalf, without being obligated to do so; (v) purchase replacement item(s) as necessary; (vi) recover from you and/or any guarantor our associated direct, indirect, incidental and consequential damages, costs and expenses (including without limitation, Rent for the remainder of the Term); and/or (vii) pursue any other rights and/or remedies available hereunder, at law or in equity.

(12) **WARNING. LIFTS AND EQUIPMENT USED FOR CUTTING, DIGGING, DRILLING, DRIVING, LOADING AND/OR COMPACTING IS/ARE INHERENTLY DANGEROUS AND SHOULD BE USED, TRANSPORTED, INSTALLED, MAINTAINED AND REPAIRED WITH GREAT CARE ONLY BY THOSE WITH THE TRAINING AND EXPERIENCE NECESSARY TO DO SO SAFELY AND PROPERLY.**

(13) **WAIVER/INDEMNITY.** ABC IS NOT THE MANUFACTURER OR DESIGNER OF THE RENTED ITEM(S). ACCORDINGLY, THE RENTED ITEM(S) IS/ARE PROVIDED "AS-IS". ABC MAKES NO WARRANTY, EXPRESS OR IMPLIED (INCLUDING ANY WARRANTY OF SUITABILITY, MERCHANTABILITY, FITNESS, FUNCTION, DESIGN, CAPACITY OR FREEDOM FROM DEFECTS) REGARDING ANY RENTED ITEM, NOR DOES ABC MAKE ANY WARRANTY AGAINST INTERFERENCE OR INFRINGEMENT, ALL OF WHICH YOU HEREBY WAIVE. **NO DESCRIPTIONS OR ADVERTISEMENTS BY ABC SHALL CONSTITUTE REPRESENTATIONS OR WARRANTIES BY ABC. YOU ASSUME ALL RISK** OF INJURY, LOSS, DAMAGE AND ENVIRONMENTAL CONTAMINATION OF, TO, AND/OR ARISING IN CONNECTION WITH, THE RENTED ITEM(S), INCLUDING WITHOUT LIMITATION, ANY AND ALL LIABILITIES, CLAIMS AND DAMAGES ARISING FROM OR IN CONNECTION WITH THE SELECTION, INSPECTION, DESIGN, MANUFACTURE, USE, LOADING, UNLOADING, TRANSPORTATION, STORAGE, MAINTENANCE, REPAIR AND/OR RETAKING OF EACH RENTED ITEM, WHETHER OR NOT YOUR FAULT. YOU HEREBY RELEASE AND DISCHARGE ABC FROM **AND AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS ABC** AND ITS OWNERS, OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, INSURERS, SUBROGEEES, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL LIABILITIES, CLAIMS, DAMAGES, LOSSES, COSTS AND EXPENSES (INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES) ARISING FROM OR ASSOCIATED WITH EACH OF THE RENTED ITEM(S) (INCLUDING WITHOUT LIMITATION, ALL COSTS ASSOCIATED WITH REPAIRING AND/ OR REPLACING THE SAME), **EVEN IF ARISING FROM THE NEGLIGENCE OF ABC OR ANY OF ITS REPRESENTATIVES, AGENTS OR EMPLOYEES.**

(14) **UCC.** You hereby waive any and all rights and remedies conferred upon you under **UCC Article 2A-Leases (including without limitation, §§ 2A-508 through 522 thereof), as well as any and all incidental, consequential, special, exemplary and punitive damages, against ABC. Your duties hereunder are UNCONDITIONAL.**

(15) **Damage Waiver.** If you have accepted (not declined) the *optional* **Damage Waiver** on Page 1, you will have no liability to ABC for physical damage to the applicable Rented Item(s), **except that you will remain liable to ABC in all events for damage or loss caused in whole or in part by:** (i) your breach of this Contract; (ii) theft, mysterious disappearance or other failure to return any Rented Item(s); (iii) the use of alcohol or drugs by anyone using or dealing with any Rented Item; (iv) misuse or abuse of any Rented Item (as determined by ABC and/or the manufacturer of such Rented Item; and/or (v) use of any Rented Item in a way that violates any applicable law or policy of insurance. In all events, your insurance will continue to apply for ABC's benefit and will remain primary (ABC will be subrogated to your rights under such policy). You agree to assign to ABC all of your rights thereunder to, and to take all actions necessary to assist, ABC in recovering from your insurer for all damages covered hereby.

(1) **Miscellaneous.** This Contract, and any Addenda signed or provided by ABC, represent the entire agreement between you and ABC. This Agreement supersedes all other agreements and representations (including our website and advertising). You will pay: (a) ABC's attorneys' fees and other costs of enforcing this Contract, and (b) all taxes, fines, fees, assessments and other charges related to the Rented Item(s). If any provision of this Contract is 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. **Time is of the essence.** There are no third-party beneficiaries hereto. ABC may, without notice or liability to you: (i) inspect the Rented Item(s) at any time, and/or (b) file of public record one or more UCC-1 Financing Statements to reflect its interest in the Rented Item(s). Neither our exercise, nor our failure or delay in the exercise, of any rights or remedies will constitute an election of remedies or a waiver of any right or remedy ABC may have. If any performance required of ABC is rendered impractical as a result of any act or omission of any Other Providers or any "Act of God" (e.g., any event, fact or circumstance beyond our reasonable control), ABC will be excused from such performance. You waive the benefits of any and all statutes of limitations regarding ABC's rights and remedies. All amounts due hereunder but not timely paid will bear interest at the highest rate permitted under applicable law until paid. **You authorize ABC to submit all amounts coming due hereunder for payment on your debit or credit card and hereby waive all claims to the contrary.** You agree to pay ABC the maximum lawful charge for any check you write which is returned NSF. **ABC's maximum liability under or in connection with this Contract is limited to the Rent actually paid by you hereunder.** This Contract allocates to you the risk of injury, loss of or damage to persons or property arising in connection with the Rented Item(s), and that allocation is reflected in a reduced Rent. This Contract will be deemed to apply not only to the Rented Item(s) identified on Page 1, but *also* to *all other items* you rent from ABC *at any time* (except only as otherwise agreed by ABC). This Contract: (A) is a true (operating) lease, and not a financing arrangement; (B) cannot be further amended or extended except in a writing signed by both you and ABC; and (C) will be governed solely by the laws of the United States and the State of Ohio. Proper venue for all legal proceedings commenced in connection herewith shall lie solely and exclusively in Medina County, OH. Your handwritten, digital, electronic, photocopied or facsimiled signature on Page 1 will be enforceable as an original for all purposes.