

SERVICE TERMS AND CONDITIONS

These terms and conditions (“**Terms**”) form part of the agreement by and between MacAllister and Customer for MacAllister to perform the Services, as defined below. In consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Definitions**

- 1.1 “**Customer**” means the person or entity identified as such on the Work Order by name and/or account number, including its and their employees, representatives, or agents.
- 1.2 “**Equipment**” means any one or more of the items described as such by either make, model, equipment number, and/or serial number on a Work Order.
- 1.3 “**MacAllister**” means MacAllister Machinery Co Inc., which may do business under trade names including Michigan CAT, MacAllister Rentals, MacAllister Power Systems, MacAllister Transportation, MacAllister Railroad Machinery, or MacAllister Underground Shoring & Pump.
- 1.4 “**Offsite**” means any location that is off the premises of a MacAllister facility.
- 1.5 “**Service**” or “**Services**” means the services, repairs, and/or evaluations set forth on the quote, proposal, Work Order, or invoice that MacAllister has performed or will perform for Customer.
- 1.6 “**Work Order**” means any document or communication—whether titled as a quote, proposal, estimate, work order, invoice, or otherwise—that describes or authorizes the Services and incorporates these Terms by reference. A Work Order may be delivered or accepted in person, electronically, or by other means, and includes any associated documents or materials, such as schedules, exhibits, appendices, and Change Orders.

2. **Agreement**

- 2.1 MacAllister and Customer agree that MacAllister will provide the Services to Customer subject to these Terms.
- 2.2 Customer agrees to be bound by and accepts all the Terms when any of the following occurs, even if the Work Order is not fully executed:
 - (a) Customer approves the Work Order either orally, in writing, electronically, or otherwise;
 - (b) Customer accepts or uses the Equipment after the Services are performed; or
 - (c) Customer makes any payment to MacAllister for or related to the Services.
- 2.3 The Work Order, including any Change Order or amendment, and these Terms constitute the entire agreement between Customer and MacAllister for the Services. No oral or other agreements apply unless they are included in the Work Order. Any reference in Customer’s purchase order, quote, or other document to any other terms or conditions to control this transaction is void and rejected. Any use of or reference to Customer’s purchase order number on the Work Order or otherwise is for Customer’s convenience only.
- 2.4 Any individual signing or approving the Work Order represents and warrants that he or she is of legal age and has the authority and power to agree to the Work Order on behalf of the Customer.

3. **Additional Work; Change Orders**

- 3.1 MacAllister will use reasonable efforts to meet any performance dates specified in the Work Order. Any such dates are estimates only and subject to change.
- 3.2 MacAllister may provide an initial estimate or quote for the Services. If additional work is later required to fulfill its obligations under the Work Order, MacAllister will notify Customer and provide a revised estimate (“**Additional Work**”). If Customer does not approve the Additional Work within thirty (30) days, MacAllister may terminate the Work Order. Approved Additional Work becomes a “**Change Order**.”
- 3.3 Customer may request changes to the Services in writing. MacAllister will assess the request and, if accepted, issue a revised estimate. Once approved by both parties, the change becomes a Change Order. MacAllister may reject any requested changes in its reasonable discretion.
- 3.4 MacAllister may make minor changes to a Work Order or the scope of Services without Customer’s consent, provided such changes do not materially alter the nature, scope, timing, or pricing of the Services.

4. **Quotes; Hours of Operation; Engine Cores**

- 4.1 Quoted pricing is valid for 30 days from the date of the quote or proposal.
- 4.2 Prices quoted cover the specific Services listed and are based on Service occurring during MacAllister’s regular business hours, Monday through Friday, excluding holidays. Services performed outside those hours will be billed at the applicable overtime or double-time rate.
- 4.3 To receive full core credit as may be reflected in the quote, the core must meet acceptable core credit criteria as determined by the original equipment manufacturer (“OEM”). Additional core charges may apply. MacAllister will notify customer of any core charges not to exceed the core amount, if applicable.
- 4.4 All new, remanufactured, and exchange engine purchases will require the qualifying core to be turned over to MacAllister before Customer takes possession of the new, remanufactured, or exchange engine.

5. **Payment Terms**

- 5.1 Customer will pay all undisputed amounts within 30 days of MacAllister’s invoice date, unless otherwise stated on the invoice or Work Order.
- 5.2 Customer agrees that timely payment is essential, and that MacAllister will not release Equipment to Customer until undisputed amounts are paid in full. A late fee will apply to past-due amounts at the greater of 1% per month (12% annually) or the maximum allowed by law.
- 5.3 Customer will be responsible for all sales, use, excise, and any other similar taxes, levies, duties, and charges of any kind applicable to the Services (collectively, “**Taxes**”).
- 5.4 If claiming a tax exemption, Customer must provide a valid certificate. If the transaction is later deemed taxable, Customer must reimburse MacAllister for any applicable Taxes.
- 5.5 Customer must notify MacAllister in writing of any disputed charges within forty-five (45) days of the invoice date, or Customer will have irrevocably waived its right to dispute such amounts.

6. **Deposit**

6.1 Any deposit secures payment and guarantees Customer's full and complete performance of each and all the terms, covenants, and agreements to be performed by Customer. In case of any breach by Customer, MacAllister may apply the deposit against any damages, costs, or expenses that MacAllister incurs as a result of the breach, at the sole option of MacAllister.

7. **Credit Card Authorization**

7.1 "Credit Card" means the credit card provided by Customer related to the Work Order or otherwise kept on file with MacAllister.

7.2 CUSTOMER AUTHORIZES MACALLISTER TO CHARGE THE CREDIT CARD OR ACCOUNT FOR ANY AMOUNTS DUE UNDER THE WORK ORDER AND AGREES TO INDEMNIFY, DEFEND, AND HOLD MACALLISTER HARMLESS FROM ANY RELATED CLAIMS, DAMAGES, OR LOSSES.

8. **Inspection**

8.1 Customer must inspect the Equipment after Service and before taking possession. Acceptance is conclusive proof that the Equipment is in good working order and the Service is satisfactory and suitable for Customer's needs, absent manifest error.

8.2 MacAllister may deactivate or interrupt certain mechanical and electrical systems (including fire suppression systems) to perform the Services. Customer is responsible for inspecting and reactivating such systems after completion of the Services. MacAllister has no responsibility, and will not be liable for any failure, to reactivate, test, or operate any such system.

9. **Customer's Responsibilities**

9.1 Customer will provide all information, approvals, and documentation MacAllister requests to assess and perform the Services. MacAllister will rely on the accuracy and completeness of this information to perform the Services.

9.2 For any Services performed Offsite, Customer must:

- (a) provide MacAllister with a safe and secure work environment;
- (b) ensure MacAllister has reasonable, safe access; and
- (c) notify MacAllister of any known hazards or uncorrectable conditions in advance.

10. **Limited Warranty; Disclaimer**

10.1 Customer has selected and approved the Services for its own purposes.

10.2 MacAllister warrants that the Services will be free from defects in workmanship for six (6) months from the date of completion ("Warranty Period"). MacAllister will perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with industry standards for similar services.

10.3 EXCEPT AS STATED IN SECTION 10.2, MACALLISTER MAKES NO WARRANTIES WITH RESPECT TO THE SERVICES, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY OR TITLE; (b) WARRANTY OF FITNESS FOR A PARTICULAR

PURPOSE; OR (c) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS; WHETHER EXPRESS OR IMPLIED, THROUGH COURSE, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

- 10.4 Parts or equipment manufactured by a third party (“**Third-Party Products**”) may constitute, be incorporated into, or be part of the Equipment or Services. MacAllister did not design or manufacture the Equipment or any Third-Party Product and is not the agent of those that did. Equipment and Third-Party Products may be subject to an OEM warranty. MacAllister will assign to Customer any applicable OEM warranty for Third-Party Products to the extent assignable. But the Equipment and any Third-Party Products are not covered by any MacAllister warranty.
- 10.5 MACALLISTER MAKES NO WARRANTIES, AND DISCLAIMS ANY WARRANTY, REGARDING THE EQUIPMENT OR ANY THIRD-PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY OR TITLE; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY THAT THE EQUIPMENT OR THIRD-PARTY PRODUCTS ARE FREE FROM DEFECTS OR CONTAMINANTS; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS; WHETHER EXPRESS OR IMPLIED, THROUGH COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.
- 10.6 MacAllister will not be liable for breach of any warranty, unless: (i) the claim arises during the Warranty Period; (ii) Customer gives MacAllister written notice within seven (7) days of discovering (or reasonably should have discovered) the defect; and (iii) MacAllister reasonably verifies the defect.
- 10.7 Warranty coverage does not apply if: (i) Customer continues to use the Equipment after discovering the defect; (ii) the defect is due to normal wear and tear or Customer’s failure to follow the oral or written instructions of MacAllister or the OEM; or (iii) Customer, on its own or by others, alters or repairs the Equipment without MacAllister’s written consent.
- 10.8 Subject to Sections 10.6 and 10.7, if there is a valid warranty claim for any Services, MacAllister will, in its sole discretion, repair or re-perform the Services, or issue a pro rata credit or refund.
- 10.9 THE REMEDIES IN SECTION 10.8 ARE CUSTOMER’S SOLE AND EXCLUSIVE REMEDY AND MACALLISTER’S ENTIRE LIABILITY FOR ANY WARRANTY CLAIMS. REMEDIES EXCLUDE TRAVEL TIME, OVERTIME, AND TRANSPORT COSTS.

11. **No Bailment**

- 11.1 MacAllister may, but is not required to, lock the Equipment in a closed space or take other reasonable measures to secure the Equipment. But MacAllister is not a bailee of the Equipment and assumes no control, custody, or responsibility for its care. Customer must have its own insurance covering the Equipment for the full replacement cost, including “all risk” coverage for loss or damage to the Equipment.
- 11.2 MacAllister may impose reasonable conditions on Customer’s access to its premises, including ID checks, limited hours, and sign-in/out procedures.
- 11.3 If Customer fails to pick up the Equipment within 7 days of Service completion, or fails to authorize work within 7 days of a quote, MacAllister may charge reasonable storage fees.

12. **Environmental Fee**

- 12.1 Due to the hazardous nature of some waste and other products, and to support environmental compliance and sustainability, MacAllister incurs various direct and indirect costs (e.g., waste disposal, equipment upgrades, and administrative expenses). To help offset these and other costs, MacAllister assesses an environmental fee, plus applicable taxes, for certain services (“**Environmental Fee**”) that are reflected in the Work Order.
- 12.2 The Environmental Fee is not a tax or government-mandated charge. Rather, it is a charge that MacAllister collects and uses at its sole discretion.
- 12.3 Customer acknowledges and agrees to pay the Environmental Fee.

13. **Mutual Indemnification**

- 13.1 EXCEPT AS STATED OTHERWISE AND SUBJECT TO SECTION 17, EACH PARTY (AS “**INDEMNIFYING PARTY**”) WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE OTHER PARTY AND ITS AFFILIATES, OWNERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS, AND ASSIGNS (COLLECTIVELY, “**INDEMNIFIED PARTY**”) FROM AND AGAINST ANY CLAIMS, LOSSES, DAMAGES, LIABILITIES, PENALTIES, FINES, COSTS (INCLUDING REASONABLE ATTORNEYS’ FEES), OR SIMILAR (“LOSSES”) ARISING FROM (i) BREACH OF ANY OBLIGATION, REPRESENTATION, OR WARRANTY UNDER THE WORK ORDER BY INDEMNIFYING PARTY; (ii) NEGLIGENT, RECKLESS, OR WILLFUL ACTS OR OMISSION OF INDEMNIFYING PARTY IN PERFORMING ITS OBLIGATIONS UNDER THE WORK ORDER; OR (iii) PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE CAUSED BY SUCH ACTS OR OMISSIONS OF INDEMNIFYING PARTY.
- 13.2 THE INDEMNIFYING PARTY IS NOT OBLIGATED TO INDEMNIFY, HOLD HARMLESS, OR DEFEND INDEMNIFIED PARTY FOR ANY LOSSES CAUSED, IN WHOLE OR IN PART, BY THE INDEMNIFIED PARTY’S (i) NEGLIGENCE OR WILLFUL MISCONDUCT; (ii) BAD FAITH BREACH OF ITS OBLIGATIONS; OR (iii) MISUSE OF THE SERVICES OR EQUIPMENT CONTRARY TO SPECIFICATIONS PROVIDED BY MACALLISTER OR THE OEM.
- 13.3 THESE INDEMNITY OBLIGATIONS REMAIN ENFORCEABLE REGARDLESS OF ANY STATUTORY OR CONSTITUTIONAL LIMITS ON LIABILITY OR EMPLOYEE IMMUNITY.

14. **Termination**

- 14.1 Either party may terminate this Agreement, effective upon written notice to the other party (“**Defaulting Party**”), if the Defaulting Party:
 - (a) commits a non-curable breach, or fails to cure a curable breach within 30 days of written notice;
 - (b) becomes insolvent or unable to pay its debts as they come due;
 - (c) is subject to bankruptcy or insolvency proceedings not stayed within 7 business days or dismissed within 45 days;
 - (d) is dissolved, liquidated, or takes action to do so;

- (e) makes a general assignment for the benefit of creditors; or
- (f) has a receiver or similar agent appointed over material assets.

15. **Insurance**

- 15.1 Customer must maintain and carry, at its own expense, insurance covering all risks of damage or liability related to the Services or use of the Equipment, including the following minimal insurance coverage:
- (a) commercial general liability (“**CGL**”) with limits of at least \$1,000,000 per occurrence and \$2,000,000 aggregate, including coverage for bodily and personal injury, property damage, and completed operations;
 - (b) property insurance for full replacement cost of the Equipment, including coverage for “all risks” of loss or damage to the Equipment; and
 - (c) worker’s compensation insurance as required by law.
- 15.2 For Offsite Services, MacAllister will maintain:
- (a) CGL with at least \$1,000,000 per occurrence and \$2,000,000 aggregate; and
 - (b) worker’s compensation insurance as required by law.
- 15.3 Customer’s insurance will be primary and non-contributory with respect to any claim for loss or damage to the Equipment.
- 15.4 Upon request, each party will provide a certificate of insurance naming the other as additional insured. The insured party will give 30 days’ written notice of cancellation or material change, and—unless prohibited by law—will require its insurer to waive subrogation rights against the other party and its insurers.

16. **Security Interest**

- 16.1 Unless otherwise stated in the Work Order, Customer grants MacAllister a security interest and lien on the Equipment to secure all amounts owed, in addition to any rights MacAllister has under mechanic’s lien or similar laws.
- 16.2 MacAllister may perfect its security interest by possessing the Equipment or filing a UCC financing statement. Customer irrevocably appoints MacAllister as its attorney-in-fact to execute and file such statements.
- 16.3 If Customer defaults on payment, MacAllister may exercise all rights available to a secured creditor under Article 9 of the UCC or similar state laws, including all waivers permitted by law.

17. **Limitation of Liability and Claims**

- 17.1 NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE TOTAL LIABILITY OF MACALLISTER RELATED TO THE WORK ORDER—INCLUDING ANY LIABILITY ARISING FROM ITS COMPARATIVE, CONCURRENT, CONTRIBUTORY, PASSIVE, OR ACTIVE NEGLIGENCE, OR THAT ARISES AS A RESULT OF ANY STRICT OR ABSOLUTE LIABILITY—WILL NOT EXCEED THE AMOUNT PAID BY CUSTOMER UNDER THE WORK ORDER.

- 17.2 MACALLISTER IS NOT LIABLE OR RESPONSIBLE TO CUSTOMER OR ANY OTHER PARTY FOR: (I) ANY LOSS OF USE, REVENUE, OR PROFIT, DIMINUTION IN VALUE, OR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR SPECIAL DAMAGES, EVEN IF SO ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR (II) ANY LOSS, DAMAGE, OR INJURY RESULTING FROM CUSTOMER'S FAILURE TO MAKE EQUIPMENT AVAILABLE OR AUTHORIZE RECOMMENDED SERVICES.
- 17.3 These limits do not apply to the extent liability results from MacAllister's gross negligence or willful misconduct, or as otherwise prohibited by applicable law.
- 17.4 Any claim relating to the Work Order must be brought within twelve (12) months after the cause of action accrues.

18. **Telematics and Data Consent**

- 18.1 Customer consents to MacAllister's collection, use, and disclosure of personal and financial information provided voluntarily per MacAllister's privacy statement. This may include name, contact details, date of birth, driver's license number, and financial data related to the Work Order. Information may be used for this and future transactions, and to evaluate, improve, or develop MacAllister's products and services. **For more information, see MacAllister's Privacy Statement available at www.macallister.com/privacy.**
- 18.2 Customer acknowledges that Caterpillar Inc., and its subsidiaries and affiliates ("Caterpillar") and MacAllister each collect, use, retain, disclose, and otherwise process personal information for purposes including warranty support, marketing, and promotional communications. Caterpillar's Global Data Privacy Statement is available at <http://www.caterpillar.com/dataprivacy>. MacAllister's privacy statement is available at: <https://www.macallister.com/privacy>. MacAllister and Caterpillar may share or disclose such personal information with the other. Customer agrees that nothing in these Terms impacts any prior consent given to Caterpillar or MacAllister.

19. **Order of Precedence**

- 19.1 These Terms govern over any conflicting terms in Customer's purchase order or similar documents, which are rejected. If MacAllister signs such a document, it does so only to acknowledge the order—not to accept other terms.

20. **Forum; Jury Waiver**

- 20.1 Courts in Hendricks County, Indiana (for Indiana Services), and Oakland County, Michigan (for Michigan Services), have exclusive jurisdiction over all disputes. TRIAL BY JURY IS WAIVED.

21. **Miscellaneous**

- 21.1 A party's failure to enforce any Term is not a waiver of its right to enforce strict compliance.
- 21.2 Customer waives any rule that construes ambiguities against MacAllister as drafter. No rule of construction will apply against MacAllister in interpreting the Work Order.
- 21.3 If MacAllister initiates a claim, suit, or other legal action to collect amounts due under the Work Order, Customer will pay all of MacAllister's reasonable costs of collection, including court costs, attorneys' fees, and related expenses incurred in enforcing these Terms.

- 21.4 If any provision of the Work Order is held invalid or unenforceable, it will not affect the validity of the remaining provisions or its enforceability in other jurisdictions.
- 21.5 Terms that by nature survive termination—including Insurance, Indemnification, and Limitation of Liability—will remain in effect after expiration or termination of this Agreement.

22. **Force Majeure**

- 22.1 No party will be liable for any failure or delay in performance caused by events beyond its reasonable control (“**Force Majeure**”), including but not limited to: acts of God; fire, flood, or natural disaster; war, terrorism, civil unrest; epidemics or pandemics; government orders or laws; embargoes or blockades; labor disputes or supply chain disruptions; or other events beyond the party’s control.
- 22.2 The affected party must notify the other within 7 days of the Force Majeure event and provide an estimate of its expected duration. It must use reasonable efforts to mitigate delay and resume performance promptly. If the event continues for more than 90 days, either party may terminate the Agreement with 30 days’ written notice. Customer remains obligated to pay for all Services performed before the effective date of such termination.