

## **RENTAL AGREEMENT TERMS AND CONDITIONS**

### **1. Definitions**

- 1.1 “**Agreement**” means the Reservation Details, together with any associated Rental Out Agreement, and including these Rental Agreement Terms and Conditions, all of which are incorporated herein by reference.
- 1.2 “**Equipment**” means any one or more of the items described as equipment in the Reservation Details, rented together with all present and future attachments, accessories, replacement parts, repairs, appurtenances, and similar items and all proceeds thereof.
- 1.3 “**Jobsite**” means the job location identified in the Reservation Details.
- 1.4 “**Lessee**” means the person(s), entity, or entities identified as lessee in the Reservation Details and its and their employees, representatives, agents, or officers of Lessee.
- 1.5 “**MacAllister**” means MacAllister Machinery Co Inc., which sometimes does business as MacAllister Rentals, MacAllister Underground Shoring & Pump, or Michigan CAT.
- 1.6 “**Rental Out Agreement**” means the agreement between Lessee and MacAllister for MacAllister to rent Equipment to Lessee, whether made in person, online, or at the time of Equipment delivery, and which incorporates by reference these Rental Agreement Terms and Conditions and identifies the Equipment to be rented by Lessee.
- 1.7 “**Reservation Details**” means the Equipment, job location, date out, date in, rental rates, and other information set forth on the reservation form, Equipment Condition Report, and/or Rental Out Agreement, as the case may be.
- 1.8 “**Service**” or “**Services**” means the services MacAllister provides in connection with the rental of Equipment, including Trench Services, Fluid Solutions Services, and Power and HVAC Services, which are described in Section 24.
- 1.9 “**Store Location**” means the MacAllister facility from which the Equipment was rented.

### **2. Agreement**

- 2.1 MacAllister agrees to lease to Lessee, and Lessee leases from MacAllister, the Equipment as set forth in the Agreement.
- 2.2 Lessee agrees to be bound by and accepts all the terms and conditions in this Agreement when any of the following occurs, even if the Rental Out Agreement is not fully executed:
  - (a) Lessee executes the Agreement;
  - (b) Lessee takes delivery of or uses the Equipment or Services; or
  - (c) Lessee makes payment to MacAllister for the Equipment or Services.
- 2.3 The terms and conditions of the Agreement, and any amendment thereto, represent the entire agreement between Lessee and MacAllister with respect to the Equipment and the rental and servicing of the Equipment. There are no oral or other representations or agreements not included herein. Any reference in Lessee’s purchase order, quote, or other document to other terms or

conditions to control this transaction is void and rejected. Any use of or reference to Lessee's purchase order number on the Agreement is for Lessee's convenience only.

- 2.4 Any individual signing the Agreement represents and warrants that he or she is of legal age and has the authority and power to sign this Agreement on behalf of Lessee.

### 3. **Rental Period**

- 3.1 The Rental Period will begin on the "date out" set forth in the Reservation Details and will end on any of the following ("**Rental Period**"):

- (a) The date and time on which MacAllister provides Lessee with a pickup ticket number for the Equipment, unless such date and time are extended as provided in this Agreement;
- (b) The date and time on which Lessee returns the Equipment to the Store Location, with written acknowledgement of receipt from MacAllister, unless such date and time are extended as provided in this Agreement;
- (c) The date and time on the "date in" set forth in the Reservation Details; or
- (d) The date the Agreement is terminated as provided under Section 20.

### 4. **Rental Charges**

- 4.1 Lessee agrees to pay the identified rental rates in the Reservation Details ("**Rental Rates**") for the length of the Rental Period.

- 4.2 Rental Rates are based on normal "**one shift**" operation usage of up to 8 hours per day, 40 hours per week, or 160 hours per 4-week period.

- (a) Unless quoted otherwise, if Equipment is used in excess of one shift, Lessee agrees to pay a full additional shift rate, and hours used in excess of such second shift (i.e. greater than 16 hours per day, 80 hours per week, or 320 hours per 4-week period) will result in yet an additional shift rate being charged.
- (b) Rental Rates will not be prorated.

- 4.3 Rental Rates do not include, and Lessee is solely responsible for:

- (a) all consumables, fees, licenses, present and future Taxes (defined below), and any other governmental fees or charges based on Lessee's possession or use of the Equipment, including additional fees for more than one-shift use;
- (b) delivery and pickup charges, including but not limited to any freight, transportation, delivery, and pickup fees and surcharge fees;
- (c) maintenance, repairs, and replacements to the Equipment as provided in this Agreement;
- (d) miscellaneous charges and fines, such as fees for lost keys, REP (defined below), and cleaning;
- (e) fuel used during the Rental Period and any Refueling Charge (defined below); and
- (f) Environmental Fees (defined below).

5. **Payment Terms**

- 5.1 In addition to securing the payment of rental charges, Lessee agrees that any deposit is deemed to be a guarantee by Lessee of the full and complete performance of each and all the terms of this Agreement to be performed by Lessee. In the event of any breach by Lessee, MacAllister may credit the deposit against any damages, cost, or expense that MacAllister incurs as a result of the breach, at the sole option of MacAllister.
- 5.2 Lessee must pay MacAllister in full all amounts when due under the Agreement.
- 5.3 Lessee agrees that there will be added to all past due rental charges a late payment fee equal to the greater of one percent (1%) per month (12% per annum) on any payments outstanding after 30 days, or the maximum amount allowed by applicable law.
- 5.4 Rental Rates do not include sales tax, goods and services tax or other taxes, levies, and assessments required to be collected by MacAllister from Lessee at any time upon, or in respect of, the Equipment and/or the Agreement (collectively, “**Taxes**”).
- 5.5 In the event Lessee asserts that a transaction is exempt from Taxes, Lessee agrees to provide a valid tax exemption certificate. Should the transaction later be deemed taxable, Lessee is obligated to reimburse MacAllister for any Tax assessed that was attributable to Lessee.
- 5.6 Lessee must notify MacAllister in writing of any disputed amounts, including Credit Card charges, within fifteen (15) days after date of the invoice, or Lessee will be deemed to have irrevocably waived its right to dispute such amounts.

6. **Credit Card Authorization**

- 6.1 “**Credit Card**” means the credit card provided by Lessee as part of this Agreement or otherwise kept on file with MacAllister.
- 6.2 TO THE EXTENT PERMITTED BY APPLICABLE LAW, LESSEE IRREVOCABLY AND UNCONDITIONALLY AUTHORIZES MACALLISTER TO CHARGE THE CREDIT CARD AND/OR LESSEE’S ACCOUNT FOR ANY AMOUNTS DUE UNDER THIS AGREEMENT, INCLUDING FOR LOSS OF OR DAMAGE TO THE EQUIPMENT AND EXTENSION OF THE RENTAL PERIOD, AND LESSEE AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS MACALLISTER REGARDING SAME.

7. **Indemnity; Hold Harmless**

- 7.1 TO THE FULLEST EXTENT PERMITTED BY LAW, LESSEE AGREES TO INDEMNIFY, DEFEND, AND HOLD MACALLISTER, AND ANY OF ITS RESPECTIVE OFFICERS, AGENTS, SERVANTS, OR EMPLOYEES, AND AFFILIATES, PARENTS, AND SUBSIDIARIES, HARMLESS FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, LOSS, DAMAGE, OR COSTS (INCLUDING, BUT NOT LIMITED TO, ATTORNEYS’ FEES, LOSS OF PROFIT, BUSINESS INTERRUPTION, OR OTHER SPECIAL OR CONSEQUENTIAL DAMAGES, DAMAGES RELATING TO PROPERTY DAMAGE, BODILY INJURY, OR DAMAGES RELATING TO WRONGFUL DEATH) ARISING OUT OF OR RELATED IN ANY WAY TO THE (A) INSTALLATION, OPERATION, HANDLING, USE, TRANSPORTATION, POSSESSION, OR RENTAL OF THE EQUIPMENT OR SERVICES, (B) ERRORS, OMISSIONS, OR INACCURACIES IN THE DOCUMENTS OR OTHER INFORMATION PROVIDED BY LESSEE, OR

OBTAINED FROM OTHERS, UPON WHICH MACALLISTER RELIES WHEN PROVIDING THE EQUIPMENT OR SERVICES, AND (C) BREACH BY LESSEE OF ANY TERM OF THE AGREEMENT OR ANY OF ITS REPRESENTATIONS OR WARRANTIES UNDER THE AGREEMENT.

- 7.2 LESSEE'S OBLIGATIONS UNDER SECTION 7.1 ALSO APPLY TO ANY CLAIMS ASSERTED AGAINST MACALLISTER BASED ON STRICT OR PRODUCT LIABILITY CAUSES OF ACTION.
- 7.3 LESSEE SHALL NOT BE OBLIGATED TO INDEMNIFY MACALLISTER FOR THAT PART OF ANY LOSS, DAMAGE, OR LIABILITY CAUSED BY THE INTENTIONAL MISCONDUCT OR SOLE NEGLIGENCE OF MACALLISTER.
- 7.4 IN FURTHERANCE, BUT NOT IN LIMITATION, OF THE INDEMNITY PROVISIONS IN THIS AGREEMENT, LESSEE EXPRESSLY AND SPECIFICALLY AGREES THAT THE FOREGOING OBLIGATIONS TO INDEMNIFY WILL NOT IN ANY WAY BE AFFECTED OR DIMINISHED BY ANY STATUTORY OR CONSTITUTIONAL LIMITATION OF LIABILITY OR IMMUNITY LESSEE MAY HAVE FROM CLAIMS OR SUITS BY ITS OWN EMPLOYEES.
- 7.5 THE DUTIES TO DEFEND AND INDEMNIFY IN THIS AGREEMENT WILL CONTINUE IN FULL FORCE AND EFFECT NOTWITHSTANDING THE EXPIRATION OR EARLY TERMINATION OF THE AGREEMENT.

8. **No Warranties / Disclaimer**

- 8.1 Lessee has selected the Equipment for its own purposes expressly disclaims any reliance upon any statements or representations made by MacAllister.
- 8.2 Lessee acknowledges and agrees that MacAllister did not design or manufacture the Equipment and is not the agent of those that did.
- 8.3 MACALLISTER MAKES NO WARRANTIES, EXPRESS OR IMPLIED WITH RESPECT TO THE EQUIPMENT OR SERVICES AND MAKES NO WARRANTIES AS TO THE MERCHANTABILITY OF THE EQUIPMENT OR SERVICES OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. MACALLISTER MAKES NO WARRANTY AGAINST INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET, OR OTHER PROPRIETARY RIGHTS OF A THIRD PARTY. THERE IS NO WARRANTY THAT THE EQUIPMENT OR SERVICES ARE SUITED FOR LESSEE'S INTENDED USE, OR THAT THE EQUIPMENT OR SERVICES ARE FREE FROM DEFECTS OR CONTAMINANTS. EXCEPT AS MAY BE SPECIFICALLY SET FORTH IN THE AGREEMENT, MACALLISTER DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, MADE IN CONNECTION WITH THIS RENTAL TRANSACTION.
- 8.4 LESSEE ACKNOWLEDGES AND AGREES THAT IT ACCEPTS THE EQUIPMENT ON AN "AS IS, WHERE IS" BASIS, WITH "ALL FAULTS" AND WITHOUT ANY RECOURSE AGAINST MACALLISTER.

9. **Delivery and Return; Assumption of Risk and Loss**

- 9.1 Delivery will occur when either (i) MacAllister (or its third-party carrier) delivers the Equipment to the Jobsite, whether acknowledged by Lessee or not, or (ii) Lessee picks up the Equipment

from the Store Location, as the case may be (“**Delivery**”). Delivery may occur prior to the start of the Rental Period.

- 9.2 Return will occur when MacAllister comes into, and acknowledges, actual possession of the Equipment at or after the end of the Rental Period (“**Return**”). If MacAllister agrees to pick up Equipment at the end of the Rental Period, it will do so within a commercially reasonable time (typically two (2) business days) after providing Lessee a pickup ticket number for the Equipment.
- 9.3 Lessee acknowledges and assumes all risks associated with the possession, control, use, and loading and unloading of the Equipment, including but not limited to personal injury, death, theft, losses, damages, and destruction, from the time of Delivery through Return, and further agrees to take all necessary precautions to protect and secure all persons and property from injury or damage related to the Equipment. Lessee understands and agrees that its obligations under this section include securing and safely storing the Equipment to prevent fire, theft, vandalism, or other damage or loss from the time of Delivery through Return.

## 10. **Inspection**

- 10.1 MacAllister will use reasonable care to see that the Equipment is in proper working condition upon Delivery. MacAllister will not operate or test the Equipment prior to Delivery, unless such operation or test is deemed necessary by MacAllister (in its sole discretion) or unless Lessee requests such operation or test in writing.
- 10.2 Lessee acknowledges that Lessee has inspected the Equipment prior to taking possession of it and finds it in good working order and repair and suitable for Lessee’s needs.
- 10.3 Lessee has inspected or will inspect all hitches, bolts, safety chains, hauling tongues, and other devices and materials used to connect the Equipment to Lessee’s towing vehicle, if any. Lessee acknowledges that it, and not MacAllister, is responsible for any damage to the Equipment or Lessee’s towing vehicle caused (i) during transportation of the Equipment or (ii) by any detachable hitches, mirrors, or securement apparatuses, in each case by or of anyone other than MacAllister.

## 11. **Lessee’s Responsibilities**

- 11.1 Lessee must provide MacAllister with the information and the documentation that MacAllister requests to assess, plan, and perform the Services and/or provide the Equipment. MacAllister provides the Equipment and performs the Services based on information Lessee provides, and MacAllister relies on the accuracy and completeness of such information in providing the Equipment and performing the Services. Lessee recognizes that it is impossible for MacAllister to assure the accuracy, completeness, and sufficiency of information provided by others, either because it is impossible to verify, or because of errors or omissions that may have occurred in assembling such information.
- 11.2 Lessee is responsible for providing a secure and safe work environment for all parties, including MacAllister and its employees, and for ensuring that any Services are carried out in compliance with applicable laws.
- 11.3 Lessee will give MacAllister reasonable, safe, and secure access to the Jobsite to enable Delivery of the Equipment.

12. **Use and Maintenance of Equipment**

- 12.1 Lessee is familiar with the proper and safe operation and use of each item of Equipment.
- 12.2 Lessee has selected the Equipment based on its requirements and will use the Equipment only:
- (a) in a safe and careful manner and for legal purposes or in a legal manner;
  - (b) strictly in accordance with the manufacturer's operation and maintenance manual;
  - (c) in compliance with all operating and safety instructions provided on, in, or with the Equipment and all applicable federal, state and local laws, permits and licenses, including but not limited to, OSHA, as revised;
  - (d) with a proper license, if required under any applicable law; and
  - (e) with operators who are qualified to operate the Equipment.
- 12.3 Lessee must maintain the Equipment in the same condition as it was upon Delivery, normal wear and tear (defined below) excepted.
- 12.4 Lessee agrees to:
- (a) regularly check filters, oil, fluid levels, and tire air pressure;
  - (b) clean and visually inspect the Equipment daily;
  - (c) maintain the Equipment per factory recommended lubrication and maintenance intervals and keep scheduled oil sample records; and
  - (d) immediately stop using the Equipment and immediately notify MacAllister if Equipment needs repair or maintenance.
- 12.5 Lessee must not:
- (a) alter or cover up any decals or insignia on the Equipment or remove any operating or safety equipment, instructions, or manuals;
  - (b) use the Equipment in a negligent, illegal, unauthorized, or abusive manner; or
  - (c) allow or make available to any unauthorized person to use the Equipment, as Lessee acknowledges that the Equipment may be dangerous if used improperly or by untrained parties.
- 12.6 Lessee agrees and acknowledges that MacAllister has no responsibility to inspect or maintain the Equipment at any time from Delivery through Return.
- 12.7 MacAllister has the right to replace the Equipment with other reasonably similar equipment at any time and for any reason.

13. **Equipment Malfunction**

- 13.1 If the Equipment is involved in an accident, becomes unsafe or unfit for use, malfunctions, or requires repair, Lessee must immediately stop using the Equipment and immediately notify MacAllister.

- 13.2 If the condition described in Section 13.1 is the result of normal operation and otherwise in accordance with this Agreement, MacAllister will repair or replace the Equipment (at its sole option) with reasonably similar equipment, if such replacement is available.
- 13.3 If MacAllister elects to repair the Equipment, it will use reasonable diligence to make the repairs on demand. If any work is done outside of MacAllister's regular hours, by reason of which MacAllister is required to pay double time or other overtime charges to its employees, or to anyone doing the work for Lessee, all such charges will be paid by Lessee to MacAllister.
- 13.4 In the event of accident or breakage of any part of the Equipment, and after receiving written approval from MacAllister, Lessee may have the same repaired by any competent person, firm, or corporation at its own expense.
- 13.5 MacAllister has no obligation to repair or replace Equipment rendered inoperable by misuse, abuse, neglect, or failure to adhere to any obligations of this Agreement. Lessee must pay MacAllister for any such repairs or related damage.
- 13.6 Lessee's sole remedy for any failure or defect in Equipment is to terminate any rental charges accruing after the time of failure. Lessee must return the Equipment to the Store Location within twenty-four (24) hours from the time of defect in order to terminate rental charges.
- 13.7 MacAllister will not be liable in any event to the Lessee for any loss, delay, or damage of any kind or character resulting from defects in or deficiency of the Equipment or accidental breakage thereof.

#### 14. **Damaged & Lost Equipment**

- 14.1 At the end of the Rental Period, Lessee must restore the Equipment to the same condition as it was upon Delivery, normal wear and tear (as defined below) excepted.
- 14.2 Lessee will be responsible for all damages to or loss of the Equipment (including fire, theft, or vandalism) from the time of Delivery until Return, including any damage during transit, regardless of the cause or origin of such loss or damage. Lessee understands and acknowledges that this includes time outside the Rental Period, such as when the Rental Period expires but the Equipment is not yet Returned.
- 14.3 If Equipment is lost, stolen, or destroyed (as determined in MacAllister's sole discretion), or if Lessee is unable or fails to return the Equipment to MacAllister for any reason whatsoever, Lessee must pay MacAllister the then full replacement list value of the Equipment at the manufacturer's suggested price, together with the full Rental Rates until such Equipment is replaced.
- 14.4 If Equipment is damaged or excessively worn upon Return, Lessee must pay MacAllister the reasonable cost of repair at MacAllister's then-current rates and pay rental charges on the Equipment at the regular Rental Rates until all repairs have been completed.
- 14.5 MacAllister has no obligation to commence repair work under this Agreement until Lessee has paid to MacAllister the estimated cost for such repair.
- 14.6 MacAllister may, at its option, refuse to do any repair work on the Equipment in time of strike, for any cause beyond its control, or in violation of any rule affecting the Equipment.

- 14.7 Lessee agrees that MacAllister reserves the right to charge the Credit Card and/or Lessee's account for any amount owed by Lessee under this Section 14 due to damaged or lost Equipment.
- 14.8 Lessee agrees that any accrued amount paid or payable under this Agreement, including any deposits, does not apply to the payment of any amounts due under Section 14.

15. **Wear and Tear; Tires**

- 15.1 “**Normal wear and tear**” means the normal deterioration of the Equipment caused by ordinary and reasonable use in the rental equipment industry on a one-shift basis.
- 15.2 The following examples are not normal wear and tear:
- (a) Damage resulting from lack of lubrication, insertion of improper fuel or maintenance of necessary oil, water and air pressure levels; cavitation; or freezing;
  - (b) Any damage resulting from lack of servicing or preventative maintenance suggested in the manufacturer's operation and maintenance manual, except where MacAllister expressly assumes the obligation to service or maintain the Equipment;
  - (c) Damage resulting from any collision, overturning, or improper operation, including overloading or exceeding the rated capacity of the Equipment;
  - (d) Damage in the form of dents, bending, tearing, staining, misalignment, or corrosion of or to the Equipment or any part of it;
  - (e) Wear resulting from use in excess of the number of shifts for which the Equipment is rented; or
  - (f) Any other damage to the Equipment which is not considered ordinary and reasonable in the equipment rental industry.
- 15.3 Repair and replacement of tires are not included in the Rental Rates, and Lessee agrees to pay for the repair or replacement of any tires returned to MacAllister in a damaged condition regardless of the cause of damage, normal wear and tear excepted.
- (a) For tires, it is agreed that rubber abrasions (gouges, tears, cuts, grooving, and removal of rubber in pieces) or damage to castings is not normal wear and tear.

16. **Late Return**

- 16.1 Lessee agrees that if, when MacAllister arrives at the Jobsite to pick up the Equipment, the Equipment (i) is not ready or available to be picked up, (ii) is still in use, or (iii) has been used after issuance of the pickup ticket number, then MacAllister may, in its sole discretion, require Lessee to do any of the following:
- (a) continue to pay the Rental Rate(s) applicable to the Equipment;
  - (b) for periods less than 24 hours, pay the full daily Rental Rate applicable to the Equipment;
  - (c) pay any increased Rental Rate(s) in effect at the time of, or after, the expiration of the Rental Period; or
  - (d) assess a pickup charge.



16.2 Lessee agrees that MacAllister reserves the right to charge the Credit Card, and/or account of Lessee for any amount owed by Lessee under this section due to late return of Equipment.

17. **Refueling Charge**

17.1 Lessee acknowledges that a charge will be applied to all Equipment having anything other than a full tank of fuel upon Return (“**Refueling Charge**”). The exact cost of the Refueling Charge may vary depending on the rate being charged by the Store Location on the date of Return.

17.2 Lessee acknowledges that the Refueling Charge is not a retail sale of fuel, and that Lessee may avoid the Refueling Charge if the Equipment has a full tank of fuel upon Return.

17.3 Lessee agrees to pay the Refueling Charge where applicable.

18. **Environmental Fee**

18.1 To promote a clean and sustainable environment, MacAllister takes various measures to comply with applicable environmental regulations, as well as with its own policies. MacAllister also incurs a wide range of environmental related expenses (both direct and indirect). These expenses may include services such as waste disposal, construction and maintenance of cleaning facilities, acquisition of more fuel-efficient equipment, labor costs, administration costs, and others. To help defray these and other costs, MacAllister assesses an environmental fee, plus applicable taxes, for certain rentals (“**Environmental Fee**”).

18.2 The Environmental Fee is not a tax or government-mandated charge and is not designated for any particular use or placed in an escrow account. Rather, it is a charge that MacAllister collects and uses at its sole discretion.

18.3 Lessee acknowledges the items above and agrees to pay the Environmental Fee where applicable.

19. **Title to Equipment; No Liens**

19.1 The Agreement is not a contract of sale.

19.2 Title to the Equipment and any replacement is, and must remain, with MacAllister.

19.3 The Equipment must not become a part of any building by being placed in the building or by being annexed to it. If Equipment is annexed to any property, Lessee must furnish MacAllister with a landlord’s release that permits MacAllister to remove the Equipment from the property at any time during or after expiration of this Agreement.

19.4 Unless covered by a specific supplemental agreement signed by MacAllister, Lessee has no option or right to purchase the Equipment.

19.5 No amounts paid or payable under this Agreement will apply to any subsequent purchase of the Equipment.

19.6 Lessee must keep the Equipment free and clear of all liens and encumbrances.

20. **Default**

20.1 Lessee will be in default if MacAllister deems itself insecure or if Lessee:

(a) fails to pay any amount when due under this Agreement;

- (b) breaches or fails to perform, observe, or keep any provision of the Agreement;
- (c) becomes “**Insolvent**” (as defined below), or if MacAllister reasonably anticipates that Lessee may become Insolvent;
- (d) fails to insure the Equipment as required in this Agreement, or otherwise places the Equipment at risk; or
- (e) is in default under any other contract or agreement with MacAllister.

20.2 If Lessee is in default, MacAllister may do any one or more of the following:

- (a) Terminate the Rental Period for all or any part of the Equipment;
- (b) Terminate the Agreement;
- (c) Declare the entire amounts due under this Agreement immediately due and payable and commence legal action to recover them;
- (d) Cause MacAllister’s employees or agents, with or without notice but without legal process, to enter upon Lessee’s property and take all action necessary to retake and repossess the Equipment, and Lessee hereby consents to such entry, re-taking and repossession and hereby waives all claims for damages and losses, physical and pecuniary, caused thereby and must pay all costs and expenses incurred by MacAllister in retaking and repossessing the Equipment, including attorneys’ fees; or
- (e) Pursue any rights or remedies available under this Agreement, at law, or in equity.

20.3 Lessee will be considered “**Insolvent**” if Lessee generally does not pay, or is unable to pay, or admits its inability or anticipated inability to pay its debts as such debts become due; makes an assignment for the benefit of creditors, or petitions or applies to any court or tribunal for the appointment of a custodian, receiver, or trustee for it or a substantial part of its assets; commences any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or later in effect; has any such petition or application filed or any such proceeding commenced against it in which an order for relief is entered or an adjudication or appointment is made; or takes any action indicating its consent to, approval of, or acquiescence in any such petition, application, proceeding, or order for relief or the appointment of a custodian, receiver, or trustee for all or any substantial part of its properties.

## 21. **Lessee’s Insurance**

21.1 Lessee agrees to maintain and carry, at Lessee’s sole cost, at least the following insurance:

- (a) commercial auto liability insurance with limits of \$2,000,000, combined single limit per occurrence for personal injuries and property damage;
- (b) commercial general liability (“**CGL**”) insurance (providing coverage equal to or greater than the standard ISO CG 00 01 12 04 form) with limits of insurance not less than \$2,000,000 per occurrence and \$10,000,000 million in the aggregate, and including coverage for bodily and personal injury, property damage, and products and completed operations, and further including Lessee’s contractual liabilities in this Agreement, such as the obligations in Section 7;

- (c) property insurance for the full replacement cost of the Equipment, including coverage for “all risks” of loss or damage to the Equipment;
  - (d) worker’s compensation insurance as required by law;
  - (e) if Lessee is hauling the Equipment, all risk cargo insurance for the full replacement cost of the Equipment; and
  - (f) umbrella (excess) liability for the coverage in Section 21.1(a) and 21.1(b), with limits no less than \$10,000,000.
- 21.2 If Lessee maintains broader coverage and/or higher limits than the minimums shown above, MacAllister requires and shall be entitled to the broader coverage and/or the higher limits maintained by Lessee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to MacAllister.
- 21.3 Any insurance that excludes boom damage or overturns is a breach of the Agreement.
- 21.4 For any claims related to this Agreement, Lessee’s insurance coverage will be primary coverage at least as broad as ISO CG 20 01 04 13 as respects MacAllister, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by MacAllister, its officers, officials, employees, or volunteers will be excess of Lessee’s insurance and will not contribute with it.
- 21.5 MacAllister must be covered and named as an additional insured for liability insurance and, if applicable, additional loss payee for property insurance.
- 21.6 Any deductibles or self-insured retentions must be the sole responsibility of the Lessee.
- 21.7 All insurance required in the Agreement must include a waiver of rights of recovery against MacAllister or its insurers by Lessee and its insurers, as well as a waiver of subrogation against MacAllister or its insurers.
- 21.8 The policies required under this Agreement must provide that MacAllister must receive not less than 90 days’ notice prior to any cancellation.
- 21.9 Lessee must furnish MacAllister with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required hereunder) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to MacAllister before the Rental Period. However, failure to obtain the required documents prior to the Rental Period will not waive Lessee’s obligation to provide them. MacAllister reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

22. **Rental Equipment Protection**

- 22.1 The Rental Equipment Protection Terms and Conditions (“**REP**”) are available at [www.macallister.com/rep](http://www.macallister.com/rep) and incorporated herein by this reference. Lessee acknowledges that it has read, understands, and agrees to the REP terms and conditions.
- 22.2 Lessee agrees to purchase REP if Lessee fails to obtain insurance coverage required in this Agreement and provide MacAllister with proof of such coverage, or if such insurance contains coverage amounts that are inadequate, to cover the Equipment at any time as provided herein.

23. Assignment; Subletting; Jobsite

- 23.1 Lessee must not sublease, sub-rent, re-rent, assign, or loan the Equipment or Agreement to any other person or entity without first obtaining the written consent of MacAllister. If Lessee takes any such action without MacAllister's written consent, it is void.
- 23.2 If Lessee obtains consent from MacAllister to sublease or re-rent the Equipment, Lessee will remain fully obligated to MacAllister for the Equipment under this Agreement.
- 23.3 Lessee agrees to use and keep the Equipment exclusively at the Jobsite. Lessee must not move or re-locate the Equipment from the Jobsite without the prior written consent of MacAllister.
- 23.4 MacAllister may at any time, without notice to Lessee, transfer or assign the Agreement or any Equipment or any moneys or other benefits due or to become due hereunder.

24. Services

24.1 TRENCH SERVICES.

- (a) "**Trench Services**" may include engineering, delivery, and pickup of a trench/shoring system rented as Equipment ("**System**"). The System is to be used in complete accordance with any manufacturer's tabulated data that is provided for it. MacAllister makes no representation or warranty about, and shall not be responsible for, such data.
- (b) If MacAllister provides an on-site observer ("**Observer**") to observe installation of the System, neither the presence of the Observer at the Jobsite nor the provision of the Trench Services by MacAllister will relieve Lessee, and Lessee assumes full responsibility for, the construction means, methods, sequence, techniques, and procedures necessary to use the Equipment and System, including but not limited to the assembly, installation, welding, maintenance, deflection, dewatering, and removal of the System in accordance with the requirements of this Agreement, the Occupational Safety and Health Administration Act ("**OSHA**"), and all other applicable federal, state, and local laws, rules, regulations, and ordinances.

24.2 FLUID SOLUTIONS SERVICES.

- (a) "**Fluid Solutions**" means fluid storage, transfer, and/or treatment, and includes but is not limited to, pumps, filtration, and any accessories, attachments, or other items delivered to Lessee and rented as Equipment, as well as any ancillary services thereto. Fluid Solutions may include the design, installation, operation, ongoing maintenance, monitoring, and dismantling of the Fluid Solutions system ("**Fluid Solutions Services**").
- (b) Lessee must provide accurate measurements, specifications, and any supporting documentation to assist in the Fluid Solutions Services. Unless otherwise agreed to by the parties, Lessee must (i) provide adequate labor and material handling equipment onsite to unload and load and setup and breakdown Equipment, including chains or cables of sufficient capacity along with cribbing material to support pumps, piping, and accessories; (ii) insert, remove, clean, and maintain sewer pipe plugs and suction screens as necessary; (iii) provide any and all containment and required matting; (iv) obtain any and all rights of way, permits, licenses, and easements as necessary; (v) provide adequate staging areas, water sources, and access thereto; (vi) provide necessary controls of erosion, odor and traffic, including site restoration, as necessary; (vii) provide fueling

and/or adequate power, including cable and an electrician, as necessary; (viii) perform daily inspection and maintenance of the Equipment during the Rental Period; and (ix) provide access at all times to the Fluid Solutions system and a clean, unobstructed, and safe area to perform the Fluid Solutions Services.

- (c) The scope of services (“**Scope**”) provided for each job is incorporated into the Agreement. Unless specifically agreed to in the Scope, Lessee, at its cost and expense, must obtain all required building and construction permits, inspections, or certificates, as well as any permissions and authority necessary to perform the Fluid Solutions Services.
- (d) If the type of liquid, including its constituents and other characteristics (for example, viscosity, turbidity), the volume or the rate of flow (whether due to weather or other factors not specifically under MacAllister’s control), or any other material information on which MacAllister relied when designing the Fluid Solutions Services materially change at any time, MacAllister will notify Lessee and request an emergency change order (“**Emergency Change Order**”).
- (e) Lessee acknowledges that, due to the nature of Fluid Solutions Services that are tailored to specific information and data, in the event of such material change, it is imperative that Lessee immediately respond to any request for Emergency Change Order to avoid a spill or other incident. Therefore, Lessee must designate one or more authorized representatives who will be available to MacAllister 24 hours per day, 7 days per week, and 365 days per year to respond to such requests.
- (f) Lessee agrees that the verbal or written approval (whether by email or text or other document) of such designated representative is binding and subject to the terms and conditions in the Agreement. Further, if Lessee’s authorized representative does not immediately respond to such request, Lessee agrees that MacAllister, in its sole discretion, may take the action it deems most effective to mitigate any spill, incident, or accident and Lessee further waives the right to contest such action, agrees that MacAllister must not be liable to Lessee or its customer in connection with such action, and Lessee must be responsible for the additional costs incurred thereby.

## 25. **Parking, Tolls, and Violation Fees**

- 25.1 Lessee will be responsible for, and pay without delay, all parking and traffic violations, tolls and toll violations, as well as other expenses and penalties, all towing, storage, and impound fees, and all tickets incurred related to the Equipment from the time of Delivery through Return.
- 25.2 Such charges will be billed to Lessee when information is received by MacAllister, and they may be charged to Lessee at a date later than any final invoice.

## 26. **Telematics and GPS Tracking**

- 26.1 Lessee consents to the collection and monitoring of electronic information, including Global Positioning System (“**GPS**”) data, generated by or in connection with this Agreement or Lessee’s use or the location of Equipment or Services. Lessee agrees that MacAllister owns the data described in this paragraph and may use such data, including GPS and/or telematics data, for any purpose.

27. **Order of Precedence**

27.1 These terms and conditions and the Agreement control over any other terms and conditions contained in Lessee's purchase order or similar documents, and MacAllister hereby rejects such other terms and conditions. If MacAllister signs Lessee's purchase order or similar document, such signature is solely for the purpose of acknowledging the order; it being the express intent of the parties that this Agreement and these terms and conditions govern all rental and service transactions between the parties.

28. **Forum; Jury Waiver**

28.1 The federal and state courts in Marion County, Indiana (for Equipment rented from a Store Location in Indiana), and Oakland County, Michigan (for Equipment rented from a Store Location in Michigan), will have exclusive jurisdiction over all matters relating to this Agreement. TRIAL BY JURY IS WAIVED.

29. **Limitation of Liability**

29.1 LESSEE AGREES THAT MACALLISTER'S LIABILITY UNDER THIS AGREEMENT, INCLUDING ANY LIABILITY ARISING FROM MACALLISTER'S COMPARATIVE, CONCURRENT, CONTRIBUTORY, PASSIVE, OR ACTIVE NEGLIGENCE, OR THAT ARISES AS A RESULT OF ANY STRICT OR ABSOLUTE LIABILITY, MUST NOT EXCEED THE TOTAL RENTAL CHARGES PAID BY LESSEE UNDER THIS AGREEMENT.

29.2 IN NO EVENT WILL MACALLISTER BE LIABLE OR RESPONSIBLE TO LESSEE OR ANY OTHER PARTY FOR: (I) ANY LOSS, DAMAGE, OR INJURY CAUSED BY, RESULTING FROM, OR IN ANY WAY CONNECTED WITH THE EQUIPMENT, ITS OPERATION, OR ITS USE; (II) MACALLISTER'S FAILURE TO DELIVER THE EQUIPMENT AS REQUIRED HEREUNDER, OR ITS FAILURE TO REPAIR OR REPLACE NON-WORKING EQUIPMENT; OR (III) ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES, EVEN IF SO ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

30. **Other Provisions**

30.1 Any failure of MacAllister to insist upon strict performance of any terms and conditions of this Agreement must not be construed as a waiver of MacAllister's right to demand strict compliance. Lessee has carefully reviewed this Agreement and waives any principle of law that would construe any provision of the Agreement against MacAllister as the drafter of this Agreement. Any rule of construction to the effect that any ambiguities are resolved against the drafting party will not apply to the interpretation of the Agreement.

30.2 Lessee agrees to pay all reasonable costs of collection, court costs, attorneys' fees, and other expenses MacAllister incurs in the collection of any charges or amounts due under this Agreement or in connection with the enforcement of its terms.

30.3 Lessee must pay the amounts due without any offsets, deductions, or claims.

30.4 Lessee consents to the collection, use, and disclosure of his or her personal identification and financial information as described herein and in MacAllister's Privacy Policy. Lessee's personal identification and financial information is provided voluntarily and not as part of a credit card

transaction. Personal identification information may include, for example, Lessee's name, billing address, ZIP code, telephone number, date of birth, driver's license number, and email address. Financial information includes, for example, information related to any balances or invoices related to the Agreement. Lessee's personal identification information can be used for purposes of this transaction, any subsequent transactions with MacAllister, and for MacAllister to evaluate and improve its products and services and/or develop new products or services.

- 30.5 MacAllister has the right to immediately repossess Equipment, without any liability to Lessee, in the event of (i) permanent closure of the Store Location; (ii) declaration of any emergency, disaster, or similar situation by any federal, state or local government; or (iii) as otherwise set forth in this Agreement.
- 30.6 The use of false identification to obtain Equipment or the failure to return the Equipment by the end of the Rental Period may be considered a theft subject to criminal prosecution pursuant to applicable criminal or penal code provisions.

### 31. **Force Majeure**

- 31.1 MacAllister is not be liable or responsible to Lessee, nor will it be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond its control, including, without limitation, the following force majeure events (each a "**Force Majeure Event**"): (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) pandemics, epidemics, or other viral outbreaks; (e) government order or law; (f) actions, embargoes or blockades in effect on or after the date of this agreement; (g) action by any governmental authority; (h) national, regional, state, or local emergency; (i) strikes, labor stoppages or slowdowns or other industrial disturbances; and (j) other events beyond the control of MacAllister.
- 31.2 If a Force Majeure Event prevents MacAllister from timely picking up or delivering the Equipment, MacAllister will reasonably notify Lessee, and the Lessee must assume all risk and responsibility during the pendency of the Force Majeure Event (i) for damage or loss to the Equipment, (ii) to maintain full insurance coverage on the Equipment, and (iii) to properly secure the Equipment in a safe location until the Equipment is able to be picked up by or returned to the possession of MacAllister.