

Terms and Conditions of Rental Contract

Vandalia Rental

For good and valuable consideration, you and BND Rentals, Inc., an Ohio corporation, d/b/a "Vandalia Rental" (hereinafter referred to as "BND," "Lessor," "we," "us" and "our"), agree as follows:

1. **DEFINITIONS:** As used herein, "P.1" refers to the first page, invoice or "face" of this Contract; "Contract" refers to P.1 together with these Terms and Conditions; "Rented Item(s)" or "Item(s)" means the item(s) rented to you, as identified on P.1; "Site" means the address set forth on P.1 where the Item(s) is/are to be delivered and/or used; and "Customer," "Lessee," "you" and "your" mean the "Renter," "Customer," "Lessee" and/or "Guarantor" (as applicable) identified on P.1.
2. **TERMS:** You agree to rent from BND the Rented Item(s) for the period(s) specified on P.1 (the "Term"), to pay us our stated rental rate(s) (the "Rent") together with all other charges accruing hereunder, without proration, reduction or setoff, and to remain liable for all loss, theft, injuries, and damages of, to, or associated with such Item(s), until all Rented Item(s) is/are returned to and accepted by BND in the return condition required under this Contract. Unless otherwise specifically agreed by BND in writing, all rental rates are for normal use of the Rented Item(s) on a single-shift basis during the Term, not exceeding 8 hours per 24-hour period for which Rent is charged hereunder (each, a "Rental Day"), 40 hours per 7-Rental Day period, or 160 hours per 28-Rental Day period (zero hours are permitted for any and all uncharged-for periods). Additional Rent at our highest incremental rate will be charged for late returns and overuse. You will not be entitled to any cancellation right or reduction of Rent or other amounts coming due hereunder to account for time in transit, Act(s) of God, event(s) of *force majeure*, or any other period(s) of nonuse. We have estimated the Rent based on your estimate of the length of the Term (the "Estimated Rent"). Unless otherwise agreed by BND in writing, you agree: (a) to pay us the Rent and any deposits specified on P.1 in advance of the Term (together, the "Prepayment") and all other amounts coming due hereunder upon demand; and (b) that: (i) we may deduct any amount(s) you owe us from any Prepayment; (ii) no interest will accrue on any Prepayment; (iii) no Prepayment will be deemed a limit of your liability to us; and (iv) all Prepayments are **NON-REFUNDABLE**. You agree to fully and timely pay all taxes (including sales, use, and other taxes), tolls, fines, fees, assessments, and other charges related to each Item and/or the transactions contemplated in this Contract allowable and/or required under Ohio law. See Ohio Rev. Code Ann. tit. 57 Taxation and its/their successor(s), if any, for details. All amounts due hereunder but not timely paid will bear interest at the lesser of 2% per month or the highest rate permitted under applicable law. You authorize us to charge all amounts coming due hereunder to any debit and/or credit card(s) you provide (up to 150% of the new replacement cost of the Item(s)). You agree to pay us the maximum lawful charge for any check you write which is returned unpaid.
3. **DELIVERY/RETRIEVAL:** You agree to ensure the Site is reasonably clean, safe, secure, and fit for delivery and use of the Item(s). If we agree to provide any services (including without limitation, delivery, retrieval, servicing and maintenance), you shall: (a) pay our regular charge(s) therefor, and for all waiting time; (b) be present at the Site at the agreed time(s); and (c) ensure our personnel have full access to the Site at all times. We will not be responsible for delay(s) caused by any acts or omissions of/by you, your agents, employees or contractors, or any other parties, including providers of other equipment or services ("Other Providers") for which you agree to indemnify, defend, and hold harmless BND, its agents, employees, and contractors. If you are not present upon delivery or retrieval of any Item(s), you agree to accept the statements of our representatives and/or delivery personnel regarding the same (including status, condition, quality, utility, defects, and quantities of or with respect to the Item(s) and the Site). Anything remaining with, in, or on any Rented Item(s) upon return will, at our option, be deemed abandoned.
4. **TITLE/OWNERSHIP:** Except with respect to Items BND rents from one or more third parties (each, a "Third Party Owner" or "TPO") and then re-rents to you ("Re-Rented Items"), BND owns and will retain title to all Rented Item(s) at all times. **You will have exclusive control over the Rented Item(s) during the Term; subject to your obligation to always fully and timely comply with this Contract. You SHALL NOT (nor shall you allow anyone else to) permit the taking or existence of any lien, claim, security interest, or encumbrance on any Rented Item(s); have any title or ownership interest in or with respect to any Rented Item(s) or loan, share, transfer, sublease, store, surrender or assign any Rented Item(s) or this Contract, without our prior written consent (in our sole and absolute discretion).** BND may substitute Rented Item(s) and/or sell or assign all or any part of its interests in one or more Rented Item(s) and/or this Contract, in which event, you will attorn to the assignee, who will not be responsible for any pre-existing obligations or liabilities of BND.
5. **INSTRUCTIONS:** Upon the earlier of your receipt or the delivery to the Site of the Rented Item(s), unless you immediately reject it/them, you represent, warrant, acknowledge and agree that: (a) each Item: (i) is complete and in good order, condition and repair, fully charged and/or fueled (as applicable); (ii) is appropriate for your purposes and in all ways acceptable to you; and (iii) was selected not based on any recommendation by us, carefully examined, counted and tested by you and/or your agent(s); and (b) you: (i) have carefully reviewed and fully understand all laws, rules, regulations, training, instructions, user manuals, maintenance requirements, and other information, if any, including all EPA, OSHA, MSHA, ASME, IBC, IFC, IEEE, UL, ASSP, DOT, FMCSA, IFTA, ANSI and other standards, applicable to the Item(s), (including 29 CFR Part 1926 Subpart P; See the following OSHA publication for additional information on Trenching and Excavation Safety (OSHA 2226-10R 2015) at: <https://www.osha.gov/sites/default/files/publications/osha2226.pdf>) (collectively, "Instructions"); (ii) will fully comply therewith (including Tier 4, Silica Dust, Ventilation, AWP/MEWP training and familiarization, charging, fueling, cleaning, voltage, and site assessment requirements); (iii) have been made aware of the need to use all applicable personal protective equipment and safety devices (including, but not limited to, RESPIRATORY AND FALL PROTECTION DEVICES (including harnesses, lanyards, lifelines, ladders, steps and ramps, where applicable)); (iv) will use each Item only for its intended purpose, in a reasonable and safe manner; (v) will timely give all applicable notices to, and obtain all applicable licenses, authorizations, permits and approvals from, all affected parties, including governmental authorities, utilities, cable companies and the owner(s) of the Site, and ensure that all underground lines, cables and conduits are clearly and properly marked before using any Item(s) to disturb the ground surface (Call 811 and go to www.Call811.com at least 3 full working days in advance); (vi) will promptly notify the authorities and BND in the event of any theft or accident involving the Rented Item(s); (vii) will comply and ensure that all others fully comply, with this Contract at all times, and (viii) agree to notify BND if any of the above requirements is/are breached, or proven incorrect or misleading.
6. **CARE OF RENTED ITEMS:** You agree to protect, properly maintain and care for all Rented Item(s) at all times, keep Items safely stored and locked when not in use, and return the Item(s) to us on time at the end of the Term, complete (with all original batteries, cords, attachments and peripherals), clean, free of contamination (including without limitation, asbestos, beryllium, silica and pathogens), in good order, condition, and repair, properly serviced and maintained, and if applicable, fully charged and/or full of the appropriate fuel, fluids, and lubricants. If you fail to comply, you will promptly pay BND, in addition to the amounts specified on P.1: (a) Rent at our highest incremental rate(s) until all such Rented Item(s) have been returned or replaced as required; and (b) all costs and expenses we incur in connection

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with such failure. **You shall not**, nor shall you permit anyone else to: (i) **text, email or otherwise use any handheld communication device while operating any Rented Item**; (ii) use any Rented Item while under the influence of any intoxicant(s) **(including, without limitation, cannabis, cannabinoids, and alcohol, whether or not legal or medicinal)**; (iii) abuse, misuse, overuse, conceal, store with any third party, repair, modify or damage any Rented Item(s); (iv) violate any law, Instruction, insurance policy, or warranty; (v) expose any Rented Item(s) to any flammable, explosive, harmful or hazardous substance(s) or circumstance(s); (vi) disable, misuse or circumvent any safety equipment or device(s) in, on or with any Item(s); or (vii) take possession of or exercise control over any Rented Item(s), without our prior consent.

7. **MALFUNCTIONS:** You agree (and shall cause all others using the Items) to immediately cease using any Item that is damaged, breaks down, or proves defective (a "Malfunction"), in which event, you will immediately notify and return the Malfunctioning Item(s) to BND. Provided that the Malfunction did not result from or in connection with any wrongful or negligent act or omission of/by you or anyone you permit to use or otherwise deal with any Rented Item, or your breach of any provision of this Contract, BND will, at its option: (i) repair the Malfunctioning Item; (ii) provide you with a comparable item; **or** (iii) solely with respect to the Malfunctioning Item, return the unused portion of the Rent and cancel this Contract. **The foregoing remedies are EXCLUSIVE.** BND shall not have any other obligation(s) regarding Malfunctions, all of which **YOU WAIVE, TOGETHER WITH ALL INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, AND PUNITIVE DAMAGES.**

8. **SAFETY WARNINGS: THE ITEM(S) CAN BE DANGEROUS AND SHOULD BE FUELED, CHARGED, MAINTAINED, AND USED WITH EXTREME CARE, ONLY FOR THEIR INTENDED PURPOSE(S), AND ONLY BY PROPERLY QUALIFIED, INSTRUCTED, TRAINED, FAMILIARIZED, COMPETENT, AND (IF APPLICABLE) LICENSED, ADULT USERS AND OPERATORS. YOU SHALL PROVIDE ALL APPLICABLE FAMILIARIZATION, TRAINING, INSTRUCTIONS, AND WARNINGS TO ALL SUCH PARTIES AND ENSURE THAT EACH SUCH ITEM IS FUELED, CHARGED, USED, OPERATED AND OCCUPIED SAFELY AND ONLY FOR ITS INTENDED PURPOSE(S), WITHIN ITS RATED CAPACITY, AT THE SITE (UNLESS OTHERWISE SPECIFICALLY AGREED BY BND), AND IN FULL COMPLIANCE WITH THIS CONTRACT, THE INSTRUCTIONS, AND ALL APPLICABLE WARRANTIES AND INSURANCE POLICIES, AT ALL TIMES. TEST EXCAVATION SITES FOR ATMOSPHERIC HAZARDS SUCH AS LOW OXYGEN, HAZARDOUS FUMES, OR TOXIC GASES REGULARLY.**

9. **NO WARRANTIES: BND IS NOT THE MANUFACTURER OR DESIGNER OF ANY ITEM(S), ALL OF WHICH ARE PROVIDED "AS-IS." NEITHER BND NOR ANY TPO MAKE ANY WARRANTY(IES), EXPRESS OR IMPLIED (INCLUDING ANY AND ALL WARRANTY(IES) OF MERCHANTABILITY, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, FUNCTION, DESIGN, QUALITY, CAPACITY, FREEDOM FROM DEFECTS AND GOOD AND WORKMANLIKE PERFORMANCE, AS WELL AS ANY WARRANTY(IES) ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE AND/OR USAGE OF TRADE) REGARDING ANY ITEM(S) OR SERVICE(S) PROVIDED BY OR AT THE DIRECTION OF BND OR ANY TPO, NOR DOES BND OR ANY TPO MAKE ANY WARRANTY AGAINST INTERFERENCE OR INFRINGEMENT, ALL OF WHICH WARRANTIES YOU HEREBY WAIVE. NO DESCRIPTIONS, SPECIFICATIONS OR ADVERTISEMENTS CONSTITUTE REPRESENTATIONS OR WARRANTIES BY BND OR ANY TPO. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF.**

10. **ASSUMPTION OF RISK / INDEMNITY: TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, YOU (A) ASSUME ALL RISK OF PERSONAL AND BODILY INJURY, ELECTRIC SHOCK, ILLNESS, PRODUCTS LIABILITY, LOSS, THEFT, DAMAGE, AND CONTAMINATION OF, TO, AND/OR ARISING IN CONNECTION WITH, THE ITEM(S) AND/OR SERVICE(S) REFERENCED IN THIS CONTRACT, INCLUDING ALL LIABILITIES, CLAIMS, DAMAGES, LOSSES, COSTS AND EXPENSES ARISING FROM AND/OR IN CONNECTION WITH THE SELECTION, PROVISION, INSPECTION, DESIGN, MANUFACTURE, FUELING, CHARGING, USE (INCLUDING CAVE-INS DURING TRENCHING AND SHORING ACTIVITIES), LOADING, UNLOADING, TRANSPORTATION, DEMONSTRATION, INSTALLATION, CLEANING, STORAGE, SERVICING, MAINTENANCE, REPAIR, DELIVERY AND/OR RETRIEVAL OF SUCH ITEM(S) AND/OR SERVICE(S), WHETHER OR NOT YOUR FAULT (COLLECTIVELY, "RISKS"); (B) RELEASE AND DISCHARGE, AND AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS, BND, EACH TPO, their respective parents, affiliates, subsidiaries, owners, shareholders, members, managers, officers, directors, agents, employees, insurers, subrogees, representatives, successors and assigns (each, an "indemnitee"), for, from and against all such risks, as well as all other liabilities, claims, damages, losses, costs and expenses arising from and/or in connection with the item(s), this contract, our negligence, and/or your breach of any one or more of the terms hereof; and (c) except only as provided in § 7, WAIVE ALL RIGHTS, REMEDIES AND DEFENSES AVAILABLE UNDER THE UNIFORM COMMERCIAL CODE, AS WELL AS ALL DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, GENERAL, SPECIAL, EXEMPLARY AND PUNITIVE DAMAGES, against each indemnitee. Our maximum liability in connection with this contract is limited to the amount(s) actually paid by you and received by us hereunder for the item(s) identified on p.1.**

11. **INSURANCE:** You agree to maintain all insurance we may require, including: (a) liability insurance with minimum limits of \$1,000,000 per occurrence and \$2,000,000 in aggregate; (b) property damage/inland marine insurance covering all Items for the full (new) replacement cost thereof; (c) workers' compensation insurance; and (d) for all vehicles and trailers included with or in the Item(s): (i) hired auto liability insurance with minimum limits of \$1,000,000; (ii) hired auto physical damage insurance for actual cash value; and (iii) replacement cost contents insurance for all contents thereof. Such policies shall, whenever possible: (A) name BND as an additional insured and loss payee; (B) waive subrogation against us; (C) be primary and non-contributory; and (D) include a severability of interests clause and such other provisions (including deductibles) as we may require. You irrevocably appoint BND as your agent and attorney-in-fact to submit and settle claims on all such policies.

12. **LIMITED DAMAGE WAIVER:** If and *only if*, we have offered and you have purchased and paid for our **OPTIONAL "RENT GARD" LIMITED DAMAGE WAIVER ("LDW")** (set forth on P.1, *if available*) in advance of the Term, you will have no liability to us for 100% of the first \$5,000 of repair/replacement costs for Item(s) covered by LDW ("Covered Item(s).") **You will remain fully liable for:** (a) all loss of and damage to: (i) Item(s) not covered by LDW; (ii) Covered Item(s) lost or damaged as a result of: (A) your breach of this Contract; (B) theft or other failure to timely return Covered Item(s) to us; (C) negligence, misuse and/or abuse of Covered Item(s) (including without limitation, submerging, overturning, and overloading); (D) striking overhead objects; and/or (E) improper or inadequate servicing; (iii) batteries, glass, tires, tubes, tracks, booms, belts, chains, knobs and/or hoses; and (b) all repair and replacement costs exceeding \$5,000

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in the aggregate across *all* Covered Item(s). You may decline LDW ONLY if you provide the insurance required under § 11. **LDW IS NOT INSURANCE, NOR IS IT A WARRANTY.**

13. FORCE MAJEURE / LIENS: To the maximum extent permitted under applicable law, you grant to BND a lien on all real and personal property placed in, on or improved with, any Rented Item(s). If any performance required of BND shall be delayed, impaired or made more costly as a result of any act or omission of/by you, any Other Provider(s) or any "Act of God," event of *force majeure* (including fire, flood, storm, earthquake, tsunami, slide, subsidence, collapse, riot, war, violence, threat, theft, terrorism, cyber-attack, supplier delay, strike, shutdown, power surge or outage, epidemic, pandemic, and governmental and regulatory actions) or other events, facts or circumstances beyond our reasonable control, we will be excused from such performance.

14. TELEMATICS/GPS: Rented Items may be equipped with GPS and/or Telematics hardware or software. Customer acknowledges and agrees that BND may (without further notice or liability to you or any Guarantor), monitor (in person and/or electronically), inspect, access, use, collect and disclose any data generated by, collected by, or stored in or on Rented Items at any time to (including without limitation) our manufacturers and affiliates. You consent thereto and agree that all information thereby obtained will be BND's property.

15. DEFAULTS/REMEDIES: This is a "net" rental; accordingly, your duties hereunder are unconditional and shall not be subject to any reduction, setoff, or counterclaim. If you or any Guarantor shall: (a) fail to fully and timely honor, pay, perform or comply with this Contract and/or any of your obligations arising hereunder or in connection herewith; (b) provide any incorrect or misleading information to us; (c) become insolvent; or (d) die or cease conducting business, or if any Rented Item(s) shall be lost or, except to the extent covered by LDW per § 12, damaged, you will be in **DEFAULT** under this Contract, whereupon, BND may with or without legal process or notice (and without liability to you or any Guarantor), to the maximum extent permitted under applicable law: (i) cancel the Term and/or the subject Contract(s) (and/or your rights to use and possess the Rented Item(s)); (ii) seek relief from stay; (iii) recover, empty, lock, restrict and/or disable any Item(s) without being guilty of breach, trespass or wrongful interference, or liable for any injuries or property damage, including without limitation, any and all damage to crops, flora and/or fauna (for which you will indemnify, defend and hold harmless each Indemnitee); (iv) perform your obligations hereunder on your behalf, without being obligated to do so; (v) purchase replacement Item(s); (vi) recover from you and/or any Guarantor our associated damages, losses, costs and expenses **FOR WHICH YOU WILL BE PERSONALLY LIABLE** (including without limitation, Rent for the entire scheduled Term, overtime, loss of use, interest, repossession costs, collection costs, attorneys' fees, and if civil fraud has occurred, punitive damages for civil fraud); and/or (vii) pursue any one or more other rights and/or remedies available in connection (t)herewith, all of which shall be cumulative. You acknowledge that in the event of default, the damages provided in this Contract are reasonable in light of the anticipated harm that would result from your breach. You waive all statutes of limitations regarding our rights and remedies. Neither our exercise, nor our failure or delay in the exercise, of any rights or remedies available in connection herewith will constitute an election of remedies or a waiver of any of our rights or remedies.

16. LAW/VENUE: This Contract shall be governed by and enforceable under Ohio law (unless waived by BND). At BND's option, disputes arising hereunder shall be submitted to binding **ARBITRATION** in accordance with the Rules of the American Arbitration Association before a single arbitrator and in a location selected by BND. Judgment on the arbitrator's award shall be final and binding and may be entered in any court of competent jurisdiction. Proper venue for all other civil legal actions commenced in connection herewith shall lie solely and exclusively in the federal, state, and local courts located in or nearest to Montgomery County, OH. You consent and submit thereto and waive all claims that such venue lies in an inconvenient forum. The terms of this Contract are severable. To the extent any provision is deemed invalid or unenforceable by any court or arbitrator of competent jurisdiction, such provision will be deleted, and the remainder of this Contract will remain valid and enforceable. If legal action is commenced in connection herewith, BND will be entitled to recover its associated reasonable legal costs and expenses from you if BND prevails. **You hereby waive: (a) your right(s), if any, to participate in any class, collective, or other joint action against BND; and (b) your right to trial by jury.**

17. MISCELLANEOUS: There are no third-party beneficiaries hereto other than the applicable Indemnitees. These Terms and Conditions apply to all Item(s) identified on P.1 and to all other Items you obtain from us at any time (except only as we may otherwise agree). This Contract, and any pictures, videos and/or addenda we provide, each of which is incorporated herein (including as applicable, our forms of Credit Application, Debit/Credit Card Charge Authorization, Forklift, Silica, Tier 4/Stage IV, Trailer, and Aerial Equipment Addenda) represent(s) the entire agreement between you and BND, superseding all other agreements and representations (including our website and advertising) and cannot otherwise be amended or extended except in a writing signed by BND. Time is of the essence. This Contract: (i) is a true operating lease, and not a financing; (ii) is fair and reasonable; and (iii) shall bind and be enforceable by you, BND, the other Indemnitees, and their respective insurers, subrogees, successors and permitted assigns. Digital, electronic, photocopied, and facsimiled signatures and initials appearing on this Contract will be deemed originals.

18. THEFT WARNING: Failing to timely return the Rented Item(s), obtaining or exercising control over the property of another with the intent to deprive the other person of the property and/or obtaining services by deception, threat, force, or any other means designed to avoid the due payment for services that a person knows are available only for compensation, may be deemed THEFT, resulting in CRIMINAL PROSECUTION AND/OR CIVIL PENALTY(IES). See Ohio Rev. Code Ann. § 2913.02; Ohio Rev. Code Ann. § 2913.72 and its/their successor(s), if any, for details.