

# ASPEN EQUIPMENT, A DIVISION OF MGX EQUIPMENT SERVICES, LLC - TERMS AND CONDITIONS OF RENTAL

**1. DEFINITIONS.** The term "Agreement" shall mean this agreement, all pages, front and back. The term "Equipment" shall reference and mean all pieces of equipment referenced in this Agreement as well as all attachments or parts rented or sold to Lessee. The term "manual" shall mean any operating manual, safety manual, or other information provided by the Equipment manufacturer. The term "Aspen" or "Lessor" shall mean Aspen Equipment, a division of MGX EQUIPMENT SERVICES, LLC. The term "Customer" or "Lessee" shall mean the customer entering into this Agreement.

**2. INSURANCE.** Lessee is responsible for the full value of loss or damage to the Equipment, regardless of fault, including lost rental income. Lessee shall, prior to delivery of the Equipment and throughout the rental period, maintain the following insurance coverage, at its sole cost and expense, with limits and conditions not less than the following:

- **General Liability Insurance**, written on an occurrence form, including but not limited to premises-operations, broad form property damage, products/completed operations, contractual liability, independent contractors, personal injury and advertising injury and liability assumed under an insured contract, with limits of at least \$1,000,000 per occurrence and \$2,000,000 general aggregate and products/completed operations aggregate of \$2,000,000. This policy shall include the Lessor as an Additional Insured and shall be deemed as primary insurance and not excess over, or contributing with, any insurance purchased or maintained by the Lessor.
- **Automobile Liability Insurance** including coverage for owned, hired, and non-owned vehicles with a combined single limit including bodily injury and property damage of not less than \$1,000,000 each accident. This policy shall include the Lessor as an Additional Insured and shall be deemed as primary insurance and not excess over, or contributing with, any insurance purchased or maintained by the Lessor.
- **Workers' Compensation Insurance** with benefits afforded under the laws of the state in which the services are to be performed and Employer's Liability insurance with minimum limits of \$1,000,000 for Bodily Injury – each accident, \$1,000,000 for Bodily Injury by disease – policy limit and \$1,000,000 for Bodily Injury by disease – each employee. Lessee is required to carry this insurance regardless of eligibility for waiver or exemption of coverage under state statute, however, qualified self-insured coverage is acceptable or Lessee may maintain an Occupational Accident Policy where allowed by law.
- **Excess Liability (Umbrella) Insurance** with a minimum limit of \$1,000,000 per occurrence. This policy shall provide excess limits for the General Liability, Employer's Liability and Automobile Liability policies and be follow form or at least as broad in coverage.
- **Physical Damage** insurance covering any damage to the Equipment. Such coverage shall be for replacement cost of the Equipment and no less than the value set forth in this Agreement. This coverage shall include the Lessor as an Additional Insured and Loss Payee, as their interests may appear. The deductible for this coverage may not exceed \$1,000 per occurrence.

Lessee waives all rights of subrogation that an insurer might have against the Lessor. All policies shall be endorsed accordingly. Each policy shall provide at least 30 days written notice of cancellation. On or before the required date for the insurance to be provided hereunder, Lessee shall furnish certificates of insurance to Lessor evidencing the insurance required hereunder. Lessee shall make proof of loss under the physical damage insurance policy and shall take all other action reasonably required to ensure collection from insurers for any loss under any such policy.

**3. RENTAL PERIOD, CALCULATION OF RENT, QUOTES.** The rental period begins when the Equipment leaves Lessor's possession and ends when the Equipment is returned to Lessor in good condition or is put in good condition by Lessor. No deduction shall be made for Sundays, holidays, time in transit, or any period of time the Equipment is not in use. A rental day is 24 hours. Any rental period less than 24 hours shall constitute a full rental day. A rental week is seven calendar days. A rental month is four weeks (there are 13 rental months in a calendar year). All rental rates are based on 8 hours of Equipment use per day, 40 hours per rental week and 160 hours per rental month. If the Equipment is used more hours than allotted, an overtime rate will apply. Lessee agrees to immediately notify Lessor if Equipment is used more than the allotted hours in any rental period(s) and to permit Lessor to inspect its records upon request. Lessee shall pay all drayage charges, all taxes associated with the Agreement, including but not limited to sales tax, use tax, tax on damage repairs, fuel taxes, or any other levied taxes, and any recovery fees/surcharges as required or permitted by law. Lessee shall hold Lessor harmless against any liability or expense resulting from Lessee's failure to pay taxes or file tax returns. Unless otherwise specified, quotes do not include taxes and are valid, only, for 30 days and can be withdrawn at any time by Lessor.

**4. MISC. FEES AND CHARGES.** To the extent other charges apply to this Agreement, including but not limited to permit charges, freight charges, delivery or pick-up charges, fuel charges, supply charges, and environmental charges, these charges are not designated for any particular use and are used at Lessor's discretion.

**5. OPERATION / KNOWLEDGE.** Lessee has studied and understands the manual. Lessee agrees to restrict the use of the Equipment to only its employees, and only those employees who are competent and qualified operators, who are familiar with the Equipment, who understand the manual, and the limitations of the Equipment. Lessee agrees to use the Equipment within its rated capacity, with all safety devices fully operational, and only for purposes for which it was designed. Lessee shall maintain and use the Equipment pursuant to applicable law and regulation. Lessee represents and warrants that Lessee and its employees are familiar with and shall at all times comply with applicable safety regulations, including but not limited to ANSI Safety Requirements for Excavating (ANSI/ASSP A10.12- 1998 (R2016)), OSHA Excavating standards (29 CFR Part 1926, Subpart P), and OSHA Trenching and Excavation Safety (OSHA 2226-10R 2015). Lessee shall not operate the Equipment, and shall immediately notify Lessor, if any safety device or label is missing or damaged.

**6. EQUIPMENT RETURN AND LESSEE DUTY TO MAINTAIN EQUIPMENT.** Lessee is solely responsible for the Equipment until Lessor regains physical possession of the Equipment, regardless of any "call-off". Lessee agrees to return the Equipment to a location designated by Lessor in the same condition as when received. If damaged, Lessee agrees to pay the expenses of returning the Equipment to its original condition, subject to normal wear. This payment requirement is unconditional and may not be excused by theft, act of God, or for any other reason. Lessee agrees, while Equipment is in its possession, to check engine oil, water, tire condition, cooling systems, and fuel each day, and to perform routine preventive maintenance pursuant to the manual. Equipment returned unclean will be cleaned by Lessor and a cleaning fee determined in Lessor's discretion shall be imposed.

**7. REPAIRS.** Lessee will immediately notify Lessor of any accidents, failures, or breakdowns involving the Equipment. Lessee expressly agrees all repairs must be conducted by only Lessor. The cost of all repairs outside of normal wear and tear shall be borne by Lessee and shall be considered additional rent owed by Lessee. In the event the Equipment requires repair, this Agreement, including the invoicing of rent, shall continue during the repair period.

**8. EQUIPMENT LOCATION, JOBSITE AND BOND INFORMATION.** Lessee shall use the Equipment only at the address shown on the face of this Agreement. The Equipment may not be moved without prior written consent of Lessor. Upon Lessor's request, Lessee shall promptly provide (a) copies of any contracts governing the projects on which the Equipment is used; (b) copies of any payment and/or performance bond(s) issued on said projects; and (c) the name and location of all projects where the Equipment has been used. Lessee agrees to provide any other information requested by Lessor.

**9. OWNER CONTROL OF EQUIPMENT.** Lessee agrees that Lessor shall retain all ownership rights in the Equipment and agrees to execute any financing statements or other document necessary to disclose and protect Lessor's ownership. If necessary, Lessee agrees to subordinate any of its interests arising from this Agreement to any interest that Lessor or its lender may have in the Equipment. During this lease, in the event a lien is placed on the Equipment for any reason, this Agreement shall immediately terminate and Lessor, or anyone acting on Lessor's behalf, may take possession of the Equipment. Lessor and its agents shall have free access to the Equipment at all times for any lawful purpose.

**10. ASSIGNMENT/SUBLEASE.** All rights of Lessor may be assigned, pledged, mortgaged, transferred, or otherwise disposed of, either in whole or in part, at the sole discretion of Lessor, without notice to Lessee. Lessee shall not transfer, deliver and/or sublet the Equipment.

**11. HAZARDOUS WASTE.** Lessee agrees that it is familiar with all hazardous waste laws and regulations and all hazards that may be encountered on the job, project, or work on which the Equipment will be used. Lessee shall not expose the Equipment to any hazardous or corrosive material or waste. In the event of exposure, Lessee shall immediately notify Lessor and, if applicable, the appropriate regulatory authority and have the Equipment removed from such exposure, and completely clean and decontaminate the Equipment, all pursuant to applicable local, state, or federal laws and regulations, at the sole cost of Lessee. If the Equipment cannot be completely cleaned and decontaminated, Lessee shall pay Lessor for the full value of the Equipment.

**12. HOLDOVER** If Lessee keeps the Equipment beyond the agreed upon end date, this Agreement shall extend and continue until the Equipment is returned pursuant to section 7. During this holdover period, Lessor may terminate the Agreement and take possession of the Equipment for any reason without notice.

**13. INDEMNIFICATION/HOLD HARMLESS. LESSEE AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS LESSOR AND LESSOR'S DIRECTORS, OFFICERS, EMPLOYEES, OR AGENTS (COLLECTIVELY, THE "INDEMNITEE") FROM ANY AND ALL CLAIMS OR DAMAGES (WHETHER SOUNDING IN TORT, CONTRACT, PRODUCTS LIABILITY, STATUTE OR OTHERWISE) ARISING FROM, RELATING TO OR CONNECTED WITH LESSEE'S USE, SELECTION, ACCEPTANCE, REJECTION, TRANSPORTATION, OPERATION, RENTAL, MAINTENANCE, PURCHASE OR POSSESSION OF THE EQUIPMENT, OR FROM EXPOSURE OF THE EQUIPMENT TO HAZARDOUS WASTE OR MATERIAL, INCLUDING BUT NOT LIMITED TO ANY LOSS OR DAMAGE TO THE EQUIPMENT, ANY LOSS, DAMAGE, OR INJURIES TO PERSONS OR PROPERTY, INCLUDING EMPLOYEES, THIRD PARTIES AND THEIR PROPERTY, AND ANY AND ALL EXPENSES INCURRED IN THE DEFENSE OF SUCH CLAIMS INCLUDING ATTORNEY FEES AND COSTS. THE LESSEE ACKNOWLEDGES, UNDERSTANDS AND AGREES ITS OBLIGATION TO INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEE PURSUANT TO THIS AGREEMENT SHALL APPLY REGARDLESS OF WHETHER THE LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE, ACTS, OR OMISSIONS OF INDEMNITEE OR ANY THIRD PARTY. IN NO EVENT SHALL INDEMNITEE BE HELD RESPONSIBLE FOR INJURY, DELAYS, OR DAMAGES, CONSEQUENTIAL OR OTHERWISE, RESULTING BY REASON OF THE CONDITION, FAILURE, OR OPERATIONAL DIFFICULTY OF THE EQUIPMENT, INCLUDING, WITHOUT LIMITATION, LATENT OR OTHER DEFECTS IN THE EQUIPMENT, WHETHER OR NOT DISCOVERABLE BY INDEMNITEE OR LESSEE, DELIVERY DELAYS, LOSS OR DAMAGE TO THE EQUIPMENT IN TRANSIT OR WHILE IN USE BY LESSEE, STRIKES OR ANY CONTINGENCIES BEYOND THE CONTROL OF INDEMNITEE, OR ANY OTHER CAUSE.**

**14. PAYMENT TERMS AND REMEDIES.** Except for extended term agreements, invoices are payable upon receipt and Lessee agrees to pay the amount due within thirty (30) days of the invoice date. Balances that are unpaid beyond 30 days of the date of the invoice will be subject to a finance or interest charge per month at the highest rate allowable by law. Lessee's account will be delinquent when any part of the account is 30 days past due. Lessor reserves the right to apply payments at its discretion. Lessor may, at its option and without notice, raise or allow charges in excess of any credit limit granted. Lessee understands it is responsible for all charges to the account. Lessee shall be liable for all costs and fees, including attorney and/or collection agency fees and expenses, incurred in pursuit and/or collection of any amounts past due, including interest charges. Lessor shall have any and all remedies provided in this Agreement, at law or equity, including but not limited to the right to sue for damages, collection of unpaid rent or other charges, repossession, and consequential damages for Lessee's breach of this Agreement. All remedies provided to Lessor in this Agreement are cumulative, and the exercise of any one remedy by Lessor shall not affect Lessor's right to exercise any other remedy. Termination of this Agreement shall not affect Lessor's right to pursue any remedy provided here or at law or equity. If at any time Lessor, in its sole discretion, determines that the Equipment is being used beyond its capacity, improperly maintained, damaged, or that Lessor's rights to the Equipment are endangered, or if Lessee defaults on any term or condition set forth in this Agreement, Lessor may: (a) demand return of the Equipment and Lessee shall return the Equipment to Lessor within 72 hours of such demand; or (b) promptly repossess the Equipment, lock up or remove the Equipment from the job site, and immediately terminate this Agreement without demand or notice to Lessee. Lessor will deem Lessee's failure to timely return Equipment as theft. Lessee grants Lessor the right to enter the premises where the Equipment is located for the purpose of taking possession of the Equipment.

**15. BINDING AGREEMENT, ENTIRE AGREEMENT, SEVERABILITY AND NON-WAIVER.** This Agreement shall be binding upon Lessee, Lessor, and their heirs, successors, personal representatives, agents, and assigns. This writing constitutes the entire agreement between the parties regarding the subjects addressed, and any representation or agreement not contained in this Agreement shall be of no force or effect. The provisions in this Agreement cannot be waived or amended unless made in a writing signed by Lessor's authorized corporate officer. If any word, phrase, clause, sentence, or paragraph of this Agreement is or shall be invalid for any reason, it shall be severed from the remainder of this Agreement and shall in no way affect or impair the validity of the remaining provisions of this Agreement. Lessor's failure to insist upon strict performance of any provision of this Agreement shall not be construed as a waiver of Lessor's right to demand strict performance of any and all provisions, and Lessee waives notice of demand for strict compliance.

**16. VENUE, JURISDICTION, CHOICE OF LAW, JURY WAIVER.** This Agreement shall be construed under Wisconsin law. Lessee agrees that the sole and exclusive venue for any dispute arising from or relating to this Agreement is Milwaukee, Wisconsin, except that Lessor, in its sole discretion, may file suit in the parish or county of Lessee's domicile or where the transaction occurred. Lessee agrees to waive any right to a trial by jury in any proceeding arising from or relating to this Agreement.

**17. LEASE NOT A CONSUMER CONTRACT.** This Agreement is for commercial purposes. Lessee agrees that this Agreement shall not be construed as a consumer contract.