



GENERAL RENTAL TERMS AND CONDITIONS

These General Rental Terms and Conditions ("**Terms and Conditions**"), as amended from time-to-time by Cooper Equipment, LLC ("**Lessor**") in its sole and absolute discretion, apply to and are effective for all rentals or leases of Equipment (as defined below) by Customer from Lessor and provision of services by Lessor to Customer in connection with the rental or lease of Equipment. References in these Terms and Conditions to "Lessor", "we", "us", or "our" refers to Cooper Equipment, LLC, a North Carolina limited liability company. All references in these Terms and Conditions to "Customer", "you", or "your" refers to the Customer (as defined below).

These Terms and Conditions include an indemnification obligation, a waiver of class action litigation and arbitration, a mandatory arbitration provision, a waiver of jury trial, and limitations and disclaimers of Lessor's liability.

Customer agrees as follows:

1. **DEFINITIONS**

The following terms shall have the meanings set forth below whenever they appear in the Agreement.

"Agreement" means, collectively, these Terms and Conditions, as revised from time-to-time, and each Equipment Rental Form, and all renewals, amendments, or substitutions therefor or thereof. The expressions "herein", "hereof", "hereto", "above", "below", and similar expressions refer and relate to the whole of this Agreement and not to any particular Section, Articles, subsection, or clause only, unless otherwise provided.

"Credit Card" means the Customer's credit card information provided by the Customer in connection with the Agreement or otherwise kept on file with Lessor.

"Customer" means the Person identified in the Equipment Rental Form as the customer and who or which executes the Equipment Rental Form as the customer for purposes of renting Equipment from Lessor.

"Equipment" means each of the items identified in the Equipment Rental Form(s) and any accessories, attachments, parts, components, or other items delivered to the Customer by or on behalf of Lessor, including, but not limited to, air hoses, electric cords, blades, welding cables, liquid fuel tanks, and nozzles.

"Equipment Rental Form" means each Equipment Rental Form which is or may from time-to-time be executed by Lessor and the Customer.

"Person" means any individual, partnership, joint venture, governmental entity or body (including, without limitation, a government or political subdivision or an agency or instrumentality thereof), limited liability company, corporation, association, trust, estate, or other entity, business enterprise, or organization.

"Qualified Operator" means any individual who is authorized by the Customer to operate a Vehicle rented by Lessor to the Customer, is of the legal age to operate the Vehicle in North Carolina, who holds a valid (non-expired) and unrestricted license in North Carolina or other applicable jurisdiction where the Vehicle is used to operate the Vehicle, and who meets the qualifications and requirements set out in the Agreement for Qualified Operators, including, without limitation, any individuals identified in the Equipment Rental Form as additional Qualified Operators with respect to the Vehicle.

"Regulated Materials" means any material, substance, liquid, or waste that falls into any one or more of the following five categories: (i) "**Hazardous Materials**," as defined or listed or regulated by any local, state, or federal government authority, (ii) "**DOT Hazardous Materials**," as defined or identified as "hazardous material" by the Department of Transportation as set forth in 49 C.F.R. Parts 171 to 180, (iii) "**Polychlorinated Biphenyls**" or "**PCBs**," meaning any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance, and which are regulated under the Toxic Substances Control Act and its implementing regulations found at 40 C.F.R part 761, (iv) "**Radioactive Materials**," identified by any local, state, or federal authority as being radioactive; or (v) "**Infectious Materials**," meaning any infectious substance, material, liquid, or waste that is defined, listed, or regulated by any local, state, or federal government authority.

"Rental Period" means the period of time during which each item of Equipment is rented by the Customer from Lessor, as set out in the applicable Equipment Rental Form, and which, subject to extension, renewal, or earlier termination as provided in the Agreement, commences and expires on the dates and at the times set forth in the section of the Equipment Rental Form entitled "Rental Period".

"Service" or "Services" means the services, if any, provided by Lessor in connection with the Equipment and specified in the Equipment Rental Form.

"Specialty Media" means specialty filtration materials purchased by the Customer in connection with the rental of Equipment used for fluid solutions, such as sand, gravel, carbon, or other materials used to remove certain contaminants or other materials.

"Tanks" means the Equipment identified as rental items as part of the Fluid Solutions Services in which the Customer stored materials.



"Vehicle" or "Vehicles" means each motor vehicle rented by Lessor to the Customer or identified as Equipment in the Equipment Rental Form, if any.

2. INCORPORATION INTO AGREEMENT / AUTHORITY TO SIGN

These Terms and Conditions are incorporated into each Equipment Rental Form in their entirety, as if fully set out in each Equipment Rental Form. These Terms and Conditions and each Equipment Rental Form(s) collectively constitute the Agreement. Any individual signing an Equipment Rental Form as or on behalf of the Customer represents and warrants to Lessor that he or she has full legal capacity, is of the legal age to sign the Equipment Rental Form on behalf of the Customer and to cause the Customer to be bound by the Agreement (including, without limitation, these Terms and Conditions), and has the authority and power to sign the Equipment Rental Form in the name and on behalf of the Customer and to bind the Customer to the Agreement (including, without limitation, these Terms and Conditions). Customer's execution of an Equipment Rental Form, rental or lease of Equipment, receipt or acceptance of delivery of Equipment, or use of Equipment constitutes Customer's agreement to and acceptance of these Terms and Conditions in their entirety.

3. RENTAL OF EQUIPMENT

Subject to the provisions of the Agreement (including, without limitation, these Terms and Conditions), Lessor hereby rents to the Customer for the Rental Period, and the Customer hereby rents from Lessor for the Rental Period, the Equipment.

4. INSPECTION AND ACCEPTANCE OF EQUIPMENT / USE OF EQUIPMENT

- a.** The Customer acknowledges, represents, warrants, and agrees that (i) the Equipment is of a size, make, model, design, capacity, and manufacture selected by the Customer, (ii) the Customer is satisfied that the Equipment is suitable for the Customer's purposes, (iii) the Customer will inspect the Equipment prior to taking possession thereof, and the Customer will only accept delivery of the Equipment if the Customer determines that the Equipment is in good working order and repair and is suitable for the Customer's purposes, (iv) the Customer will inspect the propulsion tank of Vehicles registered and licensed, or required to be registered and licensed, for use on any highway or public road, prior to taking possession thereof, and the Customer will take delivery of such Equipment only if such propulsion tank contained no dyed fuel, (v) the Customer is familiar with the proper operation and use of each item of Equipment and the applicable safety protocols and measures to be followed when using or operating the Equipment, (vi) prior to taking possession of the Equipment, the Customer will obtain and read all safety bulletins, operator manuals, and tabulated data for each item of Equipment, (vii) the Customer will inspect and confirm the good working order of all hitches, bolts, safety chains, hauling tongues, and other devices and materials used to connect the Equipment to any towing vehicle, (viii) the Equipment is rented to the Customer solely for commercial or business purposes and not for personal, family, or household purposes, (ix) the Customer accepts the Equipment in its "AS IS" condition, and (x) the Customer shall, and shall cause all users of the Equipment and other personnel of the Customer to fully comply with and adhere to all required or recommended safety practices, procedures, and protocols with respect to the use or operation of the Equipment.
- b.** The Customer shall not use or operate, or permit the use or operation of, the Equipment: (i) in violation of any applicable law, rule, regulation, or governmental order, (ii) in violation of or contrary to the manufacturer's or Lessor's operating manuals, safety instructions, or other instructions or guidelines, (iii) without a valid license to use or operate the Equipment, if a license is required under any applicable law, rule, regulation, or governmental order, (iv) by any Person who is not properly qualified and trained to operate the Equipment, or (v) by any Person who is under the influence of alcohol, any illegal drug, or any drug that may impair such Person's ability to safely operate such Equipment. The Customer shall fully comply, and shall cause all users of the Equipment to fully comply, at the Customer's sole cost and expense, with all applicable laws, rules, regulations, and governmental orders (including O.S.H.A. and the Internal Revenue Code) which may apply to the rental, lease, use, storage, operation, or possession of the Equipment. The Customer shall not insert, or permit to be inserted, any dyed fuel into the propulsion tank of any Vehicles registered or licensed, or required to be registered or licensed, for use on any highway or other public road.
- c.** The Customer agrees to: (A) check on a regular basis, and at least as often as recommended in any manufacturer or Lessor manual or instructions, all filters, oil, fluid levels, and tire air pressure on all Equipment; (B) clean and visually inspect the Equipment daily, (C) and immediately notify Lessor orally and in writing if any Equipment needs repair or maintenance, and (D) immediately cease using any Equipment that is in need of repair or maintenance until such repair or maintenance has been completed to the satisfaction of Lessor. The Customer acknowledges and agrees that Lessor is not responsible for inspecting the Equipment while it is in the Customer's possession. Lessor shall have the right to replace the Equipment with other reasonably comparable equipment at any time and for any reason, in Lessor's sole and absolute discretion.
- d.** The Customer acknowledges that the Equipment may have contained Regulated Materials from prior rentals or users. The Customer may, at the Customer's sole cost and expense, test the Equipment (provided that such testing does not cause any damage to such Equipment) for the presence of residual amounts of Regulated Materials prior to taking possession of the Equipment. In the event that residual amounts of Regulated Materials are detected in the Equipment by such testing, the Customer may notify Lessor prior to taking possession of the Equipment, and either request new Equipment or terminate the rental of such Equipment, which shall be the Customer's sole and exclusive remedy for the presence of any Regulated Materials in any Equipment. If the Customer takes possession of the Equipment, continues use of the Equipment after detecting Regulated Materials in the Equipment, or elects not to test the Equipment, the Customer waives any right to object to the presence of Regulated Material in the Equipment and agrees that the Equipment is suitable for Customer's intended use.
- e.** The Equipment shall be and remain located at all times at the Job Location or Customer's address identified in the applicable Equipment Rental Form, unless otherwise agreed by Lessor in writing.



f. The Customer shall not permit the access, operation, or use of the Equipment by any Person unless such Person is an employee or agent of the Customer, of legal age to operate such Equipment in the State of North Carolina or the jurisdiction in which such Equipment is being operated, in possession of a valid (non-expired) and unrestricted license to operate such Equipment in the State of North Carolina or the jurisdiction in which such Equipment is being operated (if such Equipment requires a license to operate), is listed as a Qualified Operator on the applicable Equipment Rental Form (if the Equipment is a Vehicle), and is properly trained and qualified to operate such Equipment in a safe manner and in accordance with all operating manuals, safety protocols and practices, and other manufacturer or Lessor instructions. The Customer shall comply, and shall cause all employees, agents, Qualified Operator's, and other users of the Equipment to comply, with all applicable laws, rules, regulations, and governmental orders applicable to such Equipment and its use and operation. The Customer shall be and remain fully liable and responsible at all times for all acts and omissions of all of the Customer's employees, agents, and Qualified Operator's, and all other users of the Equipment, including, without limitation, for any Default or breach of any provision of this Agreement or for any damage or destruction of property or death or injury to any Person.

g. Lessor, its employees, authorized agents, and representatives shall at all times have the full and unrestricted right to access and enter, and the Customer shall at all times provide full and unrestricted access to Lessor, its employees, authorized agents, and representatives to, the location and premises of the Customer, or such other location where the Equipment is stored or located, to examine, retrieve, collect, and inspect the Equipment.

5. TERM AND TERMINATION

a. The rental term for each item of Equipment rented to the Customer under the Agreement shall be for the Rental Period with respect to such item of Equipment, as set out in the applicable Equipment Rental Form.

b. Notwithstanding anything in this Agreement to the contrary, Lessor may terminate any Equipment Rental Form or Rental period, at any time, for any reason or no reason, and without liability to the Customer, by delivering written notice of termination to the Customer at least fifteen (15) days prior to the effective date of such termination.

c. At or before the expiration or termination of the Rental Period or the Equipment Rental Form for each item of Equipment, the Customer shall return such Equipment to Lessor during Lessor's regular business hours in the same condition, appearance, and working order as when received by the Customer from Lessor, ordinary wear and tear resulting from proper use thereof alone excepted, by delivering the Equipment at the Customer's sole cost and expense to such place as Lessor shall specify in the Equipment Rental Form, or such other location as may be mutually agreed by the Customer and Lessor in writing. The Customer shall obtain from Lessor a receipt signed by an authorized representative of Lessor acknowledging the return of the Equipment. Solely in the event that Lessor agreed in writing to pick up the Equipment from the Customer, the Customer shall notify Lessor in writing that the Equipment is "off rent" and shall obtain an "off rent" confirmation number from Lessor, in which event the Customer shall make the Equipment available to Lessor at the location at which Lessor agreed to pick up the Equipment, the Customer shall secure the Equipment and protect it from theft, loss, damage, or use by unauthorized Persons, and Lessor shall use its commercially reasonable efforts to pick up the Equipment at the agreed-upon location within a commercially reasonable period of time after the Equipment is called "off rent."

d. For purposes of the Agreement, "**ordinary wear and tear**" with respect to any Equipment shall mean and include only the normal deterioration of the Equipment caused by ordinary and reasonable use on a one shift basis (as defined in the Section of this Agreement entitled "RENTAL PERIOD / CALCULATION OF CHARGES") and in compliance with all manufacturer's and Lessor's operating and maintenance manuals and instructions. Notwithstanding anything in this Agreement or elsewhere to the contrary, the following shall not constitute ordinary wear and tear: (i) damage resulting from lack of lubrication, insertion of improper fuel, or maintenance of necessary oil, water, and air pressure levels, (ii) except where Lessor expressly assumes in writing the obligation to service or maintain the Equipment, any damage resulting from lack of servicing or preventative maintenance suggested in the manufacturer's operation and maintenance manual, (iii) damage resulting from any collision, overturning, or improper operation of the Equipment, including overloading or exceeding the rated capacity of the Equipment, (iv) damage in the nature of dents, bending, tearing, staining, corrosion, or misalignment to or of the Equipment or any part thereof, (v) wear resulting from use in excess of shifts for which rented, or (vi) any other damage to the Equipment which is not considered ordinary and reasonable in the equipment rental industry.

6. DAMAGED EQUIPMENT / LOST EQUIPMENT / MALFUNCTIONING EQUIPMENT

a. The Customer shall be fully liable and responsible to Lessor for all damage, theft, destruction, or loss of or to any Equipment from any and all causes whatsoever from the time the Equipment is delivered into the Customer's possession by or on behalf of Lessor until the Equipment is returned to Lessor's full possession and control in the same condition, appearance, and working order as when received by the Customer from Lessor, ordinary wear and tear resulting from proper use thereof alone excepted, and Lessor has completed its inspection of the Equipment and its condition.

b. In event of the theft, loss, or total destruction of any Equipment, as determined by Lessor in Lessor's sole and absolute discretion, or the Customer's failure to timely return the Equipment to Lessor for any reason whatsoever, Customer shall be liable for and shall pay to Lessor the full replacement cost of the Equipment and all costs and expenses incurred by Lessor with respect to Taxes, shipping, handling, and other charges with respect to the acquisition of replacement Equipment, and the full Rental Fee for the Equipment until the replacement Equipment is received in good working order by Lessor, all as computed and determined by Lessor in Lessor's sole and absolute discretion. The Customer agrees that Lessor may, in Lessor's sole and absolute discretion, charge the Credit Card and/or the Customer's account for any amount owed by the Customer pursuant to this Agreement including, without limitation, any amounts owed pursuant to this Section of this Agreement.



- c. In the event of any damage or wear and tear other than ordinary wear and tear (as defined above) to any Equipment that does not result in the total destruction of the Equipment, as determined by Lessor in Lessor's sole and absolute discretion, the Customer shall be liable for and shall pay to Lessor upon demand all of Lessor's costs and expenses incurred in repairing such Equipment to the condition in which such Equipment was required to be returned to Lessor pursuant to this Agreement, plus the full Rental Fee for the Equipment until the repairs are completed and the Equipment is returned to Lessor's possession and control in the condition in which such Equipment was required to be returned to Lessor pursuant to this Agreement. Lessor shall have no obligation to commence repair work on any Equipment until the Customer has paid to Lessor the estimated costs and expenses for such repairs, as determined by Lessor in Lessor's sole and absolute discretion. The Customer agrees that Lessor may, in Lessor's sole and absolute discretion, charge the Credit Card and/or the Customer's account for any amount owed by the Customer pursuant to this Agreement including, without limitation, any amounts owed pursuant to this Section of this Agreement.
- d. The Customer shall not perform, or cause to be performed, any repairs or maintenance on any Equipment. Any repairs or maintenance on any Equipment may only be performed by Lessor or Lessor's authorized third-party service provider.
- e. If any Equipment is involved in an accident, becomes unsafe, malfunctions, or requires repair, the Customer immediately shall cease all use of the Equipment, shall secure such Equipment in a safe location and ensure it is not used by any Person, shall immediately notify Lessor of such accident, unsafe condition, malfunction, or need for repair, and shall return such Equipment to Lessor within twenty-four (24) hours after the Customer becomes aware of such condition or need for repair. If such condition is the result of normal and proper operation and use of the Equipment consistent with this Agreement and all Lessor and manufacturer instructions and manuals, as determined by Lessor in Lessor's sole and absolute discretion, Lessor shall use its commercially reasonable efforts to repair or replace, as determined by Lessor in Lessor's sole and absolute discretion, the Equipment with reasonably comparable Equipment in working order, if such replacement Equipment is reasonably available to Lessor, and the Rental Fee for such Equipment shall abate during the period during which the Equipment is unavailable for use by the Customer, which repair or replacement and Rental Fee abatement shall be the Customer's sole and exclusive remedy for such condition, unavailability of the Equipment, non-use of the Equipment, and all other claims under this Agreement that relate to or arise as a result of such event, occurrence, or issues. Notwithstanding anything in this Agreement to the contrary, Lessor has no obligation to repair or replace any Equipment that is damaged, rendered unsafe, malfunctioning, or in inoperable repair or condition as a result of, in whole or in part, any act or omission of the Customer or any other Person including, without limitation, any damage caused by misuse, abuse, neglect, negligence, or intentional misconduct.
- f. The provisions of this Section 6 shall survive the termination or expiration of the Agreement, the Rental Periods, and the Equipment Rental Forms.

7. LATE RETURN OF EQUIPMENT

The Customer agrees that if any Equipment is not returned to Lessor, in the condition in which such Equipment is required to be returned pursuant to the Agreement, by the expiration or termination of the Rental Period with respect to such Equipment or the termination or expiration of the applicable Equipment Rental Form, the Customer shall be in material breach of this Agreement, shall hold such Equipment under a day-to-day rental subject to all terms, provisions, obligations, and conditions of the Agreement, and shall, in addition to any other rights and remedies of Lessor, upon demand by Lessor in Lessor's sole and absolute discretion: (a) continue to pay the Rental Fees applicable to the Equipment as specified in the Equipment Rental Form, (b) for periods less than 24 hours, pay the full daily Rental Fee applicable to the Equipment, and/or (c) pay any increased Rental Fee(s) in effect at the time of, or after, the expiration of the Rental Period. The Customer agrees that Lessor may charge the Credit Card and/or Customer's account for any amount owed by the Customer pursuant to this Agreement including, without limitation, any amount owed by the Customer pursuant to this Section of this Agreement.

8. RENTAL FEE / PAYMENT / TAXES

- a. The Customer agrees to pay the Rental Fees for the Equipment and all other amounts as set out in, and in accordance with, the applicable Equipment Rental Form, without set-off, holdback, deduction, or claims. The Customer's obligation to pay the Rental Fees and any other amounts payable hereunder shall be absolute and unconditional under all circumstances, regardless of any claim, demand, set-off, action, suit, or proceeding that the Customer may have or assert for any reason whatsoever against Lessor or any other Person, or interruption in or cessation of the Customer's use or possession of any Equipment or any part thereof for any reason. All Rental Fees and other amounts due hereunder shall be payable in full immediately upon the giving of an invoice by Lessor to the Customer.
- b. Rental Fees commence when the Equipment is transferred into the possession of the Customer and, except as otherwise provided in this Agreement, end when the Equipment is returned to Lessor pursuant to the provisions of this Agreement and a signed receipt from Lessor is obtained by the Customer or Lessor confirms via email to the Customer that it received the Equipment. Rental Fees do not include the cost of the Refueling Service Charge, any applicable Taxes, the cost of the Delivery and Pickup Service Charge, transportation surcharges, the cost of the Environmental Service Charge, or other miscellaneous charges, all of which are separate from the Rental Fees and shall be timely paid by the Customer in addition to the Rental Fees upon the giving of an invoice by Lessor or upon demand by Lessor. If the Customer elects for Lessor to deliver and pick up the Equipment, the Customer agrees to pay a Delivery and Pickup Service Charge, as set out in the Equipment Rental Form or otherwise specified by Lessor to the Customer in an invoice or otherwise in writing. In the event that the Customer has elected to pay for the Delivery and Pickup Service Charge, the Customer shall notify Lessor in writing that the Equipment is "off rent" and obtain an "off rent" confirmation number from Lessor, at which time, unless otherwise provided in the Agreement, Rental Fees shall no longer be assessed if the Equipment is made available for pickup by Lessor at the location designated by Lessor and pursuant to the other provisions of the Agreement. Rental Fees accrue during Saturdays, Sundays, and Holidays. Rental Fees are for normal "one shift" usage based on an 8 hour day, 40 hours per week and 160 hours per 4 week period. With respect to power Equipment, the Rental Fee for such Equipment shall be as follows for operations in excess of one shift will be as follows: 1.5 times the Rental Fee for double shift and 2 times the Rental Fee for triple shift.



The Customer shall disclose to Lessor full, accurate, and complete information regarding the number of shifts and hours for which the Equipment was operated. The Customer's right to possess the Equipment terminates on the expiration or termination of the Rental Period or applicable Equipment Rental Form, and retention of possession after this time is a material breach of the Agreement.

- c. If Lessor does not receive any payment required by this Agreement within thirty (30) days after the giving of an invoice by Lessor to the Customer for such amounts, then the Customer acknowledges and agrees that there shall be added to all past due amounts a late payment fee equal to the lesser of 2% per month (24% per annum) on any such amounts outstanding after 30 days, or the maximum amount allowed by applicable law. Where permitted by applicable law, Lessor may charge the Customer, in Lessor's sole and absolute discretion, a surcharge of 1.8% for credit card payments, but such surcharge shall not exceed Lessor's merchant discount rate for credit card transactions and is subject to sales tax in some jurisdictions.
- d. Rental Fees do not include sales or use tax, goods and services tax, or other taxes, levies, or assessments (collectively, "**Taxes**") required to be collected by Lessor from the Customer, or paid by Lessor, at any time upon, or in respect of, the Equipment, the rental thereof, any Services, or this Agreement. The Customer shall be responsible for, and shall pay to Lessor upon demand, all Taxes (local, state, and federal) which may now or hereafter be placed, charged, or assessed on the leasing, rental, sale, possession, or use of the Equipment or the provision of any Services, excluding however, all taxes on or measured by Lessor's net income and all County personal property Taxes. The Customer agrees that Lessor may, in its sole and absolute discretion, charge to the Credit Card or Customer's account any amount owed by the Customer pursuant to the Agreement including, without limitation, Rental Fees and Taxes. If the Customer believes that the rental of any or all Equipment or the provision of any Services is exempt from Taxes, the Customer shall provide to Lessor a valid tax exemption certificate. If this Agreement, the rental of any Equipment, or the provision of any Services is later determined by Lessor, in its sole and absolute discretion, to be subject to sales or use Tax or other Taxes, the Customer immediately, and in any event within five (5) days after demand from Lessor to the Customer, shall pay to Lessor the full amount of all Taxes applicable to this Agreement, the rental of such Equipment, or the provision of any Services, as applicable. The provisions of this subsection shall survive the termination or expiration of the Agreement, the Rental Periods, and the Equipment Rental Forms.
- e. The Customer shall provide to Lessor, and maintain with Lessor at all times during the Rental Period for each item of Equipment and while any amounts under this Agreement are outstanding or may be charged or assessed, a Credit Card. The Credit Card shall be valid, non-expired, and have an available credit limit at all times that is at least two (2) times the Rental Fees owed by the Customer through the full Rental Period for the Equipment. The Customer shall not permit the Credit Card to expire or be cancelled. In the event the Credit Card expires or is cancelled, the Customer immediately shall provide a new Credit Card to Lessor meeting the requirements of this Agreement. The Customer hereby authorizes Lessor to charge to the Credit Card at any time and from time-to-time any Rental Fees, Taxes, and other charges and amounts owed or payable by the Customer to Lessor pursuant to this Agreement.

9. SECURITY DEPOSIT

As security for the prompt and full payment of all Rental Fees and other amounts due or payable by the Customer to Lessor under the Agreement, and to secure the faithful, full, and timely performance of all obligations, covenants, and other provisions of the Agreement, the Customer shall pledge and deposit with Lessor the amount set forth in the section of the Equipment Rental Form entitled "Security Deposit". In the event of any Default or breach by the Customer of this Agreement or any term, covenant, obligation, or other provisions hereof (including, without limitation, any inaccuracy or incompleteness of any representation or warranty of the Customer), Lessor shall have the right, but shall not be obligated, to apply and off-set such Security Deposit, in whole or in part, for and against any damages, losses, costs, or expenses incurred by Lessor resulting from or connected with such breach or Default. Within 15 days after Lessor mails notice to the Customer that Lessor has applied any portion of the Security Deposit to Lessor's damages resulting from or connected with such breach or Default by the Customer, the Customer shall restore the Security Deposit to the full amount set forth in the Equipment Rental Form. On the expiration or termination of the Rental Period with respect to the Equipment for which such Security Deposit applies, or upon the expiration or termination of the applicable Equipment Rental Form, and provided that the Customer has paid in full to Lessor all amounts owed or payable by the Customer to Lessor pursuant to the Agreement (including, without limitation, all Rental Fees and Taxes), Lessor will return to the Customer any then remaining balance of the Security Deposit with respect to such Equipment, without interest. The Security Deposit may be commingled with Lessor's other funds and no interest or other earnings shall be due or payable to the Customer with respect to such Security Deposit. The provisions of this Section 9 shall survive the termination or expiration of the Agreement, the Rental Periods, and the Equipment Rental Forms.

10. CUSTOMER OBLIGATIONS AND RESPONSIBILITIES

The Customer shall provide Lessor, promptly upon request, with complete and accurate information and documentation as may be requested by Lessor for purposes of assessing, planning, and performing the Services (if any), or providing the Equipment. The Customer acknowledges that all Equipment is provided and all Services are performed based on information provided by the Customer to Lessor, and Lessor is relying on the accuracy and completeness of such information in providing the Equipment and performing such Services. The Customer acknowledges and agrees that Lessor is not responsible for confirming or investigating the accuracy, completeness, or sufficiency of information provided by other Persons, or for any errors or omissions in such information. The Customer is responsible for providing, and shall provide, a secure and safe work environment for all Persons, including, without limitation, Lessor and its employees and personnel, and for ensuring that the Services are carried out in compliance with all applicable laws.

11. REGULATED MATERIALS

If the Customer intends to use, or uses, the Equipment for the storage or handling of any Regulated Materials, or any Regulated Materials are stored, loaded, or handled by or on behalf of the Customer in the Equipment or using the Equipment, the following terms and conditions shall apply.



- a. **Cleaning.** Upon expiration or termination of the Rental Period or the applicable Equipment Rental Form with respect to the Equipment, but before the Equipment is returned to Lessor, the Customer shall, at the Customer's sole cost and expense, remove all Regulated Materials from the Equipment and cause the Equipment to be thoroughly cleaned in accordance with the following requirements: (i) cleaning must be performed by a third-party independent contractor acceptable to Lessor in Lessor's reasonable discretion, (ii) the cleaning must be documented to Lessor's satisfaction, (iii) for Hazardous Materials, the cleaning shall be performed to the RCRA "empty" condition, as defined in 40 C.F.R. § 261.7(b)(3) ("RCRA Empty Condition"), (iv) for DOT Hazardous Materials, PCBs, Radioactive Materials, or Infectious Materials, the cleaning shall be performed to Non-detect contamination levels ("NDCL"), (v) when a NDCL is required, the Equipment must be triple-rinsed using a solvent capable of removing Regulated Materials, then purged to remove any vapors, (iv) for Radioactive Materials, cleaning must comply with cleaning procedures set forth in the U.S. Nuclear Regulatory Commission's ("NRC") Regulatory Guide 1.86 to achieve NDCL, and (v) the third-party independent contractor must certify to Lessor in writing that the cleaning of the Equipment meets the above specifications and requirements.
- b. **Sampling.** After cleaning the Equipment in accordance with the above specifications and requirements, the Customer shall confirm the Equipment's RCRA Empty Condition or NDCL, as applicable, by obtaining a professional written laboratory test and analysis of representative samples taken from various internal parts of the Equipment. The Customer agrees that the sampling and testing must be: (i) performed by a third-party independent contractor acceptable to Lessor in Lessor's reasonable discretion, (ii) documented to Lessor's satisfaction, (iii) taken from various internal parts of the Equipment including at a minimum, the floor, the underside of various cross-braces, and each wall ("Representative Samples"), and (iv) conducted in the presence of and pursuant to the direction of a designated employee of Lessor. The Customer agrees to contact Lessor to schedule an appointment for an employee of Lessor to witness the sampling and testing not less than ten (10) business days prior to the termination of the Rental Period for each applicable item of Equipment. With respect to intermodal, roll-off, and vacuum container Equipment, in addition to the above requirements, the Customer agrees that: (A) initially, twenty percent (20%) of the intermodal, roll-off, or vacuum container Equipment rented by the Customer will be tested by the third-party laboratory, (B) based on satisfactory initial sampling results, that figure may be reduced by Lessor, in Lessor's sole and absolute discretion, to ten percent (10%), random sampling of the Equipment, (C) if liners are not used, or if any intermodal, roll-off, or vacuum container fails the testing procedures outlined in this Section, as determined by Lessor in Lessor's sole and absolute discretion, then one hundred percent (100%) sampling of all intermodals, roll-off, and vacuum container Equipment will be required.
- c. **Sample Analysis.** The Customer agree that the analysis of the sampling referenced above must: (i) be performed by a third-party laboratory that is certified to perform such an analysis by the state in which the Equipment is located and that is acceptable to Lessor in Lessor's reasonable discretion, (ii) be documented to Lessor's satisfaction, and must include a record of the chain of custody for the Representative Samples, and (iii) meet or exceed protocols established by the U.S. Environmental Protection Agency ("EPA") or the NRC, as applicable.
- d. **Return.** The Customer shall return the Equipment in a RCRA Empty Condition or NDCL in accordance with the terms set forth in this Agreement. If the Equipment does not meet the standards and other requirements and specifications set forth in this Agreement, the Customer shall undertake additional cleaning of the Equipment, in accordance with all applicable laws, to meet the standards and other requirements and specifications in this Agreement, and shall provide Lessor with written evidence of satisfaction of such standards and other requirements and specifications, which evidence must be satisfactory to Lessor in Lessor's sole and absolute discretion. Lessor will not pick up the Equipment and the Customer will continue to pay all Rental Fees for such Equipment until the Equipment has been cleaned to the standards specified herein and returned to Lessor. In the event that the Customer is unable to clean the Equipment in accordance with the terms set out in this Agreement, the Customer shall pay Lessor, immediately upon demand by Lessor, the full replacement value of the Equipment, plus any applicable Taxes, shipping, and delivery charges, all as determined by Lessor in Lessor's sole and absolute discretion. The Customer agrees that in such event the Customer assumes full responsibility for the Equipment and any residual contents and all related liability for the management, transportation, and disposal of such Equipment in accordance with all applicable laws, and assumes full ownership of such Equipment upon payment in full to Lessor of the amounts described above. The Customer agrees that the Customer shall be the generator of any hazardous, solid, or radioactive waste generated as a result of the Customer's failure to return the Equipment in a RCRA Empty Condition or NDCL, and of any residual materials resulting from the Customer's attempt to clean or failure to clean the Equipment.

12. REFUELING SERVICE CHARGE

The Customer shall return all Equipment with a full tank of fuel, and shall only refuel Equipment with fuel approved for use in such Equipment. The Customer acknowledges and agrees that Lessor shall charge, and the Customer shall pay to Lessor immediately upon demand or invoice, a "Refueling Service Charge" with respect to any Equipment not returned with a full tank of fuel. The amount of the Refueling Service Charge shall be set out in the applicable Equipment Rental Form with respect to such Equipment. The Customer acknowledges and agrees that the Refueling Service Charge does not constitute a retail sale of fuel.

13. ENVIRONMENTAL SERVICE CHARGE

Due to the hazardous nature of some waste and other products, to comply with federal and state environmental regulations, and to promote a clean environment, Lessor charges, and the Customer agrees to pay immediately upon demand or invoice, an Environmental Service Charge for rentals of Equipment. The Customer acknowledges that the Environmental Service Charge is not a government-mandated charge, is not designated for any particular use, and is used and applied at Lessor's sole discretion. The Environmental Service Charge is two percent (2.5%) of the service charge. Customer acknowledges the items indicated above are subject to the Environmental Service Charge and Customer agrees to pay that Charge.

14. TITLE / NO PURCHASE OPTION / NO LIENS / DEPRECIATION

- a. The Customer acknowledges and agrees that the Equipment shall at all times be and remain the property of Lessor and that the Customer shall have no right or title in or to the Equipment, except as otherwise expressly provided in this Agreement. The Customer acknowledges and agrees that the Customer shall not pledge, assign, encumber, or grant any security interest in, or allow any lien (whether statutory or otherwise), charge, encumbrance, or legal process to attach to or affect, the Equipment. If requested by Lessor, the Customer shall attach to and maintain on each item of Equipment a conspicuous plate or marking disclosing Lessor's ownership hereof. The Customer shall not tamper with, alter, or remove any plate, marking, or other designation of ownership



on such Equipment. The Customer immediately shall notify Lessor orally and in writing of any circumstances which may in any manner affect any item of Equipment or in any manner affect Lessor's title thereto. This Agreement is not a contract for the purchase or sale of the Equipment. Except as otherwise agreed by Lessor in writing, the Customer has no option or right to purchase the Equipment or any part thereof. The Customer shall at all times keep the Equipment free and clear of all mechanics' liens and other liens and encumbrances, except for liens expressly granted by Lessor with respect to such Equipment. The Customer promptly, at its sole cost and expense, shall take any and all action that may be necessary to discharge any lien except for the liens granted by Lessor, arising at any time with respect to the Equipment. The provisions of this subsection shall survive the termination or expiration of the Rental Periods, Equipment Rental Forms, and the Agreement.

b. Lessor, as the owner of the Equipment, shall exclusively be entitled to all deductions, credits, depreciation, and other benefits as are provided by the Internal Revenue Code of 1986, as amended, to an owner of such personal property. The provisions of this subsection shall survive the termination or expiration of the Agreement, the Rental Periods, and the Equipment Rental Forms.

15. TIRE AND TUBE REPAIR OR REPLACEMENT

Repair or replacement of tires and tubes is the responsibility of the Customer and is not included in the Rental Fee. The Customer shall, at its sole cost and expense, maintain and keep in good repair and working condition all tires and tubes with respect to the Equipment.

16. DEFAULT

a. The Customer shall be in default under this Agreement if (each a "**Default**"):

- (i) the Customer files a petition for protection under the bankruptcy laws of the United States or any other jurisdiction or becomes insolvent,
- (ii) any involuntary proceeding under the bankruptcy laws of the United States or any other jurisdiction is initiated against the Customer and not dismissed within sixty (60) days of such initiation,
- (iii) any receiver, assignor, custodian, trustee, sequestrator, or other similar agent is appointed for the Customer or any substantial portion of the Customer's assets,
- (iv) the Customer makes any general assignment for the benefit of creditors,
- (v) the Customer fails to pay when due any Rental Fee, Taxes, or other charge or amount due or payable under the Agreement,
- (vi) the Customer fails to perform or observe, or breaches, any covenant, obligation, agreement, condition, or other term of this Agreement,
- (vii) any representation, warranty, covenant, or agreement made by the Customer in this Agreement or in any document or certificate furnished to Lessor in connection with or pursuant to this Agreement is inaccurate, untruthful, or incomplete,
- (viii) the Customer abandons the Equipment,
- (ix) the Customer attempts to sell, transfer, or otherwise dispose of the Equipment, or assign or transfer any portion of the Customer's interest in the Equipment or the Agreement, to any Person without Lessor's prior express written consent,
- (x) the Customer dies, is dissolved or liquidated, or the Customer's business terminates or ceases operation,
- (xi) the Customer does or causes to be done or permits any act or thing likely to endanger life, safety, or condition of the Equipment, or the Customer is convicted of an indictable offence or is sentenced to imprisonment, or
- (xii) the Customer defaults under any other agreement between Lessor and the Customer.

b. In the event of a Default, Lessor's rights and remedies shall be cumulative, and Lessor may exercise any one or more of its rights and remedies as it chooses in its sole and absolute discretion. In the event of a Default, without excluding or limiting any other rights and remedies Lessor may have under the Agreement, at law, or in equity, Lessor shall have the right to take any one or more of the following actions:

- (i) terminate the Agreement, any Equipment Rental Form, or any Rental Period(s),
- (ii) with or without terminating the Agreement, any Equipment Rental Form, or any Rental Period(s), declare all Rental Fees and other amounts payable under the Agreement and any one or more Equipment Rental Forms during the remainder of the Rental Periods (computed without regard to Lessor's termination of this Agreement or any Equipment Rental Form or Rental Period), such that all such future Rental Fees and other amounts shall be due and payable as of the date of such termination, to be immediately due and payable,
- (iii) sue for and recover all of the Rental Fees, Taxes, Losses (as defined below), and other amounts, then accrued or thereafter accruing,
- (iv) enter upon the Customer's property or premises, or any other property or premises, and repossess the Equipment without resort to legal process, without demand or notice, and without any court order or other process of law, or
- (v) initiate or pursue any other right or remedy available under the Agreement, at law, or in equity. The Customer acknowledges and agrees that any such entry onto the Customer's property or premises, or any other property or premises, or repossession of the Equipment is approved and authorized by the Customer and shall not constitute a breach of the peace, and any and all claims for damage or loss arising out of any such entry or repossession are hereby waived and released. No such taking of possession by Lessor shall constitute an election to terminate the Agreement, any Rental Period, or any Equipment Rental Form unless Lessor, at the time Lessor takes possession of the Equipment, gives to the Customer a written notice of such termination. Lessor, in addition to all of its other rights and remedies, shall have the right to recover from the Customer, and the Customer shall be liable for and shall pay to Lessor, all other damages, Losses, costs, and expenses (including, without limitation, reasonable attorneys' fees and expenses), whether direct, indirect, consequential, special, or otherwise, incurred by Lessor in connection with such Default.

c. Notwithstanding any contrary term or provision hereof, Lessor and the Customer acknowledge and agree that Lessor shall have no duty to mitigate its damages or Losses resulting from or arising out of any Default.

17. CUSTOMER'S OBLIGATION TO MAINTAIN INSURANCE

a. At all times during all Rental Periods and while any Equipment is in the possession or control of the Customer, the Customer shall maintain, at its own cost and expense, the following minimum insurance coverage:

- (a) General liability insurance of not less than \$1,000,000 per occurrence,
- (b) Property insurance against loss by all risks to the Equipment in an amount at least equal to the replacement value of the Equipment,
- (c) Rented and leased equipment coverage equal to the replacement value of the Equipment (in the event a policy has a small property limit included with the General Liability coverage, this coverage is in excess to bring total coverage to the greater of \$100,000 or the replacement value of the Equipment),
- (d) Statutory Workers compensation insurance as



required by law, and (e) Automobile liability insurance, including comprehensive and collision if Equipment is to be used on any roadway or parking lot (including, without limitation, any public or private road, highway, or street).

b. Each such insurance policy shall be primary, non-contributory, on an occurrence basis, contain a waiver of subrogation, name Lessor as an additional insured (including an additional insured endorsement) and loss payee, and provide for Lessor to receive at least thirty (30) days' prior written notice of any cancellation or material change to such policy. No such insurance policy shall exclude boom damage or overturns. The Customer shall provide Lessor, at accounting@coopertacia.com or such other location or email address as instructed by Lessor, with certificates of insurance on the commencement of the Rental Period for each item of Equipment and thereafter upon request by Lessor, evidencing the insurance coverages required above. To the extent Lessor carries any insurance coverage, Lessor's insurance shall be considered excess insurance and shall not eliminate, modify, or limit the obligations of the Customer to maintain the above-specified insurance coverage. The insurance required herein does not relieve, release, limit, negate, or modify the Customer's obligations, covenants, or other requirements in this Agreement, or for which the Customer may be liable under applicable law or otherwise.

18. NO ASSIGNMENT, LENDING, OR SUBLETTING

The Customer shall not sublease, sublet, assign, loan, or otherwise transfer or dispose of the Equipment, or any right or interest therein, without first obtaining the prior written consent of Lessor, which consent may be withheld, conditioned, or delayed in Lessor's sole and absolute discretion. Any sublease, sublet, assignment, loan, transfer, or disposition of Equipment without Lessor's prior written consent shall be null and void ab initio, and shall constitute a material breach of this Agreement by the Customer. The Customer agrees to use and keep the Equipment at the job site or such other location set forth on the Equipment Rental Form applicable to such Equipment unless Lessor, in its sole and absolute discretion, approves otherwise in writing. Lessor may at any time, without notice to the Customer, sell, transfer, encumber, grant a security interest in, or assign, in whole or in part, any or all Equipment, this Agreement, or any Rental Fees or other amounts or benefits due or to become due hereunder.

19. INDEMNITY AND HOLD HARMLESS

TO THE FULLEST EXTENT PERMITTED BY LAW, THE CUSTOMER AGREES TO INDEMNIFY, REIMBURSE, DEFEND, AND HOLD HARMLESS LESSOR, LESSOR'S PARENT ENTITIES, SUBSIDIARIES, AND AFFILIATES, EACH OF THEIR RESPECTIVE MEMBERS, MANAGERS, SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, INSURERS, ATTORNEYS, AND REPRESENTATIVES, AND EACH OF THEIR RESPECTIVE HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, AND ASSIGNS, FOR, FROM, AND AGAINST ANY AND ALL LIABILITY, CLAIMS, ACTIONS, PROCEEDINGS, CAUSES OF ACTION, SUITS, PENALTIES, FINES, LOSS, DAMAGE, COSTS, AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND EXPENSES, LOSS OF PROFIT, BUSINESS INTERRUPTION, OR OTHER SPECIAL OR CONSEQUENTIAL DAMAGES, DAMAGES RELATING TO PROPERTY DAMAGE, DAMAGES RELATING TO BODILY INJURY, OR DAMAGES RELATING TO DEATH) (COLLECTIVELY, "**LOSSES**") ARISING OUT OF, CONNECTED WITH, OR RELATED TO (A) THE AGREEMENT, (B) THE EQUIPMENT, (C) ANY ACT OR OMISSION OF THE CUSTOMER OR ANY OF THE CUSTOMER'S EMPLOYEES, INDEPENDENT CONTRACTORS, QUALIFIED OPERATORS, AGENTS, REPRESENTATIVES, OR OTHER PERSONNEL, (D) THE OPERATION, USE, POSSESSION, STORAGE, LEASE, OR RENTAL OF THE EQUIPMENT, (E) ANY BREACH BY THE CUSTOMER OF ANY COVENANT, OBLIGATION, AGREEMENT, OR OTHER PROVISION OF THIS AGREEMENT, (F) ANY INACCURACY OR INCOMPLETENESS OF ANY REPRESENTATION OR WARRANTY OF THE CUSTOMER IN THIS AGREEMENT, (G) ALL TAXES THAT ARE THE RESPONSIBILITY OF THE CUSTOMER UNDER THIS AGREEMENT OR APPLICABLE LAW, (H) DYED FUEL BEING INTRODUCED INTO THE PROPULSION TANK OF ANY VEHICLE, (I) ANY VIOLATION BY THE CUSTOMER OR ANY OF THE CUSTOMER'S EMPLOYEES, INDEPENDENT CONTRACTORS, QUALIFIED OPERATORS, AGENTS, REPRESENTATIVES, OR OTHER PERSONNEL OF ANY APPLICABLE LAW, RULE, REGULATION, OR GOVERNMENTAL ORDER, (J) ANY DAMAGE TO OR DESTRUCTION OF PROPERTY CAUSED IN WHOLE OR IN PART BY THE CUSTOMER OR ANY OF THE CUSTOMER'S EMPLOYEES, INDEPENDENT CONTRACTORS, QUALIFIED OPERATORS, AGENTS, REPRESENTATIVES, OR OTHER PERSONNEL, (H) ANY DEATH OR INJURY TO ANY PERSON CAUSED IN WHOLE OR IN PART BY THE CUSTOMER OR ANY OF THE CUSTOMER'S EMPLOYEES, INDEPENDENT CONTRACTORS, QUALIFIED OPERATORS, AGENTS, REPRESENTATIVES, OR OTHER PERSONNEL, OR (I) ANY USE, STORAGE, TRANSPORT, OR INTRODUCTION OF REGULATED MATERIALS BY THE CUSTOMER TO, BY, WITH, WITHIN, OR USING ANY EQUIPMENT. IN FURTHERANCE OF, BUT NOT IN LIMITATION OF THE INDEMNITY PROVISIONS IN THE AGREEMENT, THE CUSTOMER EXPRESSLY AND SPECIFICALLY AGREES THAT THE FOREGOING OBLIGATION TO INDEMNIFY SHALL NOT IN ANY WAY BE AFFECTED OR DIMINISHED BY ANY STATUTORY, COMMON LAW, OR CONSTITUTIONAL LIMITATION OF LIABILITY OR IMMUNITY THE CUSTOMER ENJOYS FROM SUITS BY ITS OWN EMPLOYEES. THE DUTY OF THE CUSTOMER TO INDEMNIFY WILL CONTINUE IN FULL FORCE AND EFFECT NOTWITHSTANDING THE EXPIRATION OR TERMINATION OF THE AGREEMENT, ANY RENTAL PERIODS, ANY EQUIPMENT RENTAL FORM, OR ANY RETURN BY THE CUSTOMER TO LESSOR OF ANY EQUIPMENT. **THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THE AGREEMENT, THE RENTAL PERIODS, AND THE EQUIPMENT RENTAL FORMS.**

20. LIMITATION AND DISCLAIMER OF LIABILITY

IN NO EVENT SHALL LESSOR BE RESPONSIBLE OR LIABLE TO THE CUSTOMER OR ANY OTHER PERSON, WHETHER ARISING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, FOR: (A) ANY LOSSES CAUSED BY, RESULTING FROM, OR IN ANY WAY CONNECTED WITH, DIRECTLY OR INDIRECTLY, THE SERVICES, SPECIALTY MEDIA, THE EQUIPMENT, OR THE POSSESSION, PERFORMANCE, CONDITION, OPERATION, STORAGE, OR USE OF THE EQUIPMENT, (B) ANY FAILURE OF LESSOR TO DELIVER EQUIPMENT OR SERVICES AS REQUIRED UNDER THIS AGREEMENT, (C) ANY FAILURE OF LESSOR TO REPAIR, REPLACE, OR MAINTAIN ANY EQUIPMENT, (D) ANY INADEQUACY, DEFICIENCY, MALFUNCTION, DAMAGE, OR DEFECT OF THE EQUIPMENT OR SERVICES, (E) ANY REGULATED MATERIALS IN THE EQUIPMENT, OR (F) ANY CONSEQUENTIAL, INDIRECT, SPECIAL, OR PUNITIVE LOSSES OR DAMAGES, INCLUDING, WITHOUT LIMITATION, THOSE FOR INTERRUPTION OF SERVICE, LOSS OF BUSINESS, LOSS OF USE, LOST PROFITS, OR ANTICIPATED PROFITS. THE CUSTOMER ASSUMES ALL



RISKS RELATED TO OR INHERENT IN THE POSSESSION, USE, STORAGE, OR OPERATION OF THE EQUIPMENT. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THE AGREEMENT, RENTAL PERIODS, AND EQUIPMENT RENTAL FORMS.

21. *DISCLAIMER OF REPRESENTATIONS AND WARRANTIES*

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE EQUIPMENT IS RENTED TO THE CUSTOMER AS IS, WITH ALL FAULTS, AND WITHOUT WARRANTY. LESSOR HAS NOT MADE, MAY NOT BE CONSIDERED TO HAVE MADE, AND SPECIFICALLY DISCLAIMS: (A) ANY AND ALL EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE EQUIPMENT, SPECIALTY MEDIA, AND SERVICES, INCLUDING, WITHOUT LIMITATION, REGARDING CONDITION, DESIGN, OPERATION, MERCHANTABILITY, FREEDOM FROM CLAIMS OF INFRINGEMENT OR THE LIKE, FITNESS FOR A PARTICULAR PURPOSE, QUALITY OF MATERIALS OR WORKMANSHIP, ABSENCE OF DISCOVERABLE OR NON-DISCOVERABLE DEFECTS OR DAMAGE, ABSENCE OF REGULATED MATERIALS, OR THAT THE EQUIPMENT, SPECIALTY MEDIA, OR SERVICES ARE IN COMPLIANCE WITH ANY APPLICABLE GOVERNMENT REGULATIONS, (B) ANY AND ALL EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES THAT THE PERFORMANCE OF ANY FILTRATION EQUIPMENT MEETS ANY APPLICABLE REGULATORY STANDARD, AND (C) ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT TO THE EQUIPMENT, SPECIALTY MEDIA, AND SERVICES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. THE CUSTOMER WAIVES, RELEASES, RENOUNCES, AND DISCLAIMS EXPECTATION OF OR RELIANCE ON ANY SUCH WARRANTY OR REPRESENTATION FROM LESSOR. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THE AGREEMENT, RENTAL PERIODS, AND EQUIPMENT RENTAL FORMS.

22. *WAIVER OF CLASS ACTION RIGHTS*

THE CUSTOMER AGREES THAT ANY ACTION, COMPLAINT, LAWSUIT, CLAIM, OR PROCEEDING FILED OR INITIATED BY THE CUSTOMER RELATING TO OR ARISING OUT OF THE AGREEMENT OR THE RENTAL OF THE EQUIPMENT OR PROVISION OF THE SERVICES SHALL BE INITIATED, FILED, AND CONDUCTED EXCLUSIVELY ON AN INDIVIDUAL BASIS, AND NOT ON A CLASS-WIDE, COLLECTIVE, OR REPRESENTATIVE BASIS, AND THAT ANY ONE PERSON'S ACTIONS, COMPLAINTS, LAWSUITS, CLAIMS, OR PROCEEDINGS MAY NOT BE CONSOLIDATED WITH ANY OTHER ACTIONS, COMPLAINTS, LAWSUITS, CLAIMS, OR PROCEEDINGS. THE CUSTOMER SHALL NOT FILE ANY ACTION, COMPLAINT, LAWSUIT, OR PROCEEDING AGAINST LESSOR AS A CLASS PLAINTIFF OR CLASS REPRESENTATIVE, JOIN AS A CLASS MEMBER, OR PARTICIPATE AS AN ADVERSE PARTY IN ANY WAY IN A CLASS-ACTION LAWSUIT, CLAIM, PROCEEDING, OR ARBITRATION AGAINST LESSOR. NOTHING IN THIS SECTION, HOWEVER, LIMITS THE CUSTOMER'S RIGHT TO BRING A LAWSUIT OR ARBITRATION PROCEEDING AS AN INDIVIDUAL PLAINTIFF. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THE AGREEMENT, RENTAL PERIODS, AND EQUIPMENT RENTAL FORMS.

23. *ARBITRATION*

Any action, claim, lawsuit, dispute, or proceeding arising from, relating to, or otherwise connected with the Agreement, the rental or lease of Equipment, or the transactions contemplated under the Agreement shall be exclusively and definitively resolved through final and binding arbitration pursuant to the provisions of this Section, it being the intention of the Customer and Lessor that this is a broad form arbitration agreement designed to include any and all disputes involving the Customer and Lessor of any type connected with this Agreement, the rental or lease of Equipment, or the transactions contemplated under the Agreement. Any such arbitration shall be commenced and conducted as follows:

- a. The arbitration process shall be initiated by delivering a written demand for arbitration to the other party within the time limits that would apply to filing a civil complaint in a North Carolina court. A late request will be void.
- b. Except as otherwise expressly set forth herein, the Rules of the American Arbitration Association (the "AAA") in effect on the date of the commencement of the subject arbitral proceeding shall govern and control, but the subject arbitration shall not be administered by the AAA.
- c. The arbitral tribunal shall consist of three (3) individuals, each of whom shall: (i) be qualified with the AAA to serve as an arbitrator in an arbitral proceeding administered by the AAA, and (ii) be a lawyer in good standing in the State of North Carolina. The initiating party, as the first party, and the responding party, as the second party, each shall select one (1) arbitrator who meets the qualifications set forth herein to serve on the arbitral tribunal, and the two (2) persons so selected shall select a third individual who meets the qualifications set forth herein to serve on the arbitral tribunal. In the event that the three (3) members of the arbitral tribunal for any reason shall not have been selected within thirty (30) days of the commencement of the subject arbitral proceeding, then the Senior Resident Superior Court Judge for Wake County, North Carolina shall have the authority to select the arbitrator(s) who have not been so selected, with such Senior Resident Superior Court Judge being bound by the provisions of this subsection.
- d. The venue for any such arbitral proceeding shall be Wake County, North Carolina, unless the Customer and Lessor unanimously agree in writing otherwise.
- e. The arbitral tribunal may employ professionals and other Persons to be of assistance in the arbitration.



- f. The decision of any two (2) members of the arbitral tribunal shall be the decision of the tribunal. The decision of the arbitral tribunal shall be in writing and signed by each member of the arbitral tribunal. Judgment with respect to any such determination and award may be entered and enforced by any court of competent jurisdiction.
- g. The expenses of the arbitral tribunal and any other arbitration-related expenses shall be borne by the Customer and Lessor in the proportions determined by the arbitral tribunal.
- h. The provisions of this Section shall survive the termination or expiration of the Agreement, the Rental Periods, and the Equipment Rental Forms.

25. MISCELLANEOUS

- a. These Terms and Conditions and each Equipment Rental Form constitutes the entire agreement between the Customer and Lessor with respect to the subject matter covered herein and therein. There are no conditions precedent or subsequent to the effectiveness of the Agreement except as stated in the Agreement. All prior negotiations, understandings, terms, and conditions are merged into the Agreement. There are no oral or other representations, warranties, or agreements not included in the Agreement. Any use of the Customer's purchase order number on the Agreement is for the Customer's convenience only and terms and conditions, whether oral or written, that are different or inconsistent with the terms contained herein are hereby rejected by Lessor.
- b. The terms and conditions of the Agreement shall control over any conflicting preprinted terms and conditions contained in the Customer's purchase order or similar documents and such other terms are hereby rejected by Lessor. Any additional, conflicting, or contrary covenants, obligations, representations, warranties, or other terms or conditions contained in the Customer's purchase order or other documents are hereby rejected by Lessor, shall not be binding upon Lessor, and are null and void.
- c. The Customer and Lessor agree that, without regard to the principles of conflicts of law, the internal laws of the State of North Carolina shall govern and control the validity, interpretation, performance, and enforcement of this Agreement. The Customer and Lessor agree that any action relating to this Agreement shall be instituted and prosecuted exclusively in the State and Federal courts located in North Carolina, and each party hereto hereby waives any and all defenses to the venue and jurisdiction of such courts. Notwithstanding the foregoing, any award or judgment may be entered in accordance with applicable law in any court having jurisdiction thereof. In addition to any other rights or remedies available to Lessor under the Agreement, at law, or in equity, in the event of a Default by the Customer under the Agreement, Lessor shall be entitled to enforce its rights and remedies under this Agreement by seeking appropriate equitable relief including a temporary restraining order, order of specific performance, or an injunction without the requirement of securing or posting a bond or other security in connection with such remedy. Such remedies shall not be deemed to be the exclusive remedies for a Default but shall be in addition to all other remedies available under the Agreement, at law, or in equity.
- d. Any term or provision of the Agreement, or any Default or breach of any term or provision of the Agreement, may only be waived by a writing executed by the party to be charged with any such waiver, and any purported waiver not in compliance with this subsection shall be null and void. The failure or delay of any party hereto to insist upon the strict performance of any of the terms or provisions of the Agreement shall not, and shall not be construed to, waive any term or provision contained in the Agreement, and the same shall continue and remain in full force and effect. A valid waiver by any party hereto of any term or provision of the Agreement, or any Default or breach thereof, shall not, and shall not be construed to, waive any term, including the term that is the subject of the applicable waiver, contained in the Agreement with respect to any subsequent occurrence or breach of such term, and all terms of the Agreement shall continue and remain in full force and effect as if no waiver had occurred. The rights and remedies of the parties hereto under the Agreement are cumulative and are not exclusive of any other remedies provided under the Agreement, by law, or in equity.
- e. The section and subsection headings contained in the Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of the Agreement. Further, the parties hereto acknowledge that all parties have participated in the negotiation and drafting of the Agreement, and consequently, any rule of interpretation, whether at law or in equity, that holds that a contract shall be interpreted in favor of the non-drafting party shall not apply to the interpretation of the Agreement.
- f. The Customer consents to the collection, use, and disclosure of his or her personal identification and financial information as described herein. The Customer's personal identification and financial information is provided voluntarily and not as part of a credit card transaction. Personal identification information includes, for example, the Customer'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 this Agreement. The Customer's personal identification information can be used for purposes of this transaction, any subsequent transactions with Lessor, and for Lessor to evaluate and improve its products and services and/or develop new products or services. The Customer's personal identification information and/or financial information may be disclosed to contractors, service providers, and other third parties that support Lessor's business and who are bound by contractual obligations to keep personal information confidential and use it only for the purposes for which we disclose it to them.
- g. The Agreement shall be binding upon the Customer and Lessor, and their respective personal representatives, heirs, successors, and permitted assigns. Except as otherwise expressly provided in the Agreement, there are no third-party beneficiaries who are intended to benefit in any way from the terms and provisions of the Agreement and nothing in the Agreement shall be construed as giving any Person other than the Customer and Lessor any right, remedy, or claim under, or in respect of, the Agreement or any of its provisions.



- h.** The Customer authorizes Lessor to verify and obtain through credit reporting agencies, consumer reporting agencies, and other sources, as determined by Lessor in Lessor's sole and absolute discretion, a credit report, consumer report, and background check including, without limitation, a verification of the Customer's credit and insurance information, for purposes of this Agreement and the rental of Equipment to the Customer.
- i.** Any and all notices, requests, claims, demands, and other communications under the Agreement shall be in writing and shall be deemed given (i) when received if delivered personally, (ii) on the next business day if sent by overnight courier for next business day delivery (providing proof of delivery), (iii) on receipt of confirmation if sent by facsimile, or (iv) upon receipt of delivery confirmation if sent by email, to the Customer or Lessor at the applicable address set forth on the Equipment Rental Form (or at such other address for a party as shall be specified by like notice).
- j.** These Terms and Conditions may not be amended by the Customer. These Terms and Conditions may be amended or modified at any time by Lessor, in Lessor's sole and absolute discretion. Upon any amendment or modification of these Terms and Conditions by Lessor, Lessor may provide a copy of the amended or modified Terms and Conditions to the Customer or otherwise post a copy of amended or modified Terms and Conditions on Lessor's website. The amended or modified Terms and Conditions shall be effective immediately upon posting on Lessor's website. The Customer's rental, lease, or use of new Equipment, or continued rental, lease, or use of the Equipment, following any such amendment or modification constitutes the Customer's acceptance of and agreement to be bound by the amended or modified Terms and Conditions. The Equipment Rental Forms may not be amended or modified, except by written agreement duly executed by authorized representatives of the Customer and Lessor.
- k.** The Customer may not assign or delegate any Equipment Rental Form or the Agreement or any of the Customer's rights or obligations under any Equipment Rental Form or the Agreement without the prior written consent of Lessor, which consent may be withheld, delayed, conditioned, or denied in Lessor's sole and absolute discretion. Lessor may assign or delegate all or any Equipment Rental Forms or the Agreement, or any of Lessor's rights or obligations under any or all Equipment Rental Forms or the Agreement, at any time, without notice, and without consent of the Customer. Upon the sale or transfer by Lessor of the Equipment and the assignment by Lessor of the Agreement and Equipment Rental Forms with respect to such Equipment, Lessor automatically is and shall be fully and unconditionally released from any and all obligations under the Agreement and the Customer shall look solely to the transferee or assignee of such Equipment and the Agreement for all performance under the Agreement required of Lessor.
- l.** If any of the terms, covenants, conditions, or agreements of the Agreement for any reason shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any of the other terms, covenants, conditions, or agreements of the Agreement, and any terms, covenants, conditions, or agreements hereof thereafter shall be construed as if such invalid, illegal, or unenforceable terms, covenants, conditions, and agreements were never contained herein.
- m.** If, in any suit, action, proceeding, or arbitration between the Customer and Lessor involving the Agreement, it shall become necessary for either party to employ an attorney to enforce or defend any of such party's rights, remedies, or obligations hereunder in a court of law or in an arbitration proceeding, the party substantially prevailing in any such action or proceeding as determined by the court, the arbitrator, or the arbitrators, as the case may be, shall be entitled to an award of all reasonable attorney fees and expenses incurred by such party as the same shall be determined by the court, arbitrator, or arbitrators where the same is authorized to be awarded by any provision of law, including, but not limited to, N.C. Gen. Stat. §6-21.6. The Customer and Lessor hereby acknowledge and agree that this Agreement is a "business contract" for the purposes of N.C. Gen. Stat. §6-21.6.
- n.** The exchange of a fully executed Equipment Rental Form, in counterparts or otherwise by facsimile or electronic delivery in .pdf format shall be sufficient to bind the parties hereto to the terms and conditions of the Agreement.
- o.** **TIME IS OF THE ESSENCE WITH RESPECT TO ALL RENTAL PERIODS AND OTHER DATES AND TIME PERIODS SET FORTH IN THE AGREEMENT.**
- p.** The provisions of this Section 25 shall survive the termination or expiration of the Agreement, the Rental Periods, and the Equipment Rental Forms.