

TERMS AND CONDITIONS

1. Agreement; Modification of Terms. These terms and conditions (the “**Terms**”) apply to all orders for, and all sales and rentals of, all equipment (“**Equipment**”) described in the quotation, delivery ticket, return ticket, work order, purchase order, or invoice to which these Terms are attached or incorporated by reference. Sale or rental of any Equipment to any customer (“**Customer**”) is expressly conditioned on Customer’s acceptance of these Terms; if Customer does not agree to these Terms, then Customer shall return the Equipment to Trenchtech, Inc. or Trenchtech of Maryland, LLC, as applicable (“**Trenchtech**”) immediately. These Terms shall become effective upon the earliest of: (a) Customer issuing a purchase order or rental order to Trenchtech; (b) Customer’s receipt of the Equipment; or (c) Trenchtech’s receipt of payment in full or in part for the Equipment. Trenchtech may modify these Terms, in whole or in part, at any time without notice to Customer. Customer should check Trenchtech’s website regularly to see the current Terms. Customer’s continued purchase or rental of Equipment from Trenchtech shall constitute acceptance of such modified Terms; provided, however, that such modifications will not retroactively affect purchase or rental orders that have previously been submitted and accepted by Trenchtech.

2. Acceptance. Any quotation provided by Trenchtech to sell or rent Equipment to Customer shall constitute an offer to sell or rent, as applicable, the Equipment identified on such quotation in accordance with these Terms, which, when accepted by Customer, shall constitute a binding agreement between the parties. Customer’s acceptance of any offer by Trenchtech is limited to these Terms. Any terms or conditions proposed by Customer in any document that are different from, conflict with, or add to these Terms shall be deemed to materially alter the offer and are objected to and rejected by Trenchtech.

3. Price. Customer shall pay Trenchtech the purchase price or rental price, as applicable, as listed in Trenchtech’s quotation or as otherwise set forth in Trenchtech’s invoice. Trenchtech’s prices are exclusive of insurance, shipping, handling, and taxes. Customer shall be solely responsible for payment of all such insurance, shipping, handling, and taxes with respect to the purchase or rental of Equipment. Charges for insurance, shipping, handling, and taxes shall be billed to Customer with the applicable invoice. If Customer is a tax-exempt entity, Customer shall present all appropriate documentation for any tax exemption to Trenchtech prior to placing its order.

4. Payment Terms. Customer shall pay all invoices within thirty (30) days from the date of the invoice. If Customer fails to make any payments when due, Customer will be charged interest of one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less, on any overdue balance from the due date until paid, even after the entry of judgment against Customer. Trenchtech is not obligated to extend credit or financing terms to Customer. Trenchtech may in its sole discretion revoke any credit extended to Customer and require payment in full prior to Trenchtech’s delivery of Equipment. Trenchtech may retain possession of any Equipment until Customer has paid in advance all amounts due to Trenchtech. If Trenchtech incurs any costs to collect overdue payments, all such collection costs (including, without limitation, attorneys’ fees) shall be paid by Customer.

Sale Terms. Sections 5 through 8 shall apply only to sales of Equipment by Trenchtech to Customer.

5. Shipment and Delivery. All Equipment is priced FOB shipping point, and all freight and shipping charges are the responsibility of and shall be paid by Customer. Manner of shipping and routing of shipments is at the discretion of Trenchtech, unless otherwise agreed in writing by Trenchtech and Customer.

6. Title and Risk of Loss. Title to the Equipment and any risk of loss associated with the Equipment shall pass to Customer at the time of delivery of the Equipment to the carrier for shipment to Customer. In the event Customer or its agent picks up the Equipment at Trenchtech’s place of business or Trenchtech delivers the Equipment, title and risk of loss shall pass to Customer at the time of pick-up by Customer or its agent or delivery by Trenchtech. With respect to Equipment that is returned to Trenchtech, title and risk of loss shall remain with Customer until receipt and acceptance of the Equipment by Trenchtech. All claims for damage or loss in transit shall be made by Customer with the carrier.

7. Inspection and Acceptance. Customer shall have ten (10) days from receipt of the Equipment to inspect the Equipment for conformance with the applicable purchase order. Customer may reject Equipment that does not substantially conform to the purchase order. All rejections shall be made in writing to Seller and shall provide sufficient detail as to the reason for such rejection. In the event of such rejection, Customer shall promptly return the Equipment to Seller, at Customer’s sole expense. The Equipment shall be deemed accepted by Customer upon the

earlier of: (a) written notice of satisfactory completion of inspection by Customer to Trenchtech; or (b) the expiration of the 10-day period set forth in this Section 7.

8. Limited Warranty. If Customer purchases the Equipment from Trenchtech, either initially or after a period of rental, and the Equipment is used, such Equipment is sold on an “as is” basis. If Customer purchases the Equipment from Trenchtech and the Equipment is new, the Equipment is sold subject only to the warranties provided with the Equipment by the manufacturer, which Trenchtech shall pass through to Customer to the extent permitted.

Rental Terms. Sections 9 through 16 shall apply only to rentals of Equipment by Trenchtech to Customer.

9. Rental Period. The rental shall begin on the date specified on the delivery ticket and shall continue until the last date specified on the delivery ticket, or in the absence of such a date, when the Equipment is returned to Trenchtech (the “**Rental Period**”).

10. Title and Risk of Loss. All Equipment rented by Customer pursuant to these Terms shall at all times be and remain the sole and exclusive property of Trenchtech. Upon delivery of the Equipment, Customer assumes and shall bear the entire risk of loss or damage to the Equipment from any cause whatsoever, including, without limitation, misuse, until the Equipment is returned to Trenchtech. No loss or damage to the Equipment shall impair any obligation of Customer under these Terms. In the event of loss or damage of any kind whatsoever to any part of the Equipment, Customer shall, at the option of Trenchtech, either: (a) place the same in good condition and repair, at Customer’s sole cost; (b) pay Trenchtech its cost to place the same in good condition and repair; or (c) pay Trenchtech the full value of such Equipment. Customer accepts and hires the Equipment on an “as is” basis. Customer represents and warrants that it has inspected the Equipment, agrees the Equipment is in good condition and repair, fully understands its operation and use, and is properly qualified to use the Equipment.

11. Return of Equipment. Upon expiration of the Rental Period, Customer shall, at Customer’s sole cost, return the Equipment to Trenchtech in as good condition as when received by Customer.

12. Customer Restrictions and Obligations.

A. Only the person or entity identified as the customer or renter on the applicable delivery ticket shall have the right to use the Equipment.

B. Customer shall keep the Equipment free of all liens and encumbrances.

C. Customer shall not sublet, rent, or otherwise dispose of the Equipment. Customer shall not permit the Equipment to come into the possession of any other person or entity or to be transferred to another site, without Trenchtech’s prior written consent.

D. At Trenchtech’s sole option, and without any obligation on its part, Trenchtech shall at all times have the right of free access to the Equipment for the purpose of inspecting it and observing or determining the nature and extent of its use.

13. Insurance. Customer shall, at Customer’s sole cost, at all times during the Rental Period maintain the following insurance coverage in the following amounts:

A. Automobile liability insurance and general liability insurance covering personal injury and death in amounts of not less than \$3,000,000 for each person and not less than \$3,000,000 for each occurrence, and covering property damage (including, without limitation, damage to property of Trenchtech) in amounts of not less than \$1,000,000 for each occurrence, and comprehensive general liability insurance, including contractual liability, insuring Customer’s indemnification obligations under these Terms, in an amount of not less than \$3,000,000 combined single limit per occurrence;

B. “All risk” property insurance for the full replacement cost of all rented Equipment; and

C. Workers' compensation insurance covering Customer's employees in such as amounts as are required by applicable law.

Customer shall name Trenchtech as an "additional insured" on all policies of liability insurance (except workers' compensation) and "loss payee" on all policies of property insurance. All coverages shall be written on an occurrence basis. All of Customer's insurance policies shall provide that such insurance is primary and non-contributory to any insurance carried by Trenchtech, which insurance shall be deemed secondary or excess to Customer's insurance, and shall contain a waiver of subrogation. Each policy of insurance required under these Terms shall include an endorsement stating that the insurer shall provide thirty (30) days' prior written notice to Trenchtech before cancellation, nonrenewal, or material amendment of such insurance. Within five (5) days of Customer's acceptance of these Terms, Customer shall provide Trenchtech with certificates of insurance evidencing the current and valid insurance coverages required by these Terms. Customer shall provide replacement certificates of insurance to Trenchtech prior to the expiration of any policy on its most recently submitted certificate of insurance.

14. Financing Statement. Trenchtech may, in its sole discretion, file a UCC-1 financing statement for any part of or all of the Equipment rented from Trenchtech.

15. Limited Warranty. Trenchtech warrants to Customer that, at the time of delivery, the Equipment is in working order and free from defects in material and workmanship. Such rental warranty is void if Customer neglects, misuses, or abuses any part of the Equipment or fails to timely return the Equipment.

16. Default and Remedies. The occurrence of any one or more of the following constitutes a "Default": (a) Customer fails to pay rent or the purchase price, as applicable, when due; (b) Customer fails to comply with these Terms; (c) Customer discontinues its business, sells its business, or changes control of its business; (d) a change in Customer's financial condition; or (e) Customer is in default under any agreement between Customer and Trenchtech. In the event of a Default, Trenchtech has the right to recapture the Equipment without notice, court order, or the process of law, including, without limitation, the right to break locks to gain access to the Equipment, and has the right to terminate these Terms. Customer shall pay all costs of recapturing the Equipment and all costs of collecting outstanding charges, including, without limitation, attorneys' fees and costs.

General Terms.

17. Warranty Disclaimer. *Except as expressly set forth in these Terms, Trenchtech makes no warranties, and Customer waives all warranties, express or implied, in connection with these Terms, the Equipment, and Trenchtech's performance under these Terms, including, without limitation, the warranties of merchantability, fitness for a particular purpose, accuracy, title, non-infringement, and the warranty against interference.*

18. Limitation of Liability. *Trenchtech shall not be liable to Customer or any other person or entity for any claim or damage arising, directly or indirectly, from the furnishing of the Equipment pursuant to these Terms, from interruption or loss of use of the Equipment or from any other cause related, directly or indirectly, to the handling, possession, or use of the Equipment. Under no circumstances shall Trenchtech be liable for special, indirect, incidental, punitive, exemplary, or consequential damages, including, without limitation, loss of anticipated profits or other economic loss in connection with these Terms, Trenchtech's performance under these Terms, or the Equipment, whether or not Trenchtech is aware of the potential for such damages. In no event shall Trenchtech's liability exceed: (a) in the case of Equipment rental, the actual amount of rent paid by Customer in the twelve (12) months preceding the event giving rise to the liability; or (b) in the case of Equipment purchase, the actual aggregate purchase price paid by Customer for all Equipment in the twelve (12) months preceding the event giving rise to the liability.*

19. Indemnification.

A. Customer, for itself and its successors and assigns, shall, at its cost, indemnify, hold harmless and, at Trenchtech's option, defend Trenchtech, its affiliates, and their respective officers, directors, employees, agents and contractors against any claims, demands, actions, causes of actions, proceedings, assessments, losses, damages, liabilities, settlements, judgments, fines, penalties, interest, costs, and expenses (including, without limitation, reasonable attorneys' fees) (collectively, "Claims"), arising from or related to, directly or indirectly: (a) Customer's

breach of these Terms; (b) any negligence or other tortious conduct by Customer; (c) any act or omission on the part of Customer; (d) handling, possession, or use of the Equipment by Customer or its employees, agents, guests, invitees, or subcontractors; (e) any violation of any applicable law, rule, regulation, or order by Customer; and (f) any personal injury (including death) or property damage arising out of the use of the Equipment, except to the extent solely and directly caused by Trenchtech's gross negligence or recklessness. Customer shall give Trenchtech written notice of any such Claim that may arise and Trenchtech shall have the right to terminate these Terms upon three (3) days' notice after receiving notice of such a Claim.

B. Customer's indemnification obligations under this Section 19 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable under workers' compensation laws, disability benefit laws, or other employee benefit laws.

20. Remedies Cumulative. The remedies provided in these Terms in favor of Trenchtech upon a Default or other breach of these Terms by Customer shall not be deemed to be exclusive, but shall be cumulative and in addition to all other remedies exercisable by Trenchtech existing at law or in equity. Trenchtech may exercise all remedies, whether or not expressed, successively or concurrently.

21. No Set-Off. Customer has no rights to set-off against amounts due to Trenchtech for the Equipment. In the event Customer exercises a set-off, it shall constitute a breach of these Terms and entitle Trenchtech to all rights and remedies available under these Terms, at law and in equity.

22. No Waiver. No delay or omission in exercising any right under these Terms shall be deemed to constitute a waiver of such right. Waivers, to be effective, must be in writing and signed by the party against whom they are sought to be enforced. The waiver of a breach of any provision of these Terms shall not operate or be construed as a waiver of any subsequent breach.

23. Severability. Any provision of these Terms determined by a court of competent jurisdiction to be unenforceable or invalid shall be modified to the extent necessary to eliminate the invalidity or unenforceability and any remaining unenforceability or invalidity shall have no effect on any of the other terms of these Terms which shall remain in full force and effect.

24. Attorneys' Fees. Customer shall pay Trenchtech's costs and attorneys' fees in the event of a dispute between the parties regarding the interpretation or enforcement of these Terms that results in an arbitration or litigation in which Trenchtech substantially prevails.

25. Commercial Transaction. The transaction contemplated by these Terms is a commercial transaction.

26. Force Majeure. Trenchtech shall be excused from any delay or failure in its performance of these Terms and shall have the additional right to extend the time to provide the Equipment under these Terms or cancel these Terms, without any resulting liability of Trenchtech, where the delay or failure is due, in whole or in part, directly or indirectly, to a cause beyond Trenchtech's control, including, without limitation, labor difficulties, riots, fire, weather, casualty, accidents, acts of God, acts of terrorism, shortage of labor or materials, governmental acts or restrictions, civil disorder, or war.

27. Assignment; Binding Effect. Customer shall not assign or otherwise transfer any of its rights or duties, or both, under these Terms, in whole or in part, directly or indirectly, whether by sale, merger, sale of substantially all of Customer's assets, sale of capital stock, conversion, division, exchange of interests, or otherwise, without the prior written consent of Trenchtech. Any such attempted assignment in contravention of the foregoing restriction shall be void and ineffective. Trenchtech shall be permitted to assign its rights and delegate its duties under these Terms. These Terms shall be binding upon and shall inure to the benefit of Trenchtech and Customer and their respective representatives, successors, heirs, and permitted assigns.

28. Notices. All notices, requests, demands, and other communications ("Notice") must be in writing and shall be given by: (a) personally delivering the Notice to an officer of the party; (b) mailing the Notice by registered or certified mail, return receipt requested, or via nationally recognized courier services to the party at the address of such party as set forth on the front of these Terms, at the official corporate address of such party, or such other address as such party may hereinafter designate; or (c) sending the notice by facsimile, subsequently to be confirmed

in writing pursuant to (b) above. Notices to Trenchtech shall be sent to: 1979 Old Bristol Pike, Morrisville, Pa 19067, Attn: Beth Delone, Facsimile: 215-547-3855. Notices shall be effective as of the earlier of date of receipt or three (3) days after mailing. If the Notice relates to damage to, theft of, or injury by the Equipment or a threatened or actual seizure or levy, the Notice must be by telephone to the following number: 215-547-3800, subsequently to be confirmed in writing pursuant to (a), (b) or (c) above.

29. Waiver of Subrogation. Whenever (a) any Claim resulting from any casualty is incurred by Customer or by anyone claiming by, through or under Customer in connection with the Equipment, and (b) Customer is covered in whole or in part by any insurance that covers such Claim, then Customer waives (on its own behalf and, to the extent enforceable, on behalf of its insurer) any rights of subrogation and any claims against Trenchtech and releases Trenchtech from any liability Customer may have on account of such Claim. To the extent available, all insurance policies carried by Customer to insure against damage or loss to property shall include provisions denying to its insurer rights of subrogation and recovery against Trenchtech. Customer agrees that Trenchtech is relying upon this waiver in determining the cost of the Equipment to Customer.

30. Customer Misrepresentation. If Customer misrepresents its intended use for the Equipment, then Customer shall be liable for any additional costs that Trenchtech incurs as a result of, directly or indirectly, Customer's misrepresentation.

31. Compliance with Laws. Customer shall comply with all applicable local, state, and federal laws, rules, regulations, and orders in connection with the use of the Equipment and performance of these Terms.

32. Technical Assistance. Trenchtech shall provide technical assistance while on Customer's premises, but is not required to provide any additional assistance after the Equipment is delivered to Customer's premises. If Customer needs additional assistance, Customer shall contact Trenchtech and may be subject to additional charges. Trenchtech is not responsible for training Customer on the use of the Equipment. Any training that is required shall be the responsibility of Customer.

33. Governing Law. These Terms shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania law, without regard to the law of conflicts of law and without regard to any rules of construction or interpretation relating to which party drafted these Terms.

34. Jurisdiction. Trenchtech and Customer confer jurisdiction and venue to interpret and enforce these Terms exclusively upon the Courts of the Commonwealth of Pennsylvania, Bucks County or the United States District Court for the Eastern District of Pennsylvania, and Customer waives any objection to such jurisdiction and venue, including, without limitation, objection as to inconvenient forum. Service of process may be made in accordance with Section 28. The parties waive their rights to service by any other means.

35. Entire Agreement. These Terms, including any quotation, delivery ticket, return ticket, work order, purchase order, or invoice to which these Terms are attached or incorporated by reference, represent the entire understanding and agreement of the parties with regard to this matter and supersede any prior or contemporaneous agreements or understandings, whether written or oral, between the parties with respect to the subject matter of these Terms. No course of prior dealings between the parties and no usage of trade shall be relevant to supplement or explain any term in these Terms. Trenchtech's acceptance or acquiescence in a course of performance rendered by Customer shall not be relevant to determine the meaning of these Terms even though Trenchtech has knowledge of the nature of the performance and opportunity for objection.

36. Limitation of Actions. All claims, actions or proceedings against Trenchtech must be commenced in court within one (1) year after the cause of action has accrued, or such claim, action, or proceeding is barred, time being of the essence of this Section 36.

37. Survival. All terms and provisions that, by their terms, should survive termination of these Terms shall survive such termination.