

## TERMS AND CONDITIONS OF AGREEMENT

**1. RECEIPT AND CONDITION OF EQUIPMENT:** Any individual signing the **NATIONAL TRENCH SAFETY, INC.** (NTS) agreement represents and warrants that they are of legal age and have the authority to sign the Agreement on behalf of the Lessee. By acceptance of the Equipment described on the reverse side ("Equipment"), Lessee acknowledges that the Equipment is in sound, safe, and serviceable condition and suitable for Lessee's needs unless NTS is notified otherwise in writing within three (3) business days from time of delivery. If Lessee is utilizing a towing vehicle, Lessee shall inspect all hitches, bolts, safety chains, hauling tongues, and any other devices or materials used to connect the Equipment to Lessee's towing vehicle, and NTS is not responsible for any damage to Lessee's towing vehicle.

**2. SERVICE; RETURN OF EQUIPMENT:** Lessee shall perform and pay for all normal preventative maintenance, adjustments, and lubrication of Equipment. If Equipment fails to operate properly, Lessee shall immediately cease using Equipment and notify NTS. Rental rates are for normal and reasonable use (up to 8 hours per day, 5 days per week, and 160 hours per month) on a one-shift basis and may be increased proportionately for any greater usage. Lessee agrees to return the Equipment to NTS during normal business hours at the location from which it was obtained promptly upon the termination of the rental agreement in as good condition as when received, less ordinary wear from normal use in the hands of a competent operator. Within ten days of return of Equipment, NTS will inspect the Equipment and submit an invoice to Lessee for any damage or repair costs deemed appropriate by NTS to return the Equipment to the working condition immediately prior to its use by Lessee. Lessee hereby agrees to promptly reimburse NTS for any damage and or repair costs when presented by NTS. If NTS has agreed to deliver or pick up the leased Equipment, Lessee shall be responsible for all loss or damage to the Equipment from time of delivery until the Equipment is picked up by NTS.

**3. TERMS OF RENTAL AND PAYMENT:** This contract is made with and is payable to: **NATIONAL TRENCH SAFETY, INC. at 260 N Sam Houston Pkwy E, Ste 200, Houston, TX 77060.** Payment is due upon receipt. If full payment is not received within ten days of written demand, NTS may terminate the rental agreement for default. Any portion of any invoice not paid within thirty days of the date of invoice shall bear interest at the rate of one and a half percent per month or the maximum rate allowed by law, whichever is less, until paid. Lessee shall pay rental charges without any offsets, deductions, or claims. Rental charges accrue from the time that the Equipment is delivered to the Lessee until the Equipment is returned to NTS or NTS is notified by the Lessee by telephone or in writing that the Equipment is ready for pick up by NTS. Any "off-rent" not requested in writing will not be valid without an off-rent number. Payments made by credit card will be subject to a credit card processing fee. Payments received may be applied to oldest outstanding invoices unless a detailed remittance advice indicating otherwise is provided to NTS within 2 weeks of payment.

**4. USE OF EQUIPMENT; COMPLIANCE WITH LAWS:** Unless otherwise agreed in writing, Equipment shall be used solely in Lessee's business and kept only at Lessee's place of business or on job sites shown on the reverse side hereof (the Job Location) and shall not be removed without prior written consent. Equipment shall be used only for the purposes specified by the manufacturer, within its rated capacity, and by safe, careful, and competent personnel knowledgeable in the proper use and application of the Equipment. Lessee shall make no alterations to the Equipment and shall not employ or use additional attachments, features, or devices on the Equipment without prior written consent of NTS. Lessee shall notify NTS as soon as possible of any accident or occurrence, disablement, or failure involving the Equipment and properly furnish NTS in writing all information required by NTS. Lessee, at its sole expense, shall comply with all federal, state, and local laws, rules, regulations, and ordinances which may affect or apply to the operations of the Lessee and the utilization of the Equipment, including, without limitation, the Occupational Safety and Health Administration Act (OSHA). Lessee agrees to inspect Equipment daily and to promptly notify NTS if Equipment needs repair or maintenance.

**5. LOSS AND DAMAGE; INSURANCE:** All loss of or damage to the Equipment while in Lessee's possession, from any cause whatsoever, shall be the sole responsibility of Lessee, and repair or replacement costs shall be paid to NTS promptly upon receipt of invoice. Upon termination of this Agreement, responsibility for the safekeeping of rental Equipment remains with Lessee until the Equipment is in the actual physical possession of NTS. Rent shall continue to accrue on the Equipment until (a) the Equipment is returned to NTS in as good condition as when received by Lessee, or (b) all replacement costs have been paid to NTS (even if an insurance claim has been filed and regardless of whether Lessee or NTS is entitled to coverage or reimbursement from insurance). NTS shall not be required to negotiate or correspond with any insurance company providing coverage to Lessee. Lessee shall procure insurance covering the Equipment on a replacement cost basis against all risks of physical damage or loss of use, including but not limited to fire, theft, comprehensive losses, collision and upset, Act of God, civil disobedience or disorder, and the public enemy, in each case specifying NTS as loss payee. Lessee shall name NTS as an additional insured on its commercial general liability policy, with limits of at least \$1,000,000 per occurrence, which shall be primary and non-contributory as to NTS. Lessee's policies shall be endorsed to provide that they shall not be rescinded, impaired, or invalidated by any act or neglect of Lessee. Lessee hereby waives all rights of subrogation against NTS for any losses related to or arising out of the Equipment and agrees to have its insurance policies endorsed to provide a waiver of subrogation in favor of NTS, its affiliates, contractors, agents, or employees. Prior to shipment of the Equipment, Lessee shall provide NTS with evidence of all such insurance in the form of a Certificate of Insurance or the actual policy or loss payee endorsement satisfactory to NTS.

**6. INDEMNITY. TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, LESSEE SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS NTS AND ITS OFFICERS, SHAREHOLDERS, AGENTS, EMPLOYEES, PARENT COMPANIES, SUBSIDIARIES, AND AFFILIATES FROM AND AGAINST ALL CLAIMS, DAMAGES, COSTS, LOSSES, LIABILITIES, OBLIGATIONS, AND SUITS, INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES AND EXPENSES (COLLECTIVELY "CLAIMS"), FOR BODILY INJURY, DEATH, PROPERTY DAMAGE (INCLUDING LOSS OF USE), OR ECONOMIC LOSS ARISING OUT OF OR RELATING TO THE USE OR POSSESSION OF THE EQUIPMENT BY LESSEE, EVEN IF THE BODILY INJURY, DEATH, PROPERTY DAMAGE OR ECONOMIC LOSS IS CAUSED OR ALLEGED TO HAVE BEEN CAUSED BY ANY NEGLIGENCE OF NTS (EXCEPTING SOLE OR GROSS NEGLIGENCE OF NTS) OR STRICT LIABILITY OF NTS, ITS OFFICERS, AGENTS, EMPLOYEES, AFFILIATES, OR ANY OTHER PERSON.**

**7. TITLE:** Title to rental Equipment is and will remain with NTS. In the event the Equipment is levied upon by marshal, sheriff, or constable by reason of exception, garnishment, or attachment, or for any reason whatsoever, then in that event the Agreement immediately terminates. For rental Equipment, (a) Lessee shall not be deemed an agent or employee of NTS for any purpose, (b) Lessee shall not permit any liens or encumbrances to attach to the Equipment and shall defend, indemnify, and hold NTS harmless from all loss, liability, and expense by reason thereof, (c) all operation or use of the Equipment by Lessee or its employees or others by, through, or under Lessee, whether authorized or not by NTS, shall be at Lessee's sole risk and subject to the Agreement, and (d) nothing herein contained shall give or convey to Lessee any right, title, or interest in or to any of the Equipment leased hereunder except in the capacity as Lessee. If this Agreement is a specified sale or conditional sale, title will transfer to buyer upon receipt of payment in full of all monies due, and Lessee authorizes NTS to file in the appropriate jurisdiction(s) any UCC-1s or other financing statements to secure Lessee's obligations hereunder.

**8. DEFAULT.** The following are Defaults under this Agreement: (a) Lessee fails to pay any invoices when due; (b) Lessee breaches any provision of this Agreement; (c) Lessee subleases or relets the Equipment without prior written consent of NTS (d) Lessee becomes insolvent or the subject of a bankruptcy proceeding or has a receiver, trustee, or liquidator appointed for all or a substantial part of their assets; (e) Lessee ceases doing business as a going concern; or (f) to the maximum extent allowed by applicable law, NTS deems itself insecure.

**9. NTS'S REMEDIES ON LESSEE'S DEFAULT.** In the event of a Default, NTS, in addition to and without prejudice to any other available remedies or rights, may exercise one or more of the following remedies: (a) declare the entire amount of rent owed hereunder immediately due and payable; (b) sue for and recover all rents and other payments accrued or thereafter accruing; (c) immediately terminate this Agreement by written notice to Lessee; (d) demand return of the Equipment within five (5) days; (e) retake the Equipment, in which case NTS is hereby authorized to go upon Lessee's property during normal operating hours for said purpose, and Lessee hereby expressly waives all damages or loss, if any, suffered or caused by reason of the retaking of the Equipment by NTS; (f) pursue any other remedy at law or in equity. Notwithstanding any termination, rent continues to accrue until return of the Equipment to NTS's possession. Additionally, Lessee shall be and remain liable for the full performance of all obligations on the part of Lessee to be performed under this Agreement. All remedies are cumulative and may be exercised concurrently or separately.

**10. LIMITATION OF LESSEE'S REMEDIES:** NTS shall not be liable under any circumstances for loss of Lessee's profits, loss of business, or any other damages, direct or indirect, special, consequential, or otherwise caused by or resulting directly or indirectly from NTS's failure to comply with the terms of this Agreement or resulting from any delay in delivery or defect in the Equipment, and Lessee hereby releases NTS from such claims, **EVEN IF SUCH LOSS IS CAUSED BY THE JOINT, COMPARATIVE, SOLE, OR GROSS NEGLIGENCE OR STRICT LIABILITY OF NTS.**

**11. MISCELLANEOUS:** All notices under this Agreement shall be in writing and delivered to NTS at its Corporate Headquarters and to Lessee at the "Bill To" address. This Agreement shall be governed by the laws of the State of Texas, excluding its conflict of laws principles. The Parties agree that the exclusive jurisdiction and venue for any legal proceeding arising out of or relating to this Agreement shall be the state and federal courts located in Houston, Harris County, Texas. The Parties hereby irrevocably waive any objection to jurisdiction and venue and shall not assert any defense based on lack of jurisdiction or venue or based upon forum non conveniens. No right of NTS under this Agreement may be waived or altered except by written instruments signed by a duly authorized officer of NTS. If any provision of this Agreement is determined to be unenforceable, such provision shall be deemed modified only to the extent necessary to render the provision valid and enforceable while still maintaining the intent of the parties. The validity of any provision shall not affect any other provision in this Agreement. In the event NTS should secure the services of an attorney to enforce this Agreement, Lessee agrees to pay reasonable and necessary attorney's fees and expenses incurred by NTS. This Instrument expresses the entire Agreement between the parties with respect to the Equipment and may not be changed orally.

**NO RENTAL APPLIES TO PURCHASE UNLESS SPECIFIED IN WRITING.**