



Rental Agreement Additional Terms and Conditions

- 1. DEFINITIONS:** “rental Agreement” means this Rental Agreement, including the front and back pages of the Rental Agreement, as well as any Addendum attached hereto. “Pollack” means the corporate subsidiary of Pollack Equipment Rentals, Inc. identified on the first page of this Rental Agreement from whom the Customer has rented the Equipment. “Equipment” means any one or more of the items identified as such on the first page of this Rental Agreement and any accessories, attachments or other similar items delivered to Customer. “Customer” means the person or entity identified as such on the first page of this Rental Agreement or any representative, agent, officer or employee of the Customer. “Store Location” means the “Pollack” address in the upper left-hand corner on the first page of this Rental Agreement. “Rental Period” means the period of time between the “Date Out” and “Due Date in,” set forth on the first page of this Rental Agreement, except that the Rental Period may terminate earlier as provided in Sections 17 and 22 hereof.
- 2. AUTHORITY TO SIGN:** Any individual signing this Rental Agreement represents and warrants that he or she is of legal age, and has the authority and power to sign this Rental Agreement on their own behalf or for the Customer.
- 3. INDEMNITY/HOLD HARMLESS:** TO THE FULLEST EXTENT PERMITTED BY LAW, CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD POLLACK, AND ANY OF ITS RESPECTIVE OFFICERS, AGENTS SERVANTS, OR EMPLOYEES AND AFFILIATES, PARENTS AND SUBSIDIARIES, HARMLESS FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, LOSS, DAMAGE OR COSTS (INCLUDING, BUT NOT LIMITED TO , ATTORNEYS’ FEES, LOSS OF PROFIT, BUSINESS INTERRUPTION OR OTHER SPECIAL OR CONSEQUENTIAL DAMAGES, DAMAGES RELATING TO PROPERTY DAMAGE, BODILY INJURY, OR DAMAGES RELATING TO WRONGFUL DEATH) ARISING OUT OF OR RELATED TO THE OPERATION, USE, POSSESSION OR RENTAL OF THE EQUIPMENT. THIS INDEMNITY PROVISION ALSO APPLIES TO ANY CLAIMS ASSERTED AGAINST POLLACK BASED UPON STRICT OR PRODUCT LIABILITY CAUSES OF ACTION. HOWEVER, CUSTOMER SHALL NOT BE OBLIGATED TO INDEMNIFY POLLACK FOR THAT PART OF ANY LOSS, DAMAGE OR LIABILITY CAUSED SOLELY BY THE INTENTIONAL MISCONDUCT OR SOLE NEGLIGENCE OF POLLACK. IN FURTHERANCE OF, BUT NOT IN LIMITATION OF THE INDEMNITY PROVISIONS IN THIS AGREEMENT, CUSTOMER EXPRESSLY AND SPECIFICALLY AGREES THAT THE FOREGOING OBLIGATION TO INDEMNIFY SHALL NOT IN ANY WAY BE AFFECTED OR DIMINISHED BY ANY STATUTORY OR CONSTITUTIONAL LIMITATION OF LIABILITY OR IMMUNITY CUSTOMER ENJOYS FROM SUITS BY ITS OWN EMPLOYEES. THE DUTY TO INDEMNIFY WILL CONTINUE IN FULL FORCE AND AFFECT NOT WITHSTANDING THE EXPIRATION OR EARLY TERMINATION OF THE CONTRACT.
- 4. INSPECTION OF EQUIPMENT:** Customer acknowledges that Customer has inspected the Equipment prior to taking possession thereof, finds it in good working order and repair, and suitable for Customer’s needs. Customer further acknowledges that Customer has inspected the propulsion tank of vehicles registered and licensed, or required to be registered and licensed, for use on any highway or public road use, prior to taking possession thereof, and such propulsion tank contained no dyed fuel. Customer is familiar with the proper operation and use of each item of Equipment. Customer has inspected or will inspect all hitches, bolts, safety chains, hauling tongues and other devices and materials used to connect the Equipment to Customer’s towing vehicle, if any. Customer acknowledges Pollack is not responsible for any damage to Customer’s towing vehicle caused by detachable hitches or mirrors.
- 5. LIMITATION OF LIABILITY:** In no event shall Pollack be responsible to Customer or any other party for any loss, damage or injury caused by, resulting from or in any way connected with the Equipment, its operation or its use, Pollack’s failure to deliver the Equipment as required



hereunder, or Pollack's failure to repair or replace non-working Equipment. Customer acknowledges and assumes all risks inherent in the operation, use and possession of the Equipment from the time the Equipment is delivered to Customer until the Equipment is returned to Pollack and will take all necessary precautions to protect all persons and property from injury or damage from the Equipment.

- 6. USE OF EQUIPMENT:** **A. Customer** will not use or allow anyone to use the equipment: (a) for an illegal purpose or in an illegal manner; (b) without a license, if required under any applicable law, or (c) who is not qualified to operate it. Customer agrees, at Customer's sales expense, to comply with all applicable municipal, state, and federal laws, ordinances and regulations (including OSHA and the Internal Revenue Code) which may apply to the use of the Equipment. Customer shall not insert, or permit to be inserted, any dyed fuel into the propulsion tank of vehicles registered and licensed, or required to be registered and licensed, for use on any highway or other public road. CUSTOMER AGREES TO DEFEND, INDEMNIFY AND HOLD POLLACK HARMLESS FROM ALL FINES, PENALTIES AND COSTS INCURRED BY POLLACK DUE TO DYED FUEL BEING INTRODUCED INTO THE PROPULSION TANK OF SUCH VEHICLES. Customer agrees to check filters, oil, fluid levels and tire pressure, to clean and visually inspect the Equipment daily and to immediately notify Pollack when Equipment needs repair or maintenance. Customer acknowledges that Pollack has no responsibility to inspect the Equipment while it is in Customer's possession. Pollack shall have the right to replace the Equipment with similar equipment at any time and for any reason.

B. In California only: if and of the Equipment is power operated or power-driven excavating or boring equipment, it is the sole responsibility of the Customer to follow requirements of the regional notification center law pursuant to Article 2 (commencing with Section 4216) of Chapter 3.) Of Division 5 of Title 1 of the Government Code. By signing this Rental Agreement, Customer accepts all liabilities and responsibilities contained in the California regional notification center law.
- 7. DISCLAIMER OF WARRANTIES.** POLLACK MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY OF THE EQUIPMENT OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. THERE IS NO WARRANTY THAT THE EQUIPMENT IS SUITED FOR CUSTOMER'S INTENDED USE, OR THAT IT IS FREE FROM DEFECTS. EXCEPT AS MAY BE SPECIFICALLY SET FORTH IN THIS RENTAL AGREEMENT, POLLACK DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, MADE IN CONNECTION WITH THIS RENTAL TRANSACTION.
- 8. MALFUNCTIONING EQUIPMENT:** Should the Equipment be involved in an accident, become unsafe, malfunction or require repair, Customer shall immediately cease using the Equipment and immediately notify Pollack. If such condition is the result of normal operation, Pollack will repair or replace the equipment with similar Equipment in working order, if such replacement equipment is available. United has no obligation to repair or replace Equipment rendered inoperable by misuse, abuse or neglect. Customer's sole remedy for any failure or defect in Equipment shall be the termination of any rental charges occurring after the time of failure. Customer must return the Equipment to the store location within 24 hours from the time of defect in order to terminate the rental charges.
- 9. RETURN OF EQUIPMENT / DAMAGED AND LOST EQUIPMENT.** At the expiration period of the Rental Period, Customer will return the Equipment to the Store Location during Pollack's regular business hours, such Equipment to be in the condition and repair as when delivered to Customer, subject to reasonable wear and tear, as defined below. In the event that Pollack has agreed to pick up the Equipment from Customer, Customer shall notify Pollack in writing that the Equipment is "off rent" and shall obtain an "off rent" confirmation number from Pollack. Pollack shall endeavor to pick up the Equipment within a commercially reasonable period of time after the Equipment is called "off rent." Customer shall be liable for all damages to or loss of the equipment from the time the Equipment leaves the Store Location until the Equipment is (a) returned to the Store Location, including any damage during transit to and from Customer; or (b) picked up by Pollack after issuance of an "off rent" confirmation number. In



the case of the loss or destruction of any Equipment, or inability or failure to return same to Pollack for any reason whatsoever, Customer will pay Pollack the then full replacement list value of the Equipment together with the full rental rate as specified until such equipment is replaced. If the Equipment is returned in a damaged or excessively worn condition, Customer shall pay Pollack the reasonable cost of repair and pay the rental rate until all repairs have been completed. Pollack shall be under no obligation to commence repair work until Customer has paid the Pollack the estimated cost thereof.

- 10. REASONABLE WEAR AND TEAR.** Reasonable wear and tear of the Equipment shall mean only the normal deterioration of the Equipment caused by ordinary and reasonable use on a one shift (8 hours per day, 40 hours per week) basis. The following shall not be deemed reasonable wear and tear: (a) damage resulting from lack of lubrication, insertion of improper fuel, or maintenance of necessary oil, water and air pressure levels; (b) except where Pollack expressly assumes 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; (c) damage resulting from any collision, overturning, or improper operation, including overloading or exceeding the rated capacity of the Equipment; (d) damage in the nature of dents, bending, tearing, staining, corrosion or misalignment to or of the Equipment or any part thereof; (e) wear resulting from use in excess of shifts for which rented; and (f) any other damage to the Equipment which is not considered ordinary and reasonable in the equipment rental industry. Repairs to the Equipment shall be made to the reasonable satisfaction of Pollack and in a manner which will not adversely affect the operation, manufacturer's design or value of the Equipment.
- 11. LATE RETURN:** Customer agrees that if the Equipment is not returned by the end of the Rental Period, Pollack, in its sole discretion, may require Customer to do any of the following: (a) continue to pay the rental rate(s) applicable to the Equipment as specified on the front page of this Rental Agreement, (b) for periods less than 24 hours, pay the full daily rental rate applicable to the Equipment, or (c) pay any increased rental rate(s) in effect at the time of, or after, the expiration of the Rental Period.
- 12. RENTAL PERIOD / CALCULATION OF CHARGES:** Rental charges commence when the Equipment leaves the Store Location and ends when the Equipment is returned to the Store Location during Pollack's regular business hours. Rental charges do not include the cost of fuel, any applicable taxes, cost of delivery and pick-up of the Equipment, transportation surcharges or environmental charges. In the event that Pollack has agreed to pick up the Equipment from Customer, Customer shall notify Pollack in writing that the Equipment is "off rent" and obtain and "off rent" confirmation number from Pollack, at which time rental charges shall no longer be assessed, unless otherwise provided herein. Rental charges accrue during Saturdays, Sundays and Holidays. Rental rates are for normal usage based on an 8 hour day, 40 hours per week and 160 hours per 4 week period. On power equipment, operations in excess of one shift will be at Pollack's standard premium rental rates. Customer will truthfully and accurately certify to Pollack the number of shifts the Equipment was operated. Customer's right to possess the Equipment terminates on the expiration of the Rental Period and retention of possession after this time is a material breach of this Rental Agreement. **TIME IS OF THE ESSENCE.**
- 13. DEPOSIT:** In addition to securing the payment of rental charges hereunder, Customer agrees that any rental deposit shall be deemed to be a guarantee by Customer of the full and complete performance of each and all of the terms, covenants, and agreements to be performed by Customer hereunder, and in the event of any breach by Customer, the deposit will be credited against any damages, cost or expense incurred by Pollack as a result of the breach.
- 14. PAYMENT:** All amounts due hereunder shall be payable in full upon end of the Rental Period, return of the Equipment to Pollack, or 30 days following Pollack's invoice to Customer, whichever comes first. Customer acknowledges that timely payment of rental charges is essential to Pollack's business operations and it would be impractical and extremely difficult to fix the actual damages caused by late payment. Customer and Pollack agree that there shall be added to all past due rental charges a late payment fee equal to the lesser of 2% per month (24% per annum) on any such past due amounts, or the maximum amount allowed by applicable law.



15. **TITLE/NO PURCHASE OPTION/NO LIENS:** This Rental Agreement is not a contract of sale, and title of the Equipment shall at all times remain with Pollack. Unless covered by a specific supplemental agreement signed by Pollack, Customer has no option or right to purchase the Equipment. Customer shall keep the Equipment free and clear of all mechanics and other liens and encumbrances.
16. **TIRE AND TUBE REPAIR OR REPLACEMENT:** Repair or replacement of tires and tubes is the responsibility of Customer, and is not included in the rental rate.
17. **DEFAULT:** Customer shall be deemed to be in default should Customer in any way fail to pay any amount when due hereunder, or to perform, observe or keep any provision of this Rental Agreement, or should Customer become "insolvent" (as defined herein), or should Pollack anticipate that Customer may become insolvent or that the Customer may otherwise become in default. If Customer is in default, Pollack may do any one or more of the following: (a) terminate the Rental Period; (b) declare the entire amounts due hereunder immediately due and payable and commence legal action thereof; (c) cause Pollack's employees or agents, without notice or legal process, to enter upon Customer's property and take all action necessary to retake and repossess the Equipment, in which event Customer waives all claims for damages and losses, physical and pecuniary, caused thereby and shall pay all costs and expenses incurred by Pollack in retaking and repossessing; or (d) pursue any other remedies available by law. Customer shall be considered "insolvent" if Customer (i) shall generally not pay, or shall be unable to pay, or shall admit its inability or anticipated inability to pay its debts as such debts become due; or (ii) shall make an assignment for the benefit of creditors, or petition or apply to any tribunal for the appointment of a custodian, receiver, or trustee for it or a substantial part of its assets; or (iii) shall commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or (iv) shall have had any such proceeding commenced against it in which an order for relief is entered or an adjudication or appointment is made; or (v) shall take any action indicating its consent to, approval of, or acquiescence in any such petition, application, proceeding, or order for relief or the appointment of a custodian, receiver, or trustee for all or any substantial part of its properties.
18. **CUSTOMER'S INSURANCE COVERAGE:** Customer agrees to maintain and carry, at Customer's sole cost, the following insurance: (a) property insurance for the full replacement cost of the Equipment, including coverage for all risks and loss or damage to the Equipment. Such coverage will include, but not be limited to, risk and loss arising out of the maintenance, operation, possession or use of the Equipment; (b) commercial auto liability insurance with at least a per occurrence limit of \$2 million; and (c) commercial general liability insurance (providing coverage equal to or greater than the standard ISO CG 00 01 12 04 form) for any property damage, bodily injury or personal and advertising injury arising out of the maintenance, operation, possession or use of the Equipment with combined single limits of insurance not less than \$2 million per occurrence and \$4 million in the aggregate. Customer shall obtain insurance policies that provide, or are endorsed to provide, that all insurance required hereunder is primary and non-contributory to any other insurance maintained by Pollack. Pollack shall be named as additional insured for liability insurance and additional loss payee for property insurance. Any deductibles or self insured retentions shall be the sole responsibility of the Customer. All insurance required by this agreement shall include a waiver of rights of recovery against Pollack or its insurers by the Customer and its insurers, as well as a waiver of subrogation against Pollack or its insurers. The policies required hereunder shall provide that Pollack must receive not less than 90 days notice prior to any cancellation.
19. **NO ASSIGNMENT, LENDING OR SUBLETTING:** Customer shall not sublease, sub rent, assign or loan the Equipment without first obtaining the written consent of Pollack, and any such action by Customer, without Pollack's written consent, shall be void. Customer agrees to use and keep the Equipment at the job site set forth on the first page of this Rental Agreement unless Pollack approves otherwise in writing. Pollack may at any time, without notice to Customer, transfer or assign this Rental Agreement or any Equipment or any moneys or other benefits due or to become due hereunder.



- 20. ENTIRE AGREEMENT / ONLY AGREEMENT:** The Rental Agreement, including the front and back pages of the Rental Agreement, and any Addendum attached hereto, represent the entire agreement between Customer and Pollack with respect to the Equipment and the rental of the Equipment. There are no oral or other representations or agreements not included herein. None of Pollack's rights or Customer's rights may be changed and no extension of the terms of this Rental Agreement may be made except in writing, signed by both Pollack and Customer. Any use of Customer's purchase order number on this Rental Agreement is for Customer's convenience only.
- 21. ORDER OF PRECEDENCE:** The terms and conditions of this Rental Agreement shall control over any conflicting preprinted terms and conditions contained in Customer's purchase order or similar documents.
- 22. OTHER PROVISIONS:** A. Any failure of Pollack to insist upon strict performance by Customer of any terms and conditions of this Rental Agreement shall not be construed as a waiver of Pollack's right to demand strict compliance. Customer has carefully reviewed this Rental Agreement and waives any principle of law which would construe any provision hereof against Pollack as the draftsman of this Rental Agreement. B. Customer agrees to pay all reasonable costs of collection, court attorney's fees and other expenses incurred by Pollack in the collection of any charges due under this Rental Agreement or in connection with the enforcement of its terms. C. Customer shall pay the rental charge(s) without any offsets, deduction or claims. D. The federal and state courts in which the Store Location is located shall have exclusive jurisdiction over all matters relating to this Rental Agreement. TRIAL BY JURY IS WAIVED. In order to affect service of process on Pollack, please contact the Secretary of State Corporations Division or the equivalent office in your state to obtain the name of the registered agent and the registered office address that is on file with the Secretary of State for Pollack. Pollack shall be entitled to decrees of specific performance (without posting bond or other security) in addition to such other remedies as may be available. E. Pollack shall have the right to immediately repossess the Equipment, without any liability to Customer, in the event of (i) permanent closure of the Pollack Store Location or (ii) declaration of any emergency, disaster or similar situation by any federal, state or local government.

CRIMINAL WARNING: The use of false identification to obtain Equipment or the failure to return the Equipment by the end of the Rental Period may be considered a theft subject to criminal prosecution pursuant to applicable criminal or penal code provisions.

Customer: _____ Date: _____
I agree to all terms and conditions