

**THE ADDITIONAL TERMS AND CONDITIONS SET FORTH BELOW ARE PART OF THIS CONTRACT AND ARE INCORPORATED HEREIN BY REFERENCE.**

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1. **RENTAL OPERATION:** If the Equipment is operated for more than 8 hours per day, 40 hours per week, or 160 hours per 4 week period, during the term of this Rental Agreement, then LESSEE agrees to pay additional rental at 1-1/2 times standard daily rate per each 8 hours used, due and payable with the next rental payment, or if all such payments have been made, at Houghton Equipment Rental's demand. This Rental Agreement must be signed, and an account must be established prior to any equipment pick-up or delivery. Rental pickup charges will continue to accrue on any equipment until Houghton Equipment Rental has been notified that the equipment is ready for pickup or has been returned on our lot.

2. **EQUIPMENT USE AND LOCATION.** You acknowledge receipt of and agree to comply with the Equipment's operation and maintenance manual (the "Manual"). You acknowledge that you are familiar with the Equipment and will cause the Equipment to be operated at all times by qualified operators and in accordance with the Manual and all applicable laws. You shall use the Equipment only for the Permitted Use. You shall keep the Equipment only at the Equipment Address set forth above.

3. **CARE AND MAINTENANCE; CONDITION ON RETURN.** Upon delivery of the Equipment, you will inspect the Equipment. Unless you notify us otherwise within two (2) days after delivery, you shall be deemed to have acknowledged that the Equipment is in good condition and operating properly. You shall, at your expense: (a) maintain the Equipment in good repair; (b) store the Equipment safely; (c) make all normal and necessary adjustments and lubrication in accordance with the Manual; and (d) contact us or a third party maintenance provider approved by us in writing when the Equipment needs other service or repairs. You will be responsible for the cost of maintenance and repairs, unless the Equipment is covered by a service contract between you and us or by a service contract between you and a third party provider approved by us in writing. You will be responsible for undue wear, or damage to the Equipment from accident, abuse, failure to follow the Manual, or negligence, except to the extent the accident, abuse, failure to follow the Manual or negligence constituted a breach by us of any applicable service contract. All replacement parts, service and repairs on the Equipment must be obtained from us, except as otherwise approved by us in writing. You agree not to make any additions or alterations to the Equipment without our prior written consent. We may inspect the Equipment at any time or place and may require you to make such repairs as we feel are necessary to keep the Equipment in the condition required. Should the Equipment become unsafe, malfunction or require repair, you will notify us within 24 hours and immediately cease using the Equipment until such condition is remedied. You shall return the Equipment to our location in the same condition you received it, with a full fuel tank, other than normal wear and tear. If the Equipment is returned in unacceptable condition, you agree to pay to us upon demand all charges for cleaning, servicing, repairs and replacements necessary to restore the Equipment to the original condition, and the rental shall continue until such obligations are completed.

THERE IS NO SMOKING ALLOWED IN OUR RENTALS, AND IF UPON RETURN, THERE HAS BEEN SMOKING INSIDE OF THEM, A CLEANING FEE WILL BE ADDED.

4. **TITLE.** The Equipment shall be our sole and exclusive property (or if we lease the Equipment from a third party, of such third party), and neither you nor anyone else will acquire any interest in the Equipment, except your right to use the Equipment hereunder. You shall take steps necessary to prevent any person from acquiring any rights in or to the Equipment, other than us or the third party from which we lease the Equipment. Except for security interests, liens, encumbrances and claims (together, "Liens") in our favor, you shall keep the Equipment at all time free of Liens.

5. **INSURANCE.** During the period when the Equipment is in your possession or in transit to or from you, you shall maintain in force the insurance described in this Section 9. Prior to taking possession of the Equipment, you shall furnish us with one or more certificates evidencing such policies and evidencing that each such policy may not be cancelled or materially modified except with thirty (30) days prior written notice to us.

(a) A commercial general liability insurance policy for bodily injury and death, personal injuries, and property damage (including contractual liability) with liability limits of \$1,000,000 per occurrence and \$1,000,000 in the aggregate. Each such policy shall name us, our employees and agents ("Our Insured Parties") as additional insureds and insure us as a primary, regardless of other insurance carried by us, against liability for bodily injury and property damages sustained by any person or persons as a result of the ownership,

maintenance, use, operation, storage, erection, dismantling, servicing or transportation of the Equipment while the Equipment is in your possession or control, in transit to or from you under this Agreement, arising out of your operation of the Equipment, or otherwise related to this Agreement. You agree to abide by the provisions of each such policy and to make a written report to us and the insurer as soon as practical after any accident or occurrence involving the Equipment.

(b) Workers compensation insurance as required by law.

(c) Primary all risk (including earthquake and flood) physical damage or loss insurance (including loss of use and damages caused in transit) on the Equipment and naming Our Insured Parties as additional insureds and loss payees, with limits acceptable to us. Such policy shall provide that no act, omission or breach of warranty by you shall give rise to any defense against payment of the insurance proceeds.

(d) If the Equipment will be used on a marine vessel or on an onshore or offshore terminal, port or platform (or any other marine application), Marine Insurance that covers onshore and offshore exposed property; Hull Insurance; Marine Casualty and Marine Liability Insurance as appropriate to the application shall be provided.

Each policy of insurance maintained by LESSEE as required by this Rental Agreement, shall provide that the insurer shall give LESSOR not less than 30 days prior written notice before such policy of the coverage afforded shall be altered, terminated, or canceled, and provide that Houghton Equipment Rental's interest under such policy shall not be adversely affected by any act or omission, weather or not negligent, willful, contrary to the terms of such policy or applicable law or otherwise of LESSEE or anyone acting or purporting to act on its behalf, and that Houghton Equipment Rental may, but shall not be obligated to, pay any premiums or other sum payable in respect thereof.

6. **RISK OF LOSS.** You are liable for all damages to or loss of the Equipment arising from any accident, theft, seizure, or destruction, whether or not caused by you including without limitation damages caused by the failure of any device or material used in hitching the Equipment to a towing vehicle. Your liability for damage to or loss of the Equipment is limited to the full value of the Equipment at the time it is lost or damaged, less its salvage value, plus an administrative fee and our related expenses, such as loss of use, appraisal fees, recovery costs and attorneys' fees.

7. **INDEMNITY. YOU HEREBY RELEASE AND AGREE TO INDEMNIFY AND HOLD HARMLESS US AND OUR SHAREHOLDERS, OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, AFFILIATES, SUCCESSORS, ASSIGNS AND THIRD PARTY SUPPLIERS ("OUR INDEMNIFIED PARTIES") FROM AND AGAINST ANY AND ALL DIRECT AND INDIRECT CLAIMS, DEBTS, ACTIONS, CAUSES OF ACTION, SUITS, DEMANDS, FINES, PENALTIES, JUDGMENTS, OMISSIONS, DAMAGES OR EXPENSES WHATSOEVER, INCLUDING WITHOUT LIMITATION ACTUAL ATTORNEYS' FEES AND COSTS, ARISING OUT OF OR RELATING TO: (A) BREACH BY YOU OF ANY REPRESENTATION, WARRANTY, COVENANT OR TERM CONTAINED IN THIS AGREEMENT OR ANY LAW; (B) ANY DAMAGE TO OR DESTRUCTION OF PROPERTY, OR INJURY TO OR DEATH OF PERSONS CAUSED OR ALLEGED TO HAVE BEEN CAUSED IN WHOLE OR IN PART, BY ANY INTENTIONAL, RECKLESS, NEGLIGENT OR OTHER ACT (OR FAILURE TO ACT) BY YOU OR YOUR SHAREHOLDERS, OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, AFFILIATES OR SUCCESSORS; OR (C) LOSSES, DAMAGES OR INJURIES CAUSED BY YOUR PRODUCTS OR SERVICES OR DUE TO IMPROPER APPLICATION OR USE OF THE EQUIPMENT BY YOU OR YOUR SHAREHOLDERS, OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, AFFILIATES OR SUCCESSORS.**

8. **LIMITED WARRANTY/LIMITATION OF LIABILITY.** We warrant that the Equipment will perform in accordance with the manufacturer's specifications when used for the purpose for which it was designed; provided, however that the warranty shall not apply to cases of damage in transit, negligence, abuse, abnormal usage, misuse, accidents, damage due to environmental or natural elements, failure to follow the Manual, or improper installation, storage or maintenance. Our sole and exclusive obligation under this warranty (and your sole and exclusive remedy) shall be, upon prompt written notice by you made within 24 hours of the failure of the Equipment, at our option, (a) to repair the Equipment, (b) replace the Equipment, or (c) terminate this Agreement. If we are not able to provide you with the Equipment that performs as warranted, we will not charge you the rental rate after the time of failure provided that the Equipment is returned

to us within 48 hours. **YOU AGREE THAT THE EXPRESS WARRANTY ABOVE IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WE HEREBY DISCLAIM AND EXCLUDE ALL OTHER EXPRESS OR IMPLIED WARRANTIES.** To the extent that applicable law does not permit disclaimers of certain implied warranties, such limitations may not apply to you. This warranty gives you specific legal rights, and you may also have other rights which vary from state to state. Any oral or written description of the Equipment is for the sole purpose of identifying the Equipment and shall not be construed as an express warranty. Prior to using the Equipment, you shall determine the suitability of the Equipment for the intended use and you shall assume all risk and liability whatsoever in connection therewith. **IN ORDER TO MAINTAIN OUR PRICING AS DESCRIBED ABOVE, OUR AGGREGATE LIABILITY WITH RESPECT TO DEFECTIVE EQUIPMENT AND THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT OF MONEY PAID TO US FOR THE USE OF THE EQUIPMENT, PLUS AN ADDITIONAL 10% DISCOUNT OFF YOUR NEXT RENTAL WITH US. IN NO EVENT SHALL WE BE LIABLE FOR INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR OTHER INDIRECT DAMAGES OR LOST PROFITS.** Some states and countries do not allow the exclusion or limitation of incidental and consequential damages, so the above limitation or exclusion may not apply to you.

9. **EVENTS OF DEFAULT.** You shall be in default under this Agreement if any of the following events occur (collectively "Events of Default"): (a) you fail to timely pay any amount due to us; (b) you fail to return the Equipment when required or in original condition; (c) you fail to maintain the insurance as required by Section 9; (d) you violate or fail to perform any other term of this Agreement; (e) you cease doing business or terminate operations for any reason including without limitation dissolution, merger or asset sale; or (f) you become insolvent, assign your assets for the benefit of creditors or enter (voluntarily or involuntarily) a bankruptcy proceeding.

10. **REMEDIES.** Upon the occurrence of an Event of Default and while such Event of Default is continuing, we, at our option and to the extent not inconsistent with applicable law, may exercise any one or more of the following remedies: (a) terminate this Agreement and your rights to use of the Equipment shall cease; (b) require you to return the Equipment to our location in the same condition you received it; (c) peaceably enter the premises where the Equipment is located, take possession of and remove the Equipment, all without liability to us, our employees, agents or contractors for such entry (**YOU HEREBY WAIVE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHTS TO NOTICE AND/OR HEARING PRIOR TO THE REPOSSESSION OR REPLEVIN OF THE EQUIPMENT BY US, OUR EMPLOYEES, AGENTS OR CONTRACTORS**); (d) proceed by court action to enforce your performance of this Agreement or pursue any other remedy we may have at law, in equity or under any applicable statute, and recover such other damages as may be incurred by us; and (e) recover from you (i) any unpaid periodic rentals due and payable for periods prior to our repossession of the Equipment plus interest due

thereon under Section 5, and (ii) all costs and expenses incurred in searching for, taking, removing, storing, repairing, restoring, refurbishing and leasing or selling the Equipment. No failure on our part to exercise, and no delay in exercising, any right or remedy shall operate as a waiver. No single or partial exercise of any right or remedy shall preclude any other or further exercise or the exercise of any other right or remedy. Each right and remedy provided is cumulative and not exclusive of any other right or remedy including without limitation any right or remedy available to us at law, by statute or in equity. You shall pay all costs and expenses including without limitation attorneys' fees, incurred by us arising out of or in connection with any Event of Default of this Agreement.

11. **ASSIGNMENT; SURVIVAL.** **YOU SHALL NOT SELL, TRANSFER, ASSIGN, SUBLEASE, CONVEY OR OTHERWISE TRANSFER ANY OF YOUR RIGHTS OR OBLIGATIONS UNDER THIS AGREEMENT OR IN THE EQUIPMENT WITHOUT OUR PRIOR WRITTEN CONSENT.** We may sell, assign, sublet or otherwise transfer all or any part of our right, title and interest in and to the Equipment and/or this Agreement. We may also pledge, mortgage or grant a security interest in the Equipment and assign this Agreement as collateral. Your obligations, representations and warranties, and our rights, shall survive the expiration, cancellation or termination of this Agreement.

12. **MISCELLANEOUS.** Any claims by you must be brought within one year of the act or omission on which the claim is based. Any notice required to be given to us shall be sent by registered or certified mail, return receipt requested, to Valley View Quarry 46702 Highway M-26 Houghton, Michigan 49931. This Agreement shall be construed and governed under the laws of the State of Michigan, without reference to conflict of laws principles. Any cause of action, claim, suit or demand allegedly arising from or related to the terms of this Agreement or the relationship of the parties shall be brought in a Court situated in Houghton, Michigan and both parties hereby irrevocably consent to the venue and jurisdiction of said Court. This Agreement may be executed by facsimile signatures and in counterparts, each of which shall be deemed an original instrument. The individual signing this Agreement is authorized to sign this Agreement on your behalf. The invalidity or unenforceability of any term or condition of this Agreement shall not affect the validity or enforceability of the remainder of this Agreement.

13. **ENTIRE AGREEMENT.** This document is our complete agreement. It replaces and supersedes (and you should not rely on) any prior oral or written representations or agreements. We object to and reject any additional, different or varying terms proposed by you. **IF YOU WISH TO NEGOTIATE ANY ONE OR MORE DIFFERENT TERMS THAN THOSE CONTAINED IN THIS DOCUMENT, INCLUDING HIGHER LIABILITY LIMITS, YOU MAY DO SO.** However, any such change to this document or these terms must be in writing and signed by authorized representatives for you and us. Any terms, conditions, negotiations or understandings which are not contained in this Agreement shall have no force and effect unless made in writing and signed by each party's authorized representative. To the extent permitted by law, this Agreement is irrevocable, independent of your acceptance of the Equipment.

This Agreement may be amended or modified only by an agreement in writing signed by both parties. Acknowledge this sentence by initialing here: \_\_\_\_\_. By signing below, you acknowledge that you have read and understand the terms and conditions on the face and reverse side of this Agreement, including the Sections regarding indemnification and limitation of liability.

HOUGHTON EQUIPMENT RENTAL:

CUSTOMER:

\_\_\_\_\_  
(signature)  
\_\_\_\_\_  
(print name and title)

\_\_\_\_\_  
(signature)  
\_\_\_\_\_  
(print name and title)  
\_\_\_\_\_  
(purchase order number)  
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(date)