

AMERICAN SHORING INC.
TERMS AND CONDITIONS FOR RENTAL CONTRACTS

1. **DEFINITIONS:** Capitalized terms in these Terms and Conditions have the same meaning as provided in the Contract for Rental Equipment ("Rental Contract") to which these Terms and Conditions are attached, unless otherwise specified.
2. **PRICING:** Lessor reserves the right to correct any obvious errors in specifications or prices. All prices are quoted F.O.B. Newburgh, New York and Lessor assumes no responsibility for the delivery or pickup of any rented equipment, unless otherwise specified.
3. **RENTAL PERIOD:** Rental periods are calculated beginning on the day the equipment is either picked up by Lessee or its representative or delivered to Lessee's location, and ending on the day the equipment arrives back at or is returned to a Lessor facility. Unless otherwise specifically agreed in writing by Lessor, the rental period for all equipment subject to the Rental Contract commences on the day of the first pickup or loading of such equipment, and ends when the last of such equipment has arrived at a Lessor facility. If Lessee requires that equipment instead be delivered and/or returned on a piece-by-piece basis and priced accordingly, Lessee must so advise Lessor in writing and obtain written consent and approval from an authorized representative of Lessor.
4. **DELAYS:** Delivery dates in the Rental Contract represent Lessor's best estimate of the time of equipment delivery based upon when equipment is anticipated to be shipped and other factors. Such dates are not guaranteed and Lessor shall not be liable for any damages arising out of any delayed delivery of equipment to the Lessee. Lessee waives any and all right to claim damages for delay and all other forms of actual or consequential damages caused by or resulting from delayed delivery of the equipment rented.
5. **RETURN OF EQUIPMENT:** All returns must be made with freight charges prepaid. The rented equipment is the property of the Lessor and is rented by the Lessee subject to this agreement. The Lessor, to enforce its rights of ownership of the equipment and protect its interests, may repossess the equipment at any time upon a default by Lessee. To do so, Lessor or its representatives may enter upon the Lessee's premises, Lessee hereby waiving any right of action against Lessor for such entry and repossession. In addition, Lessee acknowledges that the sale, concealment, loss, or subleasing of rented equipment is prohibited, and that such action may constitute a crime. The Lessor, in addition to any other action it may take, may notify the authorities and take other action, including the filing of criminal complaints, subjecting the Lessee to prosecution. In addition to all other rights and remedies available at law or in equity, in the case of the loss or destruction of any equipment, or inability or failure to return same to Lessor for any reason whatsoever, Lessee will pay Lessor the then full replacement list value of the equipment together with the full rental rate as specified until such equipment is replaced.
6. **PAYMENT:** The Lessee and its principals shall be responsible for and shall pay Lessor all charges set forth in the Rental Contract and in these Terms and Conditions. All charges for equipment rental ("Rental Charges") are due upon receipt of invoice or as may otherwise be specified in the Rental Contract. If Rental Charges are not paid within ten (10) days of their due date, Lessor in its discretion may recalculate all charges on a daily rental rate basis and/or apply a late fee of 1.5% of the unpaid balance at such time and on the first day of each succeeding month thereafter until paid in full. If the Rental Charges and other charges are to be paid by a third party, Lessee represents and warrants that it is the agent of such third party and has full authority to enter into the Rental Contract and incur all such charges; provided, however, that Lessee remains fully liable for and guaranties payment of such charges and for the performance of all other obligations and responsibilities of the Lessee hereunder. In the event of a dispute regarding payment or other performance by such third party, the Lessor, in its sole discretion, may pursue any and all rights and remedies directly against Lessee without first being obligated to pursue any such rights or remedies against any third party.
7. **DEPOSIT:** At Lessor's discretion, the Lessee will be required to furnish two (2) separate payments upon execution of the Rental Contract. One payment is to cover the Rental Charges for the first rental period; the other payment is a Deposit which equals the amount of the first payment. The Deposit will be placed in a holding account. After all equipment has been returned, Lessor reserves the right to deduct from the Deposit (a) the costs of repairing or replacing any damaged or unreturned equipment and (b) the amounts of any outstanding payments due; after which, Lessor will refund any balance of the Deposit to Lessee or any third party designated by Lessee in writing.
8. **PHYSICAL CONDITION OF RENTED EQUIPMENT:** Lessee acknowledges that prior to using the rented equipment, Lessee will have examined it and become aware of its condition. Lessee acknowledges and agrees that all equipment is received in good condition and suitable for Lessee's purposes except for any defect(s) as may be noted in the Rental Agreement, and that Lessee is satisfied with the equipment's condition and accepts the equipment as-is. **Lessee agrees to return the equipment to the Lessor in as good condition as when received, usual wear and tear excepted. In the event of equipment breakage or other substantial damage, Lessee agrees that the Lessor shall repair all such damage at Lessor's discretion when the equipment is returned to the Lessor's facility, and the cost of such repairs and the full rental rate during the time of such repairs will be charged to the Lessee. In no event may Lessee undertake any repairs of any rented equipment without first obtaining Lessor's express permission in writing.**
9. **USE OF EQUIPMENT:** Lessee agrees that the equipment will be used solely by Lessee at the location designated in the Rental Contract and solely for the purpose for which the equipment was manufactured and intended. Lessee represents and warrants to Lessor that Lessee is familiar with the proper and safe manner of using the equipment and that the equipment will be used in accordance with all applicable safety laws including those promulgated by O.S.H.A.
10. **RESPONSIBILITY FOR USE:** From the time the rented equipment is taken until its return, Lessee is solely responsible for the equipment and its use. The Lessee assumes all risks inherent in the operation and use of the rented equipment and agrees to assume the entire responsibility for the defense of, and to pay, indemnify and hold the Lessor harmless from and hereby releases the Lessor from any and all claims for damage to property or bodily injury (including death) resulting from the use, operation or possession of the equipment, whether or not it be claimed or held that such damage or injury resulted in whole or part from Lessor's negligence, from the defective condition of the equipment, or from any other cause. Lessee hereby acknowledges that Lessor is not responsible in negligence, warranty, strict liability in tort for any equipment leased by Lessee.
11. **RISK OF LOSS:** Lessee shall bear the entire risk of loss, theft, damage or destruction of equipment from any cause whatsoever, and no loss, theft, damage or destruction of the equipment shall release Lessee from its obligation to pay Rental Charges or to perform any other obligation under this agreement.
12. **CLAIMS OF DEFECTS:** Lessee agrees to immediately discontinue any use or attempted use of the rented equipment should it at any time become appear unsafe or in a state of disrepair, and Lessee shall immediately notify the Lessor of the facts in writing. In no event shall Lessor be responsible for any injury or damages, including consequential damages, resulting or related to Lessee's use or attempted use of any such equipment, and Lessee agrees to defend, indemnify and hold harmless Lessor from any claims arising from such circumstances to the fullest extent permitted by law. Lessee may not resume use of any such equipment until either (i) express written permission is given by Lessor or (ii) Lessee receives replacement equipment at Lessee's sole expense.
13. **OWNERSHIP:** The equipment is, and shall at all times be and remain the sole and exclusive property of the Lessor; and Lessee shall have no right, title or interest therein or thereto except as expressly set forth in this agreement.
14. **INSURANCE:** In order to protect Lessor from any claims arising out of the rental, operation or use of the equipment and from any loss of or damage to the equipment, and to fulfill Lessee's indemnification obligations under this agreement, Lessee shall maintain general liability and property damage coverage in the minimum amount of \$1,000,000.00 per occurrence, as well as All-Risk Insurance covering the replacement value of the equipment, all on a primary and non-contributory basis. Lessee shall include Lessor as an insured/additional insured on such insurance policy(ies), using policy language applicable and enforceable in the State of New York. Upon request by the Lessor, Lessee shall furnish (i) Insurance Certificates naming Lessor as an additional insured and loss payee, and (ii) copies of insurance policies, policy declarations, and/or additional insured endorsements evidencing such coverage.
15. **MODIFICATION OF AGREEMENT:** The Rental Agreement and these Terms and Conditions represent the entire agreement between Lessor and Lessee regarding the subject matter hereof, and there are no collateral, oral, or other agreements outstanding. No right of the Lessor may be modified except in writing signed by the Lessor and made a part hereof. **Lessor does not accept any terms or conditions other than those contained herein.**
16. **UCC:** Lessee agrees to execute and deliver to the Lessor any and all instruments and documents that may be reasonably necessary to protect Lessor's interest under this agreement. If permitted by law, Lessee authorizes Lessor to file a financing statement with respect to the equipment signed only by the Lessor.
17. **DISCLAIMER:** LESSOR HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION, WARRANTY OR COVENANT, EXPRESSED OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, FITNESS, CONDITION, QUALITY, DURABILITY OR SUITABILITY OF ANY ITEM OR EQUIPMENT FOR LESSEE'S PURPOSES, OR ANY OTHER REPRESENTATION, WARRANTY OR COVENANT, EXPRESSED OR IMPLIED, WITH RESPECT TO THE EQUIPMENT OR ANY PART THEREOF.
18. **APPLICABLE LAW:** This agreement shall be governed, construed and interpreted in accordance with the laws of the State of New York. Lessee agrees that the courts located in Orange County, New York be the exclusive venue for all actions instituted to enforce or defend any rights or obligations pertaining to this agreement. Lessee agrees that the venue in the State of New York is proper and waives any objection that such forum is inconvenient or improper.
19. **COLLECTION COSTS:** Lessee agrees to pay reasonable all attorney fees, collection fees, court costs and any other expenses incurred in collecting any charges under this agreement, in repossessing the rented equipment or otherwise in enforcing the terms of this agreement.
20. **INDEMNIFICATION:** To the fullest extent permitted by law, Lessee shall indemnify, defend and hold harmless the Lessor from and against any and all claims, damages, loss, liability or expense of any kind, which is in any way connected with the equipment by the Lessee or this agreement, including any claims, damages, loss or expense arising out of or resulting from any alleged negligent act or omission of the Lessor.
21. **LIMITATION OF LIABILITY. THE LESSEE WAIVES ANY AND ALL CLAIMS FOR CONSEQUENTIAL, SPECIAL, INDIRECT OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS RENTAL CONTRACT OR THE RENTED EQUIPMENT, EVEN IF LESSOR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. LESSOR'S LIABILITY FOR ANY LOSS OR DAMAGE ARISING OUT OF OR RELATING TO THIS RENTAL CONTRACT OR THE RENTED EQUIPMENT SHALL BE LIMITED TO ANY DOLLAR AMOUNT ACTUALLY PAID BY LESSEE TO LESSOR (NOT INCLUDING ANY DEPOSIT) UNDER THIS RENTAL CONTRACT. THE LIMITATIONS OF LIABILITY SET FORTH HEREIN APPLY REGARDLESS OF THE NATURE OF THE CLAIM, WHETHER ARISING IN CONTRACT OR TORT, NEGLIGENCE, GROSS NEGLIGENCE, STRICT LIABILITY, FUNDAMENTAL BREACH, INTELLECTUAL PROPERTY OR OTHERWISE.**