



19152 | Germanna Highway | Culpeper, VA | 22701

RENTAL AND LEASE AGREEMENT TERMS AND CONDITIONS

Condition of Equipment

Lessee acknowledges that the Equipment has been examined Lessee, and that the Equipment is being received in good physical and mechanical condition. Lessee knows that the Equipment is in a USED condition. As a result of prior use, Lessee understands that the Equipment is NOT in the same condition as it was when new and that the Equipment may not operate as safely, efficiently, or effectively as if it were new.

No Warranties

THE ONLY EXPRESS WARRANTY IS THAT OF THE MANUFACTURER, IF ANY, AND NO ORAL REPRESENTATIONS OR WARRANTIES OF ANY KIND SHALL BE BINDING ON THE LESSOR. THERE IS NO WARRANTY OR REPRESENTATION THAT THE EQUIPMENT IS FIT FOR THE LESSEE'S PARTICULAR USE OR PURPOSE, OR THAT IT IS FREE FROM LATENT DEFECTS. ALL USED EQUIPMENT IS ACCEPTED BY LESSEE "AS IS." LESSEE ACCEPTS THE USED EQUIPMENT IN ITS CURRENT CONDITION, WITH ALL FAULTS, WITHOUT REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED AS TO ITS CONDITION.

Indemnification

Lessee agrees to reimburse, indemnify, hold harmless and defend, at Lessee's expense, the Lessor, against all losses, liabilities, damage, injuries, penalties, demands, costs, attorney's fees, fines, claims or settlements, including, without limitation, a bodily injury, death, property damage or other damage arising out of a breach of this **agreement**, Lessee's violation of any applicable regulations, possession, use, operation, erection, dismantling, servicing or transport involving the Equipment.

Applicable Law

Lessee is responsible for complying with all applicable law with regard to the Equipment.

This **agreement** shall be governed and interpreted pursuant to the laws of the Commonwealth of Virginia.

Risk of Loss

The execution of this **Rental Agreement** by Lessee constitutes a transfer of all risk of loss to Lessee for all damages to the Equipment, in transit or otherwise. Lessee is solely responsible for and agrees to pay to Lessor the full repair or replacement value, from any cause whatsoever, including Acts of God, and further agrees to pay all impound fees, claim administration fees, diminishment in value, towing, storage or other costs incurred by Lessor to recover the Equipment. Use of the Equipment by the Lessee, Lessee's authorized operators or persons other than Lessee shall be at the sole risk of the Lessee.

Title

Lessor will retain the title to the Equipment, and reserves a security interest in the Equipment and all proceeds therefrom.

Insurance

Physical Damage to Equipment. Lessee must provide to Lessor, at the time the Equipment is rented, a certificate of insurance naming Lessor as a loss payee and/or additional insured on said certificate evidencing coverage for physical damage to the Equipment. Such physical damage insurance covering the Equipment may not be canceled or materially modified except upon twenty (20) days prior written notice to the Lessor.

Bodily Injury/Property Damage; Responsibility to Third Parties. In addition to the foregoing physical damage insurance for the Equipment, Lessee will, at Lessee's expense, at all times during the term of this **Lease Agreement**, maintain in force a commercial general liability insurance policy covering bodily injury/property damage liability on the Equipment in an amount not less than One Million Dollars (\$1,000,000) combined single limit. Such third-party liability coverage shall be primary, and not excess or on a contributory basis, and shall provide coverage for liability for injuries and/or damages sustained by any person or persons, agents or employees of the Lessee, and Lessee's indemnity obligations hereunder. Lessee agrees to abide by all of the terms and conditions of said insurance. In the event of a loss, Lessee, its agents and employees will cooperate fully with the Lessor and Lessee's insurer in the investigation, prosecution and/or defense of any claim or suit arising therefrom and will do nothing to impair or invalidate the applicable insurance coverage. The Lessor does not waive any claims or rights hereunder. The aforesaid Lessee insurance obligation in no way limits the Lessee's ultimate liability hereunder. The Lessor does not provide, extend or afford any insurance coverage to the Lessee, any passenger or any Authorized Operator of the Equipment under this **Rental Agreement**.

Power of Attorney. The Lessee hereby grants a Limited Power of Attorney to the Lessor and appoints the Lessor as its attorney-in-fact to present insurance claims for property damage to the Lessee's insurance carrier if the Equipment is damaged during the term of this **Lease Agreement**, and to endorse the Lessee's name on insurance payments for charges or damages. The power of attorney shall be deemed to be coupled with an interest and irrevocable.

Notice of Damage, Loss or Accident

Accidents, loss, theft, damage, or failure of the Equipment must be reported immediately to the Lessor by telephone, facsimile transmission, e-mail or by hand delivery or first-class mail, postage prepaid. If notice is by telephone, a written notice shall be sent to Lessor within 24 hours of the initial report. Notice of accident, theft, or other offense shall be immediately reported to the appropriate governmental authorities. The Lessee and/or its agents, employees and Authorized Operators must provide the Lessor and all appropriate governmental authorities with complete information and assistance in the investigation and prosecution of any matter arising from such accident, loss, theft, or damage. The Lessee shall immediately inform the Lessor in writing of the delivery of every process, pleading or paper relating to any claims, suits and proceedings and shall cooperate with the Lessor in all manners connected with any claims or suits. A copy of any such process, pleading, or other document relating to any claims, suits, or proceedings shall be attached to any notice required hereunder.

Ownership; Operation

Lessee acknowledges that the Equipment is the property of the Lessor. The Lessee agrees that only the Lessee's employees and agents, herein referred to as "Authorized Operators," may use or operate the Equipment. Lessor must ensure that all Authorized Operators must be at least the age of majority by law, must be properly trained and qualified to operate the Equipment, and have a valid Operator's license to operate the Equipment and be in compliance with the law. Any person operating the Equipment shall be conclusively presumed to be authorized to operate the Equipment by the Lessee, and such operation binds the Lessee under this **Agreement**.

Delivery of Equipment

In no event shall the Lessor be liable for any damages arising out of delays in the picking up of the Equipment by Lessee from any cause whatsoever. At the termination of this **Lease** the Lessee shall deliver the Equipment to the Lessor, at Lessee's expense; the Lessor shall not be responsible for the Equipment until the Equipment is returned to Lessor's property or premises.

Assignment

Lessee is prohibited from subletting, assigning, altering, or disposing of the Equipment.

Use of the Equipment

Lessee assumes full responsibility for any damage to, destruction or loss of property due to the use of the Equipment. Lessee agrees and acknowledges that use around or in or with any hazardous materials or substances and/or toxic materials is strictly prohibited. Lessee agrees to operate the Equipment only in accordance with the manufacturer's rated capacity and operating instructions.

Taxes

During the term of this **Lease**, Lessee shall pay promptly when due all state and county taxes imposed on the Equipment, including, but not limited to, any sales, use, **rental** and personal property taxes, which amounts shall be deemed to be additional rent hereunder.

Maintenance; Repairs

Lessor shall provide the **leased** Equipment in AS IS condition. Lessee shall provide, at Lessee's costs and expense, all repair and maintenance as if Lessee were the owner of the Equipment, including, but not limited to: (1) all preventative and/or necessary maintenance, replacement parts and repair necessitated by ordinary wear and tear to maintain the Equipment in good repair and operating condition; (2) necessary oil and lubrication; (3) necessary tires and tubes; (4) periodic exterior washing and maintenance inspection; and (5) any emergency service, repairs, replacement, and towing associated with the breakdown or disabling of the Equipment.

Default

If any monthly installment of rent as herein called for, remains overdue and unpaid for thirty days (30) days, Lessor shall impose a penalty of twelve percent (12%) of the monthly **rental** amount for each month overdue. If any monthly installment of rent and interest as herein called for remain overdue and unpaid for a period of thirty days, Lessor may, at its option, at any time during such default, declare this **lease** terminated and take possession of the Equipment.

Events of Default

Lessee shall be in default of this **Lease** if Lessee fails to pay any rent when due; if Lessee breaches any of the terms of this **Lease**; if Lessee becomes insolvent, ceases doing business, or if a petition for bankruptcy is filed by or against the Lessee; or if Lessee is in default with any other **agreement** with the Lessor.

In addition, Lessee is in default of this **Lease** if the Equipment is used:

- (1) to carry persons for hire;
- (2) to carry unauthorized persons and/or to carry persons other than in the cab of the Equipment;
- (3) to carry property for hire, unless the Lessee obtains all necessary permits and licenses;
- (4) to transport any explosives or hazardous materials;
- (5) in any race, test, contest, or for any illegal purpose;
- (6) by any person under the age of majority, or by anyone who has given a fictitious name or false age or address;
- (7) by any person, if there is reasonable evidence that they were under the influence of any narcotics, intoxicants, or drugs;
- (8) outside the Commonwealth of Virginia, unless the Lessor otherwise agrees in writing;
- (9) under the authority of a license other than the Lessee's license, and Lessee hereby warrants that the licenses shown to Lessor at the time of **rental**, if applicable, are fully valid;
- (10) in a reckless or imprudent manner or if the Equipment is deliberately damaged;
- (11) if Lessee misrepresents the facts to the Lessor pertaining to the use or operation of the Equipment; or,
- (12) if the Equipment is used in or around or with or becomes contaminated by hazardous substances, materials, or toxic materials.

Remedies

In addition to remedies set forth in this **Lease**, if Default occurs, Lessor may do one or more of the following: (1) Lessor may unilaterally cancel and terminate this **Lease**; (2) Lessor may require Lessee to immediately pay Lessor, as compensation for the loss of Lessor's bargain, and not as a penalty, a sum equal to the present value of all unpaid monthly payments for the remainder of the term of this **Lease** as set forth herein; (3) Lessor may require Lessee to deliver the Equipment to Lessor, at Lessee's expense; (4) Lessor or Lessor's agent may peacefully repossess the Equipment without court order and Lessee will not make any claims against Lessor for damages or trespass or for any other reason in any court; and (5) Lessor may exercise any other right or remedy available to it at law or in equity. Lessee agrees to pay all of Lessor's costs in enforcing Lessor's rights against Lessee, including, but not limited to, reasonable attorney's fees.

Miscellaneous Provisions

(1) The written **Rental Agreement** represents the parties' full and complete understanding; there are no other **agreements**, either written or oral.

(2) This **agreement** may be modified or altered only by a writing signed by both parties.

(3) In the event any provision or clause of this **agreement** is deemed unenforceable, invalid or void by a court of competent jurisdiction, the remaining provisions of this **Lease** shall remain in full force and effect.

(4) This **agreement** is binding upon the parties, their successors and assigns.

(5) Both parties participated in the drafting of this **Lease Agreement**, there shall be no presumption against either party as the "drafter" in the event of a dispute over the construction of this **Rental Agreement**.

If you have any questions or concerns about **McClain & Co., Inc.'s Rental and Lease Agreement Terms and Conditions**, call us toll-free [\(888\) 889.1284](tel:8888891284); or email us at info@mcclain1.com; or write to us at:

McClain & Co., Inc.

19152 Germanna Hwy

Culpeper, VA 22701

Attn.: David Carpio, Vice-President

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