enabling global infrastructure

Terms & Conditions

PLEASE READ THIS DOCUMENT CAREFULLY - IT CONTAINS VERY IMPORTANT INFORMATION ABOUT YOUR RIGHTS AND OBLIGATIONS, AS WELL AS LIMITATIONS AND EXCLUSIONS THAT MAY APPLY TO YOU.

This Quotation and any supplemental documentation provided by Mabey Inc. ("Mabey") to you ("you" and/or "Customer") hereunder (collectively, this "Agreement") contain the terms and conditions that apply to the rental of shoring equipment from Mabey as described in this Agreement (the "Equipment"). By accepting delivery of the Equipment, you agree to be bound by and accept this Agreement.

1. The provisions in this Agreement constitute all of the terms and conditions between Mabey and Customer. This Agreement may not be altered, supplemented, or amended by the use of any other document(s), except as otherwise agreed to in a written agreement signed by Mabey. Any attempt to alter, supplement or amend this Agreement, or to enter a purchase order or similar document for the Equipment, which are subject to additional terms and conditions inconsistent with the terms and conditions contained in this Agreement are null and void and of no legal effect, and are hereby expressly rejected by Mabey and, accordingly, Customer's order for the Equipment shall be governed solely by the terms and conditions contained herein.

2. Unless expressly stated elsewhere in this Agreement, rent shall be computed from the date of first delivery and will continue until all Equipment is returned to a Mabey yard or an off-hire number is issued, whichever occurs first. In the event that any circumstances arise which might prevent the use of the Equipment, cause unanticipated delays in the use of the Equipment, or make the Equipment unusable or unnecessary for any period of time, there will be no abatement of rent for any such delay and you acknowledge and agree that you remain responsible for the full rental charge for the time period described herein.

3. If the Agreement provides for return haulage, you must provide no less than two (2) business days' notice to Mabey of the termination of your use of the Equipment in order to allow sufficient time for transportation arrangements to be made.

4. This Agreement does not include, and Mabey has no responsibility hereunder regarding, the unloading or loading of the Equipment from or onto trucks at the job site, or the assembly, installation, removal or dismantling of the Equipment. You acknowledge and agree that you will be solely responsible for the assembly, installation, maintenance, use, removal and dismantling of the Equipment in conformity with industry-standard safe practice and as detailed in the job-specific drawings and/or printed instructions issued by Mabey to you. You also acknowledge and agree that you will assemble, install, maintain, use, remove and dismantle the Equipment in compliance with the requirements of all laws and all federal, state and local codes, ordinances and regulations. You acknowledge that Mabey has not and will not seek or obtain permitting that may be required under any federal, state and local codes, ordinances and regulations. In order to assure proper fit, safety and compliance with the foregoing requirements, you shall not intermingle, connect or use the Equipment with components not specifically supplied by Mabey under this Agreement (except as specifically necessary for the installation of the Equipment). The Equipment may not be moved from one job to another, nor may the Equipment be loaned or leased to any third party without Mabey's express written consent.

5. You must inspect the Equipment upon receipt and notify Mabey within two (2) business days of any defective Equipment. You agree to provide for and/or arrange, within twenty-four (24) hours of Mabey's request, suitable access to the job site in order for Mabey representative(s) to inspect the Equipment. You may not engage in any effort to repair any damaged or defective Equipment as you will be responsible for any resulting damage to the Equipment and any and all cost associated to repair same.

6. It is agreed that you will assume all responsibility for the Equipment while it is in your possession, and you hereby agree to indemnify and hold Mabey, its directors, officers, employees and agents, harmless from and against any and all claims, liabilities, damages, losses, costs, expenses and fees as a result of any claim or cause of action brought against any of the foregoing that arises out of, relates to or results from your use of the Equipment, including without limitation, anticipated and actual site conditions, the specifications or set of specifications you supplied to Mabey regarding your intended use of the Equipment, or the assembly, installation, removal or dismantling of the Equipment. Without limiting the foregoing, you expressly acknowledge that Mabey shall not be liable for, and you assume all risk of, inaccurate or unsuitable specifications, site conditions or information provided, selected or designated by you or any third party.

7. If Mabey provides the services of a technician as an advisor at the job site, the technician's role is limited to providing to your specifically-designated representative assistance regarding the safe and proper assembly, installation and use of the Equipment, using the instructions provided with the Equipment and any job-specific design drawings issued by Mabey; the technician's assistance may not be substituted for your own expertise (and/or the expertise provided by any third party) concerning the safe and proper assembly, installation, maintenance, use, removal and dismantling of the Equipment and, accordingly, you are solely responsible for the safe and proper assembly, installation, use, removal and dismantling of the Equipment notwithstanding any services provided by such technician.

8. Upon completion of your use of the Equipment, it is to be returned to Mabey complete and in the same condition as delivered, ordinary wear and tear excepted. You will pay for any whole or part of the Equipment that is lost or damaged by any cause whatsoever (excepting ordinary wear and tear), including, but not limited to, the cost of repairing or replacing the lost or damaged Equipment. Your responsibility for any and all loss or damage to the Equipment includes, but is not limited to, loss and/or damage which may be caused, in whole or in part, by the acts or omissions of any third party hired or contracted to assemble, install, handle, maintain, remove or disassemble the Equipment.

9. Subject to prior approval of your credit application, payment is to be made within thirty (30) days from the date of Mabey's invoice, unless otherwise specified. Unpaid balances over sixty (60) days will be subject to interest thereon at a periodic rate of one percent (1%) per month, which equals twelve percent (12%) per annum, or if such rate is prohibited under applicable law, then at such maximum rate as is permitted under applicable law. Prompt payment is not subject to and we will not accept delay in payment caused by, related to or conditioned by receipt by you of payment from a third party. Customer shall pay all costs, including reasonable attorney's fees, incurred by Mabey in connection with the collection of Customer's past due accounts.

10. Mabey warrants only that the Equipment and any job-specific design drawings issued by Mabey hereunder shall be substantially in accordance with the site conditions descriptions, specifications or set of specifications you (or any third party on your behalf) supplied to Mabey regarding the intended use of the Equipment. You acknowledge that Mabey expressly disclaims any warranty, and shall not be liable for, and Customer assumes all risk of, inaccurate or unsuitable specifications, site conditions or information provided, selected or designated by you or any third party. Mabey will furnish replacement parts or repair any parts that prove to be defective when used under normal conditions and service and in accordance with this Agreement (including any drawings and/or printed instructions issued by Mabey in connection herewith). This shall constitute the sole and exclusive remedy for a breach by Mabey of any and all warranties, and you hereby expressly waive all other remedies. **MABEY HEREBY DISCLAIMS ALL WARRANTIES NOT OTHERWISE SET FORTH HEREIN, WHETHER EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ACCURACY OR INFORMATION CONTENT.**

YOU AGREE THAT FOR ANY LIABILITY RELATED TO THE RENTAL OF THE EQUIPMENT, MABEY IS NOT LIABLE OR RESPONSIBLE FOR ANY AMOUNT OF DAMAGES ABOVE THE AGGREGATE DOLLAR AMOUNT PAID BY YOU FOR THE RENTAL OF THE EQUIPMENT UNDER THIS AGREEMENT. UNDER NO CIRCUMSTANCES SHALL MABEY, ITS DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS BE LIABLE TO YOU OR ANY OTHER PARTY FOR INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOST REVENUES OR PROFITS OR LOSS OF BUSINESS, EXTRA LABOR COSTS, BACKCHARGES, OFFSETS AND LIQUIDATED DAMAGES) ARISING FROM THE RENTAL OF THE EQUIPMENT, WHETHER RESULTING FROM THE USE, BREAKDOWN OR MALFUNCTIONING OF THE EQUIPMENT OR ANY OTHER THIRD-PARTY EQUIPMENT ON SITE, WHETHER DUE TO A BREACH OF CONTRACT, BREACH OF WARRANTY, OR THE NEGLIGENCE OF MABEY OR ANY OTHER PARTY, EVEN IF MABEY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT THAT THE APPLICABLE JURISDICTION LIMITS MABEY'S ABILITY TO DISCLAIM ANY WARRANTIES, THIS DISCLAIMER SHALL BE EFFECTIVE TO THE MAXIMUM EXTENT PERMITTED BY LAW. Mabey shall not be liable for any damage or penalty for delays in delivery or for non-delivery of the Equipment, in whole or in part, caused by the occurrence of any event beyond the control of either Mabey or its suppliers, including without limitation acts of God, acts or omissions of Customer, acts of civil or military authorities, government regulations or fires, floods, epidemics, quarantine restrictions, war, riots, strikes, differences with workmen, accidents to machinery, inability to obtain necessary labor, materials or manufacturing facilities, delay in transportation, defaults of Mabey's suppliers, failure of or delay in furnishing correct or complete information by Customer with respect to location or other details of work to be performed hereunder, impossibility or impracticability of performance or any other cause or causes, whether or not similar to the foregoing. In the event of any delay caused as aforesaid, the completion shall be extended for a period equal to any such delay, and this Agreement shall not be void or voidable as a result of any such delay.

11. Mabey must be notified immediately, in writing, prior to any change in work, extra work, or change in job or site circumstances that may potentially involve changes in the intended use of the Equipment or any deviation from the job-specific design drawings issued by Mabey. You agree not to effect any change as described in this paragraph without first obtaining Mabey's express written consent. Mabey is not responsible (for damages or otherwise) for your breach of or failure to adhere to any the foregoing.

12. Ownership of, and all rights with respect to, the Equipment and any additional goods or services provided by Mabey hereunder, including all creative ideas incorporated therein, all preliminary materials, sketches, layouts, tooling, molds, dies, negatives, photographs, designs, blueprints or specifications relating thereto is vested exclusively in Mabey, and the foregoing and any information derived therefrom or otherwise communicated by Mabey to Customer shall be regarded as strictly confidential and shall not, without the written consent of Mabey, be provided to or disclosed to any third party (except solely for purposes of the assembly, installation, maintenance, use, removal and dismantling of the Equipment, and such third-party shall deemed subject to the foregoing confidentiality restrictions); provided, however, that the foregoing shall not apply to plans, drawings, designs and specifications supplied by Customer to Mabey. Regarding any engineering or other drawings provided to you by Mabey, any use of the said drawings by any party which is inconsistent with the terms and conditions of this Agreement is expressly prohibited. Mabey expressly reserves its copyright and all intellectual property and other rights in the drawings. No portion of the drawings are to be reproduced, changed or otherwise used in any form or manner whatsoever which is inconsistent with this Agreement nor are they to be deemed assigned to any person or entity without obtaining the express prior written permission and consent of Mabey. You agree to indemnify and hold Mabey, its employees, officers, directors and agents, harmless from and against any and all damages which arise out of or in connection with any violation of the foregoing.

13. You shall carry insurance on the full value of the Equipment, against loss by fire, theft and other insurable hazards, for Mabey's benefit. Carrying such insurance shall not relieve you of responsibility for safe keeping of the Equipment or liability for loss or damage thereto. In addition, you shall carry public liability and property damage insurance and shall hold Mabey, its employees, officers, directors and agents, harmless from and against any and all damages, liability, loss or expense on account of injury to persons, including death, or damage to property, in the event such injury, death or damage arises out of, in whole or in part, your acts or omissions or the acts/omissions of your subcontractors, employees, agents, or third parties.

14. In case of default of any installment of rent when due, or the failure to take delivery hereunder, or upon the breach of any other condition of this Agreement, or if Mabey shall deem the Equipment to be in jeopardy, or if a petition in bankruptcy, insolvency or reorganization is filed by or against you, or if you make an assignment for the benefit of creditors, or if there occurs a material adverse change in your financial condition, we may exercise and shall be entitled to any one or more of the following remedies or any other remedy provided at law or in equity: (a) the full amount of rent then unpaid hereunder shall become due and payable; (b) without notice or demand and without legal process, we may make entry and take possession of the Equipment wherever it may be located; (c) to recover all rents and other monies due and to become due hereunder including, but not limited to, payment for all engineering or other work performed; and (d) any other legal or equitable remedies. You hereby waive any and all damages occasioned by any self-help or repossession of the Equipment by Mabey or its authorized representative(s). Upon default, all of your rights in the Equipment shall terminate absolute, but you shall not be released from your obligations until the full amount of rental unpaid and all other monetary obligations to Mabey have been paid in full.

15. For Sales only, for a period of 3 months after the delivery of the first shipment Mabey will furnish replacement parts or repair any parts that prove to be defective when used under normal conditions and service and in accordance with the drawings and/or printed instructions issued by us. This shall constitute the sole and exclusive remedy for the breach of any and all warranties, and you hereby expressly waive all other remedies. We shall not be held liable for any special, indirect or consequential damages whatsoever, including, but not limited to, loss of profit, extra labor cost, delays or any other claims arising out of or resulting from the use, loss of use, breakdown or malfunctioning of the equipment or any other on-site equipment. We shall not be held liable for loss or damage arising from late delivery or non-fulfillment of contract by reason of acts of God, fire, labor disturbances, strikes, delays in transportation, accidents, war, civil or military authority, or any other cause unavoidable or beyond our reasonable control.

16. This Agreement shall be construed in accordance with and governed by the internal laws of Maryland, without reference to its conflict of laws principles. Should any part or provision of this Agreement be found by the courts to be illegal or in conflict with any law of the State of Maryland or otherwise, the validity of the remaining provisions hereof shall not be affected thereby. Mabey's failure to exercise any of its rights hereunder shall not constitute a waiver of the right to exercise the same at any time or times.

17. You hereby submit to the jurisdiction of the state courts of Maryland and the United States District Court for the District of Maryland, and agree to subject all of your property to attachment in execution and enforcement of any judgment Mabey may obtain against you pursuant to this Agreement to the extent not otherwise prohibited by law. You further agree that to the extent not otherwise prohibited by law, venue is proper in any state court of Maryland and in the United States District Court of Maryland. You hereby waive personal service of process and agree that a Summons and Complaint commencing an action or proceeding in any such court shall be properly served and shall confer personal jurisdiction once served by registered or certified mail, return receipt requested. **YOU HEREBY EXPRESSLY WAIVE ANY RIGHT TO A TRIAL BY A JURY IN ANY SUIT, ACTION OR PROCEEDING BROUGHT BY EITHER PARTY IN CONNECTION WITH THIS AGREEMENT.**