

# TERMS AND CONDITIONS

## PLEASE READ CAREFULLY

- 1. Definitions:** "Company" refers to M&M Services, Inc.. "Customer" is defined as the person or entity identified as such on the first page of this agreement, including any representative, agent, officer or employee thereof. "Equipment" refers to any one or more of the items identified as such on the first page of this agreement, and shall include any accessories, attachments or other similar items delivered to Customer.
- 2. Acceptance:** Customer shall be deemed to have accepted these terms and conditions upon the earliest to occur of: (a) two business days after receipt of an invoice from Company; (b) delivery of items of equipment ("Equipment") identified in this invoice to the site designated in this invoice (the "Site") and use or acceptance thereof; or (c) acknowledgment or other conduct of Customer indicating acceptance. These terms and conditions shall supersede any inconsistent terms of any purchase order or other documents of Customer.
- 3. Authority to Sign:** Any individual signing this contract represents and warrants that he or she is of legal age and has the authority and power to sign this agreement as or for the Customer.
- 4. Payment Terms:** All agreements are subject to approval by Company. Customer shall pay all charges by Company during the term (the "Period") shown in this invoice. All Company invoices are due and payable upon Customer's receipt of the invoice unless otherwise stated in the "Terms" section on the front side of this invoice. Customer shall be liable to Company for interest at the rate of 1.5% per month, or such lesser rate as may be the maximum lawful rate from time to time, on all overdue amounts. Customer shall pay all additional charges for services separately requested by Customer or made necessary by Customer's breach of these Terms and Conditions, including but not limited to, moving/relocation charges, special service charges, and special delivery and removal charges. In the event Customer's account becomes delinquent, Customer agrees to pay Company all reasonable costs of collection, court, attorney's fees and other expenses incurred by Company in the collection of any charges due under this agreement or in connection with the enforcement of its terms.
- 5. Service:** The Company offers servicing as an option on all portable restrooms.
- 6. Failure to Deliver:** Customer releases and discharges Company from any and all liability or damages (including consequential and special damages) which might be caused by Company's failure or inability to deliver any Equipment by any specified date or time.
- 7. Equipment Placement:** Customer warrants and represents that it has exercised due diligence and care in the selection of the location it has designated for the placing of debris boxes, portable toilets, portable storage containers and any other Equipment provided by Company, and further agrees to give directions and Supervise the placement of such debris boxes, portable toilets, portable storage containers, and any other Equipment.
- 8. Equipment Responsibility:** Company will deliver the Equipment to the Site at the commencement of the Period and will remove the Equipment at the end of the Period. If servicing of equipment has been ordered by Customer, Company will perform the required service on the service day(s) scheduled by Company. In the event Company is unable to service the Equipment on the service day due to a holiday, inclement weather, or other interfering circumstances, Company shall service the Equipment on the earliest business day, excluding Saturdays and Sundays, available in accordance with Company's other service commitments. Company shall be granted access to the Equipment at any time for any servicing, maintenance or removal of Equipment. Customer shall not remove the Equipment from the Site, and shall not move the Equipment on the Site without written permission from Company. Customer shall not modify the equipment. Customer shall not sell, rent, lease or otherwise lose possession of the Equipment, nor shall Customer permit any lien to be placed on the Equipment. Customer acknowledges that Company has no control over the use of the Equipment by Customer, and Customer agrees that from the time of delivery until the time of removal of Equipment, except for any servicing time performed by Company, that Equipment is in the Customer's possession and control. Customer agrees to comply, at Customer's sole expense, with any and all applicable municipal, county, state, federal or quasi-governmental laws, ordinances, regulations and guidelines.
- 9. Damage, Destruction, & Theft:** Customer shall be liable for any loss, damage, destruction, and/or theft, except for reasonable wear and tear, of any Equipment, and for any losses resulting from any willful or grossly negligent acts or omissions of Customer or any of its agents, servants and employees. In the event of any loss of or damage to the Equipment, Customer shall promptly notify Company of such loss or damage and shall provide Company with copies of all reports relating to such loss or damage, including police reports, informal investigation reports, and insurance reports. Customer shall exercise all rights available to it under its liability insurance policy, take all actions necessary to process such claim, and assign such claim and pay any and all proceeds from such insurance to Company. Customer shall pay Company the actual cost of repair or replacement cost thereof, and in addition thereto, for Company's loss of use of the Equipment.
- 10. Equipment Contamination:** While portable restroom units are in Customer's possession, Customer shall prevent any contamination of such units with or from radioactive, volatile, flammable, explosive, toxic or hazardous materials (including oils, paints, adhesives and solvents). Company will not remove any waste other than DSW from portable restrooms and debris boxes and storage containers ("Other Waste"). In the event Other Waste is found in the Equipment, Customer shall arrange and pay for separate removal of such Other Waste. Until such Other Waste is removed, Customer may not terminate the Period and Customer is liable for all charges accrued during such period.
- 11. Liability:** Customer agrees to defend, indemnify and hold Company harmless to the maximum extent permitted by law from and for all claims, lawsuits, damages, expenses and other losses arising out of the rental or use of Equipment delivered to or rented by Customer. Customer's obligation will apply to the extent permitted by law to all accidents or incidents regardless of whether same occur as a result of Customer's or third party's negligence, fault or other legal liability. Customer will have no obligation to defend, indemnify or hold harmless Company if the accident or incident arises out of the sole negligence or willful misconduct of Company. Company, its officers, directors, employees and agents shall not, under any circumstances, be liable to Customer for consequential, incidental, special, exemplary or punitive damages arising out of or relating to the Equipment. Customer's sole and exclusive remedy for any claims or causes of action arising out of or related to the Equipment shall be to recover from Company direct damages in an amount not to exceed the amount paid by Customer for use of the Equipment.
- 12. Termination:** Company may terminate this agreement and remove the Equipment immediately in the event (a) Customer fails to pay any amount when due to Company, (b) Customer otherwise breaches or rejects any of these Terms and Conditions, (c) there is any loss of or damage to the Equipment, (d) any lien is placed, or is proposed to be placed on any of the Equipment, or (e) a proceeding in bankruptcy or for other protection from creditors is commenced by or against Customer. Company shall not be responsible for loss of any personal property on the Site, which may be caused by removal of any of Company's Equipment pursuant to this paragraph
- 13. Governance:** This agreement shall be governed by and construed in accordance with the laws of the state, shown on this invoice, in which the Company's place of business is located, without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than such state. Each of the parties submits to the jurisdiction of any state or federal court sitting in such state, in any action or proceeding arising out of or relating to this agreement. All claims in respect of the action or proceeding may be heard and determined in any such court. No failure by Company to exercise any right hereunder shall operate as a waiver of any other right hereunder, and a waiver of any right on one occasion shall not constitute a bar to or a waiver of any such right on any future occasion. All modifications to these Terms and Conditions shall be in writing.
- 14. Taxes & Fees:** Customer shall pay any and all taxes, license fees or permit fees arising out of use of the Equipment. Customer shall pay such taxes whether such taxes are shown on this invoice or whether such taxes are later claimed by a governmental authority. In the event of a claim by a governmental authority for taxes related to the Equipment, Customer shall pay to Company such taxes on demand.
- 15. Errors & Omissions:** Company reserves the right to correct any erroneous information that may appear in this invoice or may have appeared in a prior invoice including, without limitation, Customer's name or address, or billing amounts.