

## Contract Terms and Conditions

1. **DEFINITIONS.** “*Equip-Co Unlimited of NY, LLC*” means Equip-Co Unlimited of NY LLC as identified in this Rental Contract from whom the Customer has rented the Equipment. “*Equipment*” means any one or more of the items identified as such in this Rental Contract, and shall include any accessories, attachments or other similar items delivered to Customer, such as air hoses, electric cords, blades, liquid fuel tanks, and nozzles. “*Customer*” means the person or entity identified as such in this Rental Contract, including any representative, agent, officer or employee of Customer. “*Store Location*” means the Equip-Co Unlimited of NY, LLC’s address in paragraph 18 D of this Rental Contract. “*Rental Period*” means the period of time between the “*Date*” the equipment rental begins and when the customer informs Equip-Co to take the machine off of rent.
2. **AUTHORITY TO SIGN.** Any individual signing this Rental Contract represents and warrants that he or she is of legal age, and has the authority and power to sign this Rental Contract on their own behalf or for the Customer.
3. **DISCLAIMER OF WARRANTIES.** Equip-Co Unlimited of NY, LLC makes no warranties, express or implied, as to the merchantability of the equipment or its fitness for any particular purpose. There is no warranty that the equipment is suited for customer’s intended use, or that it is free from defects. Except as may be specifically set forth in this rental contract, Equip-Co Unlimited of NY, LLC disclaims all warranties, either express or implied, made in connection with this rental transaction.
4. **CUSTOMER AGREES TO INDEMNIFY EQUIP-CO UNLIMITED OF NY, LLC.** As Equip-Co Unlimited of NY, LLC has no control over the use of equipment by customer, customer agrees to indemnify and hold Equip-Co Unlimited of NY, LLC harmless from any claims, regardless of whether such claims or actions are founded in whole or part upon any negligent act or omission of Equip-Co Unlimited of NY, LLC, or any person, party or parties, for loss, injury, and damage to person or property arising out of the customer’s possession, use, maintenance or return of equipment, including legal costs incurred in defense of such claims. This indemnity provisional also applies to any claim against Equip-Co Unlimited of NY, LLC based upon strict or product liability causes of action. Further, customer waives, releases, and renounces all claims, rights, and remedies against Equip-Co Unlimited of NY, LLC in tort, contract or otherwise arising out of or in connection with the use, operation, possession, assembly, disassembly, or maintenance of the equipment, for any claims for personal injury, death, loss of use, revenue, or profit from the equipment, any claims of contribution or indemnity against Equip-Co Unlimited of NY, LLC or any other direct, indirect, incidental, or consequential damages. This waiver includes any claim or cause of action based in whole or in part upon Equip-Co Unlimited of NY, LLC’s own negligence or strict or product liability causes of action.
5. **RECEIPT & INSPECTION OF EQUIPMENT.** Customer acknowledges that Customer has inspected the Equipment prior to taking possession thereof, finds it in good working order and repair, and suitable for Customer’s needs. Customer is familiar with the proper operation and use of each item of Equipment. Customer further agrees to note any issues on the delivery receipt or rental agreement prior to signing acceptance of Equipment. Customer’s use of the Equipment and or receipt of this invoice acknowledges Customers’ acceptance of the Equipment and agreement to the Terms and Conditions of this Rental Agreement. Customer has inspected or will inspect all hitches, bolts, safety chains, hauling tongues and other devises and materials used to connect the Equipment to Customer’s towing vehicle, if any. Equip-Co Unlimited of NY, LLC is not responsible for any damage to Customer’s towing vehicle caused by detachable hitches or mirrors.
6. **USE OF EQUIPMENT.** Customer will not use or allow anyone to use the Equipment: (a) for an illegal purpose or in an illegal manner; (b) without a license, if required under any applicable law, or (c) who is not qualified to operate it. **Customer agrees, at Customer’s sole expense and prior to rental, to contact and comply with all applicable municipal, state, and federal laws, local ordinances and regulations (including O.S.H.A. and Dig Safely New York) which may apply to the use of the Equipment. Customer can contact Dig Safely New York by calling 1-800-962-7962.** Customer agrees to check filters, fuel, oil, fluid levels, tire air pressure, to grease all grease points, to clean and visually inspect the Equipment daily and to immediately notify Equip-Co Unlimited of NY, LLC when Equipment needs repair or maintenance. Customer acknowledges and understands that the expense(s) of fuel, grease, oil, and fluids which are used, consumed, and or otherwise depleted during the rental period are the Customer sole responsibility. Customer agrees to contact Equip-Co Unlimited of NY, LLC regarding oil and fluid specifications prior to replacement. Customer acknowledges that Equip-Co Unlimited of NY, LLC has no responsibility to inspect the Equipment while it is in Customer’s possession. Equip-Co Unlimited of NY, LLC shall have the right to inspect and or replace the Equipment with other similar equipment at any time and for any reason.
7. **MALFUNCTIONING EQUIPMENT. Should the Equipment become unsafe, malfunction or require repair, Customer shall immediately cease using the Equipment and immediately notify Equip-Co Unlimited of NY, LLC.** If such condition is the result of normal operation, Equip-Co Unlimited of NY, LLC will repair or replace the Equipment with similar Equipment in working order, if such replacement Equipment is available. Equip-Co Unlimited of NY, LLC has no obligation to repair or replace Equipment rendered inoperable by misuse, abuse or neglect. Customer’s sole remedy for any failure or defect in Equipment shall be the termination of any rental charges accruing after the time of failure. Customer must return the Equipment to the Store Location within 24 hours from the time of defect in order to terminate rental charges.
8. **RETURN OF EQUIPMENT, DAMAGED & LOST EQUIPMENT. At the expiration of the Rental Period, Customer will return the Equipment to the Store Location during Equip-Co Unlimited Rental regular business hours, such Equipment to be in the condition and repair as when delivered to Customer, subject to reasonable wear and tear, as defined below. If an after hours return of Equipment is necessary, Customer must contact Equip-Co Unlimited of NY, LLC for instructions. Customer shall be liable for all damages to and loss of the equipment from the time the Equipment leaves the Store Location until the Equipment is returned to the Store Location, including any damage during transit to and from Customer. In case of the loss or destruction of any equipment, or inability or failure to return same to Equip-Co Unlimited of NY, LLC for any reason whatsoever, Customer will pay Equip-Co Unlimited of NY, LLC the then full replacement list value together with the full rental rate as specified until such Equipment is replaced. If the Equipment is returned in a damaged or excessively worn condition, Customer shall pay Equip-Co Unlimited of NY, LLC the reasonable cost of repair and pay rental on the Equipment at the regular rental rate until all repairs have been completed. Equip-Co Unlimited of NY, LLC shall be under no obligation to commence repair work until Customer has paid to Equip-Co Unlimited of NY, LLC the estimated cost therefore.**
9. **REASONABLE WEAR AND TEAR.** Reasonable wear and tear of the Equipment shall mean only the normal deterioration of the Equipment caused by ordinary and reasonable use on a one shift (8 hours per day, 40 hours per week) basis. The following shall not be deemed reasonable wear and tear: (a) damage resulting from lack of lubrication or maintenance of necessary oil, water and air pressure levels; (b) damage resulting from any collision, overturning, or improper operation, including overloading or exceeding the rated capacity of the Equipment; (c) damage in the nature of dents, scratching, bending, tearing, staining, and misalignment to or of the Equipment or any part thereof; (d) wear resulting from the use in excess of shifts for which rented; and (e) any other damage to the Equipment which is not considered ordinary and reasonable in the equipment rental industry. Repairs to the Equipment shall be made to the reasonable satisfaction of Equip-Co Unlimited of NY, LLC and in a manner which will not adversely affect the operation, manufacturer’s design or value of the Equipment.
10. **RENTAL PERIOD & CALCULATIONS OF CHARGES. Rental charges commence when the Equipment leaves the Store Location and end when the Equipment is returned to the Store Location.** Rental rates are for normal usage based on an 8 hour day, 40 hours per week, and 160 hours per month. On power equipment, operations in excess of one shift will be at Equip-Co Unlimited of NY, LLC’s standard premium rental rates. Customer will truthfully and accurately certify to Equip-Co Unlimited Rental the number of shifts the Equipment was operated. Customer’s right to possess the Equipment terminates on the expiration of the Rental Period and retention or possession after this time is a material breach of this Rental Contract. **TIME IS OF THE ESSENCE.**
11. **SECURITY / DEPOSIT.** Equip-Co Unlimited of NY, LLC at its sole discretion, may require Customer to put on file a copy of a current Driver’s License and a valid Credit Card. In addition to securing the payment of rental charges hereunder, Customer agrees that any rental deposit shall be deemed to be a guaranty by Customer of the full and complete performance of each and all of the terms, covenants, and agreements to be performed by Customer hereunder, and in the event of any breach by the Customer, the deposit will be credited against any damages, cost or expense incurred by Equip-Co Unlimited of NY, LLC as a result of the breach.
12. **PAYMENT.** All amounts due hereunder shall be payable in full at the beginning of the Rental Period, pick-up of the Equipment at Equip-Co Unlimited of NY, LLC, or according to the terms of Equip-Co Unlimited of NY, LLC’s invoice to Customer, whichever comes first. Customer acknowledges that timely payment of rental charges is essential to Equip-Co Unlimited of NY, LLC’s business operations and it would be impractical and extremely difficult to fix the actual damages caused by late payment. Customer and Equip-Co Unlimited of NY, LLC agree that there shall be added to all past due rental charges a late payment fee equal to the lesser of 1.5% per month (18% per annum) on any such past due amounts, or the maximum amount allowed by applicable law. **Customer agrees and hereby authorizes Equip-Co Unlimited of NY, LLC to charge any amount due Equip-Co Unlimited of NY, LLC against any credit card used in connection with the rental or credit card put on file, for any outstanding balance due Equip-Co Unlimited of NY, LLC.**
13. **FAILURE TO DELIVER.** Customer releases and discharges Equip-Co Unlimited of NY, LLC from any and all liability or damages (including consequential and special damages) which might be caused by Equip-Co Unlimited Rental’s failure or inability to deliver any Equipment by any specified date or time.
14. **TITLE / NO PURCHASE OPTION / NO LIENS.** This Rental Contract is not a contract of sale, and title to the Equipment shall at all times remain with Equip-Co Unlimited of NY, LLC. Unless covered by a specific supplemental agreement signed by Equip-Co Unlimited of NY, LLC, the Customer has no option or right to purchase the Equipment. Customer shall keep the Equipment free and clear of all mechanics and other liens and encumbrances.
15. **TIRE/TUBE REPAIR OR REPLACEMENT.** Repair or replacement of tires, tubes, and stems is the responsibility of the Customer and is not included.

16. **DEFAULT.** Customer shall be deemed to be in default should Customer in any way fail to pay any amount when due hereunder, or to perform, observe or keep any provision of this Rental Contract, or should the Customer become "insolvent" (as defined herein), or should Equip-Co Unlimited of NY, LLC anticipate the Customer may become insolvent or that Customer may otherwise become in default. If Customer is in default, Equip-Co Unlimited of NY, LLC may do any one or more of the following; (a) terminate the Rental Period; (b) declare the entire amounts due hereunder immediately due and payable and commence legal action therefore; (c) cause Equip-Co Unlimited of NY, LLC's employees or agents, without notice or legal process, to enter upon Customer's property to take all action necessary to retake and repossess the Equipment, in which event Customer waives all claims for damages and losses, physical and pecuniary, caused thereby and shall pay all costs and expenses incurred by Equip-Co Unlimited of NY, LLC in retaking and repossessing; or (d) pursue any other remedies available by law. The Customer shall be considered "insolvent" if the Customer (i) shall generally not pay, or shall be unable to pay, or shall admit its inability or anticipated inability to pay its debts as such debts become due; or (ii) shall make an assignment for the benefit of creditors, or petition or apply to any tribunal for the appointment of a custodian, receiver, or trustee for it or a substantial part of its assets; or (iii) shall commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debts, dissolution, or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or (iv) shall have had any such petition or application filed or such proceeding commenced against it in which an order for relief is entered or an adjustment or application is made; or (v) shall take any action indicating its consent to, approval of, or acquiescence in any such petition, application, proceeding, or order for relief or the appointment of a custodian, receiver, or trustee for all or any substantial part of its properties. Further, Customer agrees and hereby authorizes Equip-Co Unlimited Rental to charge any amount due Equip-Co Unlimited of NY, LLC against any credit card used in connection with the rental or credit card put on file.
17. **CUSTOMER'S INSURANCE COVERAGE.** Customer agrees to maintain and carry, at its sole cost, adequate liability, physical damage, public liability, property damage and casualty insurance for the full replacement cost of the Equipment, including all risks of loss or damage covered by the standard extended coverage endorsement, to cover any damage or liability arising from the handling, transportation, maintenance, operation, possession or use of the Equipment during the entire Rental Period. When requested, Customer shall supply to Equip-Co Unlimited of NY, LLC proof of such insurance by Certificate of Insurance clearly setting forth the coverage for the Equipment and naming Equip-Co Unlimited of NY, LLC as loss payee and additional insured and shall waive rights or recovery and subrogation against Equip-Co Unlimited of NY, LLC; such insurance and evidence thereof to be in amounts and form satisfactory to Equip-Co Unlimited of NY, LLC. The Certificate of Insurance and policy shall provide that Equip-Co Unlimited of NY, LLC shall receive not less than 30 days' notice prior to any cancellation of the insurance required hereunder. Failure by customer to maintain and or carry such coverage does and will not exonerate customer from any and all liabilities as stated in paragraph 6, 7, 8, 9, 12, 15, 16 and 17.
18. **DAMAGE WAIVER:**  
If the Customer does not maintain sufficient "all risk" physical damage coverage, Customer may elect to purchase a Damage Waiver ("DW") from Equip-Co Unlimited of NY, LLC. If the Equipment is used in compliance with this Lease and if Equip-Co Unlimited of NY, LLC offers and Customer accepts a "DW", which is **NOT INSURANCE OR PROVIDE COVERAGE FOR LIABILITY INSURANCE**, at the beginning of the Lease, and pays all Lease Charges and additional charges for the "DW" when due, the Customer shall not be required to reimburse Equip-Co Unlimited of NY, LLC for loss or damage to the Equipment, except for the first \$1,000 (or such other amount as may be specified on the "DW") of loss or damage to any single item of Equipment from a **COVERED PERIL. NOTWITHSTANDING THE FOREGOING, CUSTOMER SHALL REMAIN FULLY LIABLE FOR ALL LOSS OF AND DAMAGE TO EQUIPMENT RESULTING FROM:**
- Mysterious disappearance
  - Neglect, misuse, wrong application, or abuse of the Equipment
  - Sinking of the Equipment into mud or water
  - Submersion of the Equipment in mud or water above the tracks (in case of track machines) or above the tires (in the case of tire machines)
  - Use of Equipment in demolition activities
  - Tire Damage; Glass Breakage; Hydraulic Hoses
  - All loss associated with vandalism, malicious mischief, theft or conversion of the Equipment, not documented by the Customer's prompt filing with the applicable public authorities )with an immediate copy forwarded to Equip-Co Unlimited of NY, LLC of a formal written theft, vandalism or conversion report
  - All loss of or damage to the Equipment resulting from any exposure to radioactive, contaminated or other hazardous materials
  - Use or operation of the Equipment by a person other than an Authorized Operator as defined by Equip-Co Unlimited of NY, LLC
  - If operator is found to have operated Equipment while under the influence
  - Use or operation of the Equipment in violation of any law or ordinance
  - Any other failure of Customer to comply with the terms and conditions of this Lease
- The "DW", if elected by the Customer, does not apply in any way to damage to person(s) or property other than the equipment specifically set forth in this section. If Customer elects to take the "DW" and Equip-Co Unlimited of NY, LLC consents to such election, Customer shall pay Equip-Co Unlimited of NY, LLC an additional Lease charge as solely determined by Equip-Co Unlimited of NY, LLC. Customer acknowledges that the "DW" does not provide liability insurance. **CUSTOMER IS RESPONSIBLE FOR PROVIDING ITS OWN COMPREHENSIVE GENERAL LIABILITY COVERAGE AS SET FORTH IN PARAGRAPH 17.**
19. **NO ASSIGNMENT, LENDING OR SUBLETTING.** Customer agrees to and shall not sublease, sub-rent, assign, or loan the Equipment without first obtaining the written consent of Equip-Co Unlimited of NY, LLC, and any such action by Customer, without Equip-Co Unlimited of NY, LLC written consent, shall be void and a material breach of this Rental Contract. Customer agrees to use and keep the Equipment at the job site set forth on the first page of this Rental Contract unless Equip-Co Unlimited of NY, LLC approves otherwise in writing.
20. **ENTIRE AGREEMENT / ONLY AGREEMENT.** This Rental Contract represents the entire agreement between the Customer and Equip-Co Unlimited of NY, LLC with respect to the Equipment and the rental of the Equipment. There are no oral or other representation or agreements not included herein. None of Equip-Co Unlimited of NY, LLC's rights or Customer's rights may be changed and no extension of the terms of this Rental Contract may be made except in writing, signed by both Equip-Co Unlimited of NY, LLC and Customer. Any use of Customer's purchase order number on this Rental Contract is for Customer's convenience only. This Rental Contract supersedes any purchase order or other Customer provisions or forms whether sent to or received prior, or subsequent to this Rental Contract.
21. **ORDER OF PRECEDENCE.** The terms and conditions of this Rental Contract shall control over any conflicting preprinted terms and contracts contained in Customer's purchase order or similar documents.
22. **OTHER PROVISIONS.**
- A. Any failure of Equip-Co Unlimited of NY, LLC to insist upon strict performance by Customer of any terms and conditions of this Rental Contract shall not be construed as a waiver of Equip-Co Unlimited of NY, LLC's right to demand strict compliance. Customer has carefully reviewed this Rental Contract and waives any principle of law which would construe any provision hereof against Equip-Co Unlimited of NY, LLC and the draftsperson of this Rental Contract.
  - B. Customer agrees to pay all reasonable costs of collection, court, attorneys' fees and other expenses incurred by Equip-Co Unlimited of NY, LLC in the collection of any charges due under this Rental Contract or in connection with the enforcement of its terms.
  - C. Customer shall pay the rental charge(s) without any offsets, deductions or claims.
  - D. The federal and state courts in the county in which the Store Location is located shall have exclusive jurisdiction over all matters relating to this Rental Contract. **TRIAL BY JURY WAIVED.** Service of process may be effected by certified mail to Equip-Co Unlimited of NY, LLC, 2107 State Route 5, Utica NY 13502. Equip-Co Unlimited Rental shall be entitled to decrees of specific performance (without posting bond or other security) in addition to such other remedies as may be available.

**CRIMINAL WARNING:** The use of false identification to obtain Equipment or failure to return the Equipment by the end of the Rental Period may be considered a theft subject to criminal prosecution pursuant to applicable or penal code provisions.

Signature, hand written or electronic, indicates acceptance of all terms laid forth in this rental agreement.