CONGER INDUSTRIES INC. (“LESSOR”)

Standard Terms and Conditions of Rental

1) EQUIPMENT: The equipment, which includes tires, tools, equipment accessories and equipment documents, does not belong to LESSEE, but is delivered to LESSEE for rental purposes only and is in good operating condition. THERE IS NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY EQUIPMENT COVERED BY THIS AGREEMENT.

2) EQUIPMENT RETURN: LESSEE agrees that at the expiration of the term of any extend term hereof or sooner termination of the Contract to return at LESSEE’s expense each unit of Equipment to LESSOR’s facility in the same condition as when received by LESSEE, reasonable wear and tear expected.

3) REPOSSESSION OF EQUIPMENT: The equipment may be repossessed at LESSEE’s cost and without notice if it is not returned on the due back date, used in violation of law or of this Agreement, appears to be abandoned, or if LESSEE gave false or misleading information at time of rental.

4) AUTHORIZED OPERATORS: The LESSEE and the following validly Company licensed individuals with the LESSEE’s permission (“Authorized Operators”) may operate the equipment which is being leased.

5) USE RESTRICTIONS: LESSEE and LESSOR agree that the equipment will not be used or operated by anyone:

A. WHO IS AN UNAUTHORIZED DRIVER, or
B. IN A RECKLESS OR WANTON MANNER, or
C. WHILE INTOXICATED OR UNDER THE INFLUENCE OF DRUGS, or
D. FOR ANY FELONY ACT INCLUDING TRANSPORTATION OF DRUGS OR CONTRABAND, or
E. TO TOW OR PUSH ANYTHING, CARRY PERSONS OR PROPERTY FOR HIRE, OR TO ENGAGE IN SPEED CONTEST, or
F. IF OBTAINED BY FRAUD OR MISREPRESENTATION, or
G. OUTSIDE THE CONTINENTAL UNITED STATES, or
H. OFF REGULARLY MAINTAINED SURFACES, or
I. TO CARRY HAZARDOUS OR EXPLOSIVE SUBSTANCES, or
J. TO TRANSPORT WEIGHT IN EXCESS OF EQUIPMENT’S MAXIMUM PAYLOAD, or
K. WHERE INSUFFICIENT CLEARANCE OF HEIGHT OR WIDTH EXISTS, or
L. WHO DOES NOT KNOW HOW TO OPERATE THE EQUIPMENT, or
M. FOR IMPROPER LOADING OR UNLOADING

6) LIABILITY INSURANCE: LESSEE, at its own expense, shall carry a minimum of $500,000 single-limit public liability insurance. And shall keep all Equipment insured at its full replacement value against fire, theft and all risk coverage.

A. LESSEE assumes all risk and liability for and agrees to indemnify, save and hold LESSOR harmless from all claims and liens, all loss of damage to the Equipment and loss, damage, claims, penalties liability and expenses, including attorney’s fees, however arising or incurred because of the equipment or the storage, used or operation thereof.
B. LESSEE shall furnish LESSOR with certificates of insurance designating LESSOR and its assigns as insured parties under the policy which certificates shall provide for thirty (30) day prior to notice to cancellation. LESSOR is to be named as additional insured for public liability as well as loss payee for physical damage. The insurance so provided shall be effective during the period from the moment of delivery of each unit under lease to LESSEE until the moment of return or surrender of possession to LESSOR or this authorized representative.
C. LESSEE agrees to cooperate fully in the investigation and defense of and to deliver to LESSOR every document relating to any accident, claim, or lawsuit.

7) RESPONSIBILITY FOR LOSS OF, OR DAMAGE TO EQUIPMENT: LESSEE is solely responsible for all loss of or damage to equipment during this lease.

8) DAMAGED EQUIPMENT: LESSEE will not use the equipment if it is damaged or in need of repair and will be responsible for all damage to the equipment resulting from such use.

9) PAYMENT:

A. LESSEE will pay on demand all charges due under this Agreement.
B. All charges are subject to final audit, and if an error is found, either party shall promptly pay or credit the other, as appropriate, to correct the error.
C. If LESSEE has indicated that someone else or that same company will pay for charges due under the Agreement and payment is not made, LESSEE will pay upon demand.
D. Default: This lease agreement may be terminated at the election of the LESSOR if the LESSEE is not maintaining the equipment or otherwise complying with the terms and conditions of this agreement and in that event of any default by LESSEE, the entire rental provided in this agreement through the end of the lease term shall become immediately due and payable. In the event of default the LESSEE shall be liable for the LESSOR’s reasonable cost of enforcing the lease including, but not limited to, a reasonable amount for attorney fees and expenses incurred in repossessing the equipment, in addition, the LESSOR will have all the rights and remedies existing at law or in equity.
E. LESSEE will pay interest at the highest rate permitted by law on any past due charges and will also pay any collection costs, including reasonable attorney’s fees, if all charges are not paid when due.
F. If LESSEE fails to pay for equipment or other sum payable hereunder when due, or if LESSEE becomes subject to any state or federal insolvency, bankruptcy, receivership, trusteeship or similar proceeding, or if LESSEE shall default in any other term of this contract, LESSOR may immediately terminate this contract by notice in writing to LESSEE and repossess all items of Equipment wherever they may be found, but LESSEE shall nevertheless remain liable for all sums then due and unpaid, plus a reasonable amount for attorney’s fees and such expense as may be expanded in the repossession of the Equipment. The remedies provided herein in favor LESSOR shall be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in LESSOR’s favor, existing at law or in equity. Any notice hereunder shall be deemed sufficiently giving it in writing it is delivered to LESSEE, personally, or sent by mail addressed to LESSEE at the address set forth upon the reverse side hereof.

10) L.P. GAS TANK SERVICE CHARGE: LESSOR may supply L.P. tank(s) as part of the equipment leased. LESSEE agrees to pay to have such tank(s) refilled.

11) FAILURE TO RETURN EQUIPMENT: If LESSEE fails to return the equipment on the due back date or within 24 hours following a written or oral demand to LESSEE (which demand, if in writing shall be considered delivered forty-eight (48) hours after the mailing of a certified side), LESSEE will be deemed to be in unlawful possession of the equipment and to have authorized the issuance of a warrant for the arrest of LESSEE or any person possessing the equipment.

12) EQUIPMENT REPAIRS: LESSEE shall supply all fuel, oil, and water necessary to run the equipment, shall check the general condition of the equipment on a daily basis including oil and other fluid levels, cooling systems, water and batteries, shall recharge all batteries as needed, shall furnish all LP gas fuel and cylinders, and shall take care of all minor day to day servicing. LESSOR will provide all other service and maintenance to the equipment so that it remains in proper working condition. LESSEE agrees to make the equipment available for serving by the LESSOR at reasonable times during LESSOR’s normal business hours. In the event LESSEE requires service at times other than LESSOR’s normal business hours, LESSEE agrees to pay the difference between a Lessor’s straight time and overtime pay.

13) TAXES: LESSEE will pay all taxes, fees, and other charges, which may be imposed on this transaction or in connection with the use of the lease equipment during the term of the lease.

14) ASSIGNMENT: The LESSEE may not assign any of its right, title or interest in and to this rental/lease agreement or equipment.

15) BANKRUPTCY: In the event the LESSEE files or becomes subject to a bankruptcy petition or becomes subject to any receivership, trusteeship, state or federal insolvency or any similar proceedings, then this lease shall be deemed to have been terminated the day prior to the date of filing or the date prior to the day on which the LESSEE has become subject to such proceeding. Any use or retention of the equipment beyond such date shall be subject to rent at two times the stated rental price.

16) DELIVERY AND PRICE: LESSOR will use all reasonable means to make shipment within the time specified, but assume no liability for loss or damage arising from late delivery or non fulfillment of contract by reason of fires, strikes, delays in transportation, regulations of the United States Government or any cause unavoidable or beyond our control.

A. The prices quoted and the shipment specified herein is for prompt acceptance and are subject to change without notice.
B. the prices quoted are exclusive of any tax in force or which may be enacted by Federal, State, of Local Governments.
C. Prices quoted are the prices prevailing at this time.
D. The proposal is subject to subsequent credit approval by LESSOR
E. Financing and leasing arrangements are available

17) STANDARD WARRANTY: All equipment is warranted in accordance with manufacturer of said equipment. There is no warranty express or implied, as to the merchantability or fitness for any particular purpose of any equipment covered by this agreement.

18) DISCLAIMER: Except when specifically approved by LESSOR, warranty work must be performed by authorized dealers. LESSOR accepts no liability hereunder for consequential damages or for the negligence of others. The foregoing warranties are exclusive and there are no warranties which extend beyond the description on the face hereof. These express warranties are in lieu of all other warranties whether written, oral or implied and LESSOR hereby expressly excludes any implied warranties of merchantability and fitness.

19) SAFETY DEVICES: The proposed vehicles will be equipped with certain safety devices as standard equipment unless your purchase order specifically instructs us to delete such equipment. These devises, which may be removed without rendering the vehicle(s) inoperative, include: driver's overhead guard, load backrest, and when remote elevating control is specified, operator's safety platform. LESSOR will not assume any liability for injuries or damage arising from or caused by the deletion, omission, or removal of any safety devices from the vehicle(s).

20) CANCELLATION: Cancellation of this order, after is has been accepted, can be made only by mutual consent in writing. Reasonable cancellation charges will be assessed by LESSOR at its discretion. The Agreement expressly limits acceptance to the terms and conditions stated hereon and any additional or different terms and conditions proposed by the LESSEE are not accepted and are hereby excluded, unless expressly assented to in writing by LESSOR. No contract shall exist except as herein above provided.

21) MISCELLANEOUS:

A. LESSEE will pay all costs including reasonable attorney's fees and court costs incurred by the LESSOR and will defend and indemnify LESSOR from all claims, demands and lawsuits resulting from:
   1. The issuance of a warrant for the arrest of LESSEE or any person operating the equipment, and
   2. any action by the LESSOR, including, but not limited to, said help, used to get the equipment back or otherwise enforce the terms of this Agreement, and
   3. Any action against the LESSOR resulting from LESSEE's breach of the Agreement.

B. The LESSOR shall have no liability for any indirect, special, or consequential damage arising in connection with the furnishing, performance or use of the equipment or for any claim based upon the failure to honor an equipment reservation requested by LESSEE.
C. LESSEE shall not be considered an agent or employee of the LESSOR for any purpose whatsoever.
D. It is a violation of this agreement to tamper with hour meter or hour meter readings.
E. LESSEE agrees to everything stated on both sides of this Agreement, which is the entire Agreement between the parties, LESSEE agrees that the Agreement can only be changed in writing and if signed or initialed by both the renting location and LESSEE.
F. Title and possession: The leased equipment shall at all times remain and be the sole and exclusive personal property of LESSOR and LESSEE shall have only the right to possession and use of the equipment under the terms of this lease. LESSEE shall acquire no equity in or right of ownership to the equipment and shall have no rights other than those granted in this Agreement.
G. LESSOR may assign its interest in this rental/lease agreement or equipment to a third party.