

## CONGER INDUSTRIES INC.

### EQUIPMENT RENTAL TERMS AND CONDITIONS

1. **DEFINITIONS.** “Authorized Individuals” are those individuals that Customer directly or indirectly allows to use the Equipment, who are properly trained to use the Equipment, at least 18 years old, and are not under the influence of any drugs, alcohol, substances or otherwise impaired. “Customer” is identified earlier and includes any of your representatives, agents, officers, employees or anyone signing this Contract on your behalf. “Equipment” includes tires, tools, related accessories, and related documents. “Incident” is any fine, citation, theft, accident, casualty, loss, vandalism, injury, death or damage to person or property, claimed by any person or entity that appears to have occurred in connection with the Equipment. “Lost” means the Equipment is either stolen, its location is unknown, or Customer is unable to recover it for a period of 30 days. “FMV” is the Equipment’s fair market value on or about the date of the Incident relating to the Equipment, plus any administrative fees and expenses. “Ordinary Wear and Tear” means normal deterioration considered reasonable in the equipment rental industry for the rental. “Party” means Conger Industries or Customer and together both are the “Parties”. “Rental Period” commences when the Equipment is delivered to Customer and continues until the Equipment is returned to the Facility. “Facility” is the Conger Industries location located at 2290 S. Ashland Avenue, Green Bay, WI 54304. “Conger Industries” is Conger Industries, Inc. and its affiliated companies, their respective officers, directors, employees and agents.

2. **TERMS.** Customer’s execution of this Contract or taking possession of the Equipment (whichever occurs first) shall be deemed acceptance of the terms herein for this and all past and future contracts between Conger Industries and Customer upon Customer’s receipt of Conger Industries’ Equipment under those contracts. Customer rents the Equipment from Conger Industries pursuant to this Contract, which is a true lease. The Equipment (a) is and shall remain the personal property of Conger Industries and (b) shall not be affixed to any other property. Customer shall not pledge or encumber the Equipment in any manner.

3. **PERMITTED USE.** Customer agrees and warrants that (a) Conger Industries has no control over the manner in which the Equipment is operated during the Rental Period by Customer or any third party that Customer implicitly or explicitly permits, (b) prior to each use and its return to Conger Industries, Customer shall inspect the Equipment to confirm that the Equipment is in good condition, without defects, and the Equipment is suitable for Customer’s intended use; (c) Customer has access to and reviews the operating and safety instructions and will operate the Equipment in accordance with the manufacturer’s instructions and with applicable safety equipment; (d) Customer shall immediately stop use and notify Conger Industries if the Equipment is damaged, unsafe, disabled, malfunctioning, warning lights come on, levied upon, threatened with seizure, Lost, or if any Incident occurs; (e) Customer has received from Conger Industries all information needed or requested regarding the operation of the Equipment; (f) Conger Industries is not responsible for providing operator or other training unless Customer

specifically requests in writing and Conger Industries agrees to provide such training (Customer being responsible to obtain all training that Customer desires prior to the Equipment's use); (g) Conger Industries is not responsible for Customer's obligation to provide reasonable accommodation(s) to any (disabled) Authorized Individual(s); (h) only Authorized Individuals shall use and operate the Equipment, however Customer is responsible for the Equipment and its use during the Rental Period regardless of the user; (i) the Equipment shall be used and maintained in a careful manner, within the Equipment's capacity and in compliance with all applicable laws, regulations, as well as all operating and safety instructions provided on, in or with the Equipment and all applicable federal, state and local laws, permits and licenses, including but not limited to, OSHA and ADA, as revised; (j) the Equipment shall be kept in a secure location; and (k) Customer shall provide Conger Industries with accurate and complete information, which Conger Industries relies upon to provide the appropriate Equipment to Customer.

**4. PROHIBITED USE.** Customer shall not (a) remove any operating or safety equipment or instructions or alter or tamper with the Equipment; (b) assign its rights under this Contract; (c) use the Equipment in a negligent, illegal, unauthorized or abusive manner; or (d) use the Equipment to tow or push anything, engage in a speed contest, transport weight in excess of the Equipment's maximum payload, carry hazardous or explosive substances, or load or unload improperly; or (e) allow the use of the Equipment by anyone other than Authorized Individuals (Customer acknowledging that the Equipment may be dangerous if used improperly or by untrained parties).

**5. MAINTENANCE.** Customer shall perform routine maintenance on the Equipment, including routine inspections and maintenance of fuel and oil levels, grease, cooling and fluid systems, batteries, tires/tracks cutting edges, and cleaning in accordance with the manufacturer's specifications, as applicable. Upon request of Customer and at Customer's expense, Conger Industries shall supply L.P. tank(s) with the rented Equipment. Customer shall be responsible for any associated costs, including the cost to have such tanks refilled. All other maintenance or repairs may only be performed by Conger Industries or its agents, but Conger Industries has no responsibility during the Rental Period to inspect or perform any maintenance or repairs unless Customer requests a service call. If Conger Industries determines that repairs to the Equipment are needed, other than Ordinary Wear and Tear, Customer shall pay the full repair charges, additional fees, if any, and rental of the Equipment until the repairs are completed. If Equipment is stolen or damaged, Customer will be responsible for the FMV of the Equipment, including sales tax, as applicable. Conger Industries has the right to inspect the Equipment wherever located. Customer has the authority to and hereby grants Conger Industries and its agents the right to enter the physical location of the Equipment for the purposes set forth herein. Conger Industries shall be responsible for repairs needed because of Ordinary Wear and Tear. Customer agrees that repair or replacement of the Equipment is Customer's exclusive remedy for Conger Industries' breach of this Section. Notwithstanding Conger Industries' service commitment, if Customer breaches this Contract, Conger Industries shall have no obligation to stop the Rental

Period, commence repairs or rent other equipment to Customer until Customer or its agent agrees to pay for such charges.

**6. CUSTOMER LIABILITY. DURING THE RENTAL PERIOD, CUSTOMER ASSUMES ALL RISK ASSOCIATED WITH THE POSSESSION, CONTROL OR USE OF THE EQUIPMENT, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY, DEATH, RENTAL CHARGES, THEFT, LOSSES, DAMAGES AND DESTRUCTION, INCLUDING CUSTOMER TRANSPORTATION, LOADING AND UNLOADING, WHETHER OR NOT THE CUSTOMER IS AT FAULT.** After an Incident, Customer shall (a) immediately notify Conger Industries, the police, if necessary, and Customer's insurance carriers; (b) secure and maintain the Equipment and the surrounding premises in the condition existing at the time of such Incident, until Conger Industries or its agents investigate; (c) immediately submit copies of all police or other third party reports to Conger Industries; and (d) as applicable, pay Conger Industries, in addition to other sums due herein, the rental rate for Equipment until the repairs are completed or Equipment replaced plus either (i) the FMV or (ii) the full charges of recovery and repairs of damaged Equipment. Accrued rental charges shall not be applied against these amounts. Conger Industries shall have the immediate right, but not obligation, to reclaim any Equipment involved in any Incident.

**7. WARRANTY. CONGER INDUSTRIES WARRANTS ALL EQUIPMENT TO THE EXTENT OF ANY MANUFACTURER WARRANTY EXISTING WITH REGARD TO THE EQUIPMENT. ANY REPAIRS THAT ARE COVERED UNDER A MANUFACTURER WARRANTY MUST BE COMPLETED BY AN AUTHORIZED DEALER. CONGER INDUSTRIES DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT, ITS DURABILITY, CONDITION, MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR ANY PARTICULAR PURPOSE. CUSTOMER ASSUMES ALL RISKS ASSOCIATED WITH THE EQUIPMENT AND RELEASES CONGER INDUSTRIES ENTITIES FROM ALL LIABILITIES AND DAMAGES (INCLUDING LOST PROFITS, PERSONAL INJURY, AND SPECIAL, INCIDENTAL AND CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) IN ANY WAY CONNECTED WITH THE EQUIPMENT, ITS INSTALLATION, OPERATION OR USE OR ANY DEFECT OR FAILURE THEREOF, A BREACH OF CONGER INDUSTRIES' OBLIGATIONS HEREIN OR ERRORS OR INACCURACIES IN INFORMATION OBTAINED FROM CUSTOMER OR THIRD PARTIES, UPON WHICH CONGER INDUSTRIES RELIES; PROVIDED HOWEVER, IF CUSTOMER IS A CONSUMER UNDER APPLICABLE LAW, THEN NO CONSEQUENTIAL DAMAGES LIMITATION OF INJURIES TO PERSONS SHALL APPLY.**

**8. RELEASE AND INDEMNIFICATION. TO THE FULLEST EXTENT PERMITTED BY LAW, CUSTOMER INDEMNIFIES, RELEASES, HOLDS CONGER INDUSTRIES ENTITIES HARMLESS AND AT CONGER INDUSTRIES' REQUEST, DEFENDS CONGER INDUSTRIES ENTITIES (WITH COUNSEL APPROVED BY**

**CONGER INDUSTRIES), FROM AND AGAINST ALL LIABILITIES, CLAIMS, LOSSES, DAMAGES, AND EXPENSES (INCLUDING ATTORNEY'S AND/OR LEGAL FEES AND EXPENSES) HOWEVER ARISING OR INCURRED, RELATED TO ANY INCIDENT, DAMAGE TO PROPERTY, INJURY OR DEATH OF ANY PERSON, CONTAMINATION OR ALLEGED CONTAMINATION, OR VIOLATION OF LAW OR REGULATION CAUSED BY OR CONNECTED WITH THE (a) ACCESS, USE, POSSESSION OR CONTROL OF THE EQUIPMENT BY CUSTOMER OR ANY THIRD PARTY THAT CUSTOMER IMPLICITLY OR EXPLICITLY PERMITS TO ACCESS, USE, POSSESS OR CONTROL THE EQUIPMENT DURING THE RENTAL PERIOD OR (b) BREACH OF THIS CONTRACT, WHETHER OR NOT CAUSED IN PART BY THE ACTIVE OR PASSIVE NEGLIGENCE OR OTHER FAULT OF ANY PARTY INDEMNIFIED HEREIN AND ANY OF THE FOREGOING ARISING OR IMPOSED IN ACCORDANCE WITH THE DOCTRINE OF STRICT OR ABSOLUTE LIABILITY. CUSTOMER ALSO AGREES TO WAIVE ITS WORKERS' COMPENSATION IMMUNITY, TO THE EXTENT APPLICABLE. CUSTOMER'S INDEMNITY OBLIGATIONS SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS CONTRACT.** All of Customer's indemnification obligations under this paragraph shall be joint and several.

**9. INSURANCE.** During the Rental Period, Customer shall maintain, at its own expense, the following minimum insurance coverage: (a) general liability insurance of not less than \$500,000 per occurrence, including coverage for Customer's contractual liabilities herein such as the release and indemnification clause contained in Section 8; (b) worker's compensation insurance as required by law; and (c) automobile liability insurance (including comprehensive and collision coverage, and uninsured/underinsured motorist coverage), in the same amounts set forth in subsection (a), if the Equipment is to be used on any roadway. Such policies shall be primary, non-contributory, on an occurrence basis, contain a waiver of subrogation, name Conger Industries and its agents as an additional insured (including an additional insured endorsement) and loss payee, and provide for Conger Industries to receive at least 30 days prior written notice of any cancellation or material change. Any insurance that excludes boom damage or overturns is a breach. Customer shall provide Conger Industries with certificates of insurance evidencing the coverages required above prior to any rental and any time upon Conger Industries' request. To the extent Conger Industries Entities carry any insurance, Conger Industries Entities' insurance will be considered excess insurance. The insurance required herein does not relieve Customer of its responsibilities, indemnification, or other obligations provided herein, or for which Customer may be liable by law or otherwise.

**10. RENTAL RATES.** The total charges specified in this Contract are estimated based upon Customer's representation of the estimated Rental Period identified herein (rental rates beyond the estimated Rental Period may change) and other information conveyed by Customer to Conger Industries. Weekly and 4 week rental rates shall not be prorated. Rental charges accrue during Saturdays, Sundays and holidays. The rental rates do not include and Customer is responsible for, (i) all consumables, fees, licenses, present and future taxes and any other

governmental charges based on Customer's possession and/or use of the Equipment; (ii) delivery and pickup charges to and from the Facility, including but not limited to any freight, transportation, delivery, pickup and surcharge fees listed in this Contract; (iii) maintenance, repairs and replacements to the Equipment as provided herein; (iv) a cleaning fee if required; (v) miscellaneous charges, such as fees for lost keys, emergency mobilization or store opening; and (vi) L.P. or other fuel used during the Rental Period and for refueling Equipment as described above.

**11. PAYMENT.** Customer shall pay for the rental of Equipment, materials and all other items and services identified in this Contract and all other amounts due, without any offsets, in full, upon demand by Conger Industries, unless Conger Industries approves Customer's executed commercial credit application. Customer must notify Conger Industries in writing of any disputed amounts, including credit card charges, within 15 days after the receipt of the invoice/contract or Customer shall be deemed to have irrevocably waived its right to dispute such amounts. At Conger Industries' discretion, any account with a delinquent balance may be placed on a cash basis, deposits may be required and the Equipment may be picked up without notice. Due to the difficulty in fixing actual damages caused by late payment, Customer agrees that a service charge equal to the maximum rate permitted by law shall be assessed on all delinquent accounts, until paid in full. Customer shall reimburse Conger Industries for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. Payment of any late charge does not excuse Customer of any default under this Contract. Customer shall pay a fee of \$75 for each check returned for lack of sufficient funds to compensate Conger Industries for its overhead for processing missed payment. Deposits will only be returned after all amounts are paid in full. **CUSTOMER AGREES THAT IF A CREDIT OR DEBIT CARD IS PRESENTED TO PAY FOR CHARGES OR TO GUARANTEE PAYMENT, CUSTOMER AUTHORIZES CONGER INDUSTRIES TO CHARGE THE CREDIT OR DEBIT CARD ALL AMOUNTS SHOWN ON THIS CONTRACT AND CHARGES SUBSEQUENTLY INCURRED BY CUSTOMER, INCLUDING BUT NOT LIMITED TO, LOSS OF OR DAMAGE TO THE EQUIPMENT AND EXTENSION OF THE RENTAL PERIOD.**

**12. RETURN OF EQUIPMENT.** Conger Industries may terminate this Contract at any time, for any reason. The Equipment shall be returned to Conger Industries (when needed for inspections, maintenance and at the end of the Rental Period) in the same condition it was received, less Ordinary Wear and Tear. Customer will return the Equipment at the end of the Rental Period or termination of this Contract, but will continue to be responsible for rental and other charges after the Rental Period if the Equipment is not returned in the condition required herein. If the Equipment is not returned by the estimated end of the Rental Period specified earlier, Customer agrees to pay the applicable rental rate for the Equipment until the end of the Rental Period.

**13. DEFAULT.** Customer shall be in default if Conger Industries deems itself insecure or if Customer: (a) fails to pay sums when due; (b) breaches any Section of this Contract; (c) becomes a debtor in a bankruptcy proceeding, goes into receivership, takes protection from its creditors under any insolvency legislation, ceases to carry on business, or has its assets seized by any creditor; (d) fails to insure the Equipment as required, or otherwise places the Equipment at

risk; (e) fails to return Equipment immediately upon Conger Industries' demand; or (f) is in default under any other contract with Conger Industries. If a Customer default occurs, Conger Industries shall have, in addition to all rights and remedies at law or in equity, the right to repossess the Equipment without judicial process or prior notice. Customer shall pay all of Conger Industries' costs, including reasonable costs of collection, court costs, attorneys and legal fees, incurred in exercising any of its rights or remedies herein. Conger Industries shall not be liable due to seizure of Equipment by order of governmental authority. **CUSTOMER WAIVES ANY RIGHT OF ACTION AGAINST CONGER INDUSTRIES ENTITIES FOR SUCH REPOSSESSION.**

**14. CRIMINAL WARNING.** The use of false identification to obtain Equipment or the failure to return Equipment by the end of the Rental Period may be considered theft, subject to criminal prosecution and civil liability where permitted, pursuant to applicable laws.

**15. ACCOUNT SUSPENSION/TERMINATION/BLOCKING:** Conger Industries Rentals reserves the right to suspend, terminate, and/or block customer accounts for any reason, including, but not limited to, suspicious/malicious activity or the account being compromised in any way.

**16. LIMITATION OF CONGER INDUSTRIES' LIABILITY. IN CONSIDERATION OF THE RENTAL OF EQUIPMENT, CUSTOMER AGREES THAT CONGER INDUSTRIES' LIABILITY UNDER THIS CONTRACT, INCLUDING ANY LIABILITY ARISING FROM CONGER INDUSTRIES', CONGER INDUSTRIES ENTITIES, OR ANY THIRD PARTY'S COMPARATIVE, CONCURRENT, CONTRIBUTORY, PASSIVE OR ACTIVE NEGLIGENCE OR THAT ARISES AS A RESULT OF ANY STRICT OR ABSOLUTE LIABILITY, SHALL NOT EXCEED THE TOTAL RENTAL CHARGES PAID BY CUSTOMER UNDER THIS CONTRACT.**

**17. COMPLIANCE WITH EXPORT AND IMPORT LAWS.** Removal of the Equipment from the United States ("U.S.") is prohibited under this Contract. If Customer desires or causes the transport and/or operation of the Equipment outside of the U.S., Customer must (a) obtain Conger Industries' consent prior to taking such action, including approval of established customs broker, and (b) execute an amendment to this Contract, which amendment is incorporated herein. If Customer exports or re-exports without complying with the above sentence, Customer agrees that (i) the Equipment is subject to and must comply with all applicable export laws, including but not limited to the Export Administration Regulations; and (ii) Customer, as the exporter/importer of record, is responsible for: (A) determining whether and obtaining if necessary, export or re-export licenses or other authorizations as required prior to exporting or re-exporting the Equipment, (B) obtaining any required documentation necessary for return of the Equipment, and (C) ensuring no unauthorized transfers or diversions of the Equipment occur. Refer to [www.bis.doc.gov](http://www.bis.doc.gov) for information.

**18. GOVERNING LAW.** The Parties expressly and irrevocably agree: (a) this Contract, including any related tort claims, shall be governed by the laws of Wisconsin, without

regard to any conflicts of law principles and (b) if any Section of this Contract is prohibited by any law, such Section shall be ineffective to the extent of such prohibition without invalidating the remaining Sections.

**19. FORCE MAJEURE.** Conger Industries shall not be liable or responsible to the Customer, nor be deemed to have defaulted under or breached this Contract, for any failure or delay in fulfilling or performing any term of this Contract when and to the extent such failure or delay is caused by or results from acts beyond Conger Industries' control, including, without limitation, the following force majeure events ("Force Majeure Event(s)": (a) acts of God; (b) flood, fire, earthquake, epidemics, pandemics or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, regulations, shutdowns, or actions; (e) embargoes or blockades in effect on or after the date of this Contract; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power or transportation facilities; and (i) other events beyond the control of Conger Industries.

**20. MISCELLANEOUS.** This Contract, together with any Customer executed commercial credit application, if any, constitutes the entire agreement of the Parties regarding the Equipment and may not be modified except by written amendment signed by the Parties. Any reference in Customer's purchase order or other Customer document to other terms that shall control this transaction shall be void. This Contract benefits solely the Parties and their respective permitted successors and assigns and nothing in this Contract, express or implied, confers on any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Contract. Customer's obligations hereunder shall survive the termination of this Contract. If any term is invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other term or invalidate or render unenforceable such term. This Contract and all of Customer's rights in and to the Equipment are subordinate to all rights, title and interest of all persons (including Conger Industries' lenders) who have rights in the Equipment. Headings are for convenience only. To the extent that any terms in this Contract conflict, the Parties agree that the more specific terms control. A copy of this Contract shall be valid as the original. Any failure by Conger Industries to insist upon strict performance of any Section of this Contract shall not be construed as a waiver of the right to demand strict performance in the future. Customer and the person signing this Contract agree, represent and warrant that: (a) the person executing is 18 or the legal age of majority in the state, whichever is greater and they both have full authority to execute, deliver and perform this Contract; and (b) this Contract constitutes a legal, valid and binding obligation of Customer, enforceable in accordance with its terms. If the Parties have a fully executed, active agreement, intended to govern over conflicting terms and conditions, such agreement shall take precedence over the terms herein.