

Contract Terms and Conditions

1. **DEFINITIONS.** “Clark Rental” means Clark Equipment Rental identified on the first page of this Rental Contract from whom the Customer has rented the Equipment. “Equipment” means any one or more of the items identified as such on the first page of 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 on the first page of this Rental Contract, including any representative, agent, officer or employee of Customer. “Store Location” means the Clark Rental address in the upper left-hand corner on the first page of this Rental Contract. “Rental Period” means the period of time between the “Date” and when the customer informs Clark 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.** Clark Rental 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, Clark Rental disclaims all warranties, either express or implied, made in connection with this rental transaction.
4. **CUSTOMER AGREES TO INDEMNIFY CLARK RENTAL.** As Clark Rental has no control over the use of equipment by customer, customer agrees to indemnify and hold Clark Rental harmless from any claims, regardless of whether such claims or actions are founded in whole or part upon any negligent act or omission of Clark Rental, 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 Clark Rental based upon strict or product liability causes of action. Further, customer waives, releases, and renounces all claims, rights, and remedies against Clark Rental 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 Clark Rental 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 Clark Rental’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 devices and materials used to connect the Equipment to Customer’s towing vehicle, if any. Clark Rental 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 Clark Rental 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 Clark Rental regarding oil and fluid specifications prior to replacement. Customer acknowledges that Clark Rental has no responsibility to inspect the Equipment while it is in Customer’s possession. Clark Rental shall have the right to inspect and or replace the Equipment with other similar equipment at any time and for any reason.
7. **MAFUNCTIONING EQUIPMENT. Should the Equipment become unsafe, malfunction or require repair, Customer shall immediately cease using the Equipment and immediately notify Clark Rental.** If such condition is the result of normal operation, Clark Rental will repair or replace the Equipment with similar Equipment in working order, if such replacement Equipment is available. Clark Rental 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 Clark 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 Clark Rental 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 Clark Rental for any reason whatsoever, Customer will pay Clark Rental 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 Clark Rental the reasonable cost of repair and pay rental on the Equipment at the regular rental rate until all repairs have been completed. Clark Rental shall be under no obligation to commence repair work until Customer has paid to Clark Rental 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 Clark Rental 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 charges accrue during Saturdays, Sundays and Holidays. 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 Clark Rental’s standard premium rental rates. Customer will truthfully and accurately certify to Clark 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.** Clark Rental, 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 Clark Rental 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 Clark Rental, or according to the terms on Clark Rental’s invoice to Customer, whichever comes first. Customer acknowledges that timely payment of rental charges is essential to Clark Rental’s business operations and it would be impractical and extremely difficult to fix the actual damages caused by late payment. Customer and Clark Rental 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 Clark Rental to charge any amount due Clark Rental against any credit card used in connection with the rental or credit card put on file, for any outstanding balance due Clark Rental.**
13. **FAILURE TO DELIVER.** Customer releases and discharges Clark Rental from any and all liability or damages (including consequential and special damages) which might be caused by Clark 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 Clark Rental. Unless covered by a specific supplemental agreement signed by Clark Rental, 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 in the rental rate. Clark Rental retains the right to determine weather tires are repaired or replaced and final acceptance of repair or replacement work by customer or by an approved supplier for Clark Rental.**

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 Clark Rental anticipate the Customer may become insolvent or that Customer may otherwise become in default. If Customer is in default, Clark Rental 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 Clark Rental'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 Clark Rental 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 Clark Rental to charge any amount due Clark Rental 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 Clark Rental proof of such insurance by Certificate of Insurance clearly setting forth the coverage for the Equipment and naming Clark Rental as loss payee and additional insured and shall waive rights of recovery and subrogation against Clark Equipment Rental, LLC or Clark Rental; such insurance and evidence thereof to be in amounts and form satisfactory to Clark Rental. The Certificate of Insurance and policy shall provide that Clark Rental 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 Clark Equipment Rental, LLC. If the Equipment is used in compliance with this Lease and if Clark Rental 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 Clark Rental for loss or damage to the Equipment, except for the first \$1,000 (or the 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 Clark Rental) 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 Clark Rental
 - 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 Clark Rental consents to such election, Customer shall pay Clark Rental an additional Lease charge as solely determined by Clark Rental. 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, subrent, assign, or loan the Equipment without first obtaining the written consent of Clark Rental, and any such action by Customer, without Clark Rental 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 Clark Rental approves otherwise in writing.
20. **ENTIRE AGREEMENT / ONLY AGREEMENT.** This Rental Contract represents the entire agreement between the Customer and Clark Rental 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 Clark Rental'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 Clark Rental 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 Clark Rental to insist upon strict performance by Customer of any terms and conditions of this Rental Contract shall not be construed as a waiver of Clark Rental'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 Clark Rental and the draftsman of this Rental Contract.
 - B. Customer agrees to pay all reasonable costs of collection, court, attorneys' fees and other expenses incurred by Clark Rental 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 Clark Equipment Rental, 515 Brighton Ave., Syracuse, NY 13210. Clark 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.