

**ATTACHMENT  
PURCHASE ORDER FOR EQUIPMENT RENTAL**

**Terms and Conditions**

1. **DEFINITIONS.** “Supplier” means Any Vendor/Supplier, from whom NCC has rented the Equipment. “Equipment” means any one or more of the items identified as such on Purchase Order from Nooter Construction Company (“NCC”), and shall include any accessories, attachments or other similar items delivered to NCC.
2. **DISCLAIMER OF WARRANTIES.** SUPPLIER 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 NCC’S INTENDED USE, EXCEPT AS MAY BE SPECIFICALLY SET FORTH IN THIS RENTAL AGREEMENT, SUPPLIER DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, MADE IN CONNECTION WITH THIS RENTAL TRANSACTION.
3. **INDEMNITY/HOLD HARMLESS/DAMAGES.** NCC acknowledges and assumes all risks inherent in the negligent acts or omissions of NCC in the operation and use of the Equipment by NCC. NCC agrees to defend, indemnify and hold Supplier harmless from and against any and all liability, claims and damages of any kind (including attorneys’ fees) for injuries or death to persons and damage to property arising out of the use, maintenance, instruction, operation, possession, or rental of the Equipment, but only to the extent caused by the negligent acts or omissions of NCC in the use, maintenance or operation of the Equipment by NCC. Supplier agrees to defend, indemnify and hold harmless NCC from and against any and all liability, claims and damages of any kind (including attorneys’ fees) for injuries or death to persons and damage to property arising out of Supplier’s negligent acts or omissions with respect to the Equipment or with respect to defects in such Equipment.
4. **RECEIPT & INSPECTION OF EQUIPMENT.** NCC acknowledges that NCC has inspected the Equipment prior to taking possession thereof, finds it in good working order and repair, and suitable for NCC’s needs to the extent discoverable by a reasonable inspection. NCC is familiar with the proper operation and use of each item of Equipment.
5. **USE OF EQUIPMENT.** NCC 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. NCC agrees, at NCC’s sole expense, to comply with all applicable municipal, state, and federal laws, ordinances and regulations (including O.S.H.A.) which may apply to the use of the Equipment. NCC agrees to check filters, oil, fluid levels, tire air pressure, clean and visually inspect the Equipment daily and to immediately notify Supplier when Equipment needs repair or maintenance. NCC acknowledges that Supplier has no responsibility to inspect the Equipment while it is in NCC’s possession.

6. ***MALFUNCTIONING EQUIPMENT.*** Should the Equipment become unsafe, malfunction or require repair, NCC shall immediately cease using such Equipment upon such discovery and immediately notify Supplier. If such condition is not the result of NCC's misuse, improper maintenance, or abuse of the Equipment, Supplier will repair or replace the Equipment with similar Equipment in working order. Supplier has no obligation to replace Equipment rendered inoperable by NCC misuse, abuse or neglect. Except as otherwise provided herein, NCC's sole remedy for any failure or defect in Equipment shall be the termination of any rental charges accruing after the time of failure
7. ***RETURN OF EQUIPMENT, DAMAGED & LOST EQUIPMENT.*** At the expiration of the term Supplier will transport the Equipment to Supplier's location during Supplier's regular business hours, such Equipment to be in the condition and repair as when delivered to NCC, subject to reasonable wear and tear, as defined below. NCC shall be liable for all damages to or loss of the Equipment, excluding any damage during transit to or from NCC. In the case of the loss or damage of the Equipment, or inability or failure to return same to Supplier for any reason whatsoever at the end of the rental period, except as otherwise herein provided, NCC will pay Supplier the then depreciated list value of the Equipment at the time of such loss or failure. If Supplier has agreed to deliver the Equipment to NCC or to pick up the Equipment from NCC, NCC shall pay Supplier the reasonable cost of repair on the Equipment, if such repair is due to NCC's misuse, improper maintenance, or abuse of the Equipment.
8. ***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 (eight hours per day, 40 hours per week) basis, unless multiple shifts are agreed by the parties at the time such rental commences. 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) except where Supplier expressly assumes the obligation to service or maintain the Equipment, any damage resulting from lack of servicing or preventive maintenance suggested in the manufacturer's operation and maintenance manual; (c) damage resulting from any collision, overturning, or improper operation, including overloading or exceeding the rated capacity of the Equipment; (d) damage in the nature of dents, bending, tearing, staining and misalignment to or of the Equipment of any part thereof; (e) wear resulting from use in excess of shifts for which rented; and (f) 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 Supplier and in a manner which will not adversely affect the operation, manufacturer's design or value of the Equipment.
9. ***RENTAL PERIOD & CALCULATION OF CHARGES.*** Rental charges commence when the Equipment leaves the Supplier's location and end when the Equipment is returned thereto. Rental rates are for normal usage based on an eight hour day, 40 hours per week and 176 hours per month. On power equipment, operation in excess of one shift (eight hours per day) will be at Supplier's standard rates.

10. **PAYMENT.** All rentals shall be payable in full 30 days following Supplier's invoice to NCC.
11. **FAILURE TO DELIVER.** NCC releases and discharges Supplier from any and all liability or damages (including consequential and special damages) which might be caused by Supplier's failure or inability to deliver any Equipment by any specified date or time.
12. **TITLE/NO PURCHASE OPTION/NO LIENS.** This agreement is not a contract of sale, and title to the Equipment shall at all times remain with Supplier. Unless covered by a specific supplemental agreement signed by Supplier, NCC has no option or right to purchase the Equipment. NCC shall keep the Equipment free and clear of all mechanics and other liens and encumbrances.
13. **TIRE/TUBE REPAIR OR REPLACEMENT.** Repair or replacement of tires and tubes is the responsibility of NCC if such tire or tube is damaged in the course of NCC's operation, use or maintenance of the Equipment but not if such tire or tube requires replacement due to ordinary wear and tear, and is not included in the rental rate.
14. **DEFAULT.** Should either party in any way fail to perform, observe or keep any provision of this rental agreement, the other party may at its option do any one or more of the following: (a) either party may terminate this agreement for the default of the other; (b) Supplier may retake possession of the Equipment, or (c) either party may pursue any other remedies available by law for the default of the other.
15. **REPOSSESSION OF EQUIPMENT.** In the event of any actual breach by NCC, Supplier's employees or agents may, with notice of legal process, go upon NCC property and take all action reasonably necessary to repossess the Equipment.
16. **ENTIRE AGREEMENT/ONLY AGREEMENT.** The Purchase Order, together with these terms and conditions, represents the entire agreement between NCC and Supplier. There are no oral or other representations or agreements not included herein. None of Supplier's rights or NCC's rights may be changed, except in writing, signed by both Supplier and NCC.