

**FINAL TOUCH SERVICES, INC.**

**EQUIPMENT RENTAL CONTRACT**

2124 UNIVERSITY AVENUE; SUITE 100; ST. PAUL MN 55114

PHONE: (651) 641-1018

(800) 766-3880

FAX: (651) 641-0502

Job Site:

Job site phone or cell:

Customer:

Contact:

Contract No.:

Contract date:

Date out:

Date due in:

Delivery time: ≈ 7:00AM Pick-up time: ≈ 5:00PM

Salesperson:

Tax Exempt?: Yes No (Circle one)

Exempt no.:

Customer phone:

Customer fax:

Qty	Equipment description, etc.	Day	Week	Month	Amount
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Serial no:

\$0.00

DELIVERY CHARGE:	\$0.00
PICK-UP CHARGE:	\$0.00
ENVIRONMENTAL CHARGE:	\$0.00
RENTAL PROTECTION:	\$0.00
DAMAGE WAIVER:	\$0.00
SALES TAX:	\$0.00
<b>TOTAL AMOUNT DUE:</b>	<b>\$0.00</b>



A 100 percent down-payment is due in advance of delivery in the form of a cashier's (certified) check.

If equipment is used for painting or in a place where debris may dirty the equipment, the customer agrees to keep rented equipment free from paint and debris. If equipment is not returned in the same condition as received, the customer will be charged an additional \$60.00/hr. to clean equipment.

\*ENVIRONMENTAL CHARGE: The items indicated above are subject to an environmental charge which is designed to recover the company's direct and indirect expenses for the handling, managing and disposing of waste products, hazardous materials, and related administrative costs. This is not a government mandated charge. Environmental charge is approximately .48% of equipment rental price only. FUEL: Fuel charges do not include federal, state or local fuel excise taxes.

DAMAGE WAIVER: Upon accepting the damage waiver, the Customer agrees to pay a charge equal to 8% of the rental charges on Equipment Customer wants covered by insurance. In return, as set out on the back page, FTSI agrees to waive certain claims for accidental damage to such covered Equipment occurring during normal and careful use. Customer remains liable for all damages including Customer's negligence. Accept \_\_\_\_\_ Decline \_\_\_\_\_ (Initial one)

OPTIONAL RENTAL PROTECTION PLAN: *THE RENTAL PROTECTION PLAN IS NOT INSURANCE!* Upon accepting the Optional Rental Protection Plan, the Customer agrees to pay a charge equal to 10% of the rental charges on Equipment Customer wants covered by the Rental Protection Plan. In return, as set out on the back page, FTSI agrees to waive certain claims for accidental damage to such covered Equipment occurring during normal and careful use. Customer remains liable for all damages and loss due to theft listed under the Rental Protection Plan provisions including Customer's negligence. Accept \_\_\_\_\_ Decline \_\_\_\_\_ (Initial one)

**READ BEFORE SIGNING:** FTSI hereby issues to Customer Equipment and Customer hereby accepts all TERMS AND CONDITIONS listed in this rental agreement, including the TERMS AND CONDITIONS set forth on the reverse side, which the undersigned has read and understands. REMINDERS: (1) Rates do not include fuel or delivery; (2) Optional Rental Protection Plan charge is 10% of the total rental charge for covered equipment; (3) Customer pays for all time equipment is out, including Saturdays, Sundays and Holidays; (4) This rental agreement supercedes all other purchase orders or terms and conditions contained in any of the Customer's agreements or forms; (5) Customer assumes all risk and is responsible for all damages and other costs, including late charges. Details of the above as well as other obligations and responsibilities are contained in the TERMS AND CONDITIONS ON REVERSE. THE INDIVIDUAL SIGNING BELOW AS OR ON BEHALF OF CUSTOMER:

(1) AGREES TO ALL OF THE TERMS AND CONDITIONS ON THIS RENTAL AGREEMENT AND; (2) IS FULLY FAMILIAR WITH ITS OPERATION AND USE.

\_\_\_\_\_  
CUSTOMER SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
NAME PRINTED

## **RENTAL CONTRACT TERMS AND CONDITIONS**

In consideration of the mutual covenants heretofore and hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, the customer and final touch services, inc., Its agents and affiliates, (collectively, the "company"), hereby agree to the following terms and conditions.

1. The customer, after carefully inspecting the equipment, acknowledges receipt thereof in good condition and agrees to return it in the same condition as received, ordinary wear and tear excepted. The customer shall bare the sole cost and responsibility for all damage to the equipment, other than ordinary wear and tear (such cost to be charged at prevailing rates), to the extent that such damage: (a) is caused by the customer or its employees or agents; or (b) occurs prior to the expiration of the rental period (except to the extent that the damages is caused by the active negligence, recklessness, or willful conduct of the company or its employees or agents, or by a malfunction in the equipment that is beyond the control of the customer or its employees or agents. Equipment damaged by the customer or its employees or agents beyond repair will be paid for by the customer at the cost to the company to replace such equipment. Ordinary wear and tear shall mean only normal deterioration of the equipment caused by ordinary, reasonable, and proper use of the equipment.
2. The equipment shall not be used by any person except the customer, a member of the customer's immediate family, or an employee of the customer in the course of such employee's regular and usual employment by the customer, and then only if such person is of suitable age, possesses appropriate qualifications and has been instructed by qualified personnel on the intended purpose and function, and the proper use and operation, of the equipment as detailed in the instruction manual(s), warning label(s), instruction label(s), and related material(s) provided to the customer by the company (the "operating instructions"). The customer acknowledges receipt of the operating instructions and represents that it has been trained by the company regarding the intended purpose and function, and the proper use and operation, of the equipment and understands such purpose, function, use, and operation without further instructions from the company. The customer shall provide each user and operator of the equipment with a copy of the operating instructions, require all such users and operators to read said operating instructions, and ensure that all users and operators are instructed by qualified personnel on the intended purpose and function, and the proper use and operation of the equipment. The customer agrees that it and all users and operators of the equipment shall at a minimum comply with the operating instructions.
3. The customer shall not use the equipment or permit the equipment to be used for any unlawful purpose or when the equipment is in need of repair or in an unsafe condition or situation, and shall ensure that all applicable laws, ordinances, rules, regulations, and orders of any public authority, including all local, state, and federal safety codes, as well as all other commercially reasonable safety standards, including American national standards, are complied with in connection with the use of the equipment.
4. The customer shall not sublease, assign, or lend the equipment without prior written consent of an "authorized representative" (as such term is defined below) of the company and shall not pledge, encumber, create a security interest in, or permit any lien to become effective on the equipment. The customer shall not permit the equipment to be removed from its possession or be altered in any way. If any of these events takes place, the customer shall be deemed to be in breach of this agreement at the option of the company. Any purported assignment or sublease of this agreement or the equipment by the customer is void.

5. The customer shall notify the company immediately in case of accident or damage to or theft of the equipment or of accident or damage to persons or property to the extent such accident or damage relates in any way to the equipment, including the use thereof. The customer shall inspect the equipment at least daily and shall discontinue the use thereof, and immediately notify the company, when the equipment is found to need repair or maintenance. The customer shall not permit any repairs or maintenance to be made to the equipment by anyone other than the company without the prior written consent of an authorized representative of the company. The company will be available to service the equipment only during its normal business hours. In the event that the equipment is involved in an accident or is in need of repair or maintenance, the customer shall permit the company to retake possession of the equipment with or without legal process.

6. If the customer fails to observe or perform any of the terms in this agreement, the company may exercise any one or more of the following remedies: (a) terminate this agreement and take possession of and remove the equipment from wherever located; (b) to declare the entire rent hereunder immediately due and payable and pursue all legal remedies in connection with the payment thereof; and/or (c) pursue any other remedies legally available to the company. The company and its agents will not be liable for any claims for damage or trespass arising out of the removal of the equipment.

7. If the equipment is retained without permission, the company may elect to retake possession of the equipment with or without legal process or charge overtime at double the daily rate for each day the equipment is retained beyond the expiration date. The customer shall promptly pay the overtime charge if one is assessed. Time is of the essence of this agreement. Any extension must be mutually agreed to in writing.

8. Failure, refusal, or neglect to return the equipment within 72 hours after it is required to be returned, or the presenting of false, fictitious, or misleading identification of the customer's agents, shall be prima facie evidence of an intention to commit the crime of theft and the tort of conversion.

9. The customer shall pay all fees, including collection and attorneys' fees, and other expenses incurred by the company in enforcing its rights or in resolving any dispute arising under this agreement. The customer agrees that the "reasonable attorneys' fees" awarded by some courts often do not adequately reimburse the prevailing party for its actual attorneys' fees incurred. The company and customer, therefore, agree that if either of them institute legal action, the prevailing party shall be entitled to recover its actual attorneys' fees incurred unless it would be unconscionable to award same, in which case reasonable attorneys' fees are to be awarded.

10. A service charge of 1.5% PER MONTH (ANNUAL RATE OF 18%) will be charged on all past due accounts. The customer agrees that the service charge fixed by the company is reasonable.

11. The rental period begins at the time of the equipment's departure from the company's rental yard and ends when the equipment is returned to and accepted by the company if the equipment is returned prior to the end of any minimum rental period. Unless otherwise noted, the customer is responsible for any delivery and pickup charges. Rental rates are for the company's rental yard. Rental rates are based upon single shift usage, and for billing purposes, rental periods are defined as follows: rental of the equipment for one day entitles the customer to use the equipment for no more than eight hours, without additional charge; rental of the equipment for one week entitles the customer to use the equipment for no more than forty hours in a seven day period, without additional charge; and rental of the equipment for one month entitles the customer to use the equipment for no more than 160 hours in a 28 day period,

without additional charge. If the customer makes greater use of the equipment, additional fees will be charged.

12. The customer agrees that its exclusive remedy for any breach of this agreement by the company shall be a credit for the general damages sustained by the customer, which shall be applied against any balance due the company under this agreement. The company shall have no liability to the customer for any damages the customer may sustain in excess of the rental fee due the company under this agreement. The customer further agrees that the company shall have no liability for lost profits or any other incidental, indirect or consequential damages that the customer may sustain as a result of any breach of this agreement by the company or for punitive or exemplary damages.

13. Title to all the equipment shall remain at all times in the company. If the equipment is levied upon by reason of execution, garnishment, or attachment or for any reason, the company may retake possession of the equipment with or without legal process.

14. The parties agree that the company makes no warranties, express or implies. THE COMPANY SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE.

15. The customer shall keep the equipment insured against all risks of loss or damage from every cause whatsoever for not less than the full replacement value thereof, and shall, throughout the term of this agreement, carry adequate workers' compensation insurance and comprehensive public liability and property damage insurance in amounts sufficient to insure against losses with respect to the use, control, and operation of the equipment. If the customer fails to procure, maintain, or renew the insurance, the company may, but is not obligated to, obtain insurance for and for the account of the customer without prejudice to any other rights the company may have, and the customer shall promptly reimburse the company for the cost of such insurance.

16. THE CUSTOMER ACCEPTS FULL AND COMPLETE RESPONSIBILITY FOR ALL INJURIES TO PERSONS AND PROPERTY ARISING OUT OF OR IN ANY WAY RELATING TO THE EQUIPMENT FROM THE TIME THE CUSTOMER TAKES POSSESSION THEREOF UNTIL THE EQUIPMENT IS RETURNED TO AND ACCEPTED BY THE COMPANY, EXCEPT TO THE EXTENT THAT SUCH INJURIES RESULT FROM THE ACTIVE NEGLIGENCE, RECKLESSNESS, OR WILFUL MISCONDUCT OF THE COMPANY.

THE CUSTOMER ALSO AGREES TO INDEMNIFY AND SAVE THE COMPANY AND ITS AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, AND EMPLOYEES HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, PROCEEDINGS, COSTS, EXPENSES, DAMAGES AND LIABILITY OF ANY AND EVERY NATURE WHATSOEVER (INCLUDING REASONABLE ATTORNEYS' FEES) (COLLECTIVELY, "LOSSES") ARISING DIRECTLY OR INDIRECTLY FROM OR IN ANY WAY RELATING TO; (A) THE EQUIPMENT FROM THE TIME THE CUSTOMER TAKES POSSESSION THEREOF UNTIL THE EQUIPMENT IS RETURNED TO AND ACCEPTED BY THE COMPANY; (B) THE CUSTOMER'S FAILURE TO COMPLY WITH ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT INCLUDING THOSE TRAINING AND OTHER OBLIGATIONS STATED IN PARAGRAPHS 2 AND 3 OF THIS AGREEMENT; OR (C) THE CUSTOMER'S NONCOMPLIANCE WITH ANY LAW, REGULATION OR SAFETY ORDER, EXCEPT, IN EACH SUCH CASE, TO THE EXTENT THAT SUCH LOSSES RESULT FROM THE ACTIVE NEGLIGENCE, RECKLESSNESS, OR WILFUL MISCONDUCT OF THE COMPANY.

IN ADDITION, THE CUSTOMER SHALL, AT ITS OWN COST AND EXPENSE, DEFEND THE COMPANY AND ITS AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, AND EMPLOYEES AGAINST ALL SUITS OR PROCEEDINGS COMMENCED BY ANYONE IN WHICH ANY OF SUCH PERSONS OR ENTITIES IS A NAMED PARTY TO THE EXTENT SUCH SUITS OR PROCEEDINGS RELATE TO MATTERS REGARDING WHICH SUCH PERSONS OR ENTITIES WOULD BE ENTITLED TO INDEMNIFICATION HEREUNDER. THE CUSTOMER SHALL BE LIABLE AND RESPONSIBLE FOR ALL COSTS, EXPENSES, AND ATTORNEYS' FEES INCURRED IN SUCH DEFENSE AND/OR SETTLEMENT, JUDGMENT, OR OTHER RESOLUTION. THE COMPANY OR ITS AFFILIATES, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, OR EMPLOYEES, AS THE CASE MAY BE, MAY ELECT TO DEFEND ANY SUCH ACTION ON ITS OR THEIR OWN BEHALF, AND THE CUSTOMER AGREES THAT IT SHALL BE LIABLE FOR ALL COSTS, EXPENSES, AND ATTORNEYS' FEES INCURRED BY SUCH PERSON OR ENTITY IN SUCH DEFENSE.

THE INDEMNITIES AND ASSUMPTIONS OF RISK, LIABILITIES, AND OBLIGATIONS BY THE CUSTOMER ARISING UNDER THIS AGREEMENT SHALL CONTINUE IN EFFECT AFTER THE RETURN OF THE EQUIPMENT TO THE COMPANY AND THE PAYMENT OF THE FULL RENTAL PRICE THEREFOR.

17. THE CUSTOMER ACKNOWLEDGES AND AGREES THAT, UNLESS THE COMPANY EXECUTES A WRITING THAT SPECIFICALLY REFERENCES THIS PARAGRAPH 17 AND SPECIFICALLY STATES THAT THE COMPANY WAIVES THE PROVISIONS OF THIS PARAGRAPH 17, THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT SHALL GOVERN THE SUBJECT MATTER HEREOF TO THE EXCLUSION OF THE TERMS AND CONDITIONS CONTAINED IN ANY PURCHASE ORDER OR SIMILAR DOCUMENT THAT THE CUSTOMER MAY PROVIDE TO THE COMPANY (IRRESPECTIVE OF CONTRARY LANGUAGE CONTAINED IN SUCH PURCHASE ORDER OR DOCUMENT AND IRRESPECTIVE OF WHETHER THIS AGREEMENT WAS PROVIDED TO THE CUSTOMER BEFORE OR AFTER SUCH PURCHASE ORDER OR DOCUMENT WAS PROVIDED TO THE COMPANY).

18. No term or condition of this agreement may be waived or modified as to the customer except by a written instrument signed by the company's authorized representative.

19. An authorized representative of the company shall include only a branch manager or officer of the company.

20. The provisions of this agreement shall be severable so that the invalidity, unenforceability, or waiver of any one or more provisions shall not affect the remaining provisions. The failure of the company at any time to insist upon strict performance by the customer of the conditions herein shall not be construed as a waiver of the company's right to demand strict compliance.

21. By accepting the damage waiver, the company and the customer agree that the company waives any claim against the customer for physical damage to the equipment, however caused, except as follows:

- a. Breach of this rental agreement (including damage due to a violation of the operating instructions provided to the customer);
- b. Damage as a result of theft, vandalism, malicious mischief, or intentional abuse:

- c. Damage from overloading or exceeding the rated capacity of the equipment or damage resulting from striking overhead objects;
- d. Damage to tires and tubes caused by blowout, bruises, cuts, or otherwise in connection with the operation of the equipment;
- e. Damage to motors or other electrical devices caused by the use of improper electrical currents; and
- f. Damage resulting from lack of lubrication or other normal servicing of the equipment.

In addition, this provision notwithstanding, the customer shall nevertheless be liable for the first one thousand dollars (\$1,000.00) of damage to the equipment.

22. The company reserves the right to replace (exchange) the equipment delivered to the customer with similar or superior equipment.

23. This agreement constitutes the entire agreement between the customer and the company. The customer acknowledges that the company has made no representation, oral or written, other than those included in this agreement.

24. This agreement shall be construed and interpreted in accordance with the laws of the State of Minnesota. The customer irrevocably submits to the jurisdiction of the US District Court of Minnesota over any suit, action or proceeding arising out of or relating to this agreement.