

TERMS AND CONDITIONS OF SALES AND SERVICE

DEFINITIONS:

“Company” – As identified on the Invoice, the provider of the Goods or Services to Customer.

“Customer” – As identified on the Invoice, the purchaser of the Goods or Services.

“Invoice”: The written or electronic documentation provided to Customer from Company identifying: (a) Company, (b) Customer, (c) amounts due, (d) the Goods, and (e) the Services. Any additional terms or conditions or terms and conditions in conflict with this Agreement must be approved in writing by a vice president of Company. Any additional or conflicting terms and conditions not so approved in writing are rejected. The documentation may be titled “Invoice,” “Sales Agreement,” “Sales and Security Agreement,” “Bill of Sale,” or otherwise and may or may not be signed by Customer.

TERMS OF THIS AGREEMENT:

Unless otherwise agreed in a written document signed by a vice president of Company, these Terms and Conditions of Sales and Service and the Invoice (collectively, this “Agreement”) govern the purchase of goods (including, but not limited to, new and used equipment, trucks, attachments, components, technology and parts) (“Goods”) and services (“Services”) from Company by any Customer. Company hereby rejects the terms of any purchase order or other document submitted by Customer, unless the document is signed by a vice president of Company. The placing of an order with Company, payment of an Invoice, or the receipt or acceptance of Goods or Services by Customer constitute Customer’s acceptance of this Agreement.

ORDER AND DELIVERY OF GOODS OR SERVICES:

Customer warrants that the Goods and/or Services will be used for business or agricultural purposes and not personal, family, or household purposes. All orders for Goods and Services are subject to final acceptance by Company in its sole discretion and any such acceptance is conditioned upon the terms of this Agreement. Customer shall have no right to cancel purchase orders for Goods or Services once a purchase order is issued to Company; provided, however, some parts may be returnable to Company in accordance with Company’s then current parts return policy. Customer acknowledges that estimated delivery dates for Goods and Services are estimates only; actual delivery dates depend on a variety of factors, including, but not limited to, the production schedules of manufacturers. Company will use commercially reasonable efforts to meet estimated delivery dates and shall keep Customer advised of the status of its delivery, but Company shall have no liability for any loss associated with delay in the delivery of Goods or Services. In addition, Company shall have no liability for any delay in performance of Services or delivery of Goods caused by any circumstances beyond its reasonable control, including, but not limited to, delays caused by acts of God, acts of war or terrorism, fire or other casualty, storms or adverse weather, strikes, labor shortages or disturbances, shortages of materials, manufacturer delays, theft or vandalism, transport and handling accidents, or revisions to laws, regulations or governmental requirements.

Customer shall pay all freight and shipment charges. Risk of loss shall pass to Customer upon shipment or delivery to a carrier for shipment.

PRICING:

Unless otherwise set forth on a written quote issued by Company (“Quote”), the price for Goods shall be Company’s list price for such Goods on the date such Goods are delivered to Customer. Unless otherwise set forth on a Quote, the labor rates for Services shall be Company’s standard labor rates for the applicable type of Service (field rates, shop rates, mine rates or specialty rates, as applicable) in effect at the time the Services are performed. Pricing for future orders is subject to change without notice. Customer will promptly pay to Company any taxes that Company is required to collect with respect to the purchase of Goods and Services, including, but not limited to, value added, personal property, sales, use and similar taxes (“Taxes”). For any Taxes from which Customer claims exemption, Customer shall provide Company with properly completed exemption certificates and any documentation needed to validate the exemption. If Customer fails to provide an appropriate exemption certificate and supporting documentation, as determined by Company, Customer will remain liable for all such Taxes and will indemnify Company for any liability related to the same. Pricing and risk of loss for purchased Goods is FOB Company’s site, unless purchased Goods are shipped to Customer directly from the manufacturer, in which case pricing and risk of loss is FOB factory. Any claims for shortages, damages, or delays must be made by Customer direct to the carrier.

PAYMENT TERMS:

For Customers with an open credit account with Company, machine sales payments are due net 10 and all other payments are due net 30.

For Customers who do not have an open credit account with Company, payment is due upon delivery of Goods or completion of Services. Company may, in its sole discretion, at any time: (a) revoke credit; (b) modify terms and conditions of credit; (c) require payment in advance; and/or (d) withhold Goods, completed Services or scheduled Services until receipt of payment. If Customer fails to pay for Goods and Services as and when due, Customer shall pay a late charge of 1.5% of the invoice balance each month until charges are paid in full, and Customer shall pay Company all reasonable attorneys’ fees and collection costs incurred by Company. In addition to any other right of set-off or recoupment Company has under applicable law, Customer agrees that, with respect to any amounts due from Customer or Customer’s affiliates to Company or Company’s affiliates, Company and its affiliates may set-off such amounts against any amounts owing to Customer or Customer’s affiliates.

Customer acknowledges that it has authorized and hereby authorizes the Company to obtain a consumer credit report on Customer at any time relating to entering into this Agreement, during the term of this Agreement-and until all amounts due to the Company have been paid in full.

WARRANTIES:

(A) New Goods:

If Customer is purchasing new Goods (other than parts) from Company, Customer acknowledges that (i) Company is not the manufacturer of the Goods; (ii) if the Goods include a manufacturer's warranty, Company will pass through to Customer the manufacturer's warranty to the extent permitted by the terms of such warranty; and (iii) the manufacturer's warranty will be subject to all conditions and exclusions set forth therein. In certain circumstances, Customer may have the option of purchasing an equipment protection plan or extended service coverage (each, an "Extended Protection Product"); if such an Extended Protection Product is available and is purchased by Customer at the time of sale, the Extended Protection Product will be subject to all conditions and exclusions included in such Extended Protection Product. **COMPANY MAKES NO OTHER WARRANTY EXPRESS OR IMPLIED AND EXPRESSLY DISCLAIMS THE WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE, WARRANTY OF MERCHANTABILITY, AND WARRANTY AGAINST INFRINGEMENT.**

(B) New Parts:

Company warrants that the parts delivered hereunder will conform to the description set forth on the Invoice and that they are merchantable (within the meaning of the Uniform Commercial Code). If the parts delivered by Company were selected by Company from parts lists or other information in its possession, Company further warrants that the parts delivered by it are the replacement parts, or the equivalent thereof, most recently recommended to Company by the applicable manufacturer for the attachment to the machinery or equipment. **COMPANY MAKES NO OTHER WARRANTY EXPRESS OR IMPLIED AND EXPRESSLY DISCLAIMS THE WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE AND WARRANTY AGAINST INFRINGEMENT.**

(C) Used Goods:

If Customer is purchasing used Goods from Company, Customer acknowledges that the **USED GOODS ARE SOLD AS IS**, and the only warranties with respect to such used Goods are those warranties, if any, expressly set forth in the bill of sale or other document signed by a vice president of Company.

(D) Services:

If Customer is purchasing Services from Company, Company warrants that its Services will be completed in a workmanlike manner, with such service warranty extending for a period of six months from completion of the original Services. If Company performs a repair pursuant to its service warranty, the warranty period remains six months from completion of the original Services; the six month service warranty period does not start over with the repair. If the replacement parts used by Company in connection with the provision of Services include a manufacturer's warranty, Company will pass such warranty through to Customer to the extent permitted by the terms of the manufacturer's warranty. Company's service warranty will be voided in the event of any of the following: misuse or abuse of Goods or other equipment with respect to which Services were provided, subsequent repairs performed by Customer or vendors other than Company, use beyond ordinary wear and tear, failure to maintain and operate Goods or other equipment with respect to which Services were provided in accordance with the maintenance and operations manual of the manufacturer (including, but not limited to, use of fluids that do not

meet the manufacturer's standards or failure to maintain fluid levels recommended by the manufacturer) or damage due to theft, vandalism or casualty.

(E) **WARRANTY DISCLAIMER:**

OTHER THAN THE FOREGOING WARRANTIES, COMPANY MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY GOODS OR SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTIES THAT MAY ARISE FROM THE COURSE OF DEALING BETWEEN THE PARTIES. TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED BY COMPANY AND WAIVED BY CLIENT.

(F) Remedies:

Customer's sole remedy for breach by Company of any warranty shall be limited, at Company's option, to replacement by Company or refund of the price paid by Customer. Goods must be delivered to Company at Customer's expense.

(G) Parts Returns:

Subject to the other requirements herein, parts may be returned for credit if: (a) accompanied by proof of purchase from Company; and (b) they are in new and salable condition and in original packaging.

Credit will be issued for value of parts less handling charges if applicable, per the tables below.

The following shall NOT be accepted for return: (1) items returned beyond 180 days of purchase; (2) hydraulic hoses and metal lines with protective caps removed; (3) items installed or removed from equipment; (4) chemical compounds rusted or damaged; (5) opened gasket or seal kits; (6) glass; (7) electrical components; or (8) material cut or made to order.

CATERPILLAR PARTS				
DAYS FROM PURCHASE	*STOCKED RETURNABLE & NON-RETURNABLE	*NON-STOCKED RETURNABLE	*NON-STOCKED NON-RETURNABLE EXT VALUE \$60.00 OR>	*NON-STOCKED NON-RETURNABLE EXT VALUE >\$60.00
Within 30	100%	85%	85%	0%
31-60	85%	75%	0%	0%

61-180	85%	50%	0%	0%
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NON-CATERPILLAR PARTS			
DAYS FROM PURCHASE	*STOCKED RETURNABLE & NON-RETURNABLE	*NON-STOCKED RETURNABLE	*NON-STOCKED NON-RETURNABLE
Within 30	100%	85%	0%
31-60	85%	75%	0%
61-180	85%	50%	0%

*Stocked or Non-Stocked status based upon selling branch status at time of purchase.
 Non-Returnable status indicated by a 0 (zero) in the Returnable column on parts document.

If returns are the result of Company providing a part other than the one ordered, the following apply: Items returned within 30 days of purchase will receive 100% credit and will include inbound freight charges assessed in procurement. Beyond 30 days, the regular return policy applies.

INDEMNIFICATION:

Customer agrees to defend, indemnify and hold harmless Company for, from and against any third party claims related to the Goods or Services to the extent such third party claims are caused by Customer's negligent acts or omissions, willful acts or omissions, or breach of this Agreement.

LIABILITY LIMITATION:

IN NO EVENT SHALL COMPANY BE LIABLE, WHETHER BASED IN CONTRACT, WARRANTY, INDEMNITY, TORT, STRICT LIABILITY OR ANY OTHER THEORY OF LAW OR EQUITY, FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF USE OF PROPERTY OR EQUIPMENT, DOWNTIME, LOSS OF THIRD PARTY CONTRACTS OR LOST PRODUCTION, REGARDLESS OF WHETHER OR NOT SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, COMPANY'S MAXIMUM AGGREGATE LIABILITY (WHETHER IN CONTRACT, WARRANTY, INDEMNITY, TORT, STRICT LIABILITY OR ANY OTHER THEORY OF LAW OR EQUITY) FOR DAMAGES OR LOSS, HOWSOEVER ARISING OR CAUSED, SHALL IN NO EVENT EXCEED THE

AMOUNT CUSTOMER PAID TO COMPANY FOR THE GOODS OR SERVICES TO WHICH THE LIABILITY RELATES.

THE PARTIES RECOGNIZE THAT THE PRICING ASSOCIATED WITH GOODS AND SERVICES REFLECTS THIS ALLOCATION OF RISK AND IS THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. THE FOREGOING LIMITATIONS SHALL BE VALID AND ENFORCEABLE NOTWITHSTANDING ANY ALLEGED FAILURE OF ESSENTIAL PURPOSE OF THE LIMITED REMEDIES SET FORTH HEREIN.

PRIVACY STATEMENT:

Customer consents to the collection, use, retention and disclosure of information by Company and its parent, subsidiary and affiliated entities (collectively, "Company Entities") in accordance with Company's Privacy Statement (as such statement may be revised from time to time), and agrees that such information may be accessed by the Company Entities and their partners and manufacturers with a legitimate business reason to access it, as well as third parties who may process such information on their behalf.

PRODUCT INFORMATION:

If Caterpillar or other equipment that is purchased, owned or rented/leased by Customer is equipped with Product Link or other equipment monitoring technology, data concerning the equipment, its condition and its operation ("Telematics Information") is, being transmitted to Caterpillar Inc., its affiliates, the Company Entities other Caterpillar dealers, and/or other equipment manufacturers to better serve Customer and to improve products and services. Telematics Information being transmitted may include machine serial number, machine location, and other machine data including, but not limited to, fault codes, emissions data, fuel usage, service meter hours, software and hardware version numbers and installed attachments. The Telematics Information will be collected, used, retained and disclosed in accordance with Caterpillar's Privacy Statement for Telematics Devices (as such statement may be revised from time to time) ("Telematics Privacy Statement"). Customer consents to the collection, use, retention and disclosure of the Telematics Information in accordance with the Telematics Privacy Statement and agrees that the Telematics Information may be accessed by Caterpillar, its partners, its affiliates, its subsidiaries, the Company Entities, other dealers, and/or other equipment manufacturers with a legitimate business reason to access it, as well as third parties who may process the Telematics Information on their behalf. As set forth in the Telematics Privacy Statement, Caterpillar or another equipment manufacturer may use Telematics Information in combination with information about Customer. Customer further acknowledges and agrees that Telematics Information may be made available to subsequent owners of equipment. Notwithstanding anything herein to the contrary, unless Customer and a vice president of Company execute a separate, written equipment monitoring agreement that expressly sets forth monitoring services elected by Customer and the charges for such monitoring services, the transmission of Telematics Information shall not impose upon the Company Entities any obligation to monitor Customer's equipment and/or to notify Customer of any operational, performance or other issues associated with the same.

MODIFICATION:

This Agreement may not be modified or amended except upon posting of revised or amended Terms of Conditions for Sales and Service to this website or by other writing signed by an authorized Company vice president. No waiver under this Agreement is effective unless signed by an authorized Company vice president.

ATTORNEY'S FEES:

If Company commences any action with respect to this Agreement, the Customer shall pay to Company all reasonable attorney's fees and all other legal expenses (including for expert and other witnesses) paid or incurred by Company for preparation, negotiation, filing, maintenance, defense, settlement, and appeal of litigation.

SEVERABILITY:

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provision shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

CHOICE OF LAW SUBMISSION TO JURISDICTION:

The rights and liabilities of the parties under this Agreement shall be interpreted, enforced, and governed in all respects by the laws of the Commonwealth of Kentucky excluding choice of law principles. Customer hereby consents and subjects itself to the jurisdiction of every local, state, and federal court within Jefferson County, Kentucky, agrees that except as otherwise required by law, Customer shall never file or maintain any action or proceeding in connection with this Agreement in any court outside Jefferson County, Kentucky, waives personal service of any and all process in connection therewith, and consents to the service of such process upon Customer in the manner provided in this Agreement for giving notice.

ENTIRE AGREEMENT:

THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF EACH TRANSACTION EMBRACED THEREBY. ALL AGREEMENTS, REPRESENTATION, PROMISES, INDUCEMENTS, STATEMENTS AND UNDERSTANDINGS, PRIOR TO AND CONTEMPORANEOUS WITH THIS AGREEMENT, WRITTEN AND ORAL, BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER OF EACH SUCH TRANSACTION, IF ANY, ARE AND EACH IS SUPERSEDED BY THIS AGREEMENT.

ASSIGNMENT:

Customer may not assign Customer's rights or obligations hereunder without Company's prior written consent, and any such attempted assignment will be void. Company may assign this Agreement.

REMEDIES:

The rights and remedies of Company under this Agreement are cumulative.

EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION/OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS OBLIGATIONS:

Company is a federal government contractor and subject to the requirements of the Office of Federal Contract Compliance Programs (OFCCP). As part of Company's compliance with Federal Equal Employment Opportunity and Affirmative Action regulations, we are required to provide our policy to all subcontractors, vendors, and suppliers and request cooperation.

Company continues its commitment in equal employment opportunity for all applicants for employment and current employees. Through Company's Affirmative Action Program, we continue our efforts to set forth definite steps of positive action to meet legal and moral responsibilities in personnel practices.

Equal Employment Opportunity and Affirmative Action laws Company is governed by and their implementing regulations are as follows: Executive Order 11246 (and its implementing regulations 41 CFR 60).

For more information, visit: https://www.dol.gov/ofccp/regs/compliance/ca_11246.htm

The Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended (and its implementing regulations 41 CFR 60-300); for more information, visit: <https://www.dol.gov/ofccp/regs/compliance/vevraa.htm>

Section 503 of the Rehabilitation Act of 1973, as amended (and its implementing regulations 41 CFR 60-741); for more information, visit: <https://www.dol.gov/ofccp/regs/compliance/section503.htm>

Also available is Company's full [Equal Employment Opportunity Policy Statement](#).