1. Agreement. These Machinery Sales Agreement Terms and Conditions and the Machinery Sales Agreement, including all documents, exhibits, schedules, and addendums attached thereto or specifically incorporated by reference, constitute the sole and entire agreement ("Agreement") between Hawthorne Machinery Co., Hawthorne Machinery Co., dba Hawthorne Power Systems, or Hawthorne Pacific Corp. as applicable ("Hawthorne") and the purchasing customer ("Customer") (together with Hawthorne, the "Parties", and each a "Party") (v) payments made pursuant to their decision or in writing by Hawthorne, in which case the terms of payment specified on the Machinery Sales Agreement will control. Failure to notify Hawthorne in writing of any dispute regarding an invoice within sixty (60) days of receipt of said invoice waives Customer’s right to dispute such invoice. Customer’s obligation to pay amounts invoiced shall be absolute and unconditional and shall not be subject to any defense or set-off. Unless otherwise stated in writing, Customer shall pay all costs of transportation, which include but are not limited to government duties, local taxes, customs fees, and shipping costs regardless of the Party’s actual costs of transportation. Customer shall provide all direction, information, approvals, and facilities as may reasonably be requested by Hawthorne for the purposes of performing or delivering the Goods & Services. Customer shall be responsible for all damages, losses, deficiencies, judgments, settlements, interest, and, except as provided in paragraph (d) above, any losses, losses, or expenses incurred in the course of any litigation or proceeding related to this Agreement, whether arising out of or related to the Goods & Services, including any (i) warranty of merchantability, (ii) warranty of fitness for a particular purpose; (iii) warranty of title; or (iv) warranty against infringement of intellectual property rights of a third party, whether express or implied by law, course of dealing, course of performance, usage of trade or otherwise. Hawthorne is neither a manufacturer of any parts used in the Goods & Services nor an agent thereof. Although Hawthorne navigates warranties issued by a manufacturer, customer acknowledges and agrees that: (1) any express warranties by such manufacturer are not the responsibility of Hawthorne; (2) such manufacturer’s warranty may contain limitations; and (3) customer may incur certain repair, transportation or other charges which are not covered by such manufacturer’s warranty. Limitation of Liability. In no event shall Hawthorne be liable to customer or any third party for any loss of use, revenue or profit or loss of data or diminution in value, or for any consequential, indirect, incidental, special, exemplary or punitive damages (including attorneys’ fees and costs and expert-witness fees and costs) of any nature whatsoever whether arising out of breach of contract, tort (including negligence) or otherwise, in connection with or arising out of the performance or breach of this Agreement. Specifically, Hawthorne is not liable to Customer or any third party for indirect or incidental damages, losses, or expenses, or special, exemplary, or punitive damages. Hawthorne shall have no liability for damages based on interruption of business or loss of goodwill. In no event shall Hawthorne’s liability exceed the greater of (i) the fees paid or payable to Hawthorne pursuant to the Agreement in the one-year period preceding the event giving rise to the claim or (ii) $25,000. Unless specifically agreed to in writing, Hawthorne will not be liable for any claims or liabilities arising out of merged that agreement contains the same. 18. Mutual Indemnification. Subject to the terms and conditions set forth in Section 17, each Party (an “Indemnifying Party”) shall indemnify, hold harmless, and defend the other Party, its respective owners, officers, directors, employees, agents, successors and permitted assigns (collectively, “Indemnified Party”) from and against any and all claims, losses, deficiencies, judgments, settlements, interest,
24. Force Majeure. Hawthorne shall not be liable, nor be deemed to have defaulted or breached this Agreement, for any failure or delay caused by or resulting from acts or circumstances beyond Hawthorne’s reasonable control including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest, national emergency, revolution, insurrection, epidemic,lock-outs, strikes or other labor disputes (whether or not arising from the conduct of either Party’s workforce), or storms, breakdown or power outage.

25. Communications. All notices, requests, consents, claims, demands, waivers and other communications (each, a “Communication”) must be in writing and addressed to the other Party at the following addresses: [insert addresses]. Any such Communication shall be deemed to have been duly given or made on the date it is mailed or transmitted for receipt in accordance with the address of the other Party.

26. Applicable Law/Venue. This Agreement (and all matters arising out of or relating to it) will be governed by and construed in accordance with the laws of the State of California without regard to any conflict of law provisions.

27. Severability. If any provision of this Agreement shall be deemed invalid, illegal, or unenforceable by any court of competent jurisdiction, such provision shall be automatically modified to the minimum extent necessary to render the same valid and enforceable, giving due consideration to the purpose and economic substance of this Agreement, or if no such modification shall be possible, deleted, and the remainder of this Agreement will remain valid and enforceable.

28. Amendments. This Agreement shall only be modified or amended by an instrument in writing signed by the Parties. Any changes, additions, stipulations or deletions, by Customer, shall not be deemed to be agreed to or binding upon Hawthorne unless agreed to in writing in a similar instrument signed by Hawthorne.

29. No Waiver. No exercise, nor any failure or delay by either Party in the exercise of, any right or remedy available hereunder, at law or in equity will be deemed an election of remedies or a waiver of any such rights and/or remedies. Remedies hereunder shall not be exclusive, but shall be cumulative and in addition to all other remedies existing at law or in equity, including, without limitation, specific performance, injunctive relief, a protective order or other remedy. Each Party shall be entitled to injunctive relief for any violation of this Section.

30. Termination by Hawthorne. Hawthorne may terminate this Agreement for any reason upon giving Customer thirty (30) days’ prior written notice. Hawthorne may terminate this Agreement immediately in the event of Customer’s: (i) insolvency, (ii) bankruptcy, (iii) receivership, (iv) involuntary bankruptcy, (v) dissolution, (vi) assignment for the benefit of creditors, or (vii) breaches of this Agreement.

31. No Third Party Beneficiaries. This Agreement benefits solely the Parties and their respective permitted successors and assigns. Nothing in this Agreement, whether express or

A LARGER FONT COPY OF THESE TERMS AND CONDITIONS IS AVAILABLE UPON REQUEST.
35. **Heads**. Heads are for reference and do not affect the interpretation of the Agreement.

36. **Time to Bring Claim.** No claim which concerns a dispute arising under this Agreement may be commenced by Customer more than one year after the Goods & Services are performed or delivered.

37. **Equipment Management Electronic Data Sharing Product Link™, VisionLink® User Agreement/Privacy Notice, and Data Governance.** For machines equipped with Product Link™ and VisionLink®, Customer understands that data concerning the machine, its condition, and operation will be transmitted to Caterpillar Inc. and/or its dealers to better serve Customer in providing services. The information transmitted may include, but is not limited to, machine serial number, machine location, operational data, fault codes, emissions data, fuel usage, service meter hours, software and hardware version numbers, and installed attachments. Caterpillar Inc. recognizes and respects customer privacy. Caterpillar Inc. and/or its dealers will not sell or rent collected information to any third party and will exercise all reasonable efforts to keep the information secure. Customer, by executing the Agreement, understands the disclosures in this Section and grants permission to allow the referenced data to be accessed by Caterpillar Inc., and/or its dealers. Customer, by executing the Agreement, also agrees to and executes the Caterpillar Data Governance Consent Form and any and all exhibits, appendices, and attachments referenced therein, which includes but is not limited to the Caterpillar Data Governance Statement, both of which can be found at www.hawthornecat.com/terms.

38. **Title to Goods.** Hawthorne retains title to goods until Customer performs all of its obligations under the Agreement. In order to secure payment and performance of the obligations, Customer hereby grants to Hawthorne a security interest in the purchased goods and all proceeds thereof described in this agreement to secure the performance of all of Customer’s obligations under this Agreement.

39. **Equipment.** Should the Agreement include the purchase of machines or equipment from Hawthorne, when the machines necessary for the Agreement have been identified and appropriated, Customer agrees on demand to execute and deliver to Hawthorne all notes, contracts, security agreements, and financing statements required by Hawthorne to evidence the transaction. In the event Customer fails to execute and deliver said notes, contracts, security agreements and financing statements to Hawthorne, the entire balance of the purchase price of the equipment shall, at Hawthorne’s option, become immediately due and payable.

40. **Transportation.** Customer understands and consents to Hawthorne’s use of third-party vendors to provide transportation services ("Transportation Company"). Customer also agrees that Hawthorne is responsible for shipment of any goods ceases upon delivery of said goods to a Transportation Company, and any claims for shortages, delays or damages occurring thereafter shall be made timely by Customer directly to the Transportation Company. Any claims against Seller for shortages in shipment shall be made within 15 days after receipt of shipment.

41. **Nonconforming Goods.** Should the Agreement include Customer purchasing machines or equipment from Hawthorne, Customer shall have the right to reject nonconforming goods, or a nonconforming tender only if such nonconformity impairs the value of the goods by more than ten (10%) percent of the contract price. Customer’s failure to give notice of any claim within ten (10) days from the date of delivery shall constitute an unqualified acceptance of the goods and a waiver by Customer of all claims with respect to the goods. Hawthorne shall have the right to cure nonconformities in the goods or in their tender, provided that Customer notifies Hawthorne within ten (10) days of notification of the nonconformity of its intent to cure. Any such cure must occur within fourteen (14) days of the notification of the nonconformity.

42. **Used Goods.** Should the Agreement include the purchase of used machinery, parts, or equipment, said used machinery, parts, and equipment are sold “AS IS” AND “WITH ALL FAULTS”. HAWTHORNE MAKES NO WARRANTY RELATED TO THE TITLE OF THE GOODS FOR SALE UNDER THIS AGREEMENT, NOR TO THE RIGHTFUL TRANSFER OF THE GOODS, NOR TO THE EXISTENCE OF SECURITY INTEREST, LIENS, OR OTHER ENCUMBRANCES AGAINST THE GOODS. HOWEVER, HAWTHORNE WARRANTS THAT, AT THE TIME OF SALE, HAWTHORNE DID NOT KNOW OF ANY HOSTILE CLAIM OF TITLE OR ANY ENCUMBRANCES AGAINST THE GOODS FOR SALE UNDER THIS AGREEMENT.

43. **Assumption of Risk.** Customer hereby acknowledges and understands that there are risks associated with the use and operation of equipment sold by Hawthorne, which include but are not limited to injury to persons and property as well as death. Customer acknowledges and understands these risks, agrees to assume them, and waives any and all rights to seek compensation, restitution, or indemnification for any injuries, claims, or damages that might arise from said risks.

44. **Storage.** Should Hawthorne be in possession of equipment, parts, or merchandise related to the Goods & Services beyond any delivery date contemplated by the Agreement, Customer agrees to pay Hawthorne a monthly storage fee in an amount to be determined by Hawthorne taking into account the size and nature of the equipment or merchandise stored on Customer’s behalf. Customer is entitled to possession of said equipment at any time upon first giving Hawthorne reasonable notice of not less than five (5) business days. Customer agrees that Customer bears all risk of loss or damage to its equipment while stored by Hawthorne. Customer agrees to cover its equipment under its own property damage insurance policy and to name Hawthorne as an additional insured. If Customer fails to pay in full for the Goods or to take possession of its property following thirty (30) days’ written notice, Hawthorne may sell or otherwise dispose of Customer’s property as it sees fit and apply any proceeds to amounts due and owing.

45. **Survival.** Provisions of this Agreement that by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, Section 16 (Disclaimer of Warranties), Section 17 (Limitation of Liability), Section 18 (Mutual Indemnification), Section 19 (Indemnification Procedures), Section 20 (Exceptions and Limitations on Indemnification), Section 22 (Confidentiality), Section 26 (Applicable Law/Venue), Section 27 (Waiver of Jury Trial), Section 28 (Dispute Resolution), Section 29 (Enforcement), and Section 45 (Survival).

46. **Consent to Share Customer Data.** By accepting the Agreement, Customer consents to Hawthorne sharing information relating to or generated pursuant to this Agreement, or the Goods & Services, including Confidential Information, with Caterpillar, Inc., its affiliates, subsidiaries, sister companies, or vendors. Customer acknowledges and agrees that it is directing Hawthorne to intentionally disclose such information, including Customer’s personal information, if any, to Caterpillar Inc. and its affiliates, subsidiaries, sister companies, or vendors and agrees that such disclosure is not a sale or received for valuable consideration.

47. **Trade-in Equipment.** Customer warrants that the equipment traded in described on the Machinery Sales Agreement and for which trade-in allowance is given, is free and clear of all encumbrances.

48. **Local Requirements.** Hawthorne is not responsible for and does not represent or warrant that its Goods & Services comply with any local approvals, permissions, permits, licenses, certifications, regulations, or restrictions. Customer is responsible for verifying the Goods & Services are fit for their intended use. Customer is also responsible for obtaining any applicable local approvals, permissions, permits, licenses, or certifications independent and separate of its purchase of the Goods & Services from Hawthorne.

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