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 such entity, a "Party") for the sale of the Goods & Services. The Agreement is binding upon each Party and shall control. Failure to notify the other Party of any objection to the terms of the Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by any Party relating to the Goods & Services, and provide such access to Customer's premises or real or personal property or other assets unless otherwise specified. The additional warranty offered by Hawthorne does not cover (i) defects, error, or damage to Customer’s equipment due to accident, abuse, misuse, negligent use, failure to follow proper maintenance procedures, and any use other than in a normal and customary manner, (ii) defects, errors, or nonconformities due to modifications, alterations, additions or changes to Customer’s equipment not made or authorized by Hawthorne, (iii) normal wear and tear, or (iv) damage caused by force of nature or by an act of any third party. Hawthorne’s warranty shall be null and void and have no legal effect in the event the Customer has failed to pay for the Goods & Services or failed to bring its account current. All remedies under Hawthorne’s warranty are expressly limited to replacing parts or making repairs as specified in this section during the applicable warranty period. Claims for losses arising out of any failure of repaired equipment to operate for the warranty period which is attributable to the failure to pay the applicable Machinery Sales Agreement. 12. Hours of Operation. Unless specified otherwise in writing, the Goods & Services shall be performed during Hawthorne’s published business hours. Goods & Services performed or provided outside of such hours will be billed at applicable overtime or double-time rates. 13. Limited Warranty. All warranties on products or equipment sold are limited to the warranty provided by the manufacturer of said products and equipment unless a separate warranty is provided during Hawthorne’s published business hours. Goods & Services performed or provided outside of such hours will be billed at applicable overtime or double-time rates. 14. Disclaimer of Warranties. Except for the limited warranty above, HAWTHORNE MAKES NO WARRANTY WHATSOEVER WITH RESPECT 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 MAY ADMINISTER 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. 15. 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, INCLUDING WITHOUT LIMITATION ANY LOSS OF GOODWILL OR 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 OF ANY NATURE WHATSOEVER WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY LOSS OF GOODWILL OR
As a result of any (i) breach or non-fulfillment of any representation, warranty or covenant under the Agreement by Indemnifying Party; (ii) negligent or more culpable act or omission of Indemnifying Party (including any reckless or willful misconduct) in performing its obligations under the Agreement; (iii) failure by Indemnifying Party to comply with any applicable federal, state or local laws, rules, regulations or codes in the performance of its obligations under the Agreement. The Indemnified Party shall (i) provide prompt written notice of any claim to the Indemnifying Party; (ii) cooperate with all reasonable requests of the Indemnified Party; and (iii) surrender exclusive control of the defense and settlement of any third party claim to the Indemnifying Party (except, if used for the Indemnified Party’s defense) provided that the Indemnifying Party will obtain the Indemnified Party’s written consent prior to agreeing to any settlement or agreement that requires the Indemnified Party to make any admission of fault or to pay any amounts in connection with such settlement or agreement. The Indemnified Party shall not unreasonably withhold or delay any consent required under this section. The Indemnified Party shall not withhold any sums from payment for any costs or liabilities incurred or anticipated to be incurred pursuant to an indemnity obligation.

22. Confidentiality. From time to time during the term of the Agreement, either party (as “Disclosing Party”) may disclose or make available to the other party (as “Receiving Party”) non-public proprietary and confidential information that, if disclosed in writing or other tangible form is clearly labeled as “confidential,” or if disclosed orally, is identified as confidential when disclosed and promptly thereafter is summarized in writing and confirmed as confidential (“Confidential Information”); provided, however, that Confidential Information does not include any information that (i) is or becomes generally available to the public other than as a result of Receiving Party’s breach of this section; (ii) is or becomes available to Receiving Party through the Disclosing Party’s own acts or omissions; (iii) is disclosed to a third party by Receiving Party without a duty of confidentiality; (iv) was in Receiving Party’s possession prior to Disclosing Party’s disclosure hereunder; (v) was or is independently developed by Receiving Party without using any Confidential Information; or (vi) is disclosed to a third person by Disclosing Party without similar restrictions. Except as otherwise specified in these Machinery Sales Agreement Terms and Conditions Receiving Party shall (x) protect and safeguard the confidentiality of Disclosing Party’s Confidential Information with at least the same degree of care as Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care, (y) not use Disclosing Party’s Confidential Information for any purpose other than for the purposes for which it was disclosed, or (z) not disclose any such Confidential Information to any person or entity, except to Receiving Party’s representatives who need to know the Confidential Information to assist Receiving Party, or act on its behalf, to exercise its rights or perform its obligations. If Receiving Party is required by applicable law or legal process to disclose any Confidential Information, Receiving Party will (i) give Disclosing Party prompt written notice of such request so that Disclosing Party may seek an order or other adequate protective measures to prevent disclosure or may join in such proceedings as a party so as to afford Disclosing Party the opportunity to seek, at Disclosing Party’s sole cost and expense, a protective order or other remedy. Each party shall be entitled to injunctive relief for any violation of this Section.

Hawthorne. Hawthorne may terminate this Agreement for any reason upon giving Customer thirty (30) days’ prior written notice. Hawthorne may terminate this Agreement immediately upon the occurrence of a Material Breach as defined in these Terms and Conditions, or if Customer becomes insolvent, files a petition for bankruptcy, commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or similar proceedings, or has appointed a receiver, trustee or other similar person to take possession of all or any part of its property.

32. 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 shall be deemed an election of remedies or a waiver of any such rights and/or remedies. Remedies hereunder shall not be deemed exclusive, and in no event shall the exercise of any such right or the assertion of any remedies hereunder prevent the parties from exercising any other right existing at law or in equity. The receipt, acceptance and/or negotiation of, or any endorsement on, any check or draft received from one Party will not operate to waive or release, in whole or in part, any claim of the other Party arising hereunder or in connection herewith (except as to the portion thereof actually received by the other Party in cash or other good funds). Nothing herein shall be deemed to assign or transfer any of Customer’s obligations under the prior written consent of Customer, which consent will not be unreasonably withheld. If an assignee agrees to assume the obligations of Hawthorne, Customer agrees that Hawthorne shall be released from all further liability hereunder. Customer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Hawthorne. All post-assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve Customer of any of its obligations under this Agreement.

33. No Third Party Beneficiaries. This Agreement benefits solely the Parties and their respective permitted successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give to any third party rights of action under, against or in connection with this 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 and improve upon Caterpillar Inc. products and 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’s responsibility 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 OR TITLE TO 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 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.

45. **Survival.** Provisions of this Agreement that by their nature should apply beyond their terms will remain in full 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 Procedure), 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 signing the Agreement, Customer consents to Hawthorne sharing information relating to or generated pursuant to this Agreement or the Goods & Services with Caterpillar, Inc, its affiliates, and its vendors hired for the purpose of aggregation of data and analysis.

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.