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, or in writing by, Hawthorne, in which case the terms of payment specified on the Machinery Sales Agreement shall 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 setoff or any other defenses. Customer shall be responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Customer hereunder, excluding any taxes imposed on, or with respect to, Hawthorne’s income, revenues, gross receipts, personnel or real or personal property or other assets unless otherwise specified in writing.

2. Change in Scope of Work. If either Party wishes to change the scope or performance of the Goods & Services, it shall submit details of the requested change to the other Party in writing. If either Party wishes to change the scope or performance of the Goods & Services, it shall submit details of the requested change to the other Party in writing.

3. Comply with Law. Each Party agrees to comply fully, at its sole cost, with all applicable federal, state, and local laws, rules, and regulations. Customer shall be responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Customer hereunder, excluding any taxes imposed on, or with respect to, Hawthorne’s income, revenues, gross receipts, personnel or real or personal property or other assets unless otherwise specified in writing.

4. Limited Warranty. All warranties on products or equipment sold are limited to the warranty provided by the manufacturer of said products and equipment unless otherwise specified in writing. Limitations and exclusions contained in any request for proposal, purchase order, or statement of work vary according to the source from which they were obtained. Hawthorne understands that warranties for equipment and parts are limited in time and scope and can become void due to accident, abuse, misuse, negligence, or failure to perform proper maintenance procedures, and any use other than use 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 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 shall be limited to the cost of the repair services provided by Hawthorne ("Goods & Services") used in the Goods & Services or in connection with the Goods & Services. Failure to comply with any portion of this section will constitute a material breach ("Material Breach") of the Agreement, alleviate Hawthorne of any responsibility to deliver the Goods & Services, and enable Hawthorne to terminate the Agreement. Unless specified otherwise 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 whether they arise before, during, or after performance or delivery of the Goods & Services. Hawthorne reserves the right to charge Customer for any cancellation by Customer.

5. Changes to Agreement. If either Party wishes to change the scope or performance of the Goods & Services, it shall submit details of the requested change to the other Party in writing.
against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors Hawthorne may terminate the Agreement and Customers rights under the Agreement, declare the balance of all unpaid amounts and all other charges of any kind required of Customer under the Agreement to be payable immediately, and be entitled to the balance due together with interest at the rate of 10% per annum from the date of notification, and repossess the Equipment without legal process free of all rights of Customer to the Equipment. The Equipment may be moved to wherever Hawthorne’s agent enters title premises where the Equipment is located and repossesses and remove it. Customer specifically waives any right of action Customer might otherwise have arising out of the aforementioned entry and repossession and releases Hawthorne of any claim for trespass or damage caused by reason of the entry, repossession, or removal. Customer will reimburse Hawthorne for all reasonable costs and expenses of any action or suit to recover the Equipment hereunder, together with interest at the rate of 10% per annum from the date of payment. Notwithstanding any other provision of this Agreement, Customer will pay, subject to any limits under applicable law, Hawthorne’s attorneys’ fees and legal expenses of any kind to enforce any provision in this Agreement.

24. Force Majeure. Hawthorne shall not be liable, nor be deemed to have defaulted or breached this Agreement in any material respect by reason of 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 relating to either Party’s workforce), restraints or delays affecting carriers, inability or delay in obtaining supplies of adequate or suitable materials, telecommunication 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 address set forth in Section 4 and are deemed received (i) if given by facsimile, e-mail, personal delivery, courier or certified or registered mail (return receipt requested, postage prepaid). A Communication is effective only on receipt by the receiving Party if the Party giving the Communication is aware that the Communication was received by the receiving Party. AnyCommunication shall be deemed received (i) if given by facsimile or e-mail, on the date of transmission if sent prior to 3:00 p.m. (PST) on a business day and otherwise on the following business day, (ii) if by courier or personal delivery, on the date of delivery, and (iii) if by mail, two (2) days after the date of mailing.

26. Choice of Law/Venue. This Agreement (and all matters arising out of or relating to it) shall be governed by, and construed in accordance with the laws of the State of California without regard to any choice or conflict of laws provisions. When applicable, each Party hereby irrevocably submits to the exclusive jurisdiction of the courts situated in San Diego County in the State of California or Honolulu County in the State of Hawaii and waives all claims that such courts are an inconvenient forum. Customer agrees that it will be personally bound in an inconvenient forum. A LARGER FONT COPY OF THESE TERMS AND CONDITIONS IS AVAILABLE UPON REQUEST.

32. No Waiver. 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 effect to the intent of the Parties, and the remainder of this Agreement, or such modification shall be possible, deleted, and the remainder of this Agreement will remain valid and enforceable.

31. 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 be effective only if signed by Hawthorne. Any changes, additions, stipulations or deletions, by Customer, shall be effective only if signed by Hawthorne. Unless agreed to in writing in the form of an amendment signed by Hawthorne and Customer.

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 will be deemed an election of

22. Confidentiality. From time to time during the term of the Agreement, either Party (as "Receiving Party") shall receive Confidential Information ("Confidential Information") from the other Party (as "Disclosing Party") that is (i) confidential in nature or origin, (ii) not generally known to the public including, but not limited to, any Confidential Information that a Receiving Party may have developed independently of Confidential Information, (iii) marked as confidential and delivered (in writing, by facsimile or email, with the following legend: "CONFIDENTIAL" (or confidential) or (iv) delivered by Disclosing Party in tangible form, with the following legend: "Confidential" (or confidential).

21. Intellectual Property. All intellectual property rights, including copyrights, trademarks, trade secrets, know-how, confidential information, patents, and related software, related data, and associated software, whether or not patented, licensed, or copyrighted, and including all related intellectual property rights (each, an "Intellectual Property Right") and any derivative works and all other rights (collectively, "Intellectual Property Rights") in and to all such documents, work product and other materials that are delivered to Customer under this Agreement.

19. Indemnification Procedure. The Indemnifying Party shall (i) promptly notify the Indemnified Party of any claim that may result in a claim against the Indemnified Party; (ii) cooperate with the Indemnified Party in the defense of any such claim; (iii) provide the Indemnified Party with all information and assistance that the Indemnified Party reasonably requests to enable the Indemnified Party to adequately defend the Indemnified Party or to mediate or settle any such claim; (iv) provide the Indemnified Party with a reasonable opportunity to participate in the mediation or settlement process; (v) provide the Indemnified Party with a reasonable opportunity to participate in any legal proceeding related to the claim.

18. Indemnification. Each Party shall indemnify, defend, and hold harmless the other Party (the "Indemnified Party") against any Losses which result from, in whole or in part, such Party’s breach of these Terms and Conditions or its failure to comply with any applicable law or legal process.

17. Limitation of Liability. Customer agrees that the aggregate liability for any Losses of any nature, whether foreseeable or not, that Hawthorne may have to Customer as a result of any breach of these Terms and Conditions or any other provision of this Agreement, shall be as follows: (i) in no event shall Hawthorne be liable to Customer for any Losses that result from any breach or non-fulfillment of any of these Terms and Conditions or any other provision of this Agreement, to the extent that such Losses are not directly and proximately caused by Hawthorne’s intentional, willful, or negligent act or omission; (ii) in no event shall Hawthorne be liable for any Losses resulting from any action or failure to act by Customer; (iii) in no event shall Hawthorne be liable for any costs or expenses associated with any taxes or fees charged to Customer; (iv) Hawthorne shall not be liable for any further losses resulting from any breach or non-fulfillment of any of these Terms and Conditions or any other provision of this Agreement, to the extent that such Losses are not directly and proximately caused by Hawthorne’s intentional, willful, or negligent act or omission; (v) Hawthorne shall not be liable for any Losses resulting from any action or failure to act by Customer; (vi) in no event shall Hawthorne be liable for any Losses resulting from any action or failure to act by Customer; (vii) in no event shall Hawthorne be liable for any Losses resulting from any action or failure to act by Customer.

16. Indemnifying Party. If the Indemnified Party reasonably requests the Indemnifying Party to mediate or settle any claim, the Indemnifying Party shall mediate or settle such claim in good faith. The Indemnifying Party shall not by any action or inaction cause the Indemnified Party to suffer any Losses.

15. Notwithstanding anything to the contrary, the Indemnified Party shall have all rights, defenses, and remedies available to it under applicable law, whether or not such rights, defenses, and remedies are conferred by this Section 15. The Indemnified Party shall be entitled to be represented by counsel of its own choosing.

14. Indemnified Party. If Customer reasonably requests, the Indemnifying Party shall turn over to Customer any tangible or intangible property reasonably requested by Customer, any copy of any Confidential Information delivered to Customer under this Agreement, or any tangible or intangible property or other material reasonably requested by Customer.

13. Notice of Breach. If Customer reasonably requests, the Indemnifying Party shall, as soon as practicable after becoming aware thereof, promptly give Customer written notice of any breach or non-fulfillment of any provision of these Terms and Conditions.

12. Indemnifying Party. If Customer reasonably requests, the Indemnifying Party shall, as soon as practicable after becoming aware thereof, promptly give Customer written notice of any breach or non-fulfillment of any provision of these Terms and Conditions.

11. Indemnifying Party. If Customer reasonably requests, the Indemnifying Party shall, as soon as practicable after becoming aware thereof, promptly give Customer written notice of any breach or non-fulfillment of any provision of these Terms and Conditions.

10. Indemnifying Party. If Customer reasonably requests, the Indemnifying Party shall, as soon as practicable after becoming aware thereof, promptly give Customer written notice of any breach or non-fulfillment of any provision of these Terms and Conditions.

9. Indemnifying Party. If Customer reasonably requests, the Indemnifying Party shall, as soon as practicable after becoming aware thereof, promptly give Customer written notice of any breach or non-fulfillment of any provision of these Terms and Conditions.

8. Indemnifying Party. If Customer reasonably requests, the Indemnifying Party shall, as soon as practicable after becoming aware thereof, promptly give Customer written notice of any breach or non-fulfillment of any provision of these Terms and Conditions.

7. Indemnifying Party. If Customer reasonably requests, the Indemnifying Party shall, as soon as practicable after becoming aware thereof, promptly give Customer written notice of any breach or non-fulfillment of any provision of these Terms and Conditions.

6. Indemnifying Party. If Customer reasonably requests, the Indemnifying Party shall, as soon as practicable after becoming aware thereof, promptly give Customer written notice of any breach or non-fulfillment of any provision of these Terms and Conditions.

5. Indemnifying Party. If Customer reasonably requests, the Indemnifying Party shall, as soon as practicable after becoming aware thereof, promptly give Customer written notice of any breach or non-fulfillment of any provision of these Terms and Conditions.

4. Indemnifying Party. If Customer reasonably requests, the Indemnifying Party shall, as soon as practicable after becoming aware thereof, promptly give Customer written notice of any breach or non-fulfillment of any provision of these Terms and Conditions.

3. Indemnifying Party. If Customer reasonably requests, the Indemnifying Party shall, as soon as practicable after becoming aware thereof, promptly give Customer written notice of any breach or non-fulfillment of any provision of these Terms and Conditions.

2. Indemnifying Party. If Customer reasonably requests, the Indemnifying Party shall, as soon as practicable after becoming aware thereof, promptly give Customer written notice of any breach or non-fulfillment of any provision of these Terms and Conditions.

1. Indemnifying Party. If Customer reasonably requests, the Indemnifying Party shall, as soon as practicable after becoming aware thereof, promptly give Customer written notice of any breach or non-fulfillment of any provision of these Terms and Conditions.

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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. 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)

33. Assignment. Hawthorne may assign any of its rights or obligations under the Agreement
without the prior written consent of Customer. 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. Any purported 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.

34. 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, confers on any other person any legal or equitable right, benefit or remedy of any
nature whatsoever under or by reason of this Agreement.

35. Headings. Headings 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™, Vision Link®
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 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 RIGUHTFUL
TRANSFER OF THE GOODS, NOR TO THE EXISTENCE OF SECURITY INTEREST,
LIENS, OR OTHER ENCUMBRANCES AGAINST THE GOODS. HOWEVER,
HAWTHORNE MAKES NO WARRANTIES 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
Hawthorne 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 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 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 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.

A LARGER FONT COPY OF THESE TERMS AND CONDITIONS IS AVAILABLE UPON REQUEST.