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 purchaser (“Customer”) (together with Hawthorne, the “Parties,” and each a “Party”). Any purchase order or other purchase order issued by Customer (the “Order”) constitutes acceptance of the terms and conditions of this Agreement. Hawthorne ("Hawthorne” (“Goods & Services”) on behalf of Customer. This Agreement supersedes all prior and contemporaneous understandings and agreements, both written and oral regarding the Goods & Services. No purchase order issued in connection with the Goods & Services shall be binding on Hawthorne unless accepted by Hawthorne in writing. The provision of the Goods & Services by Hawthorne is expressly conditioned upon the terms and conditions of this Agreement. Any acceptance by Customer of the Goods & Services shall constitute acceptance of the terms and conditions hereof, the terms and conditions of any Order, and all documents, exhibits, schedules, and addendums attached to such Order or specifically incorporated by reference, constituting the sole and entire agreement of the Parties, and supersedes all prior agreements, understandings, and negotiations, oral or written, express or implied, including any purchase order. This Agreement will constitute Customer’s legal, valid, and binding obligation, enforceable against Customer to the extent arising directly or indirectly from such prevention or delay.

2. Timing. Hawthorne shall use reasonable efforts to meet any performance dates specified in the Agreement. Customer agrees that any such dates shall be estimates only.

3. 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. Promptly after receipt of any proposed change, the Parties shall negotiate and agree in writing signed by all parties on the terms of such change.

4. Customer Warranties. Customer warrants that (i) it has the authority to make such an agreement and to purchase the Goods & Services under the Agreement; (ii) it is duly authorized to execute, deliver, and perform its obligations hereunder; (iii) when delivered and executed by each Party, the Agreement shall constitute the entire agreement of the Parties; and (iv) all granted licenses, permissions, consents, or authorizations necessary for the Goods & Services to be delivered under the Agreement are complete and accurate.

5. Customer Obligations. Customer shall pay or reimburse all prices, fees, expenses, or charges related to the Goods & Services when they become due, cooperate with Hawthorne in all matters relating to the Goods & Services, and provide such access to Customer’s premises and facilities as may reasonably be requested by Hawthorne for the purposes of performing or delivering the Goods & Services. Customer shall provide all direction, information, approvals, authorizations, notes, contracts, security agreements, financing statements, decisions or materials requested by Hawthorne to perform or deliver 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 perform or deliver the Goods & Services.

6. Compliance with Law. Each Party agrees to comply fully, at its sole cost, with all applicable federal, state and local laws, rules and regulations.

7. Customer’s Acts or Omissions. If Hawthorne’s performance under the Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants, or employees, Hawthorne shall not be deemed in breach of its obligations under the Agreement. If Customer’s performance under the Agreement is prevented or delayed by any act or omission of Hawthorne, Hawthorne shall use reasonable efforts to meet any performance dates specified in the Agreement.

8. Cancellations / Partial Work. Hawthorne reserves the right to charge Customer for any work performed prior to cancellation of this agreement.

9. Fees and Expenses. Customer shall (i) reimburse Hawthorne for all reasonable costs and expenses incurred in connection with the Goods & Services or in collecting any late payments and (ii) pay all other amounts due within thirty (30) days of receipt of an invoice from Hawthorne unless specified otherwise on the Machinery Sales Agreement 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 such thirty-day period shall constitute a waiver of any claim made by Customer with respect to such invoice.

10. Payment. All late payments shall bear interest at the lesser of the rate of 1.5% per month (18% per annum) or the highest rate permitted under applicable law, calculated daily and compounded monthly, from the date such payment was due until the date paid in full. In addition to any other remedies available to it (which Hawthorne does not waive by the exercise of any rights hereunder), Hawthorne shall be entitled to suspend the provision of any Goods & Services if Customer fails to pay any amounts due. If Customer fails to pay any amounts due when due, all unpaid sums shall become immediately due and payable within ten (10) days. Amounts past due are considered overdue, and Customer shall be permitted to apply any funds paid by Customer to Hawthorne at any time to satisfy unpaid amounts.

11. Taxes. 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.

12. Hours of Operation. Unless specified otherwise in writing, the Goods & Services shall be performed or provided during Hawthorne’s publicized business hours. Goods & Services performed or provided outside of such hours shall 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 in writing to Customer at the time of purchase or described in writing on the applicable Machinery Sales Agreement. Subject to the foregoing Hawthorne does not warrant the equipment or goods sold. Customer understands that warranties for equipment and parts are limited in time and scope and can vary according to the source from which they were obtained.

14. Exclusions from Limited Warranty. Any limited 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 the intended use; (ii) normal wear and tear, modifications, alterations, additions or changes to 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 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 or for loss due to, or in connection with, the failure of the repaired equipment, including any and all claims for indirect and consequential damages, are excluded from this warranty.

15. Limited Warranty Procedure. Hawthorne’s warranty obligations set forth above do not arise unless Customer gives written notice that reasonably describes any defective Goods & Services to Hawthorne within thirty (30) days of discovery of the alleged defect and any applicable warranty period has not expired. If, in its sole discretion, Hawthorne determines that Goods & Services are defective, Hawthorne shall have the right to (i) correct the defect at no cost to Customer, (ii) make an adjustment to the purchase price, (iii) replace the Goods & Services with goods and services of like kind and quality, or (iv) refund the purchase price. In the event 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.

16. Disclaimer of Warranty. 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, TESTING, REPRODUCTION, OR OTHER CHARGES WHICH ARE NOT COVERED BY SUCH MANUFACTURER’S WARRANTY. HAWTHORNE IS AN INDEMNIFYING PARTY.

17. 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, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL HAWTHORNE’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE LESSER OF (i) THE FEES PAID OR PAYABLE TO HAWTHORNE HEREUNDER; (ii) THE RETURNED DEPOSIT AMOUNT (if any); OR (iii) $25,000. UNLESS SPECIFICALLY AGREED TO IN WRITING, HAWTHORNE WILL NOT BE LIABLE FOR ANY LIQUIDATED DAMAGES OF ANY KIND AND IS NOT BOUND BY ANY AGREEMENT CONTAINING THE SAME.

A LARGER FONT COPY OF THESE TERMS AND CONDITIONS IS AVAILABLE UPON REQUEST.
against it proceedings relating to bankruptcy, receivership, reorganization or assignment for
relinquish the Goods & Services and the Deliverables (collectively, the "Goods & Services.") to

against this Agreement, or if no such agreement is attainable within a commercially
reasonable degree of care, (y) not use 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, (z) only disclose Confidential Information to assist Receiving Party, or act on its behalf, to exercise its rights or perform its obligations, and (ii) if necessary to enable Customer to make reasonable use of the Deliverables and the Goods & Services.

and Conditions Receiving Party shall (x) protect and safeguard the confidentiality of

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against it proceedings relating to bankruptcy, receivership, reorganization or assignment for

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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 Parties.** 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®, Vision Link®, 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.hawthorne.cat.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 the purchase of machinery 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 SOLD 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 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.

48. **Prevailing Wage.** Unless specified otherwise in writing, the Services shall be quoted, performed or provided with the assumption that any local, state, or federal prevailing wage laws, or public or private collective bargaining agreements, do not apply. Goods & Services performed or provided pursuant to a local, state, or federal prevailing wage law, or a public or private collective bargaining agreement, will be billed at applicable rates, which Customer agrees to pay.