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") (i) in the case of Services to Customer shall not constitute acceptance of any terms and conditions contained in any request for proposal, purchase order, statement of work, or other similar document, nor does it serve to modify or amend this Agreement. Any such document shall create a separate contract consisting of the terms of this Agreement and any additional terms proposed by such document to the extent they do not conflict with the terms of this Agreement. Should the terms of any proposal, purchase order, or statement of work issued by Customer or a third party conflict with the terms and conditions of this Agreement, the terms of this Agreement shall control. The Parties agree that the Goods & Services will be governed by the following documents in this order of precedence: Machinery Sales Agreement, Machinery Sales Agreement Terms and Conditions, other writings signed by the Parties, other documents issued by the Parties relating to the Goods & Services. The Agreement is not effective until Hawthorne receives a Machinery Sales Agreement signed by the Customer, which is an offer to Hawthorne to sell or provide the Goods & Services to Customer, and Hawthorne indicates its acceptance of Customer’s offer by signing the Sale Agreement.

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. Payment Terms, Late Payments. 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, and enable Hawthorne to terminate the Agreement.

5. Compliance with Law. Each Party agrees to comply fully, at its sole cost, with all applicable laws, regulations, and orders of any government, local, state, or federal government.

6. Customer’s Acts of 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 or otherwise liable for any costs, charges, or losses sustained or incurred by Customer to the extent arising directly or indirectly from such prevention or delay.

7. Cancellations / Partial Work. Hawthorne reserves the right to charge Customer for any cancellation by Customer.

8. 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. Until such time as Customer has paid in full for the Goods & Services, 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 affected by any set-off or defense.

9. 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.

10. Hours of Operation. Unless specified otherwise in writing, the Goods & Services shall be 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.

11. 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. No warranty is provided in addition to that provided by the manufacturer of a product. Customer understands that warranties for equipment and parts are limited in time and scope and cannot vary according to the source from which they were obtained.

12. Exclusions from Limited Warranty. Any limited warranty offered by Hawthorne does not extend to damages or loss, or to defects or failures caused by (a) Customer’s use or misuse of the Goods & Services or any portion thereof, (b) Customer’s failure to properly maintain the Goods & Services or maintain the Goods & Services in accordance with the maintenance procedures and guidelines furnished by Hawthorne, (c) any modifications, alterations, additions or changes to the Goods & Services made or caused by Customer or any entity other than Hawthorne, (d) modifications, alterations, additions or changes to the Goods & Services made or caused by any third party without express written approval of Hawthorne, (e) any accident or damage arising from the negligence of Customer or any entity other than Hawthorne, or (f) any modification which is not made in substantial compliance with the terms and conditions of this Agreement.

13. Limitation of Liability. In no event shall Hawthorne be liable to Customer for 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 no event shall Hawthorne’s aggregate liability arising out of or related to this Agreement, whether in contract, tort or otherwise, 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 costs, charges, or losses incurred by Customer to the extent arising directly or indirectly from such prevention or delay.

14. Mutually 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 officers, agents, and employees from and against any and all claims, losses, deficiencies, judgments, settlements, interest, A LARGER FONT COPY OF THESE TERMS AND CONDITIONS IS AVAILABLE UPON REQUEST.
24. Force Majeure. Hawthorne shall not be liable, nor be deemed to have 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, restraints or delays affecting carriers, an 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 provided in the Machinery Sales Agreement, or such other address that the receiving Party has designated in accordance with this Section. Unless otherwise agreed to in writing, all Communications must be delivered 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 has complied with the requirements of this Section. Communications shall be deemed to be effectively delivered if transmitted by facsimile, e-mail or courier before 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. Applicable Law/Venue. This Agreement (and all matters arising out of or relating to it) will be governed in all respects by the laws of the State of California without regard to any choice of conflict or law provisions. When applicable, each Party hereby irrevocably submits to the exclusive jurisdiction of the courts located in San Diego County in the State of California or in Honolulu County in the State of Hawaii and waives all claims that such courts lie in an inconvenient forum.

27. Solution of Disputes. Each Party knowingly, voluntarily, irrevocably and unconditionally waives its right to a jury trial of any claim or cause of action based on or arising out of this Agreement or the subject matter hereof (including, without limitation, contract, tort, breach of duty, and all other common law and statutory causes of action), and each Party hereby irrevocably waives its right to a jury trial of any exceptions. Each Party (i) understands that this is a waiver of important legal rights and (ii) acknowledges having had a reasonable opportunity to discuss this waiver and its effects with legal counsel.

28. Indemnification. The Indemnifying Party shall (a) promptly provide written notice to the Indemnified Party of any claim of the other Party arising hereunder or in connection herewith (except as to the portion of such claim indemnifiable under this Section); (b) cooperate with all reasonable requests of the Indemnified Party in connection with any claim of the other Party arising hereunder; (c) use its best efforts to obtain a waiver of such claim or settlement of such claim on reasonable terms; (d) use such reasonable means as the Indemnifying Party may deem appropriate to contest or settle any such claim, providing the Indemnified Party with a protective order or other remedy. Each Party shall be entitled to injunctive relief for any violation of this Section.

29. 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 in the event of (a) Customer’s bankruptcy, receivership, reorganization or assignment for the benefit of creditors, or otherwise breaches this Agreement.

A LARGER FONT COPY OF THESE TERMS AND CONDITIONS IS AVAILABLE UPON REQUEST.
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.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 shortfalls, 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 the same, 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. 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 25 (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.