1. Agreement. These Power Sales Terms and Conditions and the document incorporating them by reference, 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") with respect to any services to be performed and equipment to be furnished by Customer ("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 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. 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 preference: the Agreement (including any addendums or schedules), the request for proposal, purchase order, statement of work, or other similar document, any 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 Customer has failed to pay for the Goods & Services or failed to bring it to the attention of Hawthorne in a timely manner. 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 Agreement.

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 the Goods & Services are not defective, Hawthorne’s obligations under the Agreement in any form (whichever occurs first) constitutes acceptance of these terms and conditions and any terms set forth in the document(s) incorporating them by reference, Power Sales Terms and Conditions, other writings signed by the Parties, other documents issued by the Parties relating to the Goods & Services. Acceptance of any portion of the Goods and Services, providing payment in whole or in part, or acceptance of this Agreement in any form (whichever occurs first) constitutes acceptance of these terms and conditions and any terms set forth in the document(s) incorporating them by reference.

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. Any changes to the scope of work shall be negotiated and agreed to in writing signed by both parties on the terms of such change.

4. Customer Warranties. Customer warrants that (i) if an entity, it is duly organized and validly existing in good standing; (ii) it is duly authorized to execute, deliver, and perform its obligations under this Agreement; (iii) when duly executed and delivered by each Party, the Agreement constitutes a valid and binding obligation of that Party enforceable against it in accordance with its terms; (iv) it is not insolvent and is paying all of its debts as they become due; (v) any payments made pursuant to the Agreement are intended by it to be a substantially contemporaneous exchange for new value given to it; (vi) each payment made of a debt incurred by it under this Agreement is or was in the ordinary course of its business or for the ordinary and necessary expenses of such business operations.

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 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.

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 such failure is caused directly or indirectly by (i) any act or omission by or on behalf of Customer; (ii) any act or omission by or on behalf of any government entity on any amounts payable by Customer thereunder, 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 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 in writing to Customer at the time of purchase or purchased by Customer. Subject to the foregoing Hawthorne does not provide a warranty in addition to that manufacturer’s warranty of a product. 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 normal industrial use of the Goods & Services; (ii) defects or failures caused by force of nature, including, but not limited to, wind, rain, lightning, earthquakes, termites, and flooding, or by other causes beyond the control of Hawthorne; (iii) normal wear and tear; (iv) damage caused by force of nature or by an act of any third party.

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, DIAGNOSIS, AND OTHER CHARGES WHICH ARE NOT COVERED BY SUCH MANUFACTURER’S WARRANTY.

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. THE TOTAL LIABILITY OF HAWTHORNE TO CUSTOMER UNDER THIS AGREEMENT AS THE SUM OF ALL LIABILITIES 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 UNDER THIS AGREEMENT OR (ii) $50,000.  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 UNDER THIS AGREEMENT OR (ii) $50,000.

A LARGER FONT COPY OF THESE TERMS AND CONDITIONS IS AVAILABLE UPON REQUEST.
EXPENSES OF WHATSOEVER KIND, INCLUDING REASONABLE ATTORNEYS' FEES, THAT ARE INCURRED BY INDEMNIFIED PARTY (COLLECTIVELY, "LOSES") AS A RESULT OF ANY (i) BREACH OR NON-FULFILLMENT OF ANY REPRESENTATION, WARRANTY OR COVENANT UNDER THE AGREEMENT BY INDEMNIFYING PARTY; (ii) NEGLIGENCE OR MORE CULPABLE ACT OR OMISSION OF INDEMNIFYING PARTY (INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT); OR (iii) VIOLATION OF THIS SECTION.

21. Intellectual Property. All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, designs, trademarks, and all other rights (collectively, "Intellectual Rights") to all documents, work product and other materials that are delivered to Customer under this Agreement or prepared by or on behalf of the Hawthorne in the course of performing or delivering the Goods & Services (collectively, the "Deliverables") shall be owned by Hawthorne.

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 through no fault or act of the receiving Party; (ii) is already known to the receiving Party at the time of disclosure by the disclosing Party; and (iii) is not derived from or connected with Confidential Information that is available to Receiving Party on a non-confidential basis from a third party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (iii) was in Receiving Party’s possession prior to Disclosing Party’s disclosure hereunder; (iv) was or is independently developed by Receiving Party without using any Confidential Information; or (v) is disclosed to a third person by Disclosing Party without similar restrictions. Except as otherwise specified 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 to exercise its rights or perform its obligations, and (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, or otherwise, to disclose Confidential Information, Receiving Party shall make commercially reasonable efforts to notify Disclosing Party of such requirements 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.

23. Bankruptcy. 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. If Customer fails to make any of the payments required by the Agreement, does not keep or perform any of the conditions set out herein, breaches this Agreement or if Customer becomes insolvent, files a petition for bankruptcy, commences or has commenced a proceeding to reorganize, liquidate or restructure its obligations under the Agreement, or becomes the subject of an involuntary bankruptcy petition or any other judicial proceeding 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. Customer authorizes Hawthorne or Hawthorne’s agent to enter onto any premises where the Equipment is located and repossess and remove it. Customer specifically waives any right of action Customer might otherwise have arising out of the aforementioned entry and repossess. In the event Hawthorne of claim for trespass or repossessed or removed any right of action Customer might otherwise have arising out of reason of the entry, repossession, or removal. Customer will reimburse Hawthorne for all reasonable expenses of repossession and enforcement of Hawthorne of any claim for trespass or repossession, or removal. Customer will reimburse Hawthorne for all reasonable expenses of repossession and enforcement of Hawthorne’s rights and remedies, 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 offsets allowed by law, the reasonable costs and expenses of 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, for any failure or delay caused by or resulting from acts or omissions beyond beyond Hawthorne’s reasonable control including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities or similar events, or any natural disaster, governmental act, war, civil commotion, embargo, act of God, terrorist action or war, civil commotion, embargo. However, neither Party’s failure to perform its rights or perform its obligations. If Receiving Party is required by applicable law or legal process, or otherwise, to disclose 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, and (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, or otherwise, to disclose Confidential Information, Receiving Party shall make commercially reasonable efforts to notify Disclosing Party of such requirements 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.

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 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 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 certified or registered 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 or conflict of law 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 and in the State of Hawaii and waives all claims that such courts lie in an inconvenient forum.

27. Waiver of Jury Trial. EACH PARTY KNOWINGLY, VOLUNTARILY, IRRESCU板Y 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 CLAIMS), AND WILL NOT BE SUBJECT TO 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. Dispute Resolution. Any dispute or controversy arising under or in connection with this Agreement shall first be resolved by informal discussion between senior management of the Parties. If informal discussion fails to produce a resolution, the Parties must then attend non-binding mediation in the San Diego County, California or Honolulu, Hawaii with a mutually agreed upon mediator. If mediation fails, then either Party may initiate arbitration, which shall be conducted in San Diego, California or Honolulu, Hawaii in accordance with the commercial arbitration rules of the American Arbitration Association. The party prevailing in the arbitration shall have all of its reasonable costs, fees and expenses, including, without limitation, attorneys’ fees as invoiced and house counsel fees at $500 per hour incurred in connection with the arbitration, as well as all costs, fees, and expenses of the arbitrators, reimbursed by the non-prevailing party. A prevailing party is a party that recovers at least 75% of its total claims or that is required to pay out no more than 25% of the claims made against it. The arbitrator will be selected in accordance with the rules and the commercial arbitration rules of the American Arbitration Association. The arbitrator will be selected in accordance with the rules and the commercial arbitration rules of the American Arbitration Association. The arbitrator will be selected in accordance with the rules and the commercial arbitration rules of the American Arbitration Association.

29. Enforcement. Subject to Section 28, Customer shall pay all costs Hawthorne may incur in enforcing or exercising its rights under this Agreement, whether or not suit is filed.

30. 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 severed and the remaining provisions shall remain in full force and effect. To the extent that any provision of this Agreement is invalid, illegal, or unenforceable, such provision shall be deemed 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.

31. Amendments. This Agreement may be modified or amended by an instrument in writing signed by both Parties. No change, modification, addition, deletion, or waiver, by either Party in exercising any rights available hereunder, at law or in equity will be deemed an election of waiver. If either Party is the prevailing party in any action or proceeding against the other party, then the non-prevailing party shall not be entitled to a waiver of, 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 A LARGER FONT COPY OF THESE TERMS AND CONDITIONS IS AVAILABLE UPON REQUEST. Rev. 11/18/2020
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, shall confer any rights or any 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 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 but may sell or rent collected information to any third party for all exercise all reasonable efforts to keep the information secure.

Customer, by executing the Agreement, 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 but may sell or rent collected information to any third party for

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 to the 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 RIGHTFUL TRANSFER OF THE GOODS, NOR TO THE EXISTENCE OF SECURITY INTEREST, LIENS, OR ANY 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 Goods or 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