1. **Agreement.** These Rental Agreement Terms and Conditions and the Rental Agreement, Proposal, Invoice, Quote, or other document(s) incorporating them by reference, including all documents, exhibits, schedules, and addendums attached thereto or specifically incorporated by reference by them, constitute the sole and entire agreement ("Agreement") between Hawthorne Machinery Co. or its applicable subsidiary, affiliate, or related entity ("Hawthorne") and the purchasing customer ("Customer") (together with Hawthorne, the "Parties") with respect to the rental of certain property ("Equipment") by Hawthorne on behalf of or to Customer ("Services"). This Agreement supersedes all prior and contemporaneous understandings and agreements, both written and oral regarding the Services. No purchase order, work order, or statement of work issued in connection with the Services by Customer or a third party shall be binding on Hawthorne unless accepted by Hawthorne in writing. The provision of the 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 issued by Customer or a third party, nor does it serve to modify or amend this Agreement.

2. **Precedence.** 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 the terms and conditions by reference, these Rental Agreement Terms and Conditions, other writings signed by or on behalf of Hawthorne and Customer, whether they arise before, during, or after performance of the Services. All credit card charges, service fees, or charges related to the Services when they become due, cooperate with Hawthorne in all matters relating to the Services, and provide such access to Customer’s premises and facilities as may reasonably be requested by Hawthorne for the purposes of performing the Services. Customer shall provide all direction, information, approvals, authorizations, notes, contracts, security agreements, financing statements, decisions or materials requested by Hawthorne to perform the Services. Customer shall maintain the premises on and around which the Services will be performed in a reasonably safe condition and shall notify Hawthorne in advance of any hazards, dangerous conditions and defects. 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 the Services, and enable Hawthorne to terminate the Agreement.

8. **Compliance with Laws.** Customer will fully, at its sole cost, with all applicable federal, state and local laws, rules and regulations.

9. **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 or otherwise liable for any costs, charges, expenses, or losses sustained or incurred by Customer to the extent arising directly or indirectly from such prevention or delay.

10. **Costs and Expenses.** Customer will indemnify, defend, and hold harmless Hawthorne, its agents, employees, and their respective owners, officers, directors, employees, agents, successors and permitted assigns from any and against any and all claims, losses, expenses, liabilities, deficiencies, judgments, settlements, interest, awards, fines, causes of action, damages, costs, penalties, taxes, assessments, charges, punitive damages and expenses of any nature whatsoever (including attorneys’ fees and costs of any nature whatsoever) occurring in the ordinary course of business or financial affairs, and any claims, demands, costs, causes of action, losses, expenses, or liabilities arising from the same. In no event shall Hawthorne be liable to Customer for any third party for any loss of use, income, or profit or loss of data or diminution in value, or for any consequential, indirect, incidental, special, exemplary or punitive damages (including attorneys’ fees and costs of any nature whatsoever) arising out of breach of contract, tort (including negligence) or otherwise, EXCEED THE LESSER OF (i) THE FEES PAID 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 LIQUIDATED DAMAGES OF ANY KIND AND IS NOT BOUND BY ANY AGREEMENT CONTAINING THE SAME.

11. **Duty to Indemnify.** Customer will indemnify, defend, and hold harmless Hawthorne, its agents, employees, and their respective owners, officers, directors, employees, agents, successors and permitted assigns from any and against any and all claims, losses, expenses, liabilities, deficiencies, judgments, settlements, interest, awards, fines, causes of action, damages, costs, penalties, taxes, assessments, charges, punitive damages and expenses of any nature whatsoever (including attorneys’ fees and costs of any nature whatsoever) occurring in the ordinary course of business or financial affairs, and any claims, demands, costs, causes of action, losses, expenses, or liabilities arising from the same. In no event shall Hawthorne be liable to Customer for any third party for any loss of use, income, or profit or loss of data or diminution in value, or for any consequential, indirect, incidental, special, exemplary or punitive damages (including attorneys’ fees and costs of any nature whatsoever) arising out of breach of contract, tort (including negligence) or otherwise, EXCEED THE LESSER OF (i) THE FEES PAID 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 LIQUIDATED DAMAGES OF ANY KIND AND IS NOT BOUND BY ANY AGREEMENT CONTAINING THE SAME.

16. **Normal Wear and Tear.** Customer agrees to return Equipment to Hawthorne in the same condition in which it was leased and, at Hawthorne’s discretion, agrees to compensate Hawthorne for any damage in excess of normal wear and tear. At Hawthorne’s discretion, a cleaning charge for one day’s rental or more may apply. Customer will also use and store the Equipment in a careful and proper manner and will not permit it to be operated or used in violation of any and all applicable manuals, user guides, instructions, or applicable federal, state or local statute, ordinance, rule or regulation relating to the possession, use and maintenance of the Equipment as specified by the manufacturer.

**A FULL COPY OF THESE TERMS AND CONDITIONS IS AVAILABLE UPON REQUEST.**
In the event of any failure of the Equipment, Customer at its expense shall immediately return it to Hawthorne's premises. Customer shall not repair Equipment without Hawthorne's written authorization.

21. Insurance and Rental Protection Plan. Customer will provide Hawthorne no less than two (2) days before the date on which the Services are to begin and no less than five days before the expiration date of existing insurance an Accord certificate by an "A" rated admitted carrier evidencing the required insurance coverage with Hawthorne Machinery Co. as follows: A) Certificate Holder: Hawthorne Machinery Co., Attention: Risk Management, 16945 Camino San Bernardo, San Diego, CA 92127. B) General Liability: Limits Required: $1,000,000 Per Occurrence/$2,000,000 Aggregate per year. Endorsement: Additional Insured - Hawthorne Machinery Co., its Affiliated Companies, Directors & Officers, Agents and Employees. Primary Insurance: Primary Insurance is required. The insurance must be primary and non-contributory. C) Business Auto (If Applicable): Coverage: Require s Statutory limits required by the state. Employer's Liability $1,000,000. Waiver of Subrogation: A Waiver of Subrogation is required in favor of Hawthorne Machinery Co. E) Property Physical Damage: Limits Required: Blanket coverage limits must equal or exceed the value of the item(s) leased or rented. Form: Coverage is required to be written on Special Form, including theft. Endorsement: Hawthorne Machinery Co. must be named as Additional Insured on your Auto Policy. F) Additional Insured: If renting or leasing Equipment, Customer taking possession of any Equipment to which this Agreement applies, shall in no way or manner affect or become a part of the primary coverage provided to the Equipment as specified in the Section titled “Loss or Destruction of Equipment.”

22. Confidentiality. By entering into this Agreement, Customer agrees to supply Hawthorne with Confidential Information. Confidential Information includes but is not limited to, all non-public Confidential Information that, except to Receiving Party's representatives who need to know the Confidential Information to assist Receiving Party, or act on its behalf, to exercise its rights or perform its obligations. If Receiving Party is required by applicable law or legal process to disclose any Confidential Information, it shall, prior to making such disclosure, use commercially reasonable efforts to notifyDisclosing Party of such requirements to afford Disclosing Party the opportunity to contest the disclosure or 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. Refusal of RPP. If Customer refuses to pay for the RPP, then Hawthorne may terminate the Agreement at its sole option. However, if Hawthorne elects to continue the Agreement, the RPP will not be effective and Customer shall be fully responsible for all loss and damage to Equipment as specified in the Section titled “Loss or Destruction of Equipment.”

24. Loss or Destruction of Equipment. Customer is responsible to Hawthorne for any loss or damage to Equipment, except for ordinary wear and tear. If the Equipment is stolen, lost or damaged, Customer shall be liable to Hawthorne for the full value of the Equipment, together with interest at the highest legal rate on such value. Customer will provide Hawthorne no less than two (2) days before the date on which the Services are to begin and no less than five days before the expiration date of existing insurance an Accord certificate by an "A" rated admitted carrier evidencing the required insurance coverage with Hawthorne Machinery Co. as follows: A) Certificate Holder: Hawthorne Machinery Co., Attention: Risk Management, 16945 Camino San Bernardo, San Diego, CA 92127. B) General Liability: Limits Required: $1,000,000 Per Occurrence/$2,000,000 Aggregate per year. Endorsement: Additional Insured - Hawthorne Machinery Co., its Affiliated Companies, Directors & Officers, Agents and Employees. Primary Insurance: Primary Insurance is required. The insurance must be primary and non-contributory. C) Business Auto (If Applicable): Coverage: Requires Statutory limits required by the state. Employer's Liability $1,000,000. Waiver of Subrogation: A Waiver of Subrogation is required in favor of Hawthorne Machinery Co. E) Property Physical Damage: Limits Required: Blanket coverage limits must equal or exceed the value of the item(s) leased or rented. Form: Coverage is required to be written on Special Form, including theft. Endorsement: Hawthorne Machinery Co. must be named as Additional Insured on your Auto Policy. F) Additional Insured: If renting or leasing Equipment, Customer taking possession of any Equipment to which this Agreement applies, shall in no way or manner affect or become a part of the primary coverage provided to the Equipment as specified in the Section titled “Loss or Destruction of Equipment.”

25. Fuel. It is the responsibility of the Customer to use appropriate fuels. Engine damage arising from the use of incorrect fuel will be charged to Customer.

26. Waiver of Jury Trial. This Agreement is governed by the laws of the United States of America, and Canada.

27. Term. This Agreement shall commence on the date specified in the applicable Rental Agreement, Service Authorization, Proposal, Quote, or other document(s) incorporating these terms and conditions by reference, or, if no such date is specified, as of acceptance of any portion of the Services by Customer, the Customer providing payment in whole or in part, or Customer taking possession of any Equipment to which this Agreement applies, shall continue until the completion of the Services unless sooner terminated pursuant to this Agreement, and shall automatically renew at the end of each term for successive terms equal in duration to the initial term.

28. Termination by Hawthorne. If Customer fails to make any of the payments required by this Agreement, Service Authorization, Proposal, Quote, or other document(s) incorporating these terms and conditions by reference, or, if no such date is specified, as of acceptance of any portion of the Services by Customer, the Customer providing payment in whole or in part, or Customer taking possession of any Equipment to which this Agreement applies, shall continue until the completion of the Services unless sooner terminated pursuant to this Agreement, and shall automatically renew at the end of each term for successive terms equal in duration to the initial term.

29. 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 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, an inability or delay in obtaining supplies of adequate or suitable materials, telecommunication breakdown or power outage.

30. 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 Rental Agreement, Proposal, Invoice Quote, or other document(s) incorporating these terms and conditions by reference, or, if no such date is specified, as of acceptance of any portion of the Services by Customer, the Customer providing payment in whole or in part, or Customer taking possession of any Equipment to which this Agreement applies, shall continue until the completion of the Services unless sooner terminated pursuant to this Agreement, and shall automatically renew at the end of each term for successive terms equal in duration to the initial term.

31. Waiver of Jury Trial. 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 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 A LARGER FONT COPY OF THESE TERMS AND CONDITIONS IS AVAILABLE UPON REQUEST.
REASONABLE OPPORTUNITY TO DISCUSS THIS WAIVER AND ITS EFFECTS WITH LEGAL COUNSEL.

34. 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 mediator. If mediation fails to produce a resolution, or if the Parties cannot agree on a mediator, any dispute or controversy arising out of or relating to this Agreement shall be settled by binding arbitration. 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. Each Party shall share equally the cost of the arbitration and shall bear its own attorneys’ fees, unless the arbitrator awards such fees and costs to a Party. The arbitrator shall not have the power to award any punitive damages.

35. Enforcement. Subject to Section 34, Customer shall pay all costs Hawthorne may incur in enforcing or exercising its rights under this Agreement, whether or not suit is filed.

36. Severability. If any provision of this Agreement shall be deemed invalid, illegal, or unenforceable then the validity, legality or enforceability of the remaining provisions shall not be affected, modified or affected, 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 the other Party arising hereunder in connection herewith (except as to the portion thereof actually received by the other Party in cash or other good funds).

39. 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 or sublet or hire out the Equipment without the prior written consent of Hawthorne.

40. 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.

41. Headings. Headings are for reference and do not affect the interpretation of the Agreement.

42. 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 Services are performed.

43. Equipment Management Electronic Data Sharing Product Link™ and Vision Link® User Agreement/Privacy Notice. For Equipment equipped with Product Link™ and Vision Link®, Customer understands that data concerning the machine, its condition, and operation will be collected and shared with 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.

44. Title to Goods. Hawthorne retains title to goods. Customer hereby grants to Hawthorne a security interest in any purchased goods and all proceeds thereof described in this agreement to secure the performance of all of Customer’s obligations under this Agreement.

45. Equipment. Should the Agreement include the purchase of machinery from Hawthorne, the machine 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.

46. Transportation. Customer understands and consents to Hawthorne’s use of third party 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.

47. Used Goods. Should the Agreement include the purchase of used machinery, parts, or other equipment, said used machinery, parts, and other 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 INTERESTS, 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.

48. Consent to Share Customer Data. By signing the Agreement, Customer consents to Hawthorne sharing information relating to or generated pursuant to this Agreement or the Services with Caterpillar, Inc., its affiliates, and its vendors hired for the purpose of aggregation of data and analysis.

49. No Waiver. Under no circumstance (other than damages resulting from covered losses by Hawthorne’s RPO) does Hawthorne waive any claim against Customer, and in all circumstances Customer shall be responsible for accessories such as air hoses, tool steel, electric cords, blades, welding cables, LPG tanks, fuel containers and other similar items. Moreover, the waiver of subrogation specified in the Section titled “Rental Protection Program” shall not apply to any bodily injury or property damage liability claims in any circumstances.

50. Air Pollution Permit Compliance. Customer agrees to fully read and understand all terms and conditions of any State or Federally issued air permit for Equipment being rented. Customer agrees as a “Rental Operator”, to comply with all requirements of any issued air permit and all applicable local, state and federal air quality rules and regulations. Customer fully understands that permitted Equipment is subject to enforcement action by Local, State and Federal regulatory agencies for any violations of the listed permit conditions and local, state and federal air quality rules and regulations.

51. EMISSIONS REQUIREMENTS: 

CAL AIR RESOURCES BOARD 5 MIN IDLING LIMIT WHEN OPERATED IN CAL, ANY OFF-ROAD DIESEL VEHICLE MAY BE SUBJECT TO THE CAL AIR RESOURCES BOARD IN-USE OFF-ROAD DIESEL VEHICLE REGULATION. IF THEREFORE COULD BE SUBJECT TO RETROFIT OR ACCELERATED TURNOVER REQUIREMENTS TO REDUCE EMISSIONS OF AIR POLLUTANTS. FOR MORE INFORMATION, PLEASE VISIT THE CAL AIR RESOURCE BOARD WEBSITE AT: ARB.CA.GOV/MSIPROGDIESEL/OR DIESEL.HTM.

52. Personal Property Tax. Customer agrees to pay Hawthorne an additional 0.75% charge on the rental price of qualified heavy equipment as defined in California Civil Code 1656.5 (“PPT”). The PPT is an estimate of the personal property tax Hawthorne will be required to remit for the rental of certain qualified heavy equipment by Customer. In the event the PPT exceeds actual amounts owed by Hawthorne, Customer acknowledges and authorize the excess to be remitted to the State Board of Equalization for deposit into the State of California General Fund as required by law.

53. 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 13 (Disclaimer of Warranties), Section 15 (Limitation of Liability), Section 16 (Duty to Indemnify), Section 23 (Insurance and Rental Protection Program), Section 27 (Confidentiality), Section 32 (Applicable Law/Venue), Section 33 (Waiver of Jury Trial), Section 34 (Dispute Resolution), Section 35 (Enforcement), Section 42 (Time to Bring Claim), and Section 55 (Survival).