1. Agreement. These Service Authorization Terms and the Conditions, the Service Authorization, Proposal, 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 or affiliate (“Hawthorne”) and the purchasing customer (“Customer”) (together with Hawthorne, the “Parties,” and each, a “Party”) relating to the Services. Any representation on which Hawthorne relied in writing the Services to Customer shall not constitute acceptance of any terms and conditions contained in any request for proposal, purchase order, 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 Services will be governed by the following documents in this order of precedence: the Service Authorization, Proposal, Quote, or other document(s) incorporating these terms and conditions by reference, Service Authorization Terms and Conditions, other writings signed by the Parties relating to the Services. Acceptance of any portion of the Services, providing payment in whole or in part, or acceptance of the Agreement in any form (whoever occurs first) shall constitute acceptance of these Service Authorization Terms and Conditions and any terms set forth in the document(s) incorporating them by reference.

2. Timing. Hawthorne, in its sole and absolute discretion, may meet any performance dates specified in the Agreement. Customer agrees that any such dates shall be estimates only.

3. Partial Information. Customer understands and acknowledges that Hawthorne has quoted the Services relying on representations made by Customer regarding the cleanliness, functionality, operational status, contents, and nature of the equipment or machinery that will be the subject of the services to be performed. If any of the information provided by Hawthorne in preparing or pricing the Services be false or incomplete, or if Hawthorne shall reasonably determine in the course of performing the Services that additional repair, maintenance, or improvement services are necessary to satisfy its obligations hereunder ("Additional Work"), Hawthorne shall promptly provide to Customer an estimated cost of the additional work necessary to complete the Services. If Customer fails to agree to the Additional Work in writing, Hawthorne may terminate this Agreement in accordance with Section 28.

4. Change in Scope of Work. Subject to Section 3 above, if either Party wishes to change the scope or performance of the 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 a writing signed by all parties on the terms of such change. Notwithstanding the above, Hawthorne may from time to time change the Services without the consent of Customer provided that such changes do not materially affect the nature or scope of the Services, the fees, or any performance dates set forth in the Agreement.

5. 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) if all executed and delivered by each Party, the Agreement will constitute Customer’s legal, valid, and binding obligation, 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 payment required and due hereunder is made free and clear of any lien, claim, or encumbrance of any nature; (vii) Customer has no financial obligations which adversely affect its ability to perform its obligations hereunder; (viii) all information supplied by Customer is complete and accurate, and (ix) the performance of the Services does not require Hawthorne to remove, replace, or alter any part of a building or structure.

6. Customer Obligations. Customer shall pay or reimburse all prices, fees, expenses, 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 obtain financing or otherwise to enable Hawthorne to properly perform the Services. Customer shall pay for partially completed work based on time and material at a pro-rata share of the Services used. The remedies set forth above shall be exclusive and in addition to all 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 Services if Customer fails to pay any amounts due. If Customer fails to pay any amounts when due, all unpaid sums shall become immediately due and payable within ten (10) days. Additionally, Hawthorne shall have the right, but not the obligation, to apply any funds paid by Customer to Hawthorne at any time to satisfy unpaid amounts.

7. 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 property, sales, service, use, leases, or similar taxes.

8. Hours of Operation. Unless specified otherwise in writing, the Services shall be provided during Hawthorne’s publicized business hours. Services performed outside of such hours will be billed at applicable overtime or double-time rates.

9. Ancillary Systems. Hawthorne may deactivate or interrupt mechanical and electrical systems (including fire suppression systems) to perform the Services. Customer shall be responsible for reactivating such systems after completion of the Services. Hawthorne shall have no responsibility for reactivating, testing, or operating any such system.

10. Fees and Expenses. Customer shall (i) reimburse Hawthorne for all reasonable costs and expenses incurred in connection with the 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 in the Service Authorization, Proposal, Quote, or other document(s) incorporating these terms and conditions by reference, in which case the terms of payment specified in that document by Hawthorne will control. Failure to notify Hawthorne of any dispute or claim in writing within thirty (30) days of receipt of the invoice shall constitute an agreement to accept the amount billed and waives Customer’s right to dispute such invoice. Customer’s obligation to pay amounts invoiced shall be absolute and unconditional and shall not be subject to any delay, reduction, set-off, defense, or counter-claim. Unless specified otherwise in writing, Customer shall pay all costs of transportation, which include but are not limited to government duties, local taxes, customs, insurance, and shipping costs regardless of whether they arise before, during, or after performance of the Services. All credit card charges of $3,000 or more will be subject to an additional three percent (3%) charge.

11. Late Payments. 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 on the outstanding balance.

12. Change in Scope of Work. If Customer’s acts or omissions prevent or delay the provision of 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 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 Services will be governed by the following documents in this order of precedence: the Service Authorization, Proposal, Quote, or other document(s) incorporating these terms and conditions by reference, Service Authorization Terms and Conditions, other writings signed by the Parties, other documents issued by the Parties relating to the Services. Acceptance of any portion of the Services, providing payment in whole or in part, or acceptance of the Agreement in any form (whoever occurs first) shall constitute acceptance of these Service Authorization Terms and Conditions and any terms set forth in the document(s) incorporating them by reference.

13. Hours of Operation. Unless specified otherwise in writing, the Services shall be performed during Hawthorne’s publicized business hours. Services performed outside of such hours will be billed at applicable overtime or double-time rates.

14. Ancillary Systems. Hawthorne may deactivate or interrupt mechanical and electrical systems (including fire suppression systems) to perform the Services. Customer shall be responsible for reactivating such systems after completion of the Services. Hawthorne shall have no responsibility for reactivating, testing, or operating any such system.

15. Limited Warranty. Hawthorne warrants to Customer that it shall perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner, and in accordance with industry standards for similar services. Hawthorne warrants its service labor to be free from defect in workmanship for five hundred (500) service meter hours, 12,500 highway miles (where applicable), or ninety (90) calendar days, whichever occurs first. All warranties on products or equipment sold are limited to the warranty provided by the manufacturer of said products and equipment. Hawthorne does not provide a warranty 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 can vary according to the source from which they were obtained.

16. 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 use in a normal and customary manner, (ii) defects, errors, or nonconformities due to modifications, alterations, additions or changes to Customer’s equipment not made or authorized by Hawthorne, (iii) normal wear and tear, or (iv) damage caused by force of nature or by an act of any third party. Hawthorne’s warranty shall be null and void and have no legal effect in the event Customer has failed to pay for the service or parts at issue or failed to bring 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 limited warranty.

17. Limited Warranty Procedure. Hawthorne’s warranty obligations set forth above do not arise unless Customer gives written notice that reasonably describes any defective 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 there to be a material breach of warranty or a breach of any other representations on which Hawthorne relied in writing, it may, in its sole discretion, either (i) use commercially reasonable efforts to cure any defect, or (ii) credit or refund the price of any defective Services, less a deduction equal to a pro-rata share of the Services used. THE REMEDIES SET FORTH ABOVE SHALL BE CUSTOMER’S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF THE WARRANTY.

18. Disclaimer of Warranties. EXCEPT FOR THE LIMITED WARRANTY ABOVE, HAWTHORNE MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; (iv) WARRANTY OF NONINFRINGEMENT OF THE 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 SERVICES NOR AN AGENT THEREOF. ALTHOUGH HAWTHORNE 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 A LARGER FONT COPY OF THESE TERMS AND CONDITIONS IS AVAILABLE UPON REQUEST.
22. Exceptions and Limitations to Indemnification

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 costs, fees, expenses (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 to Hawthorne under the Agreement prior to the date of 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.

23. Indemnification Procedure.

The Indemnified Party shall (i) promptly upon becoming aware of any claim to the Indemnifying Party; (ii) cooperate with all reasonable requests of the Indemnifying Party; and (iii) surrender exclusive control of the defense and settlement of any claim pursuant to an indemnity obligation.

24. Intellectual Property

All intellectual property rights, including copyrights, patents, trademarks, 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, derivative works and all other rights (collectively, “Intellectual Property Rights”) in and 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 the Services (collectively, the “Deliverables”) shall be owned by Hawthorne. Hawthorne hereby grants Customer a license to use all Intellectual Property Rights in the Deliverables free of additional charge and on a non-exclusive, worldwide, non-transferable, non-sublicensable, fully-paid up, royalty-free and perpetual basis to the extent necessary to enable Customer to use the Services as permitted under this Agreement and the other Service Terms and Conditions.

25. 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 oral 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 other than as a result of Receiving Party’s breach of this section; (ii) is or becomes available to Receiving Party on a non-confidential basis from a third party source, provided that the Disclosing Party reasonably believes that such source did not acquire such information in a breach of confidence; (iii) is confidential information of a third party source to the extent that such third party is not prohibited from disclosing such Confidential Information; or (iv) is in Receiving Party’s possession prior to Disclosure 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 in these Service Terms and Conditions, the Receiving Party shall (a) 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, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations, and (z) not disclose any Confidential Information to any person or entity other than its 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 notify Disclosing Party of such requirements to afford Disclosing Party the opportunity to object thereto. Each Party shall be entitled to injunctive relief for any violation of this Section.

26. Term

This Agreement shall commence as of the date Hawthorne receives Customer’s signature on the Service Authorization, Proposal, Quote, or other document(s) incorporating these terms and conditions by reference and shall continue until the completion of the Services, unless terminated prior to said Agreement's expiration by either Party. This Agreement will start on the first day of the month following the date of customer’s signature or, if Customer will issue a purchase order or work authorization, Hawthorne’s receipt of said purchase order or work authorization from Customer, will continue for the specified term, and automatically renew at the end of each term in successive terms equal in duration to the initial term with an automatic increase in price or compensation to be paid to Hawthorne of no less than 3% per annum unless either party terminates this Agreement by providing written notice in accordance with these terms and conditions.

27. Termination by Customer

Customer may terminate this agreement for any reason following forty-five (45) days’ written notice sent to Hawthorne in accordance with the terms of this Agreement. Customer may terminate this Agreement following thirty (30) days’ written notice if Hawthorne breaches a material obligation under this Agreement and fails to cure said breach within thirty (30) days after receipt of notice from Customer of said breach. Such notice shall specifically describe the breach and specify the date such breach first occurred. On termination of this Agreement, Customer will remain liable for payment of any charges that become due for payment before or after termination, actual costs for any work in progress caused by termination, and any associated costs or liabilities incurred or anticipated to be incurred pursuant to an indemnity obligation.

28. Termination by Hawthorne

Hawthorne may terminate this Agreement in accordance with any reason upon giving Customer forty-five (45) days’ prior written notice. Hawthorne may terminate this Agreement following thirty (30) days’ written notice to Customer upon the occurrence of a Material Breach as defined in these Terms and Conditions, or if Customer becomes subject to bankruptcy, receivership, receivership, reorganization, or assignment for the benefit of creditors, or otherwise breaches this Agreement.

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 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, epidemics, lock-outs, strikes or other labor disputes (whether or not relating to either Party’s workforce), restraints or delays affecting carriers, any communications (each, a “Communication”) must be in writing and addressed to the other Party at the address provided in the Service Authorization, Proposal, Quote, or other writing(s) incorporating these terms and conditions by reference and 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 LARGER COPY OF THESE TERMS AND CONDITIONS IS AVAILABLE UPON REQUEST.
Communications is effective only on receipt by the receiving Party if the giving of 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 mail, two (2) days after the date of mailing.

32. 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, BREACH OF CONTRACT, TORT, BIVICTIONS, OR ANY 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.

33. 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 with a mutually agreeable mediator. If mediation fails to produce a resolution, or if the Parties cannot agree on a mediator, any dispute, controversy or claim arising out of or relating to the Agreement shall be settled by binding arbitration. Either Party may initiate arbitration, which shall be conducted in San Diego, California 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 punitive damages.

34. Enforcement. Subject to Section 33, Customer shall pay all costs Hawthorne may incur in enforcing or exercising its rights under this Agreement, whether or not suit is filed.

35. 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 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.

36. Amendments. This Agreement shall or may be modified or amended by an instrument in writing signed by the Parties. Any changes, additions, stipulations or deletions, by Customer, shall not be deemed to be agreed to or binding upon Hawthorne unless agreed to in writing in the form of an amendment signed by Hawthorne and Customer.

37. No Waiver. No exercise, nor any failure or delay by either Party in the exercise of, any right or remedy available hereunder, at law or in equity shall be deemed an election of remedies or a waiver of any such rights and/or remedies. Remedies hereunder shall not be exclusive, but shall be cumulative and in addition to all other remedies existing at law or in equity. The receipt, acceptance and/or negotiation of, or any endorsement on, any check or draft received from one Party will not operate to waive or release, in whole or in part, any claim of the other Party arising hereunder or in connection herewith (except as to the portion thereof actually received by the other Party in cash or other good fund).

38. Assignment. No assignment or delegation under the Agreement without the prior written consent of Hawthorne. 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. 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.

39. 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.

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

41. 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.

42. CHOICE OF 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 choice 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 or Honolulu County in the State of Hawaii and waives all claims that such venue is improper or inconvenient.

43. Nonconforming Goods. Should the Agreement include the purchase of used machinery, parts, or equipment, 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 percent (10%) of the contract price. Customer’s failure to give notice of any claim for nonconformity or tender of rejected goods, or to return 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.

44. Time to修 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.

45. Equipment. Should the Agreement include the purchase of 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 percent (10%) of the contract price. Customer’s failure to give notice of any claim for nonconformity or tender of rejected goods, or to return 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.

46. 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.

47. 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 percent (10%) of the contract price. Customer’s failure to give notice of any claim for nonconformity or tender of rejected goods, or to return 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.

48. 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 TITLE TO THE GOODS. CUSTOMER AGREES THAT HAWTHORNE IS NOT LIABLE FOR 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.

49. Assumption of Risk. Customer hereby acknowledges and understands that there are risks associated with the service and testing of its equipment, which include but are not limited to damage to Customer’s equipment during routine testing. Customer agrees to assume these risks and waives any and all rights to seek compensation, restitution, or indemnification for any injuries, claims, or damages that might arise from said damage. Customer also agrees and understands that during the testing and/or servicing of Customer’s equipment, the equipment will not be available for use. Customer hereby agrees to assume this risk and waives any and all rights to seek compensation, restitution, or indemnification for any injuries, claims, or damages that might arise from these circumstances. Hawthorne and Customer agree that Hawthorne will not be liable for any damage caused to Customer’s equipment during the rendering of any part of the Services that requires Hawthorne to test the equipment on 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 Services or for any part of the Services, Customer assigns to Hawthorne all of its rights and interests in and to the 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.

50. Storage. Should Hawthorne be in possession of equipment, parts, or merchandise related to the 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 such 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 Services or for any part of the Services, Customer assigns to Hawthorne all of its rights and interests in and to the 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.

51. 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 10 (Disclaimers), Section 13 (Limitation of Liability), Section 20 (Mutual Indemnification), Section 21 (Indemnification Procedure), Section 22 (Exceptions and Limitations on Indemnification), Section 23 (Insurance), Section 25 (Confidentiality), Section 31 (Applicable Law/Venue), Section 32 (Waiver of Jury Trial), Section 33 (Dispute Resolution), Section 34 (Enforcement), and Section 51 (Survival).