1. Agreement. These Service Authorization Terms and Conditions and 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 purchaser ("Customer") (together with Hawthorne, the "Parties") and each a "Party," with respect to the Terms and Conditions, the services, the work to be done, and any other services, products, or services that may be ordered by the Customer and performed by Hawthorne on behalf of Customer. 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 parties agree that acceptance of the Terms and Conditions is an integral part of any offer to order by Customer, and that the terms and conditions herein do not amend or supersede 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 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 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 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 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 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 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 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 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 conditions contained in any request for proposal, purchase order, statement of work, or other similar 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 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 subject to any delay, reduction, set-off, defense, or counter-claim. Unless specified otherwise in writing, Customer shall pay for all parts, equipment, services, and other products and services furnished by Hawthorne on account of or in connection with the Services, in full, in accordance with the terms and conditions of the service order and the applicable terms and conditions of the Terms and Conditions, including local taxes, customs fees, 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 or, if such interest is prohibited, at the rate specified in any applicable law, or the highest rate permitted under applicable law, calculated daily and compounded monthly, from the date such payment was due until the date paid in full. In addition to 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, if any account of Customer, whether past due, delinquent, or otherwise, shall have the right, but not the obligation, to apply any funds paid by Customer to Hawthorne at any time to satisfy unpaid amounts.

12. 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.

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

14. Change in Scope of Work. Changes in scope of work include, but are not limited to, changes to 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 any such system.

15. Limited Warranty. Hawthorne warrants to Customer that it shall perform the Services in a workmanlike manner in accordance with generally recognized industry standards for similar services. Hawthorne warrants its service labor to be free from defect in workmanship for five (5) years from the completion date. All warranties on products or equipment sold are subject to the manufacturer’s warranty. If, in its sole discretion, Hawthorne determines there to be a defect in service or materials provided, which defect is directly attributable to Hawthorne, Hawthorne 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 the cost of repair, if any, and all claims for indirect and consequential damages, are excluded from this Limited Warranty.

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 its account current. All remedies under Hawthorne’s warranty are expressly limited to replacing parts or making repairs as specified in this section during the applicable warranty period. Claims for losses arising out of any failure of repaired equipment to operate for the warranty period or for loss due to, or in connection with, the failure of the repaired equipment, and no claim or demand made on account of any indirect or 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 defect in service or materials provided, which defect is directly attributable to Hawthorne, Hawthorne 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 the cost of repair, if any, and all claims for indirect and consequential damages, are excluded from this limited warranty.

18. Disclaimer of Warranties. EXCEPT FOR THE LIMITED WARRANTY ABOVE, HAWTHORNE MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES, INCLUDING ANY AND ALL WARRANTIES 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 MAKES NO WARRANTIES OR REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, 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 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, TRANSPORTATION OR OTHER CHARGES WHICH ARE NOT COVERED UNDER SUCH MANUFACTURER’S WARRANTY.

A LARGER FONT COPY OF THESE TERMS AND CONDITIONS IS AVAILABLE UPON REQUEST.
20. Mutual Indemnification. SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN SECTION 22, EACH PARTY (AN “INDEMNIFYING PARTY”) SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE OTHER PARTY, ITS AFFILIATES AND THEIR RESPECTIVE OWNERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS AND PERMITTED ASSIGNS (COLLECTIVELY, “INDEMNIFIED PARTY”) FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DEFICIENCIES, JUDGMENTS, SETTLEMENTS, INTEREST, AWARDS, FINES, CAUSES OF ACTION, DAMAGES, LIABILITIES, COSTS, PENALTIES, TAXES, ASSESSMENTS, CHARGES, PUNITIVE DAMAGES AND EXPENSES OF WHATEVER KIND, INCLUDING REASONABLE ATTORNEYS’ FEES, EXPENSES OF WHATEVER KIND, INCLUDING REASONABLE ATTORNEYS’ FEES, WITHHOLDING OR DELAY OF CONSENT REQUIRED UNDER THIS SECTION. THE INDEMNIFIED PARTY SHALL NOT REQUIRE THE INDEMNIFYING PARTY TO MAKE ANY ADMISSION OF FAULT OR TO PAY ANY AMOUNTS IN CONNECTION WITH SUCH SETTLEMENT OR AGREEMENT. THE INDEMNIFIED PARTY SHALL NOT UNREASONABLY WITHHOLD OR DELAY ANY CONSENT REQUIRED UNDER THIS SECTION. THE INDEMNIFIED PARTY SHALL NOT WITHHOLD ANY SUMS FROM PAYMENT FOR ANY COSTS OR LIABILITIES INCURRED OR ANTICIPATED TO BE INCURRED PURSUANT TO AN INDEMNITY OBLIGATION.

21. Indemnification Procedure. The Indemnified Party shall (i) provide prompt written notice 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 third party claim to the Indemnifying Party (with the exception of the choice of counsel used for the Indemnified Party’s defense) provided that the Indemnifying Party will obtain the Indemnified Party’s written consent prior to agreeing to any settlement or agreement that requires the Indemnifying Party to make any admission of fault or to pay any amounts in connection with such settlement or agreement. The Indemnified Party shall not unreasonably withhold or delay any consent required under this section. The Indemnified Party shall not withhold any sums from payment for any costs or liabilities incurred or anticipated to be incurred pursuant to an indemnity obligation.

22. Exceptions and Limitations to Indemnification. Notwithstanding anything to the contrary hereunder, the Indemnified Party shall not be obligated to indemnify, hold harmless, or defend Indemnified Party for any Losses which result from, in whole or in part, Indemnified Party’s (i) negligence or more culpable act or omission (including recklessness or willful misconduct); (ii) bad faith failure to comply with any of its obligations set forth in the Agreement; or (iii) use of the Services or serviced equipment in any manner that does not materially conform with the usage specifications provided by Hawthorne or the equipment manufacturer, as applicable.

23. Insurance. During the term of the Agreement, each Party shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, (i) commercial general liability in occurrence form with a minimum limit of $1,000,000 per occurrence and $2,000,000 per policy period (primary) for claims arising from Hawthorne’s operations, and (ii) workers’ compensation in an amount no less than the minimum required by law and employers’ liability in a sum no less than $1,000,000; and (iii) any additional insurance Hawthorne may reasonably require, in each case with financially sound and reputable insurers. Either Party’s request, the other Party shall provide the requesting Party with a certificate of insurance from such Party’s insurance carrier evidencing the insurance specified above. The certificate of insurance shall name the requesting Party as an additional insured. The insured Party shall provide the requesting Party with thirty (30) days’ advance written notice in the event of a cancellation or material change in the insured Party’s insurance policy. Except where prohibited by law, the insured Party shall require its insurer to waive all rights of subrogation against the requesting Party and to give written notice to the requesting Party prior to any judgment, settlement or compromise.

24. 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, discovered or developed 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 make reasonable use of the Deliverables and the Services.

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”) confidential information; the party receiving such confidential information from the Disclosing Party shall not disclose such confidential information to any third party unless the party receiving such confidential information (the “Receiving Party”) shall (i) provide written notice of such disclosure to the Disclosing Party; (ii) use reasonable efforts to protect the confidentiality of the confidential information that is disclosed to it; (iii) agree in writing to a confidentiality agreement with the Disclosing Party; (iv) ensure that each employee of the Receiving Party who is to receive such confidential information is bound to similarly restricted. The Receiving Party shall ensure that the confidential information is not disclosed to any other party, except to the extent such confidential information is available to the public other than by reason of a disclosure by the Disclosing Party, and that the Receiving Party shall continue to have the obligation of confidentiality as if such information were originally disclosed by the Disclosing Party. The Receiving Party agrees to notify the Disclosing Party of any unauthorized use or disclosure of such confidential information, and to provide such other assistance as the Disclosing Party may reasonably request in protecting the confidentiality of such information. The Receiving Party agrees to return all copies of such confidential information to the Disclosing Party immediately upon the occurrence of a Material Breach as defined in these Terms and Conditions, at the Disclosing Party’s option, or, if the Disclosing Party so requests, to destroy such confidential information. If the Receiving Party shall provide the requesting Party with a certificate of insurance from such Party’s insurance carrier evidencing the insurance specified above. The certificate of insurance shall name the requesting Party as an additional insured. The insured Party shall provide the requesting Party with thirty (30) days’ advance written notice in the event of a cancellation or material change in the insured Party’s insurance policy. Except where prohibited by law, the insured Party shall require its insurer to waive all rights of subrogation against the requesting Party and to give written notice to the requesting Party prior to any judgment, settlement or compromise.

26. Term. This Agreement shall commence as of the date Hawthorne receives Customer’s written request to commence the Agreement. The duration of the Agreement shall be as set forth in these Service Terms and Conditions. At the end of the term, this Agreement will automatically renew at the end of each term for successive terms equal in duration to the initial term, unless either Party gives to the other Party at least thirty (30) days’ prior written notice to terminate the Agreement. This Agreement is subject to renewal and continuation at will. Either Party may terminate this Agreement immediately upon the occurrence of a Material Breach as defined in these Terms and Conditions, or if Customer becomes insolvent, files a petition for bankruptcy, commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, or otherwise breaches this Agreement.

27. Termination by Customer. Customer may terminate this Agreement immediately upon the occurrence of a Material Breach as defined in these Terms and Conditions, or if Customer becomes insolvent, files a petition for bankruptcy, commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, or otherwise breaches this Agreement.

28. Force Majeure. Hawthorne shall not be liable, nor be deemed to have defaulted or breached this Agreement, if the Force Majeure event(s) make it impossible, impracticable or commercially unreasonable to perform such obligations.

29. 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 specified in the Agreement. All communications shall be deemed given on the date sent if sent as an e-mail or facsimile, the earlier of the date of receipt or the next business day if sent as certified or registered mail, but only if either Party gives to the other Party at least thirty (30) days’ prior written notice to terminate the Agreement. This Agreement is subject to renewal and continuation at will. Either Party may terminate this Agreement immediately upon the occurrence of a Material Breach as defined in these Terms and Conditions, or if Customer becomes insolvent, files a petition for bankruptcy, commences or has commenced against it proceedings relating to 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.
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, California with a mutually agreeable 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 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 attorney’s fees as incurred and honest contract and court 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. The 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 shall not have the power to award any punitive damages.

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.

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 reoffered 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.

Amendments. This Agreement shall only be modified or amended by an instrument in writing signed by the Parties. Any change, addition, stipulation or deletion, 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.

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 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 funds).

No Third Party Beneficiaries. Any rights and remedies under the Agreement without the prior written consent of Customer. If an assignee agrees to assume the obligations of Hawthorne, Customer agrees that Hawthorne will be released from all further liability hereunder. Customer will not assign any of its 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.

Waiver of Jury Trial

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 or service Customer’s equipment.

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 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 the equipment or merchandise 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.

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, Sections 10 (Confidentiality), 11 (Indemnification), 12 (Dispute Resolution), 13 (Entire Agreement), 15 (Choice of Law/Venue), 17 (Applicable Law/Venue), 18 (Entire Agreement), 19 (Waiver of Jury Trial), 20 (Entire Agreement), 21 (Indemnification Procedure), 22 (Exceptions and Limitations on Indemnification), 23 (Insurance), 25 (Confidentiality), 31 (Applicable Law/Venue), 32 (Waiver of Jury Trial), 33 (Entire Agreement), 34 (Entire Agreement), and 51 (Survival).
53. **Prevailing Wage.** Unless specified otherwise in writing, the Services shall be quoted, performed or provided with the assumption that any local, state, or federal prevailing wage laws, or public or private collective bargaining agreements, do not apply. Goods & Services performed or provided pursuant to a local, state, or federal prevailing wage law, or a public or private collective bargaining agreement, will be billed at applicable rates, which Customer agrees to pay.