

1. Agreement. Any potential or actual purchaser of parts (“Customer”) makes a firm offer to purchase the Parts described in an order submitted 1) through the website of Hawthorne Machinery Co. or its applicable subsidiary, affiliate, or related entity and Parts.Cat.Com (“Hawthorne”) (together with Customer, the “Parties,” and each a “Party”) website at <https://parts.cat.com/en/hawthornecat> or <https://parts.cat.com/en/hawthornepacific> or 2) by fax, email or other contact with Hawthorne’s Parts Department (the “Order”) using the procedures described in such website and under these Parts Terms and Conditions (“Terms and Conditions”). Except as otherwise specified herein, Hawthorne accepts Customer’s offer at the earlier of when (a) Hawthorne sends Customer a written acceptance (by e-mail, fax, or otherwise), (b) Hawthorne ships Customer’s Order, (c) Hawthorne accepts by the signature of its Parts Manager or (d) Customer receives an order confirmation from Parts.Cat.Com (“Agreement”). Once Hawthorne accepts an Order, it is noncancellable. Hawthorne’s acceptance and this Agreement is conditioned on Hawthorne’s on-going determination that Customer and this Agreement comply with all applicable laws and regulations. Hawthorne reserves the right to make partial shipment of one or more Parts contained in the Order, and unless otherwise specified in Hawthorne’s written acceptance, partial shipment of an Order shall be acceptance of only that portion of an Order. For Parts not currently in Hawthorne’s inventory, Hawthorne may place such Parts on backorder and notify Customer of such status, unless such Parts will be in Hawthorne’s inventory within thirty (30) days. Notwithstanding the foregoing, acceptance is strictly limited to the terms and conditions in this Agreement. These Terms and Conditions will apply to the sale of all Parts by Hawthorne. Hawthorne objects to and rejects any provision additional to or different from the terms hereof that may appear in Customer’s purchase order, acknowledgement, confirmation, writing, or in any other prior or later communication from Customer to Hawthorne, or arising out of course of dealing or usage in the trade, unless such provision is expressly agreed to by Hawthorne in a writing signed by Hawthorne. Customer’s commencement of performance shall in all cases constitute Customer’s unqualified and unconditional acceptance of these Terms and Conditions and Hawthorne’s invoice. This Agreement supersedes all prior and contemporaneous understandings and agreements. No purchase order, work order, or statement of work issued by Customer or a third party shall be binding on Hawthorne unless accepted by Hawthorne in writing. The complete or partial filling of an Order 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 Order, 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.

3. Acceptance. Customer’s irrevocable acceptance of the Parts shall be conclusively presumed unless Customer gives written notice of a defect within ten (10) days after receipt. If Hawthorne delivers non-conforming Parts, Hawthorne will at its option and at Hawthorne’s expense promptly correct or replace the Part(s). If Customer desires to return a part for convenience, please see Hawthorne’s Parts Return Policy for eligibility and terms and conditions at the end of these Terms and Conditions.

4. Timing. Hawthorne shall use reasonable efforts to meet any performance dates specified. Customer agrees that any such dates shall be estimates only. Unless expressly stated in writing by Hawthorne, all shipment and delivery dates are estimates.

5. Change in Services. If Customer wishes to change the scope of an Order, it shall submit details of the requested change to Hawthorne in writing. Hawthorne may from time to time change the Order 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 Order.

6. 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) it is not insolvent and is paying all of its debts as they become due; (iv) any payments made pursuant to the Agreement are intended by it to be a substantially contemporaneous exchange for new value given to it; (v) each payment made of a debt incurred by it under this Agreement is or was in the ordinary course of its business or financial affairs, and (vi) all information supplied by Customer is complete and accurate.

7. Customer Obligations. Customer shall pay, or reimburse Hawthorne for all prices, fees, expenses, or charges when they become due and cooperate with Hawthorne in all matters relating to fulfillment of the Order. Customer shall provide all direction, information, approvals, authorizations, notes, contracts, security agreements, financing statements, decisions or materials requested by Hawthorne to fulfill the Order. 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 fulfill the Order, and enable Hawthorne to terminate the Agreement.

8. Compliance with Law. Each Party agrees to comply 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, or losses sustained or incurred by Customer to the extent arising directly or indirectly from such prevention or delay.

10. Fees and Expenses. Payment shall be made in United States Dollars. For Customers with an open credit account with Hawthorne, those applicable payment terms shall apply. For Customers who do not have an open credit account with Hawthorne, payment is due upon order placement or prior to delivery. Hawthorne may, in its sole discretion, at any time: (a) revoke credit; (b) modify terms and conditions of credit; (c) require payment in advance; and/or (d) withhold Parts, until receipt of payment. 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 all costs of insurance and transportation, which include but are not limited to government duties, all taxes incurred, licenses or clearance required at any destination, 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. Hawthorne is not obligated to issue Customer credits or reductions in amounts owed for Customer’s inability to use the Parts. Any credit or reduction in amounts owed or payable by Customer must be requested in writing in advance by the Customer, approved in writing by a member of management, and in no way establishes a custom, practice, obligation, intention, or separate obligation. All labor will be billed to Customer in increments of at least 15 minutes, which minimum may increase and vary by department, job, product, service, and location at Hawthorne’s discretion. Unless expressly stated otherwise in writing, travel, shipping, freight, and overtime expenses are the Customer’s responsibility and not included in any quote, price, proposal, or estimate.

11. Late Payments. If Customer fails to pay for Parts as and when due, Customer shall pay a late charge of 1.5% of the invoice balance each month until charges are paid in full, and Customer shall pay Hawthorne all reasonable attorneys’ fees and collection costs incurred by Hawthorne in collecting any payments. In addition to any other right of set-off or recoupment Hawthorne has under applicable law, Customer agrees that, with respect to any amounts due from Customer or Customer’s affiliates to Hawthorne or Hawthorne’s affiliates, Hawthorne and its affiliates may set-off such amounts against any amounts owing to Customer or Customer’s affiliates. 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. Customer also expressly agrees to pay the charges mentioned in this section as liquidated damages and not as a penalty representing reasonable and fair compensation for the foreseeable losses/expenses resulting therefrom. Customer agrees to pay Hawthorne a \$25.00 Service Charge on each dishonored check returned. Hawthorne has the right to file a Preliminary Notice if payment is not received. Failure to provide any Preliminary notice information when requested could constitute a revocation of extension of credit.

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. Customer will promptly reimburse Hawthorne on demand for any taxes that are imposed on and paid by Hawthorne or for which Hawthorne is responsible for collection in connection with this Agreement.

13. Disclaimer of Warranty. Hawthorne is not the manufacturer of the Parts. All Parts provided by Hawthorne are provided with only those written warranties made by the manufacturer(s) of the Parts and are subject to any limitations or exclusions provided by such manufacturer(s). HAWTHORNE MAKES NO REPRESENTATIONS OR WARRANTIES CONCERNING THE PARTS OR CUSTOMER’S USE THEREOF. CUSTOMER HEREBY WAIVES, RELEASES AND RENOUNCES, ALL WARRANTIES, OBLIGATIONS AND LIABILITIES OF HAWTHORNE AND ALL OTHER RIGHTS, CLAIMS AND REMEDIES AGAINST HAWTHORNE, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY NON-CONFORMANCE OR DEFECT IN ANY PARTS PROVIDED UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS; ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE; OR ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY IN TORT, WHETHER OR NOT ARISING FROM THE NEGLIGENCE OF HAWTHORNE.

14. Limitation of Liability. HAWTHORNE WILL HAVE NO OBLIGATION OR LIABILITY, WHETHER ARISING IN CONTRACT (INCLUDING WARRANTY) OR IN TORT, AND WHETHER OR NOT ARISING FROM THE NEGLIGENCE OF HAWTHORNE, OR OTHERWISE, FOR DAMAGES FOR LOSS OF USE, REVENUE OR PROFIT (INCLUDING, BUT NOT LIMITED TO, ANY LOSS OF USE, REVENUE OR PROFIT BY CUSTOMER OR ANY CUSTOMER), OR FOR ANY OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES WITH RESPECT TO THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, ANY NON-CONFORMANCE OR DEFECT IN ANY PARTS PROVIDED UNDER THIS AGREEMENT, ANY NON-DELIVERY, ANY DELAY IN DELIVERY OR DELAY IN PERFORMANCE. WITHOUT LIMITING THE FOREGOING, HAWTHORNE’S MAXIMUM LIABILITY HEREUNDER WILL NOT EXCEED THE AMOUNT ACTUALLY PAID TO HAWTHORNE FOR THE PARTS SUBJECT TO THE CLAIM. THE PARTIES AGREE THIS PROVISION SHALL SURVIVE EXPIRATION OR TERMINATION OF THIS AGREEMENT. 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.

15. Duty to Indemnify. Customer will indemnify, defend, and hold harmless Hawthorne, its agents, employees, affiliates 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 whatever kind, including reasonable attorneys’ fees, (“losses”), incurred, or reasonably anticipated to be incurred, by Hawthorne arising from or related to customer’s use, possession, condition, or storage of Parts, customer’s failure to perform any portion of the Agreement, Customer’s breach or non-fulfillment of any representation, warranty or covenant under the Agreement, Customer’s negligent or more culpable act or omission (including any reckless or willful misconduct) in performing its obligations under the Agreement, or failure to comply with any applicable federal, state or local laws, regulations or codes, which losses include but are not limited to (a) loss of or damage to Parts for any cause; (b) injury to or death of any

person; and (c) damage to real or personal property, excepting those losses that arise from Hawthorne's sole negligence or willful misconduct. Customer will pay interest at the rate of 10% per annum from the day payment is made by Hawthorne through the day Hawthorne is reimbursed by Customer.

16. 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 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 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 in these Service Terms and Conditions, the 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, 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 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 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 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.

17. Termination by Hawthorne. 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 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 Parts without legal process free of all rights of Customer. Customer authorizes Hawthorne or Hawthorne's agent to enter onto any premises where the Parts are located and repossess and remove it. Customer specifically waives any right of action Customer might otherwise have arising out of the aforementioned entry and repossession and releases Hawthorne of any claim for trespass or damage caused by reason of the entry, 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 Lease, Customer will pay, subject to any limits under applicable law, Hawthorne's attorneys' fees and legal expenses of any kind to enforce any provision in this Agreement.

18. 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, pandemic, 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.

19. Communications. Any notice required or allowed under this Agreement must be in writing and delivered to Hawthorne at Hawthorne Cat, 16945 Camino San Bernardo, San Diego, California 92127, Attn: Legal Department and to Customer at the address stated in the Order or the place of delivery of the Parts, or such other address as a party may provide to the other party by like notice. Unless otherwise agreed to in writing, all notices must be delivered by facsimile, e-mail, personal delivery, courier or certified or registered mail (return receipt requested, postage prepaid) and is effective only on receipt by the receiving Party if the Party giving the Communication has complied with the requirements of this Section. Notices 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.

20. 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 waives all claims that such venue is in an inconvenient forum.

21. 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 REASONABLE OPPORTUNITY TO DISCUSS THIS WAIVER AND ITS EFFECTS WITH LEGAL COUNSEL.

22. 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 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 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 shall not have the power to award any punitive damages.

23. Enforcement. Subject to Section 22, Customer shall pay all costs Hawthorne may incur in enforcing or exercising its rights under this Agreement, whether or not suit is filed.

24. 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.

25. Amendments. This Agreement shall only 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.

26. 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 will 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 funds)

27. 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. 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. Customer agrees to keep the Equipment free from any lien and encumbrance of any kind.

28. 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.

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

30. Time to Bring Claim. No action may be maintained by Customer unless written notice of the claim is delivered to Hawthorne within thirty (30) days after the event subject to the claim first becomes known to Customer, but in no case may Customer maintain an action unless it is brought within one (1) year after the cause of action accrues.

31. 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.

32. 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.

33. Consent to Share Customer Data. By accepting the Agreement, Customer consents to Hawthorne sharing information relating to or generated pursuant to this Agreement, or the Goods & Services, including Confidential Information, with Caterpillar, Inc., its affiliates, subsidiaries, sister companies, or vendors. Customer acknowledges and agrees that it is directing Hawthorne to intentionally disclose such information, including Customer's personal information, if any, to Caterpillar Inc. and its affiliates, subsidiaries, sister companies, or vendors and agrees that such disclosure is not a sale or received for valuable consideration.

34. Warranty. Caterpillar warrants new and remanufactured parts and assembled components, and Major Component Exchange (MCE) products (other than those parts excepted below) sold by it to be free from defects in material and workmanship. An additional warranty against the breakage is applicable to certain Ground Engaging Tools, copy of which is available upon request. The warranty period is 12 months, starting from date of sale to the first user. If a

defect in material or workmanship is found during the warranty period, Caterpillar will, during normal working hours and at a place of business of a Caterpillar dealer or other source approved by Caterpillar, provide (at Caterpillar's choice) new, MCE, Remanufactured or Caterpillar approved repaired parts of assembled components needed to correct the defect. In the case of assembled components, Caterpillar will provide repair labor needed to correct the defect, excluding assembled component removal and installation labor. This warranty does not apply to Caterpillar brand batteries, new, Remanufactured and MCE engines, parts and assembled components sold for use in on-highway applications; or parts and assembled components sold for personal, family, or household use in the United States of America, its territories, and possessions. Such items are covered by other Caterpillar warranties, whose warranty certificates are available upon request. Other items not manufactured or supplied by Caterpillar are covered by separate warranties, copies of which are available upon request. NEITHER THE FOREGOING EXPRESS WARRANTY NOR ANY OTHER WARRANTY BY CATERPILLAR, OR HAWTHORNE (OR ANY OF ITS AFFILIATES), EXPRESS OR IMPLIED, IS APPLICABLE TO ANY ITEM CATERPILLAR OR HAWTHORNE SELLS WHICH IS WARRANTED TO THE USER BY ITS MANUFACTURER. THIS WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OF FITNESS FOR A PARTICULAR PURPOSE. REMEDIES UNDER THIS WARRANTY ARE LIMITED TO THE PROVISIONS OF MATERIAL AND LABOR, AS SPECIFIED HEREIN. ANY CLAIMS FOR LOSS ARISING OUT OF THE FAILURE OF THE PARTS OR COMPONENTS TO PERFORM FOR ANY PERIOD OF TIME, OR OTHER ECONOMIC OR MORAL LOSS, OR DIRECT, IMMEDIATE, SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGE ARE EXPRESSLY EXCLUDED. THE TERMS "CATERPILLAR" AND "HAWTHORNE" USED HEREIN MEAN CATERPILLAR, INC. OR HAWTHORNE MACHINERY CO., RESPECTIVELY OR ANY ONE OF THEIR SUBSIDIARIES, WHICHEVER LAST SOLD THE PARTS OR COMPONENTS INVOLVED.

35. Compliance and export/import. In fulfilling the obligations of this agreement, Customer will comply with all applicable statutes and government rules, regulations and orders. Customer understands and agrees that the Parts may not be exported outside of the United States. Customer agrees to indemnify and hold harmless Hawthorne from and against all claims, fees, expenses, fines, duties and other costs levied against Hawthorne by any manufacturer of the Parts or any governmental entity if Customer exports the Parts or if the Parts are exported by any subsequent purchaser.

36. Shipments; Delivery; Title and Risk of Loss. Customer's order will be fulfilled through the shipment or delivery of the Parts from the applicable Seller. The number of days quoted for shipping refers to the transit time only. Additional time is required for processing orders. Customer will pay all shipping charges applicable to any order for Parts. Title and risk of loss will pass to the Customer in the case of shipment, upon delivery of the Parts to the shipping address listed in any confirmation provided, and (b) in the case of pick up at a Dealer's location listed in any shipping confirmation provided or otherwise agreed to by the Dealer, upon delivery of the Product to the Customer or its representative at such location. Shipping and delivery dates are estimates only and cannot be guaranteed. Hawthorne is not liable for any delays in shipments.

37. Prices and Payment Terms. All prices posted on any website are subject to change without notice. The price charged for a Part will be the price reasonably determined by Hawthorne to be in effect at the time the order is placed and will be set forth in an order confirmation. Price increases will only apply to orders placed after such increases are shown on the prices in the applicable website. Posted prices do not include taxes or other governmental fees or charges (the "Taxes") or charges for shipping. All such Taxes and shipping charges will be added to the Customer's merchandise total and will be itemized in the Customer's shopping cart and order confirmation. The Taxes and shipping charges included in the order confirmation will be calculated using the information available at the time of the order confirmation; however, said Taxes and shipping charges may change prior to the final order fulfillment and issuance of the confirmation of shipping due to changes in the source of said fulfillment and any changes to the information used to calculate the Taxes. Hawthorne is not responsible for pricing, typographical or other errors on any website or offered by it and Hawthorne reserves the right to cancel any orders arising from such errors. Upon receipt of an order for Parts, Hawthorne will confirm to its reasonable satisfaction that you have the credit available to pay for the order and a hold will be placed against your credit card in the amount of the order before issuance of an order confirmation. Hawthorne will receive full payment at the time of the order confirmation by collection of the funds through the applicable credit card. All credit card processing is performed by a third-party processor. Customer acknowledges that the credit card and related financial information it provides in connection with the order for Parts will be provided to such third-party processor, and Customer expressly authorizes and grants Hawthorne permission to share such information, which may include, but is not limited to, credit card and any other personal information Customer provides in connection with its order. Customer represents, warrants and agrees that (i) the credit card or payment information Customer supplies in connection with an order for Parts is true, correct and complete, (ii) Customer is duly authorized to use such credit card or other authorized form of payment for the purchase, (iii) charges incurred by the Customer will be honored, as applicable, by Customer's credit card company or the company supporting Customer's payment, and (iv) Customer will pay the amount set forth in the shipping confirmation, as well as all applicable Taxes and shipping charges (as the same may be adjusted in accordance with this section).

38. Return Policy. A copy of the pack slip or invoice MUST accompany all parts returned for credit. New Parts returned for credit must be; in new and saleable condition and in original packing, returnable to the supplier, and not a replaced or discontinued part. Parts that will not be accepted for credit include but are not limited to: returns after six months from date of purchase; items that are non-stock AND non-returnable to Hawthorne which include but are not limited to glass, electrical parts, and literature; items on the shipping list with an * in the N/R column, which include but are not limited to items cut to length such as hoses, wire, and

tubing / fluid carrying tubes with protective ends removed; opened gasket kits; seal kits; bearing kits; and Made as Ordered (MAO) parts. Handling charges for acceptable returns are as follows:

- STOCK parts returned within 0-30 calendar days or purchase - No charge
- STOCK parts returned within 30-60 calendar days of purchase - 15%
- NON-STOCK Parts returned within 0-60 calendar days of purchase - 20%
- STOCK parts and NON-STOCK parts returned within 61-180 calendar days of purchase - 25%

Hawthorne reserves the right to reject any and all parts return requests. Returned parts found unacceptable will be held for a period not exceeding thirty (30) days to allow sufficient time for Customer to advise as to their disposition. In the absence of written notice advising Hawthorne of disposition within the thirty (30) day period, Hawthorne shall assume that all rejected parts are to be discarded and shall accept no further responsibility for them. Hawthorne is required by law to charge a nonrefundable \$1 California battery fee and a refundable deposit for each lead-acid battery purchased. A credit of the same amount as the refundable deposit will be issued if a used lead-acid battery is returned at the time of purchase or up to 45 days later along with this dealer's receipt.

A LARGER FONT COPY OF THESE TERMS AND CONDITIONS IS AVAILABLE UPON REQUEST.