



## GENERAL SALE AND SERVICE AGREEMENT

This document contains very important information regarding your rights and obligations, as well as conditions, limitations and exclusions that might apply to you. Please read it carefully.

This is a binding agreement between Toromont Cat, a division of Toromont Industries Ltd. (“Vendor”) and the organization placing the order for Goods and/or Services from this website (“Customer”).

By placing an order for Goods or Services from this website, you affirm that you are of legal age to enter into this agreement on behalf of Customer, and Customer accepts and is bound by these terms and conditions. You affirm that if you place an order on behalf of an organization or company, you have the legal authority to bind any such organization or company to these terms and conditions.

Customer may not order or obtain Goods or Services from this website if Customer: (i) does not agree to these terms and conditions; (ii) if the individual acting on behalf of Customer is not the age of majority in your province or territory of residence, or; (iii) is prohibited from accessing or using this website or any of this website’s contents, Goods or Services by applicable law.

This General Terms and Conditions of Sale and Service (these “Terms”) apply to the purchase and sale of goods (including new and used equipment, trucks, attachments, components, technology and parts) (“Goods”) and services (including labour) (“Services”) through <https://www.toromontequip.com/> (the “Site”). These Terms are subject to change by Vendor without prior written notice at any time, in Vendor’s sole discretion. Any changes to these Terms will be in effect as of the “Last Updated Date” referenced on above. You should review these Terms before purchasing any Goods or Services that are available through this Site. Your continued use of this Site after the “Last Updated Date” will constitute your acceptance of and agreement to such changes.

These Terms are an integral part of the [Website Terms and Conditions of Use](#) that apply generally to the use of Vendor’s Site. Customer should also carefully review Vendor’s [Website Privacy Policy](#) before placing an order for Goods or Services through this Site.

### 1. MASTER AGREEMENT

By submitting these Terms along with, as applicable, a particular Vendor quotation, estimate, work order, pro forma or final invoice, Sales Agreement or other sale or service agreement issued under and governed by these Terms (collectively, “Sales Agreements”) or clicking “accept” (or a similar term) to these Terms and/or a Sales Agreement, or issuing a purchase order for the provision of Goods and/or Services, or accepting delivery of Goods and/or Services, Customer consents to be bound by these Terms. These Terms, together with the Sales Agreement (collectively, the “Agreement”) are the entire agreement between the parties relating to the subject matter herein and supersede any prior representations or agreements, oral or written and all other communications with respect to the subject matter herein. Customer may, at its sole option, elect to also purchase a preventative maintenance plan for the Goods purchased hereunder by contacting Vendor at the contact us details as supplied on the Site. The Sales Agreements will not be varied except in writing, signed by the authorized signing officers of the parties. Except as otherwise explicitly provided in these Terms, the provisions of these Terms will supersede, control and prevail over any conflicting provisions in any proposal, Customer purchase order, acceptance notice or other document (whether or not attached hereto or issued after the Sales Agreements) related to the subject matter of these Terms. Except for the terms and conditions contained in the Sales Agreements, all other terms and conditions are expressly disclaimed. Should any provision herein be held to be illegal or unenforceable, it will be considered separate and severable and the remaining provisions of these Terms will remain in force to the fullest extent permitted by law. Any failure of Vendor to insist upon strict performance by Customer of any provision herein is not a waiver of Vendor’s right to demand strict compliance. The Sales Agreements are binding upon the parties hereto, their respective heirs, successors and permitted assigns.

## **2. ORDERS; DELIVERY; CHANGES; INTEREST**

Customer agrees that its order is an offer to buy, under these Terms, all Goods listed in Your order. All orders must be accepted by Vendor and Vendor will not otherwise be obligated to sell the Goods to Customer. Vendor may choose not to accept orders at its sole discretion at any time, even after Vendor provides Customer with confirmation of the order number and details of the items ordered and/or Customer pays the Deposit (as hereinafter defined). All orders for Goods and Services may also be subject to credit approval by third party lenders. All purchases are EXW: Vendor's Location (as defined by Inco Terms 2020.) unless otherwise agreed in writing by the parties. Customer has no right to cancel purchase orders for Goods after the third business day following the Deposit Customer acknowledges that the total cost and anticipated completion times or dates for any particular Services and delivery dates for Goods are estimates only and Vendor has no liability whatsoever in connection therewith. All pricing quoted by Vendor is subject to change without notice until the time of delivery of the Goods or Services. Vendor has the right to make, at any time, such changes in detail or design, construction, arrangement or equipment as may, in its opinion, constitute an improvement or equivalent over that ordered. Any product images displayed on the Site are for illustration purposes only and may not be an exact representation of the Goods. Depicted attachments may not be included. Vendor reserves the right to change images of Goods at any time without notice and without liability accruing to Vendor. Actual delivery dates and pricing for Goods and Services and Vendor's performance under the Agreement depend on a variety of factors, including, but not limited to, governmental order, embargo, blockades, strikes or other labour disputes or labour shortages, shortages of goods and/or materials, transport and handling, accidents and/or delays, mechanical breakdowns, manufacturer or supplier delays or schedules, increased cost of Goods and labour, hyper-inflation, economic depression, extraordinary market conditions, revisions or changes to laws, regulations or governmental requirements, new or increased duties or tariffs or other causes beyond Vendor's control (collectively, "Extraordinary Events") and Vendor will not be liable for any failure to perform or changes to the extent caused or arising from an Extraordinary Event. An Extraordinary Event will not give rise to any rights to Customer not specifically provided for herein. Vendor reserves the right to cancel the Agreement or adjust pricing due to Extraordinary Events, in whole or in part, at any time prior to delivery of Goods and/or performance Services, as the case may be, without becoming liable to Customer for any damages or losses whatsoever by reason of such cancellation or adjustment; provided that, in such event, following a written request by the Customer, Vendor shall refund to Customer the portion of any Deposit paid in respect of the portion of the Agreement affected by such cancellation or adjustment, and such refund will constitute Customer's exclusive remedy and Vendor's sole liability in such event. In the event that any payment due hereunder is late, Customer will pay interest at the rate of 2% per month compounded monthly for an effective annual interest rate of 27.8% ("Interest Rate").

## **3. PRICE; PAYMENT TERMS**

(a) All prices, discounts and promotions posted on this Site are subject to change without notice. The price charged for Goods or Services will be the price advertised on this Site at the time the order is placed, subject to the terms of any promotions or discounts that may be applicable ("Purchase Price"). The Purchase Price charged will be clearly stated in the order confirmation email. Currency exchange rates are based on various public sources, are provided for information purposes only, and are not verified as accurate. Actual rates from Customer's local bank, credit card company or other institution may vary. Final transactions are processed only in Canadian dollars. Price increases will only apply to orders placed after the time of the increase. Posted prices do not include taxes or charges for shipping and handling. Although Vendor strives to display accurate price information, Vendor may, on occasion, make inadvertent typographical errors, inaccuracies or omissions related to pricing and availability and, therefore, Vendor reserves the right to correct any errors, inaccuracies or omissions at any time and to cancel any orders arising from such occurrences.

(b) Upon Customer's submission of Customer's order as stated herein, Customer shall pay to Vendor a deposit via credit card to purchase Goods in an amount representing 10% of the Purchase Price of each individual Goods (exclusive of taxes) to a maximum of Ten Thousand Canadian Dollars (\$10,000.00 CAD) for each individual Goods (the "Deposit") and the balance for all purchased Goods and Services shall be due within three (3) business days of Customer's credit card payment (the "Balance"). Subject to the terms of these Terms, upon successful processing of the Deposit and Vendor's acceptance of Customer's order, the purchased Goods will be secured, and an email confirmation will be sent to Customer including detailed instructions as to the next steps to pay the outstanding Balance as stated herein. Deposit shall, subject to the application of an administrative fee of 15% of the total Deposit retained by Vendor (the "Deposit Refund Admin Fee"), be refundable up until the close of business of the third business day following Customer's payment of the Deposit, at which time the Deposit will automatically and without further notice become non-refundable, non-cancelable and non-transferable. Upon any refund of the Deposit, the associated Goods will no longer be reserved for Customer and any confirmation related to such Goods will be void. Customer acknowledges and agrees that, subject to any refund of the Deposit, payment of the Deposit shall not relieve Customer of its obligations to pay the remainder of the Purchase Price within three (3) business days of the Deposit (assuming Vendor accepts Customer's Order), and if Balance is not paid, Customer will forfeit its Deposit and the Goods and Services will no longer be reserved. Taxes shall be calculated on the total Purchase Price based on location of Goods and Services and shall be finally determined only at time of payment of the Balance. All amounts set out or referred to in this Agreement are exclusive of all taxes, duties and levies, however designated or computed. Customer will pay all taxes, duties, and levies, including without limitation sales, use, or value-added taxes, duties and withholding taxes, based upon or payable in respect of this Agreement, the transactions, licenses, Goods or Services provided for hereunder or the payments made hereunder, excluding any taxes based upon Vendor's net income. If Customer is required to withhold any taxes from payments owed to Vendor under this Agreement, then the amount of the payment due will automatically be increased by the Customer by the amount of such tax, so that the amount actually received by Vendor equals the Purchase Price or amount otherwise due. Upon request, Customer shall promptly furnish Vendor with all official receipts evidencing payment of taxes due under or in relation to this Agreement to the appropriate taxing authority.

## **4. FINANCING**

(a) Financing may be available via third party lenders ("Lenders"). Vendor does not enter into any contract with Customer in respect of any Lender's product or services. By submitting Customer details, Customer is making an offer to obtain the relevant product or service from the relevant Lender on Lenders terms and conditions that may be accepted or rejected by Lender in Lender's sole discretion. Lenders may verify submitted information to determine credit worthiness, credit standing and/or credit capacity. By submitting an application and information, Customer agrees to allow any and all participating Lenders to verify the supplied information. Lender's terms and conditions will apply. Vendor, its owners, officers, directors, agents, employees, and/or contractors are not licensed or qualified to provide general financing services or advice in any manner whatsoever in accordance with Governing Law (as defined below). Customer acknowledges and understands that

Vendor, its owners, officers, directors, agents, employees, and/or contractors do not endorse, support or recommend the use of any Lender or their associated services or products.

(b) The online calculator is provided for illustrative purposes only and the information obtained by using the online calculator is not, and should not be taken as, legal or financial advice to any Customer. Vendor is not responsible for the content, results or accuracy of the information on the calculators. Results may vary depending on the accuracy and comprehensiveness of the information Vendor provides while using the online calculator. This calculator does not have the ability to pre-qualify Customer for any financing or loan program. Qualification for financing or loans requires additional information such as credit scores and existing debts which is not gathered in this calculator. Information such as interest rates and pricing are subject to change at any time and without notice. All information such as interest rates, taxes, insurance, monthly payments, etc. are estimates and should be used for comparison only. Vendor does not guarantee any of the information obtained by any calculator.

## **5. RISK; TITLE; DEFAULT; SECURITY**

Vendor may insure the Goods for its own and Customer's interest at Customer's cost. The title to Goods, free and clear of all liens, hypothecs, claims and encumbrances of any kind ("Liens"), vests in Customer upon full payment of the Purchase Price thereof and all other amounts due under the Agreement. Until receipt of full payment or upon the occurrence of an Event of Default, Vendor may, in its sole discretion, at any time:

(a) require payment in advance;

(b) withhold Goods, completed Services or scheduled Services or terminate Services (without being liable to Customer for any losses so caused); and/or

(c) inspect the Goods and, if in its opinion (either before or after repossession) the Goods are not in good order and repair, Vendor may have the Goods repaired and the cost thereof will be an Additional Charge. Customer is entitled to possession of the Goods until: (i) its default in making any payment due under the Sales Agreements, (ii) its breach of the Sales Agreements, (iii) a proceeding in bankruptcy, receivership, winding-up or insolvency is instituted or threatened by or against Customer or its property, (iv) any execution, attachment or other writ is levied on any of Customer's property, (v) any Good is or is in danger of being confiscated, misused or insecure, (each an "Event of Default"). Upon an Event of Default all amounts due and remaining unpaid under the Sales Agreements and all other agreements between Vendor and Customer, at the election of Vendor (notice of election is waived by Customer), will be immediately due and payable, subject to unearned interest rebate. In addition, Vendor has the right without waiver of its other rights and remedies and without judicial process or any notice to Customer to enter upon Customer's premises, repossess the Goods or any part thereof wherever found, sell the same either by private sale or public auction, (without notice or advertisement to any person, firm or corporation), without becoming liable to Customer for any damages whatsoever by reason of such repossession or reselling. All costs incurred by Vendor in repossession, removal, repairing and reselling (including legal and other third party expenses) will be added to Vendor's claim (collectively, "Repossession Costs"). The proceeds of any such sale will be applied on the amounts payable hereunder. Any surplus balance will be returned to Customer and Customer will pay any deficiency forthwith to Vendor. Vendor takes and reserves a security interest in the Goods and Customer grants Vendor a purchase money security interest in all of its right, title and interest in the Goods as security for the payment of the purchase price thereof and other amounts due hereunder. Customer will, at its expense, promptly execute, acknowledge and deliver all such instruments and take all such action as Vendor may reasonably request in order to ensure to Vendor the benefits of the security interest and/or ownership interest in the Goods intended to be created by this Agreement. Customer authorizes Vendor to register or publish such financing statements or other instruments, as Vendor may determine appropriate to perfect and maintain its interest in the Goods. In addition to securing payment of the purchase price of Goods and Services and all Additional Charges (hereinafter defined), any Deposit is a guarantee by Customer of the full and complete performance of all of Customer's obligations hereunder and in the event of any breach by Customer thereof, the Deposit will be entirely forfeited and non-refundable without proof of damages and may be credited against the price of Goods and Services and/or Additional Charges without prejudice to or waiver of any of Vendor's other rights or remedies. The taking or renewal of any promissory note by Vendor in respect of indebtedness secured hereunder is collateral security only and will not in any way operate as a merger, payment, alteration or postponement of such indebtedness, and will not otherwise affect terms of payment hereunder. Vendor may set-off monies it owes Customer against any monies Customer owes to Vendor. Without limiting any other provisions under the Agreement and without prejudice to any of Vendor's rights and recourses under the Agreement, at law or in equity, in authorizing services to be performed and/or Goods to be supplied pursuant to the Agreement, whether under a Sales Agreement, work order, purchase order, estimate, invoice or other document, including by way of authorization given electronically, Customer authorizes Vendor to perform services (including the Services) and/or supply such Goods and acknowledges itself indebted to Vendor in the amount indicated therein pursuant to the Manitoba Garage Keepers Act, the Ontario Repair and Storage Liens Act, the British Columbia Personal Property Security Act, the Nunavut Garage Keepers Lien Act or similar legislation in the applicable province including any amendment and successor legislation thereto, as applicable.

## **6.**

### **(a) BUYER OBLIGATIONS**

Customer will pay the Purchase Price of Goods and Services and all Additional Charges to Vendor when due. Unless otherwise specifically agreed by Vendor in writing, Additional Charges are payable forthwith on demand. "Additional Charges" means all sums of money, other than the Purchase Price of Goods and Services, payable by Customer in connection with this Agreement including, without limitation, interest, insurance premiums, storage, additional Goods or Services not included in the original Purchase Price (in accordance with Vendor's prevailing ratelines), travel, mileage and related expenses, Customer's third party payment processing, fleet management or other similar service fees charged to Vendor, costs to register or discharge Liens, Repossession Costs and all other collection costs, internal and external legal costs, the Deposit Refund Admin Fee and all other expenses, damages, claims, liability, losses, lost profits, penalties or fines incurred by the Vendor in connection with the Sales Agreements. In the event Vendor is required to provide information or personnel in a witness or expert capacity (e.g. third party or insurance claims purposes) in connection with any Service or Good or the Services Agreements, Customer will pay Vendor for all time (including travel), labour (at then current rates), materials and other expenses in relation thereto plus a 15% administrative fee. Until all amounts due hereunder are fully paid, Customer will not sell or agree to sell, mortgage, charge or dispose of, or intentionally injure or abandon the Goods, remove or alter any name plate or insignia of Vendor on the Goods or remove the Goods from the province in which the Goods are initially used by Customer without Vendor's prior written consent and will keep the same in good repair and working order. Vendor may sell Customer's equipment in accordance with applicable law if such equipment remains in Vendor's possession.

## **(b) SCHEDULING**

Vendor will endeavour to accommodate schedule requests of Customer to the extent commercially practicable. Vendor reserves the right to change such schedule for any Services if Vendor's personnel are unable to perform scheduled Services because of illness, resignation, Force Majeure or an Extraordinary Event. Vendor will make commercially reasonable efforts to replace any such personnel within a reasonable time in order to limit impact on the schedule. In the event that Customer requests that scheduled Services be rescheduled or delays scheduled Services (collectively, "Customer Delays"), Vendor will make reasonable efforts to accommodate Customer's requested dates or reschedule delayed Services but Vendor's ability to reschedule Services is dependent upon the availability of Vendor's personnel. In the event of a Customer Delay, Vendor reserves the right to invoice Customer for all costs directly related to rescheduling (such as lodging charges or air travel fees) as Additional Charges under the Sales Agreements. Without limiting the foregoing, where Services are to be performed at Customer's site or facility, if a Customer Delay, Force Majeure or Extraordinary Event results in scheduled travel of Vendor's personnel to or from the site or facility being delayed, interrupted or otherwise impacted for a period greater than two (2) hours, Vendor reserves the right to invoice Customer for the total standby or overtime rates of such personnel in addition to reasonable costs directly related to rescheduling (such as lodging charges or air travel fees) as Additional Charges under the Sales Agreements.

## **(c) FIRE SUPPRESSION SYSTEM**

Customer will perform repairs to, maintenance, inspection and certification of any fire suppression system and will be responsible for the associated removal and installation of said system in order for Vendor to perform the Services. In the event that the Customer does not remove the fire suppression system as required, then Vendor is hereby authorized to remove it as deemed necessary by Vendor at an Additional Charge to Customer and Customer will remain solely responsible for the installation and certification of such system. To the fullest extent permitted by law, Customer shall defend, indemnify and hold harmless Vendor, its affiliates and subsidiaries, and all of their respective owners, directors, officers, managers, employees, agents or representatives for, from and against any and all liabilities, claims, actions, suits, damages, losses, costs and expenses (including, but not limited to, reasonable attorneys' fees and expert witness fees) that are caused by, arise from or related in any way to fire suppression systems (including, but not limited to, the death or injury of any person(s), damage to or destruction of any real or personal property and environmental liabilities).

## **7. GOODS STORAGE**

(a) Vendor will provide storage space ("Storage Space") within one of its facilities ("Storage Facility") to be utilized by Customer for the storage of purchased Goods. All Goods are stored on a daily basis only (the "Term"). Except where another procedure is provided, Vendor may, upon written notice to Customer, require the removal of any Goods within two (2) days of date of notice. Upon the failure of Customer to remove the goods within the time specified in the notice, Vendor may sell the Goods at public or private sale without advertising. If Vendor after a reasonable effort is unable to sell the Goods, it may dispose of them in any manner it thinks fit and shall incur no liability by reason thereof. Vendor shall, from the proceeds of any sale made pursuant to this paragraph, satisfy any lien for unpaid charges and shall hold the balance, if any, in trust for Customer. Customer shall be liable to Vendor for all charges accrued and unpaid on such Goods.

(b) The Storage Space will be provided by Vendor free of cost for the first ten (10) days following notification for pick-up. Thereafter, Customer shall pay to Vendor immediately upon invoice the sum of Three Hundred Canadian Dollars (\$300.00 CDN) per day plus applicable taxes or as otherwise determined by Vendor in its sole discretion.

(c) Goods stored in the Storage Space are not insured by Vendor nor do storage rates include insurance. Vendor undertakes to store Goods only in the packages in which they are originally received, if any.

(d) Vendor reserves the right to transfer at its own expense, without notice, stored Goods from one place to another in the Storage Facility or between its Storage Facilities provided the transfer involves no change in the class of storage. In the event that the nature or condition of the Goods stored creates a condition hazardous to the safekeeping and storage of other goods in the Storage Facility or to any property or person, Vendor may forthwith remove such stored Goods from the Storage Facility. In such event, Vendor will give prompt notice to Customer that such Goods have been removed and the location of them. Customer shall then be liable for the expenses in connection with the removal, all accrued unpaid charges, and the storage and other charges of the changed location of the Goods.

(e) All Goods are stored at Customer's risk of loss or damage by fire or explosion from any cause, flood, wind, storm, earthquake or other acts of god, war, insurrection, riot, civil or military authority, strikes, picketing, or any other labour trouble, shrinkage in weight, loss in quality, or due to the inherent or perishable nature of the Goods, or by insufficient cooperation, boxing, crating or packaging, or for wear and tear, or by any cause not originating in the Storage Facility, or by any cause beyond the control of Vendor. No responsibility will be assumed for loss of Goods by leakage or failure to detect same, or for concealed damage. Vendor shall not be liable for loss or damage caused by breakage, theft, pilferage, rats, mice, vermin, sprinkler leakage or water, unless such damage is caused by failure of Vendor to exercise the ordinary care and diligence required of it by law. All storage, handling and other charges must be paid on Goods lost or damaged by any of the above causes. Goods which are susceptible to damage through temperature changes or other causes incident to general storage are accepted into general storage only at Customer's risk for such loss or damage as might result from general storage conditions. In no event shall the liability of Vendor exceed the total of all fees paid pursuant to paragraph 7(b) hereof.

## **8. WARRANTY**

Customer acknowledges that Vendor is not the Goods manufacturer's agent, therefore Customer represents that Customer has selected the Goods purchased hereunder based upon Customer's sole judgment prior to having offered to purchase same from Vendor, and Customer agrees that as between Vendor and Customer, the Goods purchased hereunder is of a design, size, fitness and capacity selected by Customer and that Customer is satisfied that the same is suitable and fit for its intended purposes. Vendor will assign to Customer the manufacturer's warranty applicable to new Goods to the extent permitted by the terms of such warranty and subject to all conditions and exclusions set forth therein. Services (if any) supplied by Vendor are covered by Vendor's then-current standard service warranty subject to all conditions and exclusions included in the applicable written warranty statement. If an extended product or service warranty is supplied by Vendor at the time of sale as indicated in writing in the Sales Agreements signed by Vendor, such warranty, if any, will be subject to all conditions and exclusions included in the applicable written warranty statement. BUYER FURTHER AGREES THAT VENDOR HAS NOT MADE AND MAKES NO REPRESENTATIONS OR WARRANTIES OF WHATSOEVER NATURE, DIRECTLY OR INDIRECTLY, EXPRESSED OR IMPLIED, INCLUDING BUT

NOT LIMITED TO ANY REPRESENTATIONS OR WARRANTIES WITH RESPECT TO SUITABILITY, DURABILITY, FITNESS FOR USE AND MERCHANTABILITY OF ANY SUCH GOODS OR SERVICES, THE PURPOSES AND USES OF THE GOODS AND SERVICES, THE CHARACTERIZATION OF THE SALE TO BUYER FOR TAX, ACCOUNTING OR OTHER PURPOSES, COMPLIANCE OF THE GOODS AND SERVICES WITH APPLICABLE GOVERNMENTAL REQUIREMENTS, OR OTHERWISE. Customer specifically waives all rights to make claim against Vendor herein for breach of any warranty of any kind whatsoever. For Goods not originally manufactured by Caterpillar Inc., Customer shall be solely responsible, at its own cost and expense, for the transfer of telematics incorporated in such Goods, if any, to a Customer account. Notwithstanding the foregoing, Customer shall be entitled to the benefit of any applicable manufacturer's warranties received by Vendor with respect to pre-owned Goods and to the extent assignable, and Vendor hereby assigns such warranties to Customer for the term of the applicable warranties. Vendor shall take such actions as may reasonably be necessary to assign such warranties to Customer. Vendor shall not be liable to Customer for any loss, damage or expense of any kind or nature caused directly or indirectly by any Goods (new or pre-owned) or Services purchased hereunder or for the use or maintenance thereof, or for the failure of operations thereof, or for the repairs, service or adjustment thereto, or by any delay or failure to provide any thereof, or by any interruption of service or loss of use thereof or for any loss of business or any other damage whatsoever and howsoever caused. No defect or unfitness of the Goods or Services shall relieve Customer of the obligation to pay the full Purchase Price, or to perform any other obligation under this agreement. NONE OF THE FOREGOING WARRANTIES

APPLY AND VENDOR MAKES NO WARRANTY WHATSOEVER RELATED TO FIRE SUPPRESSION SYSTEMS OR THE RECOMMENDATION, INSTALLATION, REMOVAL, MAINTENANCE OR SERVICING OF SAME. EXCEPT FOR THE FOREGOING WARRANTIES, VENDOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO GOODS OR SERVICES INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES AND CONDITIONS OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY OR QUALITY OR ANY IMPLIED WARRANTIES THAT MAY ARISE FROM THE COURSE OF DEALING BETWEEN THE PARTIES. ALL IMPLIED WARRANTIES AND CONDITIONS, WHETHER STATUTORY, OR ARISING BY OPERATION OF LAW OR OTHERWISE, ARE EXPRESSLY DISCLAIMED BY VENDOR AND WAIVED BY BUYER.

**SOME JURISDICTIONS LIMIT OR DO NOT ALLOW THE DISCLAIMER OF IMPLIED OR OTHER CONDITIONS AND WARRANTIES SO THE ABOVE DISCLAIMER MAY NOT APPLY TO BUYER'S ORDER.**

#### **9. PRIVACY; TELEMATICS**

Goods may be equipped with a telematics system, device and/or software such as Product Link ("Telematics System"). In such event, data concerning a Good, its condition, and its operation is being transmitted by the Telematics System to Vendor, the manufacturer and/or its affiliates, and/or its dealers (including Vendor) to better serve Customer and to improve upon products and services. Information transmitted may include: machine serial number, machine location, and operational data, including, but not limited to, fault codes, emissions data, fuel usage, service meter hours, software and hardware version numbers, and installed attachments. The Telematics System may allow for remote access to Goods for upgrades or changes (and may affect operation) without further notice. Customer consents to the collection of personal information and telematics data by the Vendor, the manufacturer and its dealers (including Vendor), and to the use, retention, and disclosure of such information and data and authorizes the manufacturer and its dealers (including Vendor) to remotely access, program and install updates and upgrades for Goods, the whole in accordance with [Vendor's Privacy Policy](#) as revised from time to time, and the manufacturer's [data governance policies and agreements](#), as revised from time to time (if Caterpillar Inc. and/or its affiliates are the manufacturer, Caterpillar's Data Governance Statement applies and can be found at: [www.caterpillar.com/en/legal-notice/data-governance-statement](http://www.caterpillar.com/en/legal-notice/data-governance-statement)), or such other applicable manufacturer's data governance policies and agreement as revised from time to time. Customer may withdraw such consent by contacting Vendor at [tequip@toromont.com](mailto:tequip@toromont.com) and, where the manufacturer is Caterpillar Inc. and/or its affiliates, Caterpillar at [CatConnectSupport@cat.com](mailto:CatConnectSupport@cat.com). Customer will notify any subsequent user, owner or purchaser of the terms of this consent. For Telematics System information regarding Goods not manufactured by Caterpillar Inc., Customer must consult the Goods' original manufacturer for complete details.

#### **10. LIMITATION OF LIABILITY**

Notwithstanding anything contained in the Sales Agreements or elsewhere: (i) In no event will Vendor, its divisions, subsidiaries and affiliates and each of their respective employees, agents, officers and directors be liable for any aggravated, indirect, consequential, punitive or special damages, loss of profits or anticipated profits, loss of revenue or anticipated revenue, loss of use of property or equipment, incremental cost of new equipment, downtime, loss of business opportunity, loss of third party contracts, loss of production, increased cost of production, delay, and other economic loss, pain and suffering, emotional distress or similar damages, howsoever arising, whether based in contract, warranty, negligence, tort, strict liability or any other theory of law or equity, regardless of whether or not the concerned party was advised of the possibility of such damages; (ii) The aggregate liability of Vendor, its divisions, subsidiaries and affiliates and their respective employees, agents, officers and directors, if any, under or pursuant to the Sales Agreements is limited to the amounts paid by Customer to Vendor for Goods or Services to which the liability relates; and (iii) Any and all claims arising out of or relating to the Goods, Services or the Sales Agreements will be barred unless a legal proceeding is commenced within one (1) year of delivery of the Goods to Customer or completion of the Services related to the liability. Except as set out herein, Customer shall defend, indemnify, and hold harmless Vendor, its subsidiaries and affiliates, and its and their directors, officers, employees and agents from and against any and all claims, demands, liabilities, fines, penalties, loss, damage, cost and expense, of whatsoever nature incurred by Customer arising out of or connected with the Sales Agreements.

#### **11. TRADE-INS**

If Vendor is taking equipment in trade, Customer undertakes to deliver such equipment to Vendor in "as inspected" condition by Vendor. Trade-in equipment delivered in excess of two months or with more than an additional 200 hours of use from inspection will be reevaluated for the purpose of the Sales Agreements. Customer represents and warrants that any equipment or goods taken in trade by Vendor are free and clear of any and all liens, no alterations have been made to the emission system on such equipment and all Federal and Provincial sales

tax and other taxes have been paid on such equipment. Customer acknowledges and agrees that its compliance with this section is a condition to the completion of the sale contemplated in the Sales Agreements. Customer shall defend, indemnify, and hold harmless Vendor, its subsidiaries and affiliates, and its and their directors, officers, employees and agents from and against all claims, damages, costs and expenses resulting from its breach of this section.

## **12. EXPORT COMPLIANCE**

Goods supplied may be subject to laws and regulations governing the export of goods and technology from Canada and/or the United States and/or use of goods outside of Canada. Goods supplied are subject to anti-bribery laws, environmental laws and regulations prohibiting and/or regulating the exportation and/or use of Goods outside of Canada (including, without limitation the United States and EU countries), export control and sanctions regimes including, without limitation, UK Export Control Regulations, EU regulations and sanctions, US Export Administration Regulations, US sanctions and regulations and International Traffic in Arms regulations and all applicable laws, rules, regulations, directives, ordinances, orders, or statutes ("Export Laws"). If Goods supplied hereunder are to be exported from Canada, then Vendor's performance of its obligations hereunder is subject to Customer obtaining, at Customer's cost, the necessary approvals, licenses and permits required by Export Laws; provided that Customer understands and agrees that certain Goods supplied hereunder may not be certified or otherwise eligible for exportation and/or use outside of Canada and, in such cases, notwithstanding any delivery term or incoterm to the contrary in the Sales Agreement, the purchase order or elsewhere, Vendor's delivery point will be located in Canada. Customer shall not ship or divert any of the Goods hereunder, or any technical information relating thereto, to any country outside Canada in violation of Export Laws. Customer acknowledges that Vendor prohibits the sale, further sale, or transit of any Goods to Cuba, Iran, North Korea, Syria, and the Crimea region, regardless of whether a required government authorization, license, permit, or approval is obtained. Prohibited destinations also include any country or region prohibited under any sanctions program administered by the United States, Canada, United Kingdom, or the European Union. Customer will supply Vendor with all information required by Vendor to comply with all Export Laws. Responsibility to comply with Export Laws transfers to Customer for any transfer by it of the Goods. Customer represents and warrants that it is not a prohibited party or subject to sanctions pursuant to Export Laws and covenants that it will not resell or divert any of the Goods to a prohibited party as defined by Export Laws. Customer shall defend, indemnify, and hold harmless Vendor, its subsidiaries and affiliates, and its and their directors, officers, employees and agents from and against all claims, damages, costs and expenses resulting from its breach of this section.

## **13. COUNTERPARTS, ELECTRONIC SIGNATURES & DELIVERY**

Each party agrees that the electronic signatures of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record. Delivery of an executed copy of this Sales Agreement by electronic transmission constitutes valid and effective delivery.

## **14. FORCE MAJEURE**

Vendor is not liable for any delay or failure to perform any of its obligations under this Agreement by reason of any event beyond its control, including, without limitation, an Act of God, war, insurrection, civil commotion, terrorism, sabotage, labour dispute or strike or lockout or slowdown, explosion, fire, flood or storm or other natural catastrophe, pandemic, epidemic, equipment failure, power or other utility failure, inability to obtain sufficient, suitable or timely labour or materials, extraordinary economic circumstances, or market conditions, embargo, law or ordinance or regulation, or plant breakdown ("Force Majeure").

## **15. GOVERNING LAW**

All matters arising out of or relating to these Terms are governed by and construed in accordance with the laws of the Province of Ontario, Canada and the federal laws of Canada applicable therein without giving effect to any choice or conflict of law provision or rule (whether of the Province Ontario or any other jurisdiction).

## **16. ASSIGNMENT**

Customer will not assign any of its rights or delegate any of its obligations under these Terms without Vendor's prior written consent, provided however, that Vendor may assign its duties or obligations hereunder without the need to obtain consent of Customer to a manufacturer and/or its affiliates, and/or its dealers to better serve Customer and to improve upon products and services. Any purported assignment or delegation in violation of this Section 17 is null and void. No assignment or delegation relieves Customer of any obligations under these Terms.

## **17. NO WAIVERS**

The failure or delay by Vendor to exercise or enforce any right or provision of these Terms will not constitute a waiver of future enforcement of that right or provision. The waiver of any right or provision will be effective only if in writing and signed by a duly authorized representative of Vendor.

## **18. THIRD PARTIES**

These Terms do not and are not intended to confer any rights or remedies upon any person or entity other than Customer.

## **19. NOTICE**

(a) To Customer. Vendor may provide any notice to Customer under these Terms by: (i) sending a message to the email address Customer provides to Vendor and consents to Vendor using; or (ii) by posting to the Site. Notices sent by email will be effective when Vendor sends the email and notices Vendor provides by posting will be effective upon posting. It is Customer's responsibility to keep email addresses current.

(b) To Vendor. To give Vendor notice under these Terms, Customer must contact Vendor as follows: (i) for sales related matters, by email at the contact us details provided on the Site; or (ii) for all other matters, by personal delivery, overnight courier or registered or certified mail to Toromont Industries Ltd. at 3131 Highway 7 West, P.O. Box 5511, Concord, Ontario, L4K 1B7, Attn: Legal Department. Notices provided by

personal delivery will be effective immediately. Notices provided by overnight courier will be effective one business day after they are sent. Notices provided by registered or certified mail will be effective three business days after they are sent.

#### **20. SEVERABILITY**

If any provision of these Terms is invalid, illegal, void, or unenforceable, then that provision will be deemed severed from these Terms and will not affect the validity or enforceability of the remaining provisions of these Terms.

#### **21. ENTIRE AGREEMENT**

These Terms, Vendor's Website Terms and Conditions of Use, any Sales Agreements and Vendor's Website Privacy Policy will be deemed the final and integrated agreement between the parties on the matters contained in these Terms.