

Terms and Conditions
JOHNSON MACHINERY CO

1. Agreement of sale: any terms and provisions of buyer's orders which are inconsistent with the terms and provisions hereof are rejected, will not be binding on the seller nor considered applicable to the sale or shipment referred to herein, unless buyer shall notify seller in writing within fifteen (15) days after receipt of this proposal by buyer. Acceptance of the terms and conditions hereof by buyer shall be indicated, and in the absence of such notification, the sale and shipment by the seller of the products covered hereby shall be conclusively deemed to be subject to the terms and conditions hereof. No waiver, alteration, or modification of the provisions hereof shall be binding on the seller unless agreed to in writing by a duly authorized official of seller at its headquarters office(s). Waiver by either party of any default by the other shall not be deemed a waiver by such party of any default of the other which may thereafter occur.

2. Prices: prices and payment terms shown on the face of this proposal apply. Inadvertent error in either prices or terms is subject to correction.

3. Taxes: the seller's prices do not include any sales, use, and excise property or similar taxes which seller may be required to pay in connection with filling any of buyer's orders. The amount of any applicable present or future such tax shall be paid by the buyer as an additional charge or in lieu thereof, the buyer shall provide the seller with a tax exemption certificate acceptable to the taxing authorities.

4. Warranty: Caterpillar warrants new earthmoving, construction and materials handling machinery (other than lift trucks) and attachments therefore sold by it to be free from defects in material and workmanship subject to the following provisions. During the first six months after date of delivery of the product to the initial user, a new or repaired part, whichever Caterpillar elects, along with the labor for installation of such new or repaired part, will be provided in place of any parts which are found upon its inspection to be defective in material or workmanship. Such parts and labor will be provided without charge to the user during normal working hours at a place of business of a Caterpillar dealer or other establishment authorized by Caterpillar, but this warranty does not include any costs for transporting the product to such place of business or establishment. Replacement parts provided under the terms of this warranty are warranted for the remainder of the warranty period applicable to the product in which installed as if such parts were original components of that product. No warranty is made with respect to items supplied by Caterpillar on special order nor with respect to tires made by others when such tires are warranted by their respective makers. This warranty does not apply to Caterpillar brand bias ply and beadless tires, ground engaging tools or Caterpillar brand batteries - to all of which different warranties apply. **This warranty is expressly in lieu of any other warranties, express or implied, including any warranty of merchantability or fitness for a particular purpose.** Remedies under this warranty are expressly limited to the provision and installation of parts, as specified above, and any claims for other loss or damages of any type (including without limitation loss from failure of the product to operate for any period of time, other economic or moral loss, or direct, immediate, special, indirect or consequential damage) are expressly excluded as used in this warranty. The term "Caterpillar" means Caterpillar Inc. or one of its subsidiaries, whichever last sold the product involved.

5. Liability and claims: seller's liability on any claim of any kind, including claims for negligence, or for any loss or damage, arising out of, or connected with, or resulting from any order accepted by seller, or from the manufacture, sale, delivery, resale, repair or use of any products covered by, or furnished under, such an order, shall in no case exceed the price allocable to the product or part thereof which gives rise to the claim. In no event shall seller be liable for special or consequential damages; any claims against seller for shortages by it in making shipments shall be made in writing to seller within fifteen (15) days after receipt of shipment. Seller's responsibility for shipments ceases upon delivery to a carrier. And any claims for shortages, delays or damages occurring thereafter shall be made direct to the carrier, the fulfillment of any order accepted by seller is subject to strikes, labor disputes, lockouts, accidents, fires, delays in manufacture or in transportation or delivery of materials, floods, severe weather or other acts of god, embargoes, or governmental actions. Or any other causes beyond the reasonable control of seller, whether similar to, or different from the causes above enumerated, and any such cause shall absolve seller from any liability to buyer.

6. Changes: seller may, at any time, without notice, make changes (whether in design, materials, the addition of improvements, or otherwise) in any product, and may discontinue the manufacture of any product, all in its sole discretion, without incurring any obligations of any kind as a result thereof, whether for failure to fill an order accepted by seller or otherwise.

7. Compliance with laws: seller will comply with all applicable federal laws, and represents that any goods to be delivered under an order placed pursuant hereto will be produced in compliance with the requirements of the fair labor standards act of 1938, as amended.

8. Shipments: shipment dates are approximate. Shipments of products under an order accepted by seller shall be subject to the approval by seller of buyer's financial condition at the time of shipment. Whether or not credit terms are specified elsewhere, seller may, at its option, condition shipments under any order accepted by seller upon receipt of satisfactory security or of cash before shipment. If, at buyer's request, shipment of products on an order accepted by seller is delayed more than thirty (30) days after the shipment date specified on the face hereof, or the date products are ready for shipment, whichever is later, seller may require immediate payment in full and/or assess additional charges for storage and other expenses incident to such delay.

9. Cancellation: in the absence of other written agreement between buyer and seller governing cancellation, any order accepted by seller may be cancelled by buyer only upon written notice to seller and payment of seller's cancellation charges. At buyer's request a statement of such charges will be furnished by seller prior to cancellation and charges will be not less than 20% of proposed selling price or accrued cost, whichever is greater.

10. Indemnification: buyer shall protect, hold harmless and indemnify seller from and against any and all demands, costs, liens, suits, judgements and penalties, and liabilities of every kind arising directly or indirectly, out of or wholly or partially caused by buyer in connection with or caused by buyers use or operation of this product, except for such seller liability as otherwise stated herein.

11. Property will be used in, _____, county, State of California. Lessee will not remove the property from this county without written permission from lessor.

12. Insurance: Lessee shall, at its expense, at all times from the time of delivery of equipment to lessee, maintain insurance against all risks of loss or damage from any cause for not less than the full replacement value thereof and shall carry public liability and property damage insurance covering the equipment. Such insurance shall be in the amounts and with insurance companies satisfactory to lessor, protecting lessor as an additional insured, and providing for ten (10) days written notice to lessor before any policy may be modified or cancelled. Lessee shall deliver to lessor evidence of insurance.

13. Lessee agrees not to part possession or sublet this equipment without the written consent of the lessor and to pay all attorney's fees, collection charges, or other expense occasioned by lessee's failure to comply with the provisions hereof. In the event of default of payment, lessor may retake possession of this equipment.

14. Lessee shall use the equipment in a careful manner in conformity with all governmental laws, ordinances, regulations, and requirements and shall take reasonable and proper care thereof, and at his own expense and cost, make all necessary repairs and replacements except warranty items referenced herein, if any. In the event of default by the lessee in the payment of rent or otherwise, the lease shall terminate immediately at the option of the lessor. Unless the equipment is returned or the lessor notified in writing to the contrary by the lessee before expiration of the rental period set forth above, the rental period shall be extended from month to month beyond the original period specified, at the option of the lessor. In the event of such extension of the rental period, lessee agrees to pay lessor rental payments at the rate specified above for any additional time the equipment is rented.

15. Title to the equipment shall at all times remain in the lessor, and lessee agrees to keep each item of equipment at all times free and clear from all claims, levies, liens, and legal processes. Equipment is and shall remain personal property.

16. Lessor shall at any time during reasonable business hours have the right to enter on lessee's premises where the equipment may be located or elsewhere to inspect the equipment or observe its use. At lessor's request, lessee shall give immediate notice of the exact location of the equipment. Lessee shall give lessor immediate notice of any attachment or other judicial process affecting any item of equipment.

17. It is expressly agreed and understood that the lessor shall not in any case or under any circumstances be held liable to any person including lessee for any loss or damage, or claim or judgment, or loss or damage of any kind or character whatsoever to persons or property, or otherwise arising from or in any manner connected with the use, operation, handling, or transportation of said property; and any and all claims for loss or damage are hereby specifically waived by lessee. Lessee agrees to indemnify and hold harmless the lessor from any and all such claims for loss, damage or liability.

18. Time is of the essence and lessee shall be in default under this agreement upon the occurrence of any of the following: (a) the misstatement or false statement in connection with, noncompliance with, or nonperformance of any of lessee's obligations under this agreement. (b) the failure to pay any rent or other amounts provided herein when the same is due and payable. (c) the failure of lessee to perform any other provisions of this lease which it is required to perform.

19. The company warrants that it is the sole owner of the equipment and that there are no liens or encumbrances or adverse claims whatsoever thereon, other than the lien of taxes not yet delinquent it is understood by the parties hereto that the company is not the manufacturer of the equipment, nor the agent of said manufacturer.

20. Demo Should this agreement pertain to the demonstration use of the equipment it is understood that ownership of the equipment is retained by Johnson Machinery Co. . Furthermore any costs associated with the damage or excessive use to the equipment during the demo period will be the responsibility of the customer as would the costs associated with the theft or destruction, regardless of responsibility, of the equipment. The customer agrees to provide necessary comprehensive and liability insurance, naming Johnson Machinery Co. as additional insured, during the demo period. Demo period is not to exceed 72 hours unless otherwise specified in writing.

Initials: _____