

GENERAL TERMS AND CONDITIONS OF SALE

ARTICLE I ORDER OF PRECEDENCE

1.1 **TERMS AND CONDITIONS.** These General Terms and Conditions of Sale ("Terms and Conditions") shall apply to all product purchase orders received by PCS Ferguson, Inc. ("Company") from the Customer identified in Quote # _____ issued by Company, and are hereby incorporated into and made a part of such quote. Customer shall be deemed to have accepted and agreed to these Terms and Conditions by purchasing products from Company pursuant to such quote.

1.2 **CONFLICTING MSA.** In the event of any conflict between these Terms and Conditions and any Master Service Agreement ("MSA") entered into between Company and Customer, the Terms and Conditions of the MSA shall control with regard to all matters pertaining to the products purchased by Customer from Company until the MSA is terminated according to its terms, unless otherwise expressly provided in these Terms and Conditions.

ARTICLE II PRODUCT PURCHASES

2.1 **PRODUCT ORDERS.** All purchase orders placed by Customer for products shall be subject to these Terms and Conditions and an order confirmation from Company accepting the purchase order for the products (the "Order Confirmation"). No additional or different terms or conditions in any purchase order or any modifications, changes or amendments to these Terms and Conditions shall be binding upon Company unless specifically agreed to in writing by an authorized representative of Company. Any additional or different terms already or hereafter proposed by Customer, whether in a purchase order or other communication or otherwise, are hereby rejected and shall not apply. The lack of objection by Company to any additional, modifying or deleting provisions contained in any purchase orders or other communications from Customer shall not be construed either as a waiver of the terms of these Terms and Conditions or as an acceptance by Company of any deviation from these Terms and Conditions.

2.2 **PRODUCT PRICES.** All price, delivery and installation quotations made by Company are conditioned upon the terms of these Terms and Conditions. No order shall be binding upon Company until an Order Confirmation is issued by an authorized representative of Company. Prices for products are subject to change without notice, provided that Company shall not change the prices of any products subject to an accepted order. Price quotations, unless otherwise stated, shall automatically expire 30 calendar days from the date issued and may be terminated at any time upon notice to Customer. All prices for products listed in Company publications are intended as a source of general information only and not as an offer to sell, and all prices contained therein are subject to confirmation by formal quotation by Company. Prices for products do not include transportation charges, insurance costs, export/import duties, licenses or fees, or any tax or governmental charge of any nature whatsoever. Prices for products also assume Company will have free use and ingress/egress to and from Customer's work site for Company crews on all-weather roads without additional cost or payment of any permit or work fees.

2.3 **TAXES, FEES AND DUTIES.** Any applicable taxes, fees and duties shall be paid by Customer, either directly or by reimbursement to Company. Any claim for exemption by Customer shall, if applicable, be effective only after receipt of proper exemption forms by Company.

2.4 **SHIPMENT AND DELIVERY.** Unless otherwise agreed in writing between the parties, all products shall be delivered FOB Shipping Point (Company's facility). If products are delivered FOB Shipping Point, Company shall provide 4837-2083-2820.1

written notice to Customer that the products are available for shipping at the delivery point (the "Availability Notice"); and Customer shall take delivery of the products within 7 days after receipt of Company's Availability Notice. If for any reason Customer fails to accept delivery of any of the products on the date fixed pursuant to the Availability Notice, or if Company is unable to deliver the products to the delivery point on such date because Customer has not provided appropriate instructions, documents, licenses or authorizations: (i) the products shall be deemed to have been delivered to Customer; (ii) title and risk of loss to the products shall pass to Customer on the date fixed pursuant to the Availability Notice; and (iii) Company, at its option, may store the products until picked up by Customer, whereupon Customer shall be liable to Company for all related costs and expenses (including, without limitation, storage and insurance costs).

Title to all products shall pass to Customer upon delivery to Customer at the delivery point. All products shall be packaged and packed for shipment in accordance with appropriate commercial practices. Claims for shortages and other error in delivery must be made in writing to Company within 10 days after the carrier designated by Customer delivers the products to the location specified by Customer and failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by Customer.

Company reserves the right to make delivery in installments, unless otherwise expressly agreed to in these Terms and Conditions; all such installments to be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any instalment shall not relieve Customer of Customer's obligations to accept remaining deliveries.

Company shall use reasonable efforts to comply with the delivery date specified by Customer in the order (if any), unless otherwise agreed in writing by the parties.

2.5 **TERMS OF PAYMENT.** Unless specified otherwise by Company, all products shall be invoiced upon delivery to Customer. Payment of the amount specified in the invoice shall be due within 30 days from the date of invoice. Amounts not paid by invoice due date shall be subject to interest on the unpaid balance at the maximum rate permitted by law. Customer shall make all payments hereunder in U.S. dollars. Customer shall reimburse Company for all collection costs, court costs, administration costs, investigation costs, attorneys' fees and all other incidental costs, charges or expenses incurred in the collection of past due amounts or otherwise resulting or arising from any breach by Customer of these Terms and Conditions. In addition to all other remedies available under these Terms and Conditions or at law (which Company does not waive by the exercise of any rights under these Terms and Conditions), Company shall be entitled to suspend the delivery of any products under this or any other agreement between the parties, if Customer fails to pay any amount when due hereunder and such failure continues for 5 days following written notice thereof. Customer shall not withhold payment of any amount due and payable by reason of any set-off of any claim or dispute with Company, whether relating to Company's breach, bankruptcy or otherwise.

2.6 **SECURITY INTEREST.** To the extent any products are sold to Customer on credit, Customer hereby grants to Company a security interest in all such products sold to Customer on credit until such time as the purchase price for such products has been paid in full to Company. Customer also hereby authorizes Company, at its option, to file any initial UCC financing statements, continuation statements or amendments thereto necessary to effectuate and perfect such security interest and the proceeds thereof.

2.7 **PRODUCT WARRANTY.** Company hereby warrants that new products shall be free from material defects in materials, design provided that the foregoing will not apply to any design provided by Customer) and workmanship for a period of 12 months after products have been placed into service (the "Warranty Period"). Company will, at its option, repair, replace or correct any and all such defective products that becomes apparent and are called to Company's attention in writing prior to the expiration of the Warranty Period at Company's sole cost and expense, which shall include, without limitation, all costs associated with performing such repairs, replacements, or corrections, if necessary. Company may, at its option, participate in the defect investigation of the defective products at the installation site and repair, correct or replace the defective products at such site or at its designated facility. Defective products covered by this warranty may be returned to Company at Company's expense if agreed to in advance in writing by Company. Repair, correction or replacement of defective products in the manner provided above shall constitute fulfillment of all Company's obligations under this warranty.

This warranty shall not apply to any products which have been subjected to (i) accident, misuse, abuse or neglect by Customer, (ii) wear and tear from the normal use of the products, (iii) repair, alteration or modification by any party, other than Company, without prior written authorization from Company, (iv) improper installation, use, storage, care or maintenance by Customer, (v) exposure to conditions outside the range of the environmental and/or operating specifications provided for the products, or (vi) force majeure events.

THE REMEDIES SET FORTH ABOVE SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND COMPANY'S ENTIRE LIABILITY FOR ANY BREACH OF THE WARRANTY SET FORTH IN THIS SECTION 2.7. COMPANY MAKES NO OTHER WARRANTIES, WHETHER EXPRESS, STATUTORY OR IMPLIED, WITH RESPECT TO THE PRODUCTS INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR CONFORMANCE TO DESCRIPTION, OR ANY WARRANTIES ARISING FROM COURSE OF DEALING, TRADE PRACTICE OR OTHERWISE.

If any products or component parts thereof are manufactured by a third party ("Third Party Products"), Third Party Products are not covered by the warranty in this Section 2.7. Any warranties made or given by such third parties for Third Party Products which are assignable by their terms are hereby assigned to Customer. If any warranties made or given by such third parties for Third Party Products are not assignable, Company shall use reasonable commercial efforts to enable Customer to receive the benefit from such warranties. FOR THE AVOIDANCE OF DOUBT, COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, STATUTORY OR IMPLIED, WITH RESPECT TO THIRD PARTY PRODUCTS INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR CONFORMANCE TO DESCRIPTION, OR ANY WARRANTIES ARISING FROM COURSE OF DEALING, TRADE PRACTICE OR OTHERWISE.

ARTICLE III INDEMNITY, LIMITATION OF LIABILITY

3.1 **COMPANY INDEMNITY.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, COMPANY RELEASES AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS CUSTOMER FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, DEMANDS, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS AND REASONABLE ATTORNEY'S FEES WHICH MAY BE INCURRED BY

CUSTOMER AS A RESULT OF CLAIMS ARISING OUT OF BODILY INJURY, LOSS OF LIFE, PERSONAL INJURY, EMOTIONAL OR PSYCHOLOGICAL INJURY, PROPERTY DAMAGE, PROPERTY OR WAGE LOSS, LOSS OF BENEFITS, ILLNESS, OR DEATH OF, ANY EMPLOYEES OF COMPANY DIRECTLY OR INDIRECTLY ARISING OUT OF ANY PRODUCTS PURCHASED BY CUSTOMER FROM COMPANY, INCLUDING WITHOUT LIMITATION ANY LOADING, UNLOADING, INGRESS, OR EGRESS OF PERSONNEL OR CARGO, REGARDLESS OF THE FAULT (OTHER THAN GROSS NEGLIGENCE, WILLFUL MISCONDUCT, MALICE, OR INTENTIONAL TORT), NEGLIGENCE (WHETHER SOLE, JOINT, CONCURRENT, ACTIVE OR PASSIVE OR OTHERWISE), PRE-EXISTING DEFECT, OR STRICT LIABILITY OF CUSTOMER. COMPANY STIPULATES AND AGREES THAT IT SHALL NOT BE ENTITLED TO INVOKE ANY IMMUNITY IT MAY HAVE UNDER ANY WORKERS COMPENSATION ACT (THE "ACT") AS A DEFENSE TO ITS OBLIGATIONS TO INDEMNIFY CUSTOMER PURSUANT TO THE AGREEMENT, IT BEING EXPRESSLY UNDERSTOOD THAT ANY WAIVER OF SUCH IMMUNITY UNDER THIS PARAGRAPH SHALL BE EFFECTIVE ONLY TO THE EXTENT NECESSARY TO PRESERVE THE LEGAL VALIDITY OF COMPANY'S INDEMNITY OBLIGATIONS UNDER THE AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT TO THE CONTRARY, SUCH WAIVER SHALL NOT IN ANY WAY IMPAIR COMPANY'S IMMUNITY UNDER THE ACT WITH RESPECT TO CLAIMS MADE AGAINST COMPANY BY ITS OWN EMPLOYEES.

3.2 **CUSTOMER INDEMNITY.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, CUSTOMER RELEASES AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS COMPANY FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, DEMANDS, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS AND REASONABLE ATTORNEY'S FEES WHICH MAY BE INCURRED BY COMPANY AS A RESULT OF CLAIMS ARISING OUT OF BODILY INJURY, LOSS OF LIFE, PERSONAL INJURY, EMOTIONAL OR PSYCHOLOGICAL INJURY, PROPERTY DAMAGE, PROPERTY OR WAGE LOSS, LOSS OF BENEFITS, ILLNESS, OR DEATH OF, ANY EMPLOYEES OF CUSTOMER DIRECTLY OR INDIRECTLY ARISING OUT OF ANY PRODUCTS PURCHASED BY CUSTOMER FROM COMPANY, INCLUDING WITHOUT LIMITATION ANY LOADING, UNLOADING, INGRESS, OR EGRESS OF PERSONNEL OR CARGO, REGARDLESS OF THE FAULT (OTHER THAN GROSS NEGLIGENCE, WILLFUL MISCONDUCT, MALICE, OR INTENTIONAL TORT), NEGLIGENCE (WHETHER SOLE, JOINT, CONCURRENT, ACTIVE OR PASSIVE OR OTHERWISE), PRE-EXISTING DEFECT, OR STRICT LIABILITY OF COMPANY. CUSTOMER STIPULATES AND AGREES THAT IT SHALL NOT BE ENTITLED TO INVOKE ANY IMMUNITY IT MAY HAVE UNDER ANY WORKERS COMPENSATION ACT (THE "ACT") AS A DEFENSE TO ITS OBLIGATIONS TO INDEMNIFY COMPANY PURSUANT TO THESE TERMS AND CONDITIONS, IT BEING EXPRESSLY UNDERSTOOD THAT ANY WAIVER OF SUCH IMMUNITY UNDER THIS PARAGRAPH SHALL BE EFFECTIVE ONLY TO THE EXTENT NECESSARY TO PRESERVE THE LEGAL VALIDITY OF CUSTOMER'S INDEMNITY OBLIGATIONS UNDER THESE TERMS AND CONDITIONS. NOTWITHSTANDING ANY OTHER PROVISION OF THESE TERMS AND CONDITIONS TO THE CONTRARY, SUCH WAIVER SHALL NOT IN ANY WAY IMPAIR CUSTOMER'S IMMUNITY UNDER THE ACT WITH RESPECT TO CLAIMS MADE AGAINST CUSTOMER BY ITS OWN EMPLOYEES.

3.3 **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANY OTHER PROVISION OF THESE TERMS AND CONDITIONS, EACH PARTY WAIVES ANY CLAIM AGAINST THE OTHER FOR ITS OWN LOST PROFITS OR LOSSES

DUE TO BUSINESS INTERRUPTIONS, OR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR OTHER SPECIAL DAMAGES, HOWEVER SAME MAY BE CAUSED, REGARDLESS OF THE FAULT (OTHER THAN GROSS NEGLIGENCE, WILLFUL MISCONDUCT, MALICE, OR INTENTIONAL TORT), NEGLIGENCE (WHETHER SOLE, JOINT, CONCURRENT, ACTIVE OR PASSIVE OR OTHERWISE), PRE-EXISTING DEFECT, OR STRICT LIABILITY OF THE RELEASED PARTY DIRECTLY OR INDIRECTLY ARISING OUT OF ANY PRODUCTS PROVIDED BY COMPANY UNDER THESE TERMS AND CONDITIONS. CUSTOMER AGREES THAT COMPANY'S ENTIRE LIABILITY, AND CUSTOMER'S EXCLUSIVE REMEDY, IN LAW AND EQUITY OR OTHERWISE WITH RESPECT TO ANY PRODUCTS PROVIDED BY COMPANY UNDER THESE TERMS AND CONDITIONS IS SOLELY LIMITED TO THE AMOUNT PAID BY CUSTOMER FOR THE PRODUCTS TO WHICH THE APPLICABLE CLAIM RELATES. CUSTOMER FURTHER AGREES THAT COMPANY'S ENTIRE LIABILITY IN CONNECTION WITH COMPANY'S INDEMNIFICATION OBLIGATIONS UNDER THESE TERMS AND CONDITIONS IS SOLELY LIMITED TO THE POLICY LIMITS OF ANY APPLICABLE INSURANCE POLICY(IES) MAINTAINED BY COMPANY WHICH PROVIDES COVERAGE FOR THE CLAIM.

ARTICLE IV CONFIDENTIAL INFORMATION

4.1 **CONFIDENTIAL INFORMATION.** A party (the "Receiving Party") shall keep in strict confidence all information which is of a confidential or proprietary nature (including any technical or commercial know-how, specifications, inventions, processes or initiatives) and has been disclosed to the Receiving Party by the other party (the "Disclosing Party"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under these Terms and Conditions, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. The Receiving Party shall remain liable for a breach of such obligations by the Receiving Party's employees, agents and subcontractors. The Receiving Party shall only use or make copies of confidential information (including any reproductions, extracts or analyses of that confidential information) in connection with and to the extent necessary for the purposes of these Terms and Conditions.

ARTICLE V FORCE MAJEURE

5.1 **FORCE MAJEURE.** Company shall not be liable for damages under these Terms and Conditions for a delay or failure in its performance under these Terms and Conditions as a result of causes beyond its reasonable control, including any law, order, regulation, direction, or request of any government having or claiming to have jurisdiction over Company, its subcontractors and/or its suppliers; failure or delay of transportation; insurrection, riots, national emergencies, war, acts of public enemies, strikes or inability to obtain necessary labor, manufacturing facilities, material or components from Company's usual sources; fires, floods or other catastrophes; acts of God, acts of omissions of Customer or any causes *beyond the reasonable control of Company and/or of its suppliers.* Upon the giving of prompt written notice to Customer of any such causes of a delay or failure in its performance of any obligation under these Terms and Conditions, the time of performance by Company shall be extended to the extent and for the period that its performance of said obligations is prevented by such cause.

4837-2083-2820.1

ARTICLE VI APPLICABLE LAWS AND JURISDICTION

6.1 **GOVERNING LAW.** These Terms and Conditions shall be governed by and be construed in accordance with laws of the State of Texas without regard to conflict of laws principles.

6.2 **CONSENT TO FORUM.** Customer hereby consents to the jurisdiction of any state or federal court located in the State of Texas and consents that it may be served with any process or paper by registered mail or by personal service within or outside the State of Texas in accordance with applicable law. Furthermore, Customer waives and agrees not to assert in any such action, suit or proceeding that it is not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. Nothing contained in this Section 6.2 shall limit or restrict the right of Company to commence any proceeding in the federal or state courts located in the state where Customer resides or maintains its chief executive offices, as applicable, or in any other state, to the extent Company deems such proceeding necessary or advisable to exercise remedies available under these Terms and Conditions.

6.3 **WAIVER OF JURY TRIAL.** Company and Customer each hereby waives any right to trial by jury in any action, suit, proceeding or counterclaim of any kind arising out of or relating to these Terms and Conditions.

ARTICLE VII MISCELLANEOUS

7.1 **SEVERABILITY.** Wherever possible, each provision of these Terms and Conditions shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of these Terms and Conditions shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of these Terms and Conditions.

7.2 **WAIVER.** Either party's failure at any time to require strict performance by the other of any of the terms or provisions of these Terms and Conditions shall not waive or diminish that party's rights thereafter to demand strict compliance therewith or with any other provision. Waiver by either party of any default by the other shall not waive any other or similar defaults by the other party.

7.3 **AMENDMENTS.** These Terms and Conditions are the exclusive agreement between the parties relating to the subject matter hereof and supersedes all prior understandings, writings, proposals, representations or communications, oral or written, of either party. These Terms and Conditions may only be amended in writing by authorized representatives of both parties.

7.4 **CAPTIONS AND HEADINGS.** The captions and headings of Articles and Sections of these Terms and Conditions are for convenience and reference only and in no way define, limit or describe the scope or intent of these Terms and Conditions or any provision thereof.

7.5 **BINDING EFFECT.** These Terms and Conditions shall be binding upon and inure to the benefit of Company, Customer and their respective successors and permitted assignees. Customer shall not assign its rights or obligations under these Terms and Conditions (by operation of law or otherwise) without the prior written consent of Company, which consent will not be unreasonably withheld. For purposes of these Terms and Conditions, assignment shall include a change in control of Customer in which more than fifty percent (50%) of

the equity interests of Customer cease to be beneficially owned by the equity holders of Customer as of the date the products are purchased by Customer.

7.6 **USE OF CUSTOMER NAME.** Customer agrees that Company may use Customer's name in connection with the marketing and promotion of the products; provided, however, Customer shall be given the opportunity to review and approve all such marketing and promotional materials using Customer's name before use by Company.

**[The Remainder of This Page
Intentionally Left Blank]**