

**TERMS AND CONDITIONS OF SALE  
(NON-U.S., NON-CANADA (EXCEPT QUEBEC), NON-AUSTRALIA BUYER)**

**1. Terms and Conditions.** The terms and conditions contained in this document entitled "Terms and Conditions of Sale" ("Terms and Conditions") cancel and supersede any and all terms and conditions of sale pertaining to parts and equipment sold by Seller to Buyer (respectively, "Parts" and "Equipment"), and any supplements thereto previously issued by Seller to Buyer, and are subject to change without advance notice. The prices, charges, discounts, terms of sale and other provisions referred to or contained in these Terms and Conditions shall apply to all Parts and Equipment (collectively, "Products") sold by Seller and shipped to Buyer on and after March 2016 and shall remain in effect unless and until superseded in writing by Seller. Acceptance of an order for Equipment or Parts by Seller shall be deemed to constitute a binding agreement between Seller and Buyer pursuant to the terms and conditions contained in these Terms and Conditions and Buyer agrees that such order may not thereafter be cancelled, countermanded or otherwise changed without the prior written consent of Seller. These Terms and Conditions supersede any prior agreements, representations or other communications between Seller and Buyer relating to the subject matter set forth in these Terms and Conditions. No other terms and conditions shall apply including, but not limited to, the terms of any purchase order submitted to Seller by Buyer, whether or not such terms are inconsistent with, conflict with or are in addition to the terms and conditions set forth in these Terms and Conditions. Seller's acceptance of Buyer's purchase order is conditional upon Buyer's acceptance of all the terms and conditions contained in these Terms and Conditions. Any communication construed as an offer by Seller and acceptance thereof is expressly limited to the terms and conditions set forth in these Terms and Conditions. The Products are intended for industrial/commercial use by professional contractors and their trained employees and are not intended for use by consumers.

**2. Terms of Payment.** Payment for Parts and Equipment purchased by Buyer shall be made in accordance with any of the following terms, provided they have been previously arranged with and expressly approved by Seller in writing: (i) cash in advance; (ii) confirmed, irrevocable letter of credit established in such amount and form and at such time and at such bank as shall be approved by Seller in respect of each order or (iii) other payment arrangements expressly approved by Seller in writing prior to or at the time the order is placed. If any Buyer credit account purchase is not paid in accordance with Seller's credit payment terms, in addition to any other remedies allowed in equity or by law, Seller may refuse to make further shipments without advance payment by Buyer. Nothing contained in these Terms and Conditions shall be construed as requiring Seller to sell any Parts or Equipment to Buyer on credit terms at any time, or as prohibiting Seller from making any and all credit decisions which Seller, in its sole discretion, deems appropriate for Seller. Seller may charge interest on all amounts not paid when due and Buyer agrees to pay such interest calculated on a daily basis, from the date that payment was due until the date on which Seller receives payment in full, at the rate of one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law. Unless otherwise agreed in writing between Seller and Buyer, Seller may, in its sole discretion, increase or decrease the price of any Parts or Equipment, as Seller deems reasonably necessary, at any time prior to shipment and invoice Buyer therefor. The purchase price of Parts and Equipment in effect at the time an order is placed may not be the same price in effect at the time of shipment. Buyer shall be invoiced for, and agrees to pay, the price in effect at the time of shipment.

**3. Taxes and Duties.** Prices quoted do not include taxes or duties of any kind or nature. Buyer agrees that it will be responsible for filing all tax returns and paying all applicable taxes, duties, export preparation charges and export documentation charges resulting from the purchase of the Products. In addition, in the event any other similar tax, duty or fee is determined to apply to Buyer's purchase of any of the Products from Seller, Buyer shall indemnify and hold Seller harmless from and against any and all such other similar taxes, duties and fees. All prices quoted are in U.S. DOLLARS unless otherwise specified. The amount of any present or future taxes applicable to the sale, transfer, lease or use of any of the Products shall be paid by Buyer or, in lieu thereof, Buyer shall provide Seller with a tax exemption certificate satisfactory to the applicable taxing authority proving that no such tax is due and payable upon such sale, transfer, lease or use.

**4. Title, Property, Risk and Delivery.** Unless otherwise stated in writing, the risk of loss of or damage to the Products shall pass to Buyer on delivery FCA, point of manufacture (Incoterms 2010). As security for payment of the full purchase price, legal and equitable title in the Products shall not pass to Buyer until receipt by Seller of payment in full for the Products. Buyer is authorized to use the Products in the ordinary course of business or sell the Products to a third party. The entire proceeds of any sale or disposition of the Products shall be held by Buyer in a fiduciary capacity for Seller. Until receipt by Seller of payment in full, Buyer shall hold the Products in a fiduciary capacity as bailee for Seller and insure the Products for their full replacement value against all risks. Buyer's right to possess and sell the Products shall automatically terminate if Buyer becomes insolvent or the subject of any bankruptcy, insolvency or similar proceedings; makes an assignment for the benefit of creditors; or is unable to pay its debts as they become due. Upon termination of the right to possession, Seller and its representatives may at any time enter the premises of Buyer or any third party to the portion of the Products. If Buyer pledges or otherwise encumbers any Products that have not been paid for in full, all monies owed by Buyer to Seller shall immediately become due and payable. If any portion of this paragraph shall be invalid or unenforceable, then such provisions shall be enforced to the maximum extent permitted by law, and such invalidity or unenforceability shall not affect the validity or enforceability of the other provisions of this paragraph.

Any claims for loss, damage or delay in transit must be entered and prosecuted by Buyer directly with the carrier, which is hereby declared to be the agent of Buyer. Seller shall not be liable for any delay in performance of these Terms and Conditions or delivery of the Products, or for any damages suffered by Buyer by reason of delay, when the delay is caused, directly or indirectly, by fire; flood; accident; riot; act of God; war; governmental interference; strike; embargo; labor difficulty; act of terrorism; shortage of labor, fuel, power, materials or supplies; transportation or any other cause beyond Seller's control. In the event that delay is caused by Buyer's failure to furnish necessary information with respect to data and details for Buyer's specifications, Seller may extend the date of shipment for a reasonable time, but in no event longer than five (5) days. In the event that delay in shipment is caused by Buyer or at Buyer's request, and the Products are not shipped within five (5) days from the first date they are ready to be shipped, Seller may, in its sole discretion, sell such Products to another buyer without any liability or responsibility to Buyer whatsoever. All payment shall be made in accordance with the terms of the applicable invoice. In addition, storage charges due to delay in furnishing delivery instructions, arranging and establishing a method of payment satisfactory to Seller, or submitting valid import permits or licenses, or any other delay caused by Buyer or at Buyer's request, will be for the account of Buyer. Claims for shortages in shipments shall be deemed waived and released by Buyer unless made in writing within five (5) days after Buyer's receipt of shipment. Seller's responsibility for shipment shall cease upon delivery of the Products to the place of shipment, and all claims occurring thereafter shall be made to or against the carrier by Buyer.

**5. Cancellation.** Prior to delivery to place of shipment, an equipment or parts order may be cancelled only with Seller's prior written consent and upon terms indemnifying Seller from all resulting losses and damages. Seller shall have the right to cancel and refuse to complete an Equipment or Parts order if any term or condition contained in these Terms and Conditions is not complied with by Buyer. In the event of cancellation by Seller, or in the event that Seller consents to a request by Buyer to stop work or to cancel the whole or any part of any order, Buyer shall make reimbursement to Seller, as follows: (i) any and all work that can be completed within thirty (30) days from date of notification to stop work on account of cancellation shall be completed, shipped and paid in full and (ii) for work in progress and any materials and supplies procured or for which definite commitments have been made by Seller in connection with the order, Buyer shall pay such sums as may be required to fully compensate Seller for actual costs incurred, plus fifteen percent (15%). Buyer may not cancel any order after Seller's delivery to place of shipment. Orders for "Special" Equipment may not be cancelled after acceptance, except by Seller. Items of "Special" Equipment are those that differ from standard Seller specifications, have a limited market or incorporate specifications that have been determined for a specific application. Determination of whether an item of Equipment is "Special" shall be made by Seller in its sole discretion.

**6. Inspection and Acceptance of Equipment.** Buyer shall inspect the Equipment immediately after receipt and promptly (but in no event later than fifteen (15) days after receipt) notify Seller in writing of any non-conformity or defect. Buyer further agrees that failure to give such prompt notice or the commercial use of the Equipment shall constitute acceptance. Acceptance shall be final and Buyer waives the right to revoke acceptance for any reason, whether or not known by Buyer at the time of such acceptance. The giving of any such notice by Buyer shall automatically cause the provisions of Seller's warranty to apply and govern the rights, obligations and liabilities of Seller and Buyer with respect to such nonconformity or defect, provided that under no circumstances shall rejection give rise to any liability of Seller for incidental or consequential damages or losses of any kind.

**7. Warranty.** Seller warrants new Products manufactured or sold by Seller to be free, under normal use and service, of any defects in material or workmanship for the following periods: **For Off Highway Rigid Dump Trucks:** for a period of twelve (12) months or 5,000 hours of operation, whichever occurs first, from (a) delivery to, and placement into service by the first user (including as a demonstrator or rental unit) or (b) delivery to the first retail purchaser, whichever occurs first; **For all other Products:** for a period of twelve (12) months from (a) delivery to, and placement into service by the first user (including as a demonstrator or rental unit) or (b) delivery to the first retail purchaser, whichever occurs first; and **For rubber tracks on Products:** for a period of twenty-four (24) months from the date of start-up, or 1,000 hours of operation, whichever occurs first, on the basis of a Prorated Allowance (as hereinafter defined), from (a) delivery to, and placement into service by the first user (including as a demonstrator or rental unit) or (b) delivery to the first retail purchaser, whichever occurs first--all provided that Buyer sends Seller written notice of the defect within thirty (30) days of its discovery and establishes that: (i) the Equipment has been maintained and operated within the limits of rated and normal usage and (ii) the defect did not result in any manner from the intentional or negligent action or inaction by Buyer, its agents or employees. Notwithstanding the foregoing time periods or anything else contained in these Terms and Conditions, all Product and rubber track warranties will commence twenty-four (24) months from the date of initial sale to the Authorized Distributor, regardless of use. If requested by Seller, Buyer shall return the defective Equipment to Seller's manufacturing facility for inspection and, if Buyer cannot establish that conditions (i) and (ii) above have been met, this warranty shall not cover the alleged defect. Failure to give written notice of defect within such period shall be a waiver of this warranty and any assistance rendered thereafter shall not extend or revive it. Accessories, assemblies and components included in any Equipment, which are not manufactured by Seller, are subject to the warranty of their respective manufacturers. This warranty shall not cover any item on which serial numbers have been altered, defaced or removed. Maintenance and wear parts are not covered by this warranty and are the sole maintenance responsibility of Buyer. This warranty is limited to the first retail purchaser and is not assignable or otherwise transferable without written agreement of the manufacturer. **THIS WARRANTY IS EXPRESSLY IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED (INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE) AND ALL OTHER OBLIGATIONS OR LIABILITY ON SELLER'S PART. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE LIMITED WARRANTY CONTAINED IN THIS SECTION 7.** Seller neither assumes nor authorizes any other person to assume for Seller any other liability in connection with the sale of the Equipment or the Parts. This warranty shall not apply to any of the Equipment or the Parts, or any part thereof, which has been subject to misuse, alteration, abuse, negligence, accident, act of God or sabotage. No action by either Seller or Buyer shall operate to extend or revive this limited warranty without the prior written consent of Seller.

**8. Remedies for Breach of Warranty. IN THE EVENT OF ANY BREACH OF THE WARRANTY BY SELLER, SELLER'S LIABILITY SHALL BE LIMITED EXCLUSIVELY TO THE REMEDIES OF REPAIR OR REPLACEMENT (AT SELLER'S SOLE DISCRETION) OF ANY DEFECTIVE EQUIPMENT COVERED BY THE WARRANTY.**

**9. Limitation of Actions.** Any action for breach of these Terms and Conditions must be commenced within one (1) year after the cause of action has accrued.

**10. Specification Changes.** In the event that Seller incurs additional expense because of changes in specifications or drawings previously approved by Buyer, or in the event that Seller is required to modify the ordered Equipment, perform any additional work or supply any additional Equipment or Parts, the additional expense shall be added to the purchase price. Seller shall have the right, in its sole discretion, to accept or reject any changes in specifications requested by Buyer. In no event shall any changes in specifications be made or accepted thirty (30) days prior to launch date or thereafter.

**11. Insurance.** Until the purchase price of the Equipment is paid in full, Buyer shall provide and maintain insurance equal to the total value of the Equipment delivered hereunder against customary casualties and risks including, but not limited to, fire and explosion, and shall also insure against liability for accidents and injuries to the public or to employees, in the names of Seller and Buyer as their interest may appear, and in an amount satisfactory to Seller. If Buyer fails to provide such insurance, Buyer shall promptly notify Seller thereof in writing so that Seller may provide such insurance and, in the event that Seller does so, the cost thereof shall be added to the contract price. All loss resulting from the failure to effect such insurance shall be assumed by Buyer.

**12. Patents, Copyrights, Trademarks, Confidentiality.** No license or other rights under any patents, copyrights or trademarks owned or controlled by Seller or under which Seller is licensed are granted to Buyer or implied by the sale of Equipment or Parts hereunder. Buyer shall not identify as genuine products of Seller Products purchased hereunder which Buyer has treated, modified or altered in any way, nor shall Buyer use Seller's trademarks to identify such Products; provided, however, that Buyer may identify such Products as utilizing, containing or having been manufactured from genuine products of Seller as treated, modified or altered by Buyer or Buyer's representative, upon written prior approval of Seller. All plans, designs, drawings, blueprints, photographs, manuals, specifications and other documents relating to the business of Seller ("Information") shall be and remain the exclusive property of Seller and shall be treated by Buyer as confidential information and shall not be disclosed, given, loaned, exhibited, sold or transferred to any third party without Seller's prior written approval; provided, however, that those restrictions shall not apply to Information that Buyer can demonstrate: (i) at the time of disclosure, is generally known to the public other than as a result of a breach of these Terms and Conditions by Buyer or (ii) is already in Buyer's possession at the time of disclosure from a third party having a right to impart such Information. Buyer shall not use any of the Information for any purpose other than to enable it to perform its obligations under these Terms and Conditions. The obligations contained in this section regarding confidentiality and use of the Information shall survive the expiration, termination or fulfillment of these Terms and Conditions.

**13. Default and Seller's Remedies.** In the event of default by Buyer, all unpaid sums and installments owed to Seller shall, at Seller's sole option, become immediately due and payable without notice of any kind to Buyer. In addition to its right of acceleration, Seller may pursue any and all remedies allowed by law or in equity. In addition to the foregoing, and not in limitation thereof, Seller shall have the right to set off any credits or amounts owed to Buyer against any amounts owed by Buyer to Seller.

**14. Indemnification by Buyer.** Buyer hereby agrees to indemnify, release, defend and hold harmless Seller, its directors, officers, employees, agents, representatives, successors and assigns against any and all suits, actions or proceedings at law or in equity (including the costs, expenses and reasonable attorney's fees incurred in connection with the defense of any such matter) and from any and all claims, demands, losses, judgments, damages, costs, expenses or liabilities, to any person whatsoever (including Buyer's and Seller's employees or any third party), or damage to any property (including Buyer's property) arising out of or in any way connected with the performance or the furnishing of services, Equipment or Parts under these Terms and Conditions, regardless of whether any act, omission, negligence (including any act, omission or negligence relating to the manufacture, design, repair, erection, service or installation of or warnings made or lack thereof with respect to any Equipment furnished hereunder) of Seller, its directors, officers, employees, agents, representatives, successors or assigns caused or contributed thereto. If Buyer fails to fulfill any of its obligations under this section or these Terms and Conditions, Buyer shall pay Seller all costs, expenses and attorney's fees incurred by Seller to establish or enforce Seller's rights under this section or these Terms and Conditions. The provisions of this section are in addition to any other rights or obligations set forth in these Terms and Conditions and shall survive the expiration, termination or fulfillment of these Terms and Conditions.

**15. Installation.** Unless otherwise expressly agreed in writing, Buyer shall be solely responsible for the installation and erection of the Products purchased. Although Seller may in some cases provide a serviceman, data and drawings to aid Buyer with installation or start-up, Seller assumes no responsibility for proper installation or support of any Products when installed and disclaims any express or implied warranties with respect to such installation and support. Notwithstanding whether data and drawings are provided or a serviceman aids in the installation, Buyer shall indemnify and hold Seller harmless and, at Seller's request, defend Seller, from any and all claims, demands or legal proceedings (including the costs, expenses and reasonable attorney's fees incurred in connection with the defense of any such matter) which may be made or brought against Seller in connection with damage or personal injury arising out of such installation or start-up.

**16. Anti-Corruption; Export Controls; No Boycotts.** Buyer agrees that it shall, and that any party retained or paid by the Buyer ("Retained Party") shall, comply with all applicable laws including, but not limited to, laws prohibiting public corruption and commercial bribery. Buyer further agrees that it shall, and that any Retained Party shall, comply with all applicable export controls, economic sanctions, embargoes and regulations regarding the export, re-export, shipment, distribution and/or sale of Products, technology, information or warranty related services. Buyer further agrees that it shall comply, and any Retained Party wherever located shall comply with applicable laws pursuant to the Joint Comprehensive Plan of Action (JCPOA) of July 14, 2015 and any other applicable laws, resolutions, regulations or licenses for the export or re-export of Products, technology, information or warranty related services directly, or with its knowledge indirectly into Iran. Buyer further agrees that it shall not, and any Retained Party shall not, export or re-export Products, technology, information or warranty related services directly, or with its knowledge, indirectly, into Sudan. Buyer further agrees that it shall not, and any Retained Party shall not, export or re-export Products, technology, information or warranty related services directly or with its knowledge indirectly into Cuba without Buyer first obtaining written approval from Seller. Failure to comply strictly with this section and all applicable laws, regulations and licensing/approval requirements shall be grounds for immediate termination of this agreement by Seller. Notwithstanding anything to the contrary contained in any agreement between the Buyer and Seller or in any other document or agreement relating to the Products sold hereunder, Seller will not comply with requests related to the boycott of any country or other jurisdiction, except to the extent such boycott is required by or otherwise not inconsistent with United States law.

**17. Construction and Severability.** These Terms and Conditions constitute the entire agreement between Seller and Buyer regarding the subject matter of these Terms and Conditions and shall be construed and enforced in accordance with the laws of the State of New York, United States of America. The United Nations Convention on Contracts for the International Sale of Goods (1980) [CISG] shall not apply. Seller shall not be bound by any agent's, employee's or any other person's or entity's representation, promise or inducement not set forth in these Terms and Conditions. The invalidity or unenforceability of any provisions of these Terms and Conditions shall not affect any other provision and these Terms and Conditions shall be construed in all respects as if such invalid or unenforceable provision were omitted.

**18. Jurisdiction.** The proper and exclusive forum and venue in all legal actions brought to enforce or construe any of the provisions of these Terms and Conditions shall be in the United States District Court, Southern District of New York, United States of America or, if federal jurisdiction is lacking, in the Supreme Court of the State of New York, New York County, United States of America.

**19. Limitation of Liability.**

**19.1 NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, SELLER AND ITS AFFILIATES SHALL NOT BE LIABLE FOR, AND SPECIFICALLY DISCLAIM, ANY LIABILITY FOR ANY: (A) LOST PROFITS AND/OR BUSINESS INTERRUPTION (WHETHER DIRECT OR INDIRECT); AND (B) INDIRECT, INCIDENTAL, CONSEQUENTIAL (WHETHER DIRECT OR INDIRECT) OR OTHER DAMAGES OR LOSSES OF ANY KIND, INCLUDING WITHOUT LIMITATION, LABOR COSTS, LOSS OF USE, EQUIPMENT, THIRD PARTY REPAIRS, INVESTIGATION COSTS, PERSONAL INJURY, EMOTIONAL OR MENTAL DISTRESS, PENALTIES, LOSS OF SERVICE OR PERSONNEL, OR FAILURE OF PRODUCTS TO COMPLY WITH ANY APPLICABLE LAWS; WHETHER OR NOT ARISING FROM BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, PRODUCT LIABILITY OR OTHERWISE.**

**19.2 NOTHING IN THIS SECTION SHALL OPERATE TO EXCLUDE SELLER'S LIABILITY FOR DEATH OR PERSONAL INJURY WHEN DIRECTLY RELATED TO SELLER'S NEGLIGENT ACT OR OMISSION.**

**20. No Assignment.** No rights or remedies arising under these Terms and Conditions may be assigned by Buyer unless expressly agreed to in writing by Seller.

**21. Miscellaneous.** Buyer represents that it: (i) is solvent and has the financial ability to pay for the Equipment and Parts purchased hereunder and (ii) has all requisite right, power and authority to perform its obligations under these Terms and Conditions.

**22. Telematics.** If a telematics system is included with the Equipment, the telematics system is administered by a third party and collects a range of operational data about the Equipment including, but not limited to, usage, performance and reliability. Buyer consents to Seller's obtaining such data for warranty, product improvement and customer support purposes.

Rev. March 2016