

Terms and Conditions. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Thompson Tractor Co., Inc. ("Thompson") agrees to supply the goods (the "Goods") described in an Order (as defined below) to the buyer specified therein ("Customer"), in accordance with the following terms and conditions (the "Terms").

1. **Orders.** Customer's intent to purchase the Goods in accordance with the Terms, and Customer's acknowledgement and acceptance of the Terms as written, shall be evidenced by any or all of the following: (a) Customer's acceptance of any proposal issued by Thompson for the Goods (together with any attachments, a "Bid"); (b) Customer's issuance to Thompson of a purchase order or other written or electronic request evidencing Customer's intent to purchase the Goods (together with any attachments, a "Purchase Order"); (c) Customer's acceptance of the Goods when delivered; and (d) Customer's payment of any invoice issued by Thompson for the Goods. Any Bid accepted by Customer or Purchase Order accepted by Thompson shall constitute an "Order" for the Goods described therein.
2. **Entire Agreement.** An Order, together with the Terms, shall constitute the entire agreement between the Parties for the supply of the Goods described therein (this "Agreement"). This Agreement shall supersede all prior and contemporaneous understandings and agreements, both written and oral, regarding such subject matter. The supply of the Goods by Thompson to Customer shall not constitute acceptance by Thompson of any terms and conditions contained in any Purchase Order or any other terms proposed by Customer, such other terms being expressly disclaimed and rejected by Thompson. If the terms proposed by Customer conflict with the Terms, the Terms shall control.
3. **Amendments.** No amendment to or modification, rescission, termination or discharge of this Agreement shall be effective unless it shall (a) be in writing; (b) specifically identify this Agreement; (c) specifically state that such document amends, modifies, rescinds, terminates or supersedes this Agreement; and (d) be signed by an authorized representative of Thompson.
4. **Waiver.** No waiver of any provision of this Agreement shall be effective unless it shall be in writing and accepted and signed by an authorized representative of Thompson. None of the following constitutes a waiver or estoppel of any right or remedy arising from this Agreement: (a) any failure or delay by Thompson in exercising any right or remedy or in enforcing any condition under this Agreement; or (b) any act, omission or course of dealing between the Parties. Unless otherwise specified, remedies hereunder shall not be exclusive, but shall be cumulative and in addition to all other remedies existing at law or in equity. The receipt, acceptance and/or negotiation of, or any endorsement on, any check or draft received from one Party will not operate to waive or release, in whole or in part, any claim of the other Party arising hereunder or in connection herewith.
5. **Acceptance and Rejection of Purchase Orders.** Thompson has no obligation to accept any Purchase Order; however, Thompson may accept a Purchase Order by confirming the Purchase Order in writing or by delivering the applicable Goods to Customer, whichever occurs first.
6. **Cancellation or Modification of Orders.** Cancellation or modification of all or part of any Order by Customer is subject to Thompson's prior written consent in each instance, and in any such instance, Customer agrees to pay to Thompson all expenses incurred and damage sustained by Thompson as a result of such cancellation or modification.
7. **Shipment.** Thompson shall select the method of shipment of and the carrier for the Goods. Thompson, in its sole discretion, without liability or penalty, may make partial shipments of the Goods to Customer.
8. **Delivery.** Unless otherwise agreed to in writing by the Parties, Thompson will, at Customer's cost and expense, deliver the Goods to the location specified in the Order (the "Delivery Location") using Thompson's standard methods for packaging and shipping.
9. **Late Delivery.** Any time quoted for delivery is an estimate only; provided, however, that Thompson shall use commercially reasonable efforts to deliver all Goods within a reasonable time consistent with the Order.
10. **Transfer of Title and Risk of Loss.** Title to the Goods shipped under any Order passes to Customer upon Customer's payment in full for the Goods. Risk of loss or damage passes to Customer upon delivery of Goods to the carrier.
11. **Price.** Unless otherwise set forth in the Order, the price for the Goods shall be Thompson's list price presented to the Customer for such Goods (the "Price"). Pricing for future orders is subject to change without notice. If Customer requests customization of the Goods, Customer agrees to pay all parts and labor costs that Thompson incurs in customizing the Goods, regardless of whether Customer completes the purchase of the customized Goods.
12. **Shipping Charges, Taxes and other Fees.** All Prices are exclusive of, and Customer is solely responsible for, and shall pay all taxes, charges, or fees assessed by any governmental authority, including interest and penalties.
13. **Estimated Sales Tax for Online Orders.** The amount of sales tax charged on Customer's online order depends on many factors including the type of item or service purchased, the time and location of fulfillment, and the shipment or delivery address of your order. These factors can change between the time of the order and when its delivery is completed. As a result, the tax calculated on Customer's order may change; therefore, "Estimated Tax" is displayed at Check Out when confirming an order. The amounts displayed as estimated tax may be updated when the order is finalized and completed.

14. Payment Terms. Customer shall pay to Thompson all invoiced amounts within thirty (30) days from the date of such invoice. Customer shall make all payments in US dollars by check, credit card or wire transfer. Customer shall also be responsible for and shall pay any credit card and wire transaction fees applicable to the Purchase.

15. Late Payments. Customer shall pay interest on all late payments calculated daily and compounded monthly, at the lesser of the rate of one and one-half percent (1.5%) per month and the highest rate permissible under applicable law. Customer also shall reimburse Thompson for all reasonable costs incurred by Thompson in collecting any late payments, including attorneys' fees and court costs. In addition to all other remedies available under this Agreement or at law (which Thompson does not waive by the exercise or waiver of any other rights under this Agreement), if Customer fails to pay any undisputed amounts when due under this Agreement, Thompson may suspend the delivery of any Goods.

16. No Set-off Right. Customer shall not have, and acknowledges that it does not have, any right to withhold, offset, recoup or debit any amounts owed (or to become due and owing) to Thompson under this Agreement.

17. Unsatisfactory Credit Status. Customer shall furnish Thompson with statements evidencing Customer's financial condition as Thompson may, from time to time, reasonably request, and shall notify Thompson immediately of any and all events that may have a material adverse effect on Customer's business or financial condition. If Thompson determines in its sole discretion that Customer's financial condition or creditworthiness is inadequate or unsatisfactory, then in addition to Thompson's other rights, Thompson may without liability or penalty take any of the following actions:

- (a) require that Customer provide a standby letter of credit satisfactory to Thompson in its sole discretion;
- (b) accelerate all amounts owed by Customer to Thompson under this Agreement;
- (c) modify the payment terms specified in Section 14 (*Payment Terms*) for outstanding and future Orders, including requiring Customer to pay cash in advance;
- (d) cancel any previously accepted Orders;
- (e) delay any further shipment of Goods to Customer;
- (f) terminate this Agreement; or
- (g) any combination of the above.

18. Termination. In addition to any remedies that may be provided under this Agreement, Thompson may terminate this Agreement with immediate effect upon written notice to Customer, if Customer: (a) fails to pay any amount when due under this Agreement; (b) has not otherwise performed or complied with any terms of this Agreement, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

19. Effect of Expiration or Termination. Any termination under this Agreement automatically operates as a cancellation of any deliveries of Goods to Customer that are scheduled to be made subsequent to the effective date of termination, whether or not any orders for such Goods had been accepted by Thompson. With respect to any Goods that are still in transit upon termination of this Agreement, Thompson, in its sole discretion, may require that all sales and deliveries of such Goods be made on either a cash-only or certified-check basis.

20. Customer Warranties. Customer warrants that (a) if an entity, it is duly organized and validly existing in good standing; (b) it is duly authorized to perform its obligations under this Agreement; (c) this Agreement will constitute Customer's legal, valid and binding obligation, enforceable against it in accordance with its terms; (d) it is not insolvent and is paying all of its debts as they become due; (e) any payments made pursuant to this Agreement are intended by it to be a substantially contemporaneous exchange for new value given to it; and (f) each payment made of a debt incurred by it under this Agreement is or was in the ordinary course of its business or financial affairs.

21. Limited Product Warranty. Thompson warrants to Customer that, for a period of 12 (twelve) months from delivery, the Goods will conform to the specifications of the Order as accepted by Thompson and that Customer will receive good and valid title to the Goods, free and clear of all encumbrances and liens of any kind. Customer acknowledges that (1) Thompson is not the manufacturer of the Goods; (2) if the Goods include an original equipment manufacturer's ("OEM") warranty, Thompson will pass through to Customer the OEM's warranty to the extent permitted by the terms of such warranty; and (3) the OEM's warranty will be subject to all conditions and exclusions set forth therein.

22. Warranty Limitations. The Limited Warranty set forth above shall not apply to any Goods that have been subjected to abuse, alteration, accident, improper handling, abnormal environmental conditions or use contrary to any instructions issued by Thompson or the product manufacturer, as applicable.

23. Customer's Exclusive Remedy. Upon being notified in writing by Customer, Thompson shall determine, in its reasonable discretion, whether any Goods are nonconforming or defective. Where practical, and in Thompson's sole discretion, the Goods to be replaced must first be returned to Thompson by Customer. If Thompson determines that Goods are nonconforming or defective, Thompson shall at its option either: (i) replace such Goods with conforming Goods; or (ii) refund to Customer such amount paid by Customer for such Goods. Customer shall also comply with Thompson's Return Policy, including for Online Orders Through Parts.Cat.Com and Integrated Procurement, to the extent

applicable. Customer acknowledges that it has had an opportunity to review and consent to the Return Policy which can be found on Thompson's publicly available website, [Return Policy - Thompson Tractor](#). THIS SECTION 23 SETS FORTH CUSTOMER'S SOLE REMEDY AND THOMPSON'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED PRODUCT WARRANTY SET FORTH IN SECTION 21 (*Limited Product Warranty*).

24. Disclaimer of Warranties. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 21 (*Limited Product Warranty*), (a) NEITHER THOMPSON NOR ANY PERSON ON THOMPSON'S BEHALF HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER, EITHER ORAL OR WRITTEN, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED; AND (b) CUSTOMER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY THOMPSON, OR ANY OTHER PERSON ON THOMPSON'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 21 (*Limited Product Warranty*). Any warranty by Thompson shall be null and void and have no legal effect if Customer has failed to pay for the Goods at issue.

25. Limitation of Liability. IN NO EVENT SHALL THOMPSON OR ITS REPRESENTATIVES BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT OR ANY ALLEGEDLY DEFECTIVE GOOD, REGARDLESS OF (a) WHETHER SUCH DAMAGES WERE FORESEEABLE, (b) WHETHER OR NOT THOMPSON WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (c) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL THOMPSON'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO THOMPSON PURSUANT TO THE APPLICABLE ORDER GIVING RISE TO THE CLAIM. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CUSTOMER ASSUMES ALL RISK AND LIABILITY FOR THE RESULTS OBTAINED BY THE USE OF ANY GOODS.

26. Intellectual Property Rights. Customer acknowledges and agrees that all intellectual property rights relating to the manufacturing of the Goods are the sole and exclusive property of Thompson or its third-party licensors, and Customer shall not acquire any ownership interest in any such intellectual property rights under this Agreement. Any goodwill derived from the use by Customer of such intellectual property rights inures to the benefit of Thompson or its third-party licensors. Without limiting the foregoing, all tooling, patterns, casting patterns, molds and documentation (including engineering specifications and test reports) used by Thompson in connection with the manufacture and sale of the Goods, together with any accessions, attachments, accessories, substitutions, replacements and appurtenances thereto (the "Tooling") are owned by Thompson or its third party licensors and Customer has no right, title, or interest in or to any of the Tooling.

27. Indemnity. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CUSTOMER HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THOMPSON, ITS AFFILIATES AND THEIR RESPECTIVE OWNERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DEFICIENCIES, JUDGMENTS, SETTLEMENTS, INTEREST, AWARDS, FINES, CAUSES OF ACTION, DAMAGES, LIABILITIES, COSTS, PENALTIES, TAXES, ASSESSMENTS, CHARGES, PUNITIVE DAMAGES AND EXPENSES (INCLUDING ATTORNEYS' FEES) INCURRED AS A RESULT OF (a) ANY BREACH BY CUSTOMER OF THIS AGREEMENT OR ANY APPLICABLE LAW OR (b) ANY WRONGFUL ACT OR OMISSION OF CUSTOMER OR ITS EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS, AFFILIATES OR INVITEES, INCLUDING WITHOUT LIMITATION ANY MISUSE OR ALTERATION OF THE GOODS WHICH RESULTS IN HARM OR LOSS TO OTHERS.

28. Relationship of the Parties. Nothing in this Agreement shall be construed as creating a joint venture, partnership, agency, employer/employee, franchise or similar relationship between the Parties, or as authorizing either Party to act as the agent of the other. The relationship between Customer and Thompson under this Agreement is intended to be that of buyer and seller. Customer is an independent contractor and neither it nor its employees, shall under any circumstances, be considered to be agents or employees of Thompson. Neither Party shall have the right to enter into contracts or commitments in the name of the other or to bind the other in any respect whatsoever.

29. Severability. If any provision of this Agreement shall be deemed invalid, illegal or unenforceable by any court of competent jurisdiction, such provision shall be automatically modified to the minimum extent necessary to render the same valid and enforceable, giving due consideration to the purpose and economic substance of this Agreement, or if no such modification shall be possible, deleted, and the remainder of this Agreement will remain valid and enforceable.

30. Assignment. Customer may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Thompson. Any purported assignment or delegation in violation of this Section 30 is null and void. No assignment or delegation relieves the assigning or delegating party of any of its obligations under this Agreement.

31. No Third Party Beneficiaries. This Agreement benefits solely the Parties and their respective permitted successors and assigns. Nothing in this Agreement, whether express or implied, confers on any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

32. Interpretation. Any rule of construction that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. Customer acknowledges that Customer has been provided a full and fair opportunity to review and consider each and every provision of this Agreement prior to purchasing the Goods.

33. Force Majeure. Neither party shall be liable, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement to the extent and for the period of time such failure or delay is caused by or results from acts

or circumstances beyond the party's reasonable control including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest, national emergency, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either Party's workforce), restraints or delays affecting carriers, an inability or delay in obtaining supplies of adequate or suitable materials, telecommunication breakdown or power outage.

34. **Successors and Assigns.** This Agreement is binding on and inures to the benefit of the Parties and their respective permitted successors and permitted assigns.

35. **Applicable Law/Venue.** This Agreement (and all matters arising out of or relating to this Agreement) will be governed in all respects by the laws of the State of Alabama without regard to any choice or conflict of law provisions. Each Party hereby irrevocably submits to the exclusive jurisdiction of the courts situated in Shelby County, Alabama and waives all claims that such courts lie in an inconvenient forum.

36. **Waiver of Jury Trial.** EACH PARTY KNOWINGLY, VOLUNTARILY, IRREVOCABLY AND UNCONDITIONALLY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED ON OR ARISING OUT OF THIS AGREEMENT OR THE SUBJECT MATTER HEREOF (INCLUDING, WITHOUT LIMITATION, CONTRACT, TORT, BREACH OF DUTY, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS), AND WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY (a) UNDERSTANDS THAT THIS IS A WAIVER OF IMPORTANT LEGAL RIGHTS AND (b) ACKNOWLEDGES HAVING HAD A REASONABLE OPPORTUNITY TO DISCUSS THIS WAIVER AND ITS EFFECTS WITH LEGAL COUNSEL.

37. **Dispute Resolution.** Except as provided below, any dispute or controversy arising under or in connection with this Agreement shall first be resolved by informal discussions between representatives of the Parties. If informal discussion fails to produce a resolution, the Parties must then attend non-binding mediation with a mutually agreeable mediator. If mediation fails to produce a resolution, or if the Parties cannot agree on a mediator, any dispute or controversy arising out of or relating to this Agreement shall be settled by binding arbitration to be held in Jefferson County, Alabama. The prevailing party in any dispute submitted to arbitration shall be awarded its costs, including reasonable attorney's fees. Any action initiated by Thompson against Customer for the collection of unpaid amounts may be brought, at Thompson's discretion, in the courts of Alabama and, if successful in whole or in part, Thompson shall be awarded its costs and reasonable attorney's fees.