

SUPER STANDARD,PG125WCU-3A-T4F

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TERMS AND CONDITIONS – EQUIPMENT SALE

1. General: The Terms and Conditions of Sale outlined herein shall apply to the sale by Volvo Road Machinery, Inc. d/b/a Volvo Construction Equipment Services (hereinafter referred to as Company) of products, equipment and parts relating thereto (hereinafter referred to as Equipment). Unless prior written agreement is reached, it shall be understood that the Company's proceeding with any work shall be in accordance with the terms and conditions outlined herein. The Company hereby gives notice of its objection to any additional or different terms included in any purchase order or other form submitted by the Purchaser. Such additional or different terms shall not be included in this contract.

The Company will comply with applicable laws and regulations as they may apply to the manufacture of the Equipment. Compliance with any local governmental laws or regulations relating to the location, use or operation of the Equipment, or its use in conjunction with other equipment, shall be the sole responsibility of the Purchaser.

2. Title and Risk of Loss: Title and risk of loss or damage to the Equipment shall pass to the Purchaser upon tender of delivery F.O.B. manufacturing facility unless otherwise agreed upon by the parties, except that a security interest in the Equipment shall remain in the Company, regardless of mode of attachment to realty or other property, until full payment has been made therefor. Purchaser agrees upon request to all things and acts necessary to perfect and maintain such security interest and shall protect Company's interest by adequately insuring the Equipment against loss or damage from any cause wherein the Company shall be named as an additional insured.

3. Assignment: Neither party shall assign or transfer this contract without the prior written consent of the other party. The Company however shall be permitted to assign or transfer, without the prior written consent of the Purchaser, the Company's right to receive all or any portion of the payment due from the Purchaser under this contract.

4. Delivery and Delays: Delivery dates shall be interpreted as estimated and in no event shall dates be construed as falling within the meaning of "time is of the essence".

The Company shall not be liable for any loss or delay due to war, riots, fire, flood, strikes, or other labor difficulty, acts of civil or military authority including governmental laws, order, priorities or regulations, acts of the Purchaser, embargo, car shortage, damage or delay in transportation, inability to obtain necessary labor or materials from usual sources, faulty forgings or castings, or other causes beyond the reasonable control of the Company. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be adjusted to reflect the actual length of time lost by reason of such delay. The Purchaser's receipt of Equipment shall constitute a waiver of any claims for delay.

5. Taxes: The price does not include any present or future Federal, State, or local property, license, privilege, sale, use, excise, gross receipts or other like taxes or assessments which may be applicable to, measured by, or imposed upon or result from this transaction, or any services performed in connection therewith. Such taxes will be itemized separately to Purchaser, who shall make prompt payment to the Company. The Company will accept a valid exemption certificate from Purchaser, if applicable. If such exemption certificate is not recognized by the government taxing authority involved, Purchaser agrees to promptly reimburse the Company for any taxes covered by such exemption certificate which the Company is required to pay.

6. Set Offs: Neither Purchaser nor any affiliated company or assignee shall have the right to claim compensation or to set off against any amounts which become payable to the Company under this contract or otherwise.

7. Patents: The Company shall defend any suit or proceeding brought against the Purchaser and shall pay any adverse judgment entered therein so far as such suit or proceeding is based upon a claim that the use of the Equipment manufactured by the Company, and furnished under this contract, constitutes infringement of any patent of the United States of America, provided the Company is promptly notified in writing and given the authority, information and assistance by Purchaser for defense of same, and the Company shall, at its option, procure for the Purchaser the right to continue to use such Equipment, modify it so that it becomes non-infringing, replace the same with non-infringing equipment, or remove such Equipment and refund the purchase price. The foregoing shall not be construed to include any agreement by the Company to accept any liability whatsoever with respect to patents for inventions including more than the Equipment furnished hereunder, or patents for methods and processes to be carried out with the aid of the Equipment. The foregoing states the entire liability of the Company with regard to patent infringement.

8. Warranty: The Company warrants that new Equipment manufactured by it and delivered hereunder will be free of defects in material and workmanship for the periods of time specified in the applicable warranties of the Company for such Equipment, which are incorporated herein by reference.

The Purchaser shall be obligated to promptly report any failure to conform to the applicable warranty to the Company in writing within the applicable warranty period, whereupon the Company shall, at its option, correct such nonconformity by suitable repair to such Equipment or furnish a replacement part F.O.B. point of shipment, provided the Purchaser has stored, installed, maintained and operated such Equipment in accordance with good industry practices and has complied with specific recommendations of the Company. The Company shall not be liable for any repairs, replacements, or adjustments to the Equipment or any costs of labor performed by the Purchaser or others without the Company's prior written approval.

The effects of corrosion, erosion and normal wear and tear are specifically excluded from the Company's warranty. Performance warranties, if any, are limited to those specifically stated within the Company's proposal. Unless responsibility for meeting such performance warranties is limited to specified shop or field tests, the Company's obligation shall be to correct in the manner and for the period of time provided in the applicable warranty.

Accessories or equipment furnished by the Company, but manufactured by others, including, but not limited to, engines, tires, batteries, engine electrical equipment, hydraulic transmissions, and carriers, shall carry whatever warranty the manufacturers have conveyed to the Company and which can be passed on to the Purchaser.

THE COMPANY MAKES NO OTHER WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER, EXPRESSED OR IMPLIED, EXCEPT THAT OF TITLE, AND ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED.

Correction by the Company of nonconformities whether patent or latent, in the manner and for the period of time provided above, shall constitute fulfillment of all liabilities of the Company for such nonconformities, whether based on contract, warranty, negligence, indemnity, strict liability or otherwise with respect to or arising out of such equipment.

The Purchaser shall not operate Equipment which is considered to be defective, without first notifying the Company in writing of its intention to do so. Any such use of Equipment will be at the Purchaser's sole risk and liability.

ALL USED EQUIPMENT IS SOLD "AS IS, WITH ALL FAULTS."

9. Limitations of Liability: THE REMEDIES OF THE PURCHASER SET FORTH HEREIN ARE EXCLUSIVE, AND THE TOTAL LIABILITY OF THE COMPANY WITH RESPECT TO THIS CONTRACT OR THE EQUIPMENT AND SERVICES FURNISHED HEREUNDER, IN CONNECTION WITH THE PERFORMANCE OR BREACH THEREOF, OR FROM THE MANUFACTURE, SALE, DELIVERY, INSTALLATION, REPAIR OR TECHNICAL DIRECTION COVERED BY OR FURNISHED UNDER THIS CONTRACT, WHETHER BASED ON CONTRACT, WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE OF THE UNIT OF EQUIPMENT UPON WHICH SUCH LIABILITY IS BASED.

THE COMPANY AND ITS SUPPLIERS SHALL IN NO EVENT BE LIABLE TO THE PURCHASER, ANY SUCCESSORS IN INTEREST OR ANY BENEFICIARY OR ASSIGNEE OF THIS CONTRACT FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF THIS CONTRACT OR ANY BREACH THEREOF, OR ANY DEFECT IN, OR FAILURE OF, OR MALFUNCTION OF THE EQUIPMENT HEREUNDER, WHETHER BASED UPON LOSS OF USE, LOST PROFITS OR REVENUE, INTEREST, LOST GOODWILL, WORK STOPPAGE, IMPAIRMENT OF OTHER GOODS, LOSS BY REASON OF SHUTDOWN OR NON-OPERATION, INCREASED EXPENSES OF OPERATION, COST OF PURCHASE OF REPLACEMENT POWER OR CLAIMS OF PURCHASER OR CUSTOMERS OF PURCHASER FOR SERVICE INTERRUPTION, WHETHER OR NOT SUCH LOSS OR DAMAGE IS BASED ON CONTRACT, WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHERWISE.

10. Nuclear Liability: In the event that the Equipment sold hereunder is to be used in a nuclear facility, the Purchaser hereby releases and agrees to indemnify the Company and its suppliers for any nuclear damage, including loss of use, in any manner arising out of a nuclear incident, whether alleged to be due in whole or in part to the negligence or otherwise of the Company or its suppliers.

11. Governing Law: The rights and obligations of the parties shall be governed by the laws of the State of North Carolina excluding its conflicts of law principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this contract.

12. Execution: The Company shall not be bound by any contract or any modification thereto until approved in writing by an officer of the Company. The contract, when so approved, shall supersede all previous communications, either oral or written, with respect to the subject matter thereof.

TERMS AND CONDITIONS – EQUIPMENT RENTAL

1. Lessee agrees to rent the Equipment for the term and at the stipulated rental rates and to pay such rental when due irrespective of any claims, demands, set-offs, actions, suits or proceedings, that it may have or assert against Lessor.

2. From the time the Equipment is shipped from Lessor's facility, until it is returned to Lessor's designated facility, Lessee shall: (i) use the Equipment solely in the conduct of its business; (ii) use and preserve the Equipment in a careful, proper and lawful manner; (iii) at its own expense keep the Equipment in good repair, condition and working order and pay the cost of any and all parts and labor required for that purpose, using only parts manufactured or furnished by the manufacturer of the Equipment; (iv) not make any material alterations to the Equipment; (v) promptly notify Lessor of any loss of or damage to the Equipment; and (vi) assume the entire risk of loss of and damage to the Equipment, and injury or death to persons, from any cause whatsoever arising under this agreement.

3. Lessor may inspect the Equipment at all reasonable times.

4. Lessee shall report and pay to the appropriate authority any and all license fees, registration fees, assessments, charges and taxes, including penalty and interest, assessed against the Equipment due to rental or use thereof and reimburse Lessor upon request for any such amounts assessed against Lessor by reason of the rental or use of the Equipment, except for taxes payable in respect to Lessor's income.

5. Lessee shall keep the Equipment at the address specified in this agreement, and not remove it therefrom without the Lessor's prior written consent. Lessee shall not assign, sublet or pledge any of the Equipment or any interest in this agreement, and any attempt to do so shall constitute an act of default hereunder.

6. The Equipment shall at all times remain personal property of Lessor regardless of the degree of its annexation to any real property and shall not by reason of any annexation become a part thereof. Lessor shall retain a security interest in the Equipment in the event that the rental of the Equipment is held by a court to constitute a lease intended for security and Lessee agrees upon request to do all things and acts necessary to perfect and maintain such security interest.

7. Lessee, at its own expense, will maintain all risk insurance coverage on the Equipment for its full replacement value, and also such other insurance as Lessor may require, in amounts and under policies acceptable to Lessor, with loss payable to Lessee and Lessor as their respective interests may appear. Upon request of Lessor, Lessee shall furnish certificates of insurance evidencing such coverage. Each policy shall provide for thirty (30) days written notice to Lessor of the cancellation or material modification thereof.

8. Lessee shall promptly notify Lessor of each accident involving any Equipment, including time, place, nature of the accident or damage, and such other information as may be known; advise Lessor of all correspondence, papers, notices, or documents received; aid in the investigation and defense of all such claims; and assist in the recovery of damages, from third parties liable therefor.

9. In the event of damage to or loss, destruction or theft of the Equipment or any part thereof, Lessee shall pay to Lessor the full value of the Equipment at the time of such occurrence except to the extent that Lessor receives proceeds of insurance covering such Equipment. Such payment may, at Lessor's option, be applied (i) to repair such Equipment, or (ii) to afford Lessee a pro rata reduction in the rental payments attributable to the lost or damaged Equipment, or (iii) to replace the Equipment with equipment of the same make and the same or later model.

10. LESSEE UNDERSTANDS THAT LESSOR MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT, AND ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED.

11. LESSOR SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOSS (I) RESULTING FROM THE NON-DELIVERY, DELIVERY, MANUFACTURE, INSTALLATION, USE OR OPERATION OF THE EQUIPMENT, OR FROM ANY DEFECTS IN, FAILURES, MALFUNCTIONS, REPAIRS, REPLACEMENTS OR ALTERATIONS THEREOF, OR (II) WITHOUT LIMITATION, ANY OTHER LIABILITY OF ANY NATURE WITH RESPECT TO THE EQUIPMENT, OR THIS AGREEMENT OR ANY BREACH THEREOF OR ARISING OUT OF NEGLIGENCE. FURTHERMORE, LESSEE SHALL INDEMNIFY AND HOLD HARMLESS LESSOR, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND REPRESENTATIVES, FROM ANY AND ALL CLAIMS, ACTIONS, SUITS, PROCEEDINGS, COSTS, EXPENSES, DAMAGES, AND LIABILITIES, INCLUDING ATTORNEY'S FEES, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM, THIS AGREEMENT OR THE BREACH THEREOF.

12. Upon termination of this agreement, Lessee will, at its own cost and expense, promptly return the Equipment to Lessor in the same condition as received, reasonable wear and tear and normal depreciation excepted.

13. If Lessee breaches its obligation to pay rentals when due or any of the other terms of this agreement, or if Lessee becomes insolvent or ceases to do business as a going concern, or if the Equipment or any part of it is abused, illegally used or misused, or if Lessee makes an assignment for the benefit of creditors, or if a petition in bankruptcy or for arrangement or reorganization is filed by or against Lessee, or if property of Lessee is attached or a receiver is appointed for Lessee or any of Lessee's property, or if Lessee is in default pursuant to the provisions of any other agreement by and between Lessor and Lessee, or whenever Lessor may deem the rentals or Equipment insecure, the Lessee hereby authorizes Lessor to enter, with or without legal process, any premises where the Equipment may be and take possession thereof, or at the request of Lessor, Lessee will assemble the Equipment and make the Equipment available to the Lessor, in whole or in part as requested, at such place or places designated by the Lessor. All remedies herein are cumulative and any or all such remedies may be exercised in lieu of or in addition to any remedies at law, in equity or under statute. If after default this agreement is placed with an attorney for collection of unpaid rentals or enforcement of any other right or remedy of Lessor, Lessee shall pay reasonable attorney's fees. Waiver of any default shall not be a waiver of any other or subsequent default.

14. All notices required to be given hereunder shall be in writing and shall be deemed adequately given if sent by registered or certified mail to the other party at the registered address of such other party, or at such other place as either party may designate in writing to the other party.

15. The rights and obligations of the parties shall be governed by the laws of the State of North Carolina excluding its conflicts of law principles.

16. This document and any attachments hereto constitute the entire agreement of the parties with respect to the subject matter hereof. No variation or modification of this document and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by both parties.

Reference Sales Order No: TBD City of Watsonville

Customer's Initials: _____