

## FREIGHT POLICY (Subject to change without notice 1-01-17)

**Freight policy intended for all orders for APT Equipment including Portable Compressor/Generator spare parts and units, Hydraulic Attachment spare parts and units, Handheld spare parts and units, and Light Compaction parts and units.**

Shipping and Handling charges for parts and accessories are based on the dollar value of the order as follows:

ORDER AMOUNT		SHIPPING/HANDLING	
FROM	TO	SHOP ONLINE	PHONE/FAX/EMAIL
Less than	\$100	\$10	\$16
\$100	\$249	\$15	\$24
\$250	\$499	\$20	\$30
\$500	\$999	\$30	\$40
\$1,000	\$9,999	3% of Net	5% of Net
\$10,000	and up	2% of Net	4% of Net

Orders to be shipped prepaid with above charges added to the invoice. If an order is not shipped complete, charges *only apply to the invoice of the first shipment and subsequent back orders are shipped free of charge.*

### NOTE:

- Stock replenishment (SR) orders for Parts/Accessory totaling \$10,000 net or more ship Free Freight via carrier of our choice if ordered via Shop Online\*.
- Portable compressors up to 400 CFM and generators up to 100 kW carry a flat \$750 charge/each up to a full truckload. A full truckload is a flat \$1,700 charge. **For partial loads the charge will be for the actual number of units shipped.** Compressors, boosters and generators above APT440 and APTG 90 will be charged at FOB Rock Hill or Indiana. Prepaid and added to your invoice.

#### Load Information:

- 9 APT 185's make one full truck load shipment
- 5 APT 440 units make one full truck load shipment
- Light towers ship FOB Denver Colorado, 10 per truck load, 2 ship for the same cost as 1
- 3 Trailer mounted APTG 120 can ship on one truck. However, FULL load rates do not apply.

- Handheld hydraulic tools and light compaction equipment, carry a freight charge of 5%, for phone/fax/email orders will be charged 3%.
- Free freight on any orders of five (5) or more handheld hydraulic tools or light compaction items when shipped to the same destination. Any parts and accessories ordered at the time of this 5 tool or more order will be shipped with no freight charge if shipping to the same destination.
- Handheld pneumatic tools, parts & accessories
  1. Free Freight on tool orders of \$3,500 or more.
  2. Freight prepaid & added to your invoice or changed to your freight account for complete tool orders less than \$3,500
  3. Freight prepaid & added to your invoice or charged to your freight account on all parts & accessories

- Mounted hydraulic breakers (units) will carry a 3% shipping/handling fee.
- Road equipment machines with added options standard shipping rates are 3% of standard dealer net price. Any additional discounts and programs to machines do not apply to the standard freight rates.
- Freight charges only valid when shipped to one destination in the continental United States; split shipments and shipments to Alaska, Hawaii, Puerto Rico or international destinations will incur additional charges on transportation of our choice.
- Shipments to destinations in the Caribbean must be through a U.S. based freight forwarder.
- We are unable to ship collect for items shipping internationally.

#### Emergency/Break Down (BD) Orders:

Only applicable if available and shipped from US warehouses

- Orders received between 3:00 PM and 5:00 PM E.S.T. – ship same day actual expedited freight charges plus \$25.00 fee.
- Orders received after 5:00 pm E.S.T. - \$250.00 Emergency fee plus actual expedited freight charges.

#### Claim for shortages:

- Must be made within 30 days from invoice.

\*Coming soon -Shop Online - The APT internet ordering system

**Freight policy subject to change at any time.**



## RETURNED MATERIALS POLICY

### Return shipment of new merchandise will be accepted and credit will be allowed subject to the following provisions:

A Returned Materials Authorization (RMA) number must be assigned by Construction Equipment North America LLC prior to shipment. This RMA number must be prominently displayed on the package. Packages with no RMA number may be refused. Construction Equipment North America LLC reserves the right to accept or reject credit for returned goods.

- a. Service parts being returned must be listed as currently supplied on the price list at the time of return. Obsolete and discontinued parts cannot be returned.
- b. Service parts must be in new and resalable condition, in the original package (when applicable), with part numbers clearly marked.
- c. Items returned must be accompanied by their original invoice or the invoice number and date as well as a description of the items being returned. Construction Equipment North America LLC shall have the sole determination of whether or not items are "current," "unused," and "undamaged," and whether or not the proper invoices or invoice numbers and dates have been provided.
- d. Special-order items are not returnable for credit.
- e. Credit on returned goods will be issued at purchase price or current price, whichever is lower, less a 20% restocking charge.
- f. Any return must be accompanied by an offsetting order for new merchandise in an amount at least equal to the net value of the credit or greater.
- g. All returned shipments will be made to Construction Equipment North America LLC's designated receiving point, freight prepaid at the sender's expense.

## GENERAL WARRANTY CONDITIONS & LIMITATIONS ON LIABILITY

### Pneumatic Products Warranty

APT warrants its products to the original purchaser to be free from defective materials and workmanship. The liability of APT is limited to the replacement of any part(s) which are judged to be defective in materials and/or workmanship by APT, provided APT is notified of the suspect part within the warranty period after receipt of the product by the original purchaser. Does not include wear items. This warranty entitles the original purchaser to have the warranted parts and labor rendered at no cost during this warranty period when the product is delivered prepaid to the APT facility in Santa Ana, California. This warranty does not apply to products which APT judges to have been misused, modified or repaired by parties other than APT personnel. This warranty does not apply to tools that have been improperly maintained by the user or when the malfunction or defect can be attributed to the use of parts that are not genuine APT OEM repair parts.

### Additional APT Products Warranty

- 1.1 Construction Equipment North America LLC warrants its new equipment against failure due to faulty material or workmanship for a period of twelve (12) months from the date of purchase of said machine, excluding expendable wear parts. To facilitate warranty claims processing, please return the completed warranty card within thirty (30) days of purchase.
- 1.2 Should any failure under this warranty occur during the specified period under normal and proper use, and provided the equipment has been properly serviced, maintained, and stored with due regard to any directions, instructions, and operating procedures published by Construction Equipment North America LLC, Construction Equipment North America LLC shall, if given prompt notice by purchaser, through its authorized servicing facility, correct such non-conformity at its option either by repair or adjustment, F.O.B. nearest service facility, or refund the purchase price of the non-conforming equipment or part. The return of the equipment or part to Construction Equipment North America LLC, pursuant to this paragraph, shall be at the purchaser's risk and expense. Construction Equipment North America LLC will return unit to the purchaser at Construction Equipment North America LLC's expense. To be eligible for credit or replacement, warranty parts must be returned to Construction Equipment North America LLC within 30 days of the original claim.
- 1.3 Construction Equipment North America LLC warrants parts repaired or replaced pursuant to 1.2 above under normal and proper use, storage, service, and maintenance against defects in workmanship and material for a period of thirty (30) days from date of repair or adjustment or the expiration of the equipment warranty, whichever is longer.
- 1.4 The foregoing warranties do not apply to defects in equipment or parts caused by materials provided by the purchaser or by redesigns made by the purchaser or by repairs or alterations not authorized by Construction Equipment North America LLC.
- 1.5 THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY, WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE ARE HEREBY DISCLAIMED.
- 1.6 Correction of non-conformities as provided for above shall be purchasers' exclusive remedy and shall constitute fulfillment of all liabilities of Construction Equipment North America LLC whether in warranty, contract, negligence, tort or otherwise. Construction Equipment North America LLC shall not be liable for any damages which a purchaser may claim arising from loss of profits or revenue, loss of use of the equipment or parts, cost of capital, cost of substitute equipment or parts, downtime costs, or claims of customers for such other damages.
- 1.7 Construction Equipment North America LLC reserves the right to amend this warranty policy at any time with thirty (30) days written notification, but said changes will not affect previously sold equipment, parts or tools.

# Terms and Conditions of Sale

**1. General.** As used herein, "Seller" means Construction Equipment North America LLC or its applicable division which is offering or supplying any equipment, machine, part, accessory, item and/or service ("Products") to Buyer. "Buyer" means the entity to which Seller's offer is made, or the entity purchasing Products from Seller. This Terms and Conditions of Sale document is hereinafter referred to as "these Terms". **Seller's sale of any Products is expressly conditioned on Buyer's assent to these Terms. Any acceptance of Seller's offer is expressly limited to acceptance of these Terms. Any terms or conditions (previously, contemporaneously, or hereafter) provided by Buyer which add to, vary from, or conflict with these Terms are hereby expressly objected to.** In the event a separate written agreement covering terms and conditions has been negotiated and mutually signed by authorized representatives of Buyer and Seller, and such agreement is applicable and in effect, it shall take precedence (to the extent of conflicts) and the terms and conditions set forth in these Terms will be supplemental to those of such agreement. All orders submitted to Seller are received subject to approval or rejection by Seller at its headquarters.

**2. Delivery Inspection.** Unless specifically agreed otherwise by Seller and Buyer in writing with respect to the particular Product ordered, Products manufactured, assembled or warehoused in the continental U.S. are delivered F.O.B. shipping point of origin, and Products shipped from outside the continental U.S. are delivered F.O.B. point of entry. Where the scheduled delivery of Products is delayed by Buyer, or by a force majeure event described in Section 8 ("Force Majeure") below, Seller may store the Products at the expense and risk of Buyer. Shipping dates/periods (whether indicated as a range of weeks or otherwise) are approximate only, and are among other things based upon timely receipt of all necessary information and approvals. Seller reserves the right to deliver in installments. Notwithstanding any agreement with respect to delivery terms or payment of transportation charges, the risk of loss or damage shall pass to Buyer and delivery shall be deemed to be complete upon delivery to a private or common carrier or upon moving into storage, whichever occurs first, at the point of shipment for Products assembled, manufactured or warehoused in the continental U.S. or at the point of entry for Products shipped from outside the continental U.S. Buyer shall inspect the Product immediately upon delivery. If Buyer fails to notify Seller in writing within ten days (or within another time period specifically agreed upon by Seller and Buyer in writing) of receiving the Product of any alleged shortage, damage, or other nonconformity with respect to the Product, the Product shall conclusively be deemed to have been irrevocably accepted by Buyer.

**3. Security Interest.** Seller reserves and retains a security interest in the delivered Product and the proceeds thereof until Buyer has paid Seller the full price. Seller shall have the rights and remedies of a secured party under the Uniform Commercial Code. Buyer authorizes Seller to file UCC financing statements (with or without Buyer's signature appearing thereon, to the extent permitted by law) and to do any other lawful act or thing necessary or useful in perfecting Seller's security interest in the Product, and Buyer agrees to execute any and all documents required to be executed on its part to perfect said security interest.

**4. Prices, Taxes.** Unless specified otherwise by Seller in its written quotation, all prices are stated in U.S. dollars, and all invoices issued by Seller and payments made by Buyer shall be in U.S. dollars. **Taxes:** The price does not include any tax or any other governmental charges, unless the price indicated by Seller specifically lists such tax or governmental charge as a line item. Buyer is responsible for any and all applicable taxes and governmental charges (except any taxes on Seller's income). Seller will accept a valid exemption certificate from Buyer, if applicable.

**5. Payment.** Unless specified otherwise by Seller in its written quotation, the payment terms are Net 30 Days after the date of Seller's invoice. Invoices shall be paid in full and Buyer shall not be entitled to deduct, set-off or to withhold payment. If Buyer fails to pay any invoice when due, Seller may exercise all available remedies to it, including under the Uniform Commercial Code, and may withhold delivery until receipt of payment or satisfactory security. Seller reserves the right to require payment in advance or C.O.D. and otherwise to modify credit terms. A service charge of the lesser of 1% per month or the highest rate permitted by law may be charged on all overdue amounts. Payment terms are subject to credit approval. If, in the sole judgment of Seller, the financial condition of Buyer does not justify the terms of payment specified, Seller may require payment in advance or cancel any outstanding order, in which event Seller is entitled to reasonable cancellation charges. Should manufacture be delayed by Buyer, pro rata payments will become due to the extent required by Seller's contract with the manufacturer. Buyer shall be responsible for Seller's reasonable attorneys' fees/collection costs relating to overdue amounts.

**6. Buyer's Cancellation of Orders.** Buyer shall have no right to cancel a Product order (or a part of the order) unless Seller, at its sole discretion, agrees in writing that the specific order (or the part of the order) may be cancelled and Buyer pays cancellation charges. The cancellation charges may include, among other things, all costs and expenses incurred, and to cover commitments made, by Seller. In no event will the cancellation fee exceed the Product's purchase price.

**7. Returns.** Buyer shall have no right to return any Product unless Seller, at its sole discretion, agrees in writing that the specific Product may be returned. If Seller agrees that Buyer may return the Product, Seller will issue a Return Material Authorization number to Buyer, and Buyer must include such Return Material Authorization number with the return. Any such returned Product must be in new condition, with complete identification, shipped freight prepaid by Buyer, in accordance with Seller's instructions and is subject to a restocking charge.

**8. Force Majeure.** Seller shall not be liable for loss, damage or delay from causes beyond its reasonable control, including from fire, strike or other concerted action of workmen, act or omission of any governmental authority, compliance with import or export regulations, insurrection or riot, embargo,

delays or shortages in transportation, or inability to obtain necessary engineering talent, labor, materials, or manufacturing facilities from usual sources. In the event of delay due to any of these causes, the date of delivery will be postponed by the length of time reasonably necessary to compensate for the delay.

**9. Warranty.** Seller warrants to Buyer that any and all Seller-manufactured (or affiliate-manufactured) Products delivered to Buyer hereunder are delivered free of defects in workmanship and material. Unless specified otherwise by Seller in its written quotation with respect to the particular Product's warranty period, the warranty shall expire at the happening of the applicable number of months or hours of operation (whichever comes first) as indicated in more detail in Seller's applicable warranty statement document. The warranty statement document is attached hereto or available at request. Should any failure to conform to the warranty be discovered during the applicable warranty period, Seller (or a third party designated by Seller to perform the specific warranty job) will repair or (at Seller's option) replace the defective Product, subject to Seller's applicable warranty statement. At Seller's sole discretion, Seller may elect (as determined by an executive officer of Seller at its headquarters) to take back any defective Product and refund or credit monies paid to Seller for such defective Product less a reasonable allowance for use, in lieu of repair or replacement. Seller will determine at its sole discretion which of the above-mentioned options (repair, replace, refund, or credit) Seller will take regarding the defective Product. Consumables/wear items are expressly excluded from the warranty. Equipment/machinery/components/accessories/parts/items sold by Seller but not manufactured by Seller or by an affiliate are not warranted by Seller and shall carry whatever warranty (if any) which the manufacturer has conveyed to Seller to the extent it can be passed on to Buyer. No warranty, either expressed or implied, is provided by Seller on any such equipment/ machinery/ components/ accessories/ parts/ items not manufactured by Seller or by an affiliate. Any and all USED PRODUCTS ARE SOLD AS-IS, with no warranty of any kind (whether express, implied or otherwise), except for implied warranty of title. Any services performed by Seller are warranted to be performed in a workmanlike manner; this warranty shall expire 30 days after the particular service is performed. If any nonconformity with this service warranty is discovered within the 30 day warranty period, the exclusive obligation of Seller shall be to re-perform the nonconforming portion of the service in a conforming manner or provide a refund or credit. Seller will determine at its sole discretion which of the above-mentioned options (re-performance, refund, or credit) Seller will take regarding the nonconforming service. Warranty repair or replacement or re-performed service shall not extend or renew the original warranty period; such Products or parts or service shall remain under warranty only for the unexpired portion of the original warranty period. See Seller's applicable warranty statement for more information.

**THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES (WRITTEN, ORAL, IMPLIED, OR OTHERWISE), AND ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXPRESSLY DISCLAIMED. CORRECTION OF NONCONFORMITIES (i.e. repair or replacement or refund or credit, all at Seller's option, of Products that do not conform to the Product warranty above, and re-performance or refund or credit, all at Seller's option, of service that does not conform to the service warranty above) IN THE MANNER AND WITHIN THE APPLICABLE WARRANTY PERIOD SET FORTH ABOVE PROVIDES THE EXCLUSIVE REMEDIES WITH RESPECT TO THE QUALITY OF OR ANY DEFECT IN PRODUCTS OR SERVICES DELIVERED OR PERFORMED HEREUNDER.**

**10. Confidentiality.** In connection with the order/contract and/or performance hereunder, Seller and Buyer (as to information disclosed, the "Disclosing Party") may each disclose Confidential Information to the other party hereto (the "Receiving Party"). "Confidential Information" shall mean all information related to the business, products, or services of the Disclosing Party that is not generally known to the public, and all pricing and terms of the contract, provided that the obligations of this paragraph shall not apply as to any portion of the Confidential Information which: (i) is or becomes generally available to the public other than as a result of disclosure by the Receiving Party, its representatives or its affiliates, or (ii) has been or is subsequently independently developed by the Receiving Party, its representatives or affiliates, without reference to the Confidential Information, or (iii) is required to be disclosed by law or valid legal process provided that the Receiving Party who intends to make such disclosure shall promptly notify the Disclosing Party in advance of such disclosure and reasonably cooperate in attempts to maintain the confidentiality of the Confidential Information. The Receiving Party agrees, except as otherwise required by law: (i) to use the Confidential Information only as the Disclosing Party intended it to be used by the Receiving Party in connection with providing or receiving the Product, and (ii) to take reasonable measures to prevent disclosure of the Confidential Information, except disclosure to its employees to the extent necessary to facilitate providing or receiving Products. Upon the Disclosing Party's request, the Receiving Party shall destroy or return to Disclosing Party all copies of Confidential Information. If either party or any of their respective affiliates or representatives is required or requested by subpoena, interrogatories, or similar legal process to disclose any Confidential Information, such party agrees to provide the Disclosing Party with prompt written notice of such request, so that the Disclosing Party may seek an appropriate protective order or waive compliance by the Receiving Party with the provisions herein. It is understood and agreed that this Section 10 survives any expiration/termination of the contract.

**11. Intellectual Property.** As between Seller and Buyer, Seller shall retain and own any and all patents, copyright, trademarks, trade secrets, and other intellectual property embodied in or associated with the Product. Without limiting the generality of the foregoing, Seller shall retain and own all right, title and interest in and to all inventions, discoveries, know-how, works of authorship, drawings, designs, processes, and ideas developed, discovered or conceived by Seller or its employees in connection with the manufacture of the ordered Products. No drawings, designs, or anything else provided by Seller shall be deemed to be "work made for hire" as that term is used in connection with the U.S. Copyright Act.



## Terms and Conditions of Sale (cont.)

**12. Software.** In the event the Product contains or otherwise includes software, the software shall remain the proprietary property of Seller (and/or its affiliates or other third parties who are Seller's licensors, if applicable), and in no event shall title thereto be sold or transferred to Buyer. In the event a Product supplied hereunder contains or otherwise includes software, the following shall apply: (i) subject to Buyer complying with these Terms, Buyer is granted a non-exclusive, nontransferable license to properly use the software in machine readable object code form only; (ii) any license so granted is limited to the proper use of the Product containing the software only in the manner authorized by Seller; and (iii) Buyer shall not sublicense the software to any other entity nor assign its license rights. Notwithstanding the above, in the event Buyer transfers (in compliance with any and all applicable laws and regulations) title to any Product containing the software, the license granted hereby shall transfer to Buyer's transferee. Any license granted hereunder shall continue: (i) until terminated in accordance with this agreement, or, (ii) for the useful life of the Product in which the software is embedded or is otherwise an integral part, or, (iii) for the useful life of the software, whichever is shorter. Any modification, alteration, or removal or unauthorized use of the software constitute a breach of this agreement and shall automatically terminate any license granted hereby. Buyer shall not (and shall not permit any third party to) create derivative works based on the software, or reverse engineer, or disassemble or decompile the software, or transfer, copy, or modify, the software. In the event a separate written applicable Seller-provided Software License is provided with the Product, specified in Seller's quotation, and/or otherwise communicated to Buyer, then the software shall be governed, in order of precedence, by the terms of the separate Software License and then by any non-conflicting terms hereof.

**13. Intellectual Property Indemnity.** Seller shall defend or at its option settle any suit or proceeding by any third party brought against Buyer in so far as it is based on an allegation that any Product (provided by Seller to Buyer) constitutes an infringement of any United States patent, copyright, or trademark. Seller will pay the damages and costs awarded in any suit or proceeding so defended. Seller's obligations in this paragraph are conditioned upon Buyer promptly (i) notifying Seller in writing of the third party's claim; (ii) giving Seller full authority to control the defense and settlement of the suit or proceeding; and (iii) providing Seller with full information and reasonable assistance at Seller's expense. Seller shall ensure that no such settlement intending to bind Buyer shall be entered into without Buyer's prior written consent, which consent shall not be unreasonably withheld or delayed. In case the Product (or any portion thereof) as a result of any suit or proceeding so defended is held to constitute infringement or its use by Buyer is enjoined, Seller will, at Seller's option and expense: (i) procure for Buyer the right to continue using the Product; (ii) replace the Product with substantially equivalent non-infringing Product; (iii) modify the Product so it becomes non-infringing; or (iv) take back the Product and refund or credit monies paid by Buyer to Seller for such Product less a reasonable allowance for use. Seller will have no duty or obligation to Buyer under this paragraph to the extent that the Product is (i) supplied according to Buyer's design or instructions wherein compliance therewith has caused Seller to deviate from Seller's normal designs or specifications, (ii) modified, (iii) combined with items, systems, methods, or processes not furnished by Seller and by reason of said design, instruction, modification, or combination a claim is brought against Buyer. If by reason of such design, instruction, modification or combination, a claim is brought against Seller or its affiliate, Buyer shall protect Seller and its affiliate in the same manner and to the same extent that Seller has agreed to protect Buyer under the provisions above in this paragraph. THIS SECTION 13 STATES SELLER'S AND ITS AFFILIATES' EXCLUSIVE LIABILITY FOR INFRINGEMENT OF ANY THIRD PARTY'S PATENT, COPYRIGHT AND/OR TRADEMARK.

**14. Export Control, and Foreign Corrupt Practices Act.** Products, technical data, technology, software, and services provided by Seller to Buyer shall at all times be subject to any and all applicable export control laws and regulations, including but not limited to applicable U.S. Export Administration Regulations, United Nations resolutions and European Union directives relating to trade embargoes and restrictions. Buyer agrees and warrants that no Product, items, equipment, materials, services, technical data, technology, software or other technical information or assistance furnished by Seller, or any good or product resulting therefrom, shall be exported or re-exported by Buyer or its authorized transferees, if any, directly or indirectly, in violation of any law or regulation. Buyer agrees and warrants that Buyer shall not violate or cause Seller to violate the U.S. Foreign Corrupt Practices Act of 1977 (as amended), in connection with any sale of the Products. If Buyer breaches any obligation in this Section 14, Buyer shall indemnify Seller from all expenses, liabilities, sanctions, and fines arising from such breach.

**15. Limitation of Liability.** NOTWITHSTANDING ANYTHING ELSE, THE TOTAL LIABILITY, IN THE AGGREGATE, OF SELLER ARISING OUT OF, RELATED TO, OR RESULTING FROM THE ORDER OR CONTRACT OR THE PERFORMANCE OR BREACH THEREOF, OR THE DESIGN, MANUFACTURE, SALE, DELIVERY, RESALE, REPAIR, REPLACEMENT, INSTALLATION, TECHNICAL DIRECTION OF INSTALLATION, INSPECTION, SERVICE, OPERATION OR USE OF ANY PRODUCT OR SERVICE SHALL BE LIMITED TO THE ACTUAL PURCHASE PRICE AMOUNT PAID BY BUYER TO SELLER FOR THE SPECIFIC PRODUCT/SERVICE GIVING RISE TO THE CLAIM (REGARDLESS OF WHETHER DAMAGES ARE CHARACTERIZED AS ARISING OUT OF BREACH OF WARRANTY, TORT, CONTRACT, OR OTHERWISE). For purposes of this Section 15, the term "Seller" means Seller, its affiliates, suppliers, and subcontractors, and their respective employees/agents.

**16. No Consequential Damages, etc.** NOTWITHSTANDING ANYTHING ELSE, UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, OR SPECIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR REVENUE, LOSS OF TOTAL OR PARTIAL USE OF THE PRODUCTS OR SERVICES, DOWNTIME COSTS, AND DELAY COST) EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES ARE FORESEEABLE AND EVEN IF ANY OF THE LIMITED REMEDIES IN THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE (REGARDLESS OF

**WHETHER DAMAGES ARE CHARACTERIZED AS ARISING OUT OF BREACH OF WARRANTY, TORT, CONTRACT, OR OTHERWISE).**

For purposes of this Section 16, the term "Seller" means Seller, its affiliates, suppliers, and subcontractors, and their respective employees/agents.

**17. U.S. Government Contracts.** If the Products are to be used in the performance of a U.S. Government contract or subcontract, Buyer expressly agrees to notify Seller in writing in connection with Buyer's order. Further, if the Products are to be used in the performance of a U.S. Government contract or subcontract, only those clauses of the applicable U.S. Government procurement regulations which are mandatorily required by federal statute to be included in this contract shall be incorporated herein by reference.

**18. Equal Employment Opportunity Requirements.** If applicable to this agreement, Seller and Buyer shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

**19. Miscellaneous.** 19.1. Typographical and/or clerical errors in Seller's quotations are subject to Seller's correction. 19.2. Buyer's issuance of a purchase order or Buyer's receipt of the Product from Seller shall (without prejudice to any other manner in which acceptance of these Terms may be evidenced) constitute full acceptance of these Terms. 19.3. THESE TERMS CONTAIN THE ENTIRE AGREEMENT BETWEEN SELLER AND BUYER WITH RESPECT TO TERMS AND CONDITIONS AND SUPERSEDE ALL PREVIOUS OR CONTEMPORANEOUS STATEMENTS, AGREEMENTS, AND REPRESENTATIONS WITH RESPECT TO TERMS AND CONDITIONS. This agreement cannot be superseded, amended, or modified except by an applicable negotiated agreement signed in handwriting by an authorized sales manager of Seller and an authorized representative of Buyer containing terms and conditions substantially similar to the terms and conditions of these Terms. Any purchase order issued by Buyer to Seller is for Buyer's internal purposes and no term or condition stated in such document shall modify these Terms. Seller's execution of any document issued by Buyer shall constitute only an acknowledgment of receipt thereof, and shall not be construed as an acceptance of any of the terms or conditions therein that differ from, conflict with, or add to these Terms. 19.4. Neither party shall assign or transfer the contract without the prior written consent of the other party (which consent shall not be unreasonably withheld); any purported assignment in violation of this sentence shall be void. Irrespective of the foregoing, Seller may without consent assign the contract (or any of its rights or obligations hereunder) to any of its affiliates and/or use sub-contractors. 19.5. The provisions of these Terms are severable and the invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability of any other provision. 19.6. Neither party's failure to enforce, or its waiver of a breach of, any provision contained in these Terms shall constitute a waiver of any other breach or of such provision. 19.7. All headings, captions and numbering in this document are for convenience of reference only and shall not be used to interpret any meaning of any terms or condition. 19.8. The validity, performance, and all other matters arising out of or relating to the interpretation and effect of these Terms and/or the contract shall be governed by and construed in accordance with the internal laws of the U.S. State in which Seller's applicable sales or service facility is located without giving effect to any choice or conflict of law provision or rule (whether in such State or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of such State. 19.9. Seller and Buyer expressly agree that the United Nations Convention on International Sale of Goods shall not apply. 19.10. The parties are independent contractors under this Agreement and no other relationship is intended including, without limitation, any partnership, franchise, joint venture, agency, employer/employee, fiduciary, master/servant relationship, or any other special relationship. 19.11. All rights and obligations contained in these Terms, which by their nature or effect are required or intended to be kept, observed, or performed after the termination or expiration of the order/contract will survive and remain binding upon and for the benefit of the parties, their successors, and permitted assigns.

Construction Equipment North America LLC