

## **SALES AGREEMENT TERMS AND CONDITIONS (GOODS/PARTS)**

By signing the Sales Agreement, the “**Customer**”, as indicated on the Sales Agreement, agrees to the following terms and conditions. The Sales Agreement and terms and conditions, as set forth below, are incorporated herein and therein, and together, shall be deemed to constitute one agreement, binding on all parties hereto. This Sales Agreement shall be binding on WSECO upon its execution of the Sales Agreement, and subject to availability of the Goods.

**1. OFFER TO SELL:** Western States Equipment Company, an Idaho corporation, or its affiliates (“**WSECO**”) agrees to supply the parts, goods, accessories, and attachments described in the Sales Agreement (the “**Goods**”) to the Customer, under the terms and conditions specified herein. Customer, together with WSECO, the “**Parties**,” and each a “**Party**”.

**2. ORDERS.** Customer’s intent to purchase the Goods in accordance with this Sales Agreement, and Customer’s acknowledgement and acceptance of the Sales Agreement (including, the terms and conditions as incorporated herein, shall be evidenced by any or all of the following: (a) Customer’s acceptance of any quote, proposal, bid or any other document issued by WSECO for the Goods (together with any exhibits, schedules, attachments and appendices thereto, a “**Bid**”); (b) Customer’s issuance to WSECO of a purchase order or other document evidencing Customer’s intent to purchase the Goods (together with any exhibits, schedules, attachments and appendices thereto, a “**Purchase Order**”); (c) Customer’s acceptance of the Goods when delivered (notwithstanding that a Bid, Purchase Order, or other document or agreement is or is not signed); or (d) Customer’s payment of any invoice issued by WSECO for the Goods. Any Bid accepted by Customer or Purchase Order accepted by WSECO shall constitute an “Order” for the Goods described therein.

- a. Acceptance and Rejection of Purchase Orders.** WSECO has no obligation to accept any Purchase Order; however, WSECO may accept a Purchase Order by confirming the Purchase Order in writing or by delivering the applicable Goods to Customer, whichever occurs first. WSECO may reject a Purchase Order without liability or penalty and without constituting a waiver of any of WSECO’s rights or remedies under this Sales Agreement.
- b. Cancellation or Modification of Orders.** Customer shall be obligated to purchase from WSECO the quantities of the Goods specified in an Order. Cancellation or modification of all or part of any Order is subject to WSECO’s prior written consent in each instance. If cancellation or modification is allowed, Customer agrees to pay to WSECO all expenses incurred, and damage sustained by WSECO as a result of such cancellation or modification.
- c. Shipment.** In the event of shipment of any Goods, WSECO shall select the method of shipment of and the carrier for the Goods. WSECO, in its sole discretion, without liability or penalty, may make partial shipments of the Goods to Customer. Each shipment will constitute a separate sale and Customer shall pay for the Goods shipped in accordance with the payment terms specified in this Sales Agreement, whether such shipment is in whole or partial fulfillment of an Order.
- d. Delivery.** Unless otherwise agreed in this Sales Agreement, or writing, the sales price is offered F.O.B. at WSECO’s designated facility as stated on the Sales Agreement and Customer is responsible for all shipping charges as provided in this Sales Agreement. WSECO will, at Customer’s cost and expense, deliver the Goods to the location specified

in the Order (the “**Delivery Location**”) using WSECO’s standard methods for packaging and shipping.

- e. **Late Delivery.** Any time quoted for delivery is an estimate only; provided, however, that WSECO shall use commercially reasonable efforts to deliver all Goods within a reasonable time consistent with the Order

3. **TITLE TO EQUIPMENT.** Title to the Goods shall pass to Customer upon receipt by WSECO of payment in full for the Goods.

4. **ACCEPTANCE AND TERMS AND CONDITIONS:** Acceptance of this Sales Agreement is limited to the express terms stated herein. Any proposal in Customer’s acceptance for additional or different terms or any attempt by Customer to vary in any degree any of the (i) terms and conditions or (ii) representations or warranties, of this Sales Agreement, is expressly objected to and hereby rejected. Once accepted, this Sales Agreement shall constitute the entire agreement between WSECO and Customer. WSECO is not bound by any representation or agreements, express, or implied, oral, or otherwise, which are not stated within this Sales Agreement (including, for purposes of clarity, any general terms and conditions contained in Customer’s purchase order or other documents submitted by Customer). This Sales Agreement will supersede all previous communications, agreements, and contracts with respect to the subject matter hereof and no understanding, agreement, term, condition, or trade custom at variance with this Sales Agreement will be binding on WSECO. No waiver or modification of the terms and conditions hereof will be effective.

5. **PAYMENT TERMS:**

- a. **Payment.** Customer shall pay to WSECO all invoiced amounts within thirty (30) days from the date of such invoice, unless otherwise set forth on the Sales Agreement and/or Credit Agreement. Notwithstanding the foregoing, for any Customer who (i) does not have a Credit agreement with WSECO, or (ii) payment terms are not set forth on the Sales Agreement, full payment shall be due at time of purchase. Customer shall make all payments in US dollars by check, credit card or wire transfer. For Customers who do not have an open credit account with WSECO, payment is due upon delivery of Goods.
- b. **Late Payments.** Customer shall pay interest on all late payments, calculated daily, and compounded monthly at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable Law, calculated daily and compounded monthly. Customer shall also reimburse WSECO for all reasonable costs incurred in collecting any late payments, including, without limitation, attorneys' fees.
- c. **Disputed Invoice.** Failure to notify WSECO in writing of any dispute regarding an invoice within sixty (60) days of receipt thereof waives Customer’s right to dispute such invoice. Customer's obligation to pay amounts invoiced is and will be absolute and unconditional and shall not be subject to any delay, reduction, set-off, defense or counterclaim.
- d. **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 WSECO under this Sales Agreement.

6. **UNSATISFACTORY CREDIT STATUS.** Customer shall furnish WSECO with statements evidencing Customer’s financial condition as WSECO may, from time to time, reasonably request,

and shall notify WSECO immediately of any and all events that may have a material adverse effect on Customer's business or financial condition. If WSECO determines in its sole discretion that Customer's financial condition or creditworthiness is inadequate or unsatisfactory, then in addition to WSECO's other rights, WSECO may without liability or penalty take any of the following actions:

- a. require that Customer provide a standby letter of credit satisfactory to WSECO in its sole discretion;
- b. accelerate all amounts owed by Customer to WSECO under this Sales Agreement;
- c. modify the payment terms specified in Section 5 (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 Sales Agreement; or
- g. any combination of the above.

No actions taken by WSECO under this Section 6 (nor any failure of WSECO to act under this Section 6) shall constitute a waiver by WSECO of any of its rights to enforce Customer's obligations under this Sales Agreement including, but not limited to, the obligation of Customer to make payments as required under this Sales Agreement.

**7. SALES TAXES:** Under certain state laws, WSECO is required to collect sales tax for sales made on Goods. Prices stated in this Sales Agreement, Order, or Purchase Order, do not include any applicable state, county, city, or local sales taxes. This Sales Agreement is accepted with the understanding that such taxes and charges shall be added, as required by law, at the time the Goods are invoiced. Where applicable, WSECO will charge sales tax at the time of invoice unless the Customer has a valid sales tax exemption certificate on file. Valid sales tax-exempt certificates can be emailed to [SalesTax@WSECO.com](mailto:SalesTax@WSECO.com). In states where WSECO is not required to collect and pay Sales Tax, the Customer is obligated to self-report and pay the Sales and/or Use Tax to the Customer's appropriate state and or local Department of Revenue. In the event that Customer fails to pay any applicable tax or other charge as agreed herein or fails to provide a valid exemption certificate, Customer agrees to indemnify and hold WSECO harmless from any liability and expense by reason of Customer's failure to pay said taxes or assessments, including, but not limited to, WSECO's reasonable attorney's fees and costs and other necessary legal expenses resulting from such failure.

**8. GRANT OF SECURITY INTEREST:** To the extent permitted under applicable law, in order to secure payment and performance of Customer's obligations arising under this Agreement, Customer grants WSECO a security interest in and to all right, title, and interest of Customer in, to, and under the Goods and any and all additions, replacements, substitutions, and proceeds of the same ("**Collateral**") to secure payment of the sales price and any and all other obligations or amounts owed or owing by Customer hereunder whether now existing or hereafter created and all renewals, extensions, and rearrangement of such liabilities. Customer appoints WSECO as Customer's irrevocable attorney-in-fact to file, at Customer's cost any financing statement(s) (and any amendments, renewals, and related instruments) (i) to perfect such

security interest, and/or (ii) to release, terminate and void WSECO security interest. Customer shall execute any such statements or other documentation necessary to perfect such security interest. The security interest granted under this provision constitutes a purchase money security interest under the Idaho Uniform Commercial Code ("**UCC**"). Customer will reimburse WSECO for all expenses for the perfection and the continuation of the perfection of WSECO's security interest in the Collateral. During such period in which WSECO has a security interest in and to the Goods, Customer may not assign, transfer, move, or otherwise sell any of the Collateral without the written consent of WSECO. Customer promptly will notify WSECO before any changes in Customer's name including any changes to the assumed business names of Customer.

**9. LOADING AND UNLOADING.** Customer is responsible for the loading and unloading of the Goods. IF WSECO EMPLOYEES ASSIST IN LOADING OR UNLOADING THE EQUIPMENT, CUSTOMER ASSUMES THE RISK OF ANY RESULTING DAMAGE OR INJURY AND SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS WSECO FROM AND AGAINST ANY LOSS, COST OR EXPENSE (INCLUDING ATTORNEYS' FEES AND EXPENSES) ARISING FROM OR RELATED TO THE SAME, WHETHER OR NOT CAUSED, IN WHOLE OR IN PART, BY WSECO'S NEGLIGENCE OR THE NEGLIGENCE OF WSECO'S EMPLOYEES, AGENTS OR ASSIGNS.

**10. TIME OF DELIVERY AND SHIPPING:** Orders for Goods are processed in the order of their acceptance by WSECO. WSECO will use commercially reasonable efforts to deliver the Goods to Customer on the scheduled delivery date as stated in this Sales Agreement, Order, or Purchase Order. However, shipping and delivery dates are estimates and dependent upon factors outside of WSECO's control including, but not limited to, the manufacturer's production schedule, material and labor shortages, equipment shortages, shipping delays, the Goods may not arrive on the scheduled date. WSECO shall not be liable for any damages caused by delays in delivery or shipment of the Goods. WSECO shall select the method of shipment of, and the carrier for, the Goods. As applicable, WSECO may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Customer. Customer is responsible for all freight, shipping, loading, and unloading costs. Unless otherwise agreed to in writing by the parties, the Equipment shall not be delivered to Customer until payment terms are mutually agreed upon.

**11. RISK OF LOSS/SHORTAGES:** As applicable, risk of loss of any Goods shall pass to Customer as soon as the Goods are properly loaded on the carrier, as elected by WSECO. WSECO's responsibility for shipment ceases upon delivery of the Goods to the carrier. In the event that WSECO serves as the carrier, WSECO's responsibility for shipment will cease upon delivery acceptance by the Customer. Any claim by Customer for shortage in shipment shall be made by written notice to WSECO within ten (10) days after receipt of the shipment. Customer will be deemed to have accepted the Goods unless it notifies WSECO in writing of any nonconforming products during the inspection period and furnishes such written evidence or other documentation as required by WSECO.

**12. COMPLIANCE WITH LAWS:** Customer shall at all times comply with all federal, state, and local laws, rules, or regulations applicable to this Sales Agreement, Customer's performance of its obligations hereunder, and Customer's use of the Goods. Without limiting the generality of the foregoing, Customer shall (a) at its own expense, maintain all certifications, credentials, licenses and permits necessary to conduct its business relating to the purchase or use of the Goods and (b) not engage in any activity or transaction involving the Goods, by way of shipment, use or otherwise, that violates any federal, state, and local laws, rules, or regulations.

**13. TERMINATION.** In addition to any remedies that may be provided under this Sales Agreement, WSECO may terminate this Sales Agreement with immediate effect upon written notice to Customer, for any reason or no reason, or if Customer: (a) fails to pay any amount when due under this Sales Agreement; (b) has not otherwise performed or complied with any terms of this Sales 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. Any termination under this Sales 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 WSECO. With respect to any Goods that are still in transit upon termination of this Sales Agreement, WSECO, 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.

**14. LIMITED WARRANTY.**

- a. New Goods.** If Customer is purchasing new Goods from WSECO, Customer acknowledges that (i) WSECO is not the manufacturer of the Goods; (ii) if the Goods include a manufacturer's warranty, WSECO will pass through to Customer the manufacturer's warranty to the extent permitted by the terms of such warranty; and (iii) the manufacturer's warranty will be subject to all conditions and exclusions set forth therein. Upon request, WSECO shall provide Customer a copy of the applicable manufacturer's warranty.
- b. Remanufactured Goods.** If Customer is purchasing remanufactured Goods from WSECO, (i) WSECO is not the manufacturer of the remanufactured Goods; (ii) if the remanufactured Goods include a manufacturer's warranty, WSECO will pass through to Customer the manufacturer's warranty to the extent permitted by the terms of such warranty; and (iii) the manufacturer's warranty will be subject to all conditions and exclusions set forth therein. Upon request, WSECO shall provide Customer a copy of the applicable manufacturer's warranty. Customer acknowledges that the only warranties with respect to remanufactured Goods are those warranties, if any, expressly set forth in the manufacturer's warranty or as specifically set forth in the Sales Agreement.
- c. Used Goods.** If Customer is purchasing used Goods from WSECO, Customer acknowledges that the only warranties with respect to such used Goods are those warranties, if any, expressly set forth in the Sales Agreement.
- d. Limitation of Remedies:** During the limited warranty, if any, as provided herein, if, for any reason, the Goods do not perform satisfactorily, as judged by WSECO in its sole discretion, WSECO may repair or replace the Goods or any part thereof, at its option, without affecting any of the terms of this Sales Agreement. This remedy does not apply if the Goods have failed or performs less than satisfactorily due to Customer's improper use of the Goods, accident (including, damage during shipment), neglect, abuse, misuse, or exposure of the Goods to conditions beyond capacity, power, environmental design limits, or operation constraints, as specified by WSECO and/or the Goods manufacturer. Customer is responsible for all expenses related to repair or replacement due to these causes.

**THE REMEDIES IN THIS SECTION 14 ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY BREACH OF THE LIMITED WARRANTY.**

**15. EXTENDED PROTECTION OR COVERAGE.** Customer acknowledges that Customer may have the option of purchasing an equipment protection plan or extended services coverage (each, an **"Extended Protection Plan"**) regarding the Goods, and Customer agrees that if an Extended Protection Plan is available and purchased by Customer at the time of sale, the Extended Protection Plan will be subject to the terms, conditions and exclusions contained in such applicable Extended Protection Plan.

**16. DISCLAIMER OF WARRANTIES:** Subject to the manufacturer warranties provided pursuant to Section 14, by receiving the Goods, Customer acknowledges the Goods to be in good, safe, and serviceable condition, and Customer accepts the Goods **"AS IS, WHERE IS"** and **"WITH ALL FAULTS,"** regardless of defects, latent or otherwise. WSECO makes no warranties, express or implied, for any Goods, equipment, product, service, or other items sold or furnished under this Sales Agreement, unless agreed to in a separate writing between Customer and WSECO. **WSECO MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. CUSTOMER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY WSECO, OR ANY OTHER PERSON ON WSECO'S BEHALF, EXCEPT AS SPECIFICALLY SET FORTH IN THIS SALES AGREEMENT. ALTHOUGH WSECO MAY ADMINISTER WARRANTIES ISSUED BY A MANUFACTURER, CUSTOMER ACKNOWLEDGES AND AGREES THAT (1) ANY EXPRESS WARRANTIES BY SUCH MANUFACTURER ARE NOT THE RESPONSIBILITY OF WSECO ; (2) SUCH MANUFACTURER'S WARRANTY MAY CONTAIN LIMITATIONS; AND (3) CUSTOMER MAY INCUR CERTAIN REPAIR, TRANSPORTATION OR OTHER CHARGES BY WSECO WHICH ARE NOT COVERED BY SUCH MANUFACTURER 'S WARRANTY.** Any warranty by WSECO shall be null and void and have no legal effect if Customer fails to pay any amounts due for the Goods at issue.

**17. LIMITATION OF LIABILITY:** In no event will WSECO, its subsidiaries, affiliates, agents or employees be liable for any liquidated, incidental, indirect, exemplary, punitive, enhanced, special, or consequential damages in connection with, arising out of, or relating to this Sales Agreement or furnishing of any equipment, goods, services or other items or any third party's ownership, maintenance, or use of any equipment, goods, services or other items furnished under this Sales Agreement, including, but not limited to, lost profits or revenues, loss of use of the Goods or any associated goods, damage to associated goods, costs of capital, cost of substitute goods, or claims of Customer for such damages, whether or not the possibility of such damages has been disclosed in advance or could have been reasonably foreseen by Customer, regardless of 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. WSECO is not responsible for meeting any federal, state, local or municipal code, rules, regulations, or specifications (whether statutory, regulatory, or contractual), unless Customer specifies it in writing and WSECO agrees to it in writing. Customer agrees that it has selected the Goods, and associated equipment and goods, based upon its own judgment and particular needs and disclaims any reliance upon any statements, advice, or presentations made by WSECO. **IN NO EVENT SHALL WSECO'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS SALES AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF AGREEMENT, WARRANTY, STRICT LIABILITY TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE LESSER OF (a) TOTAL OF THE AMOUNTS PAID TO WSECO**

**PURSUANT TO THE APPLICABLE ORDER GIVING RISE TO THE CLAIM; AND (b) \$50,000.**

The parties recognize that the pricing associated with Goods reflects this allocation of risk and is the basis of the bargain between the parties.

**18. ASSUMPTION OF RISK.** WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CUSTOMER ASSUMES ALL RISK AND LIABILITY FOR THE RESULTS OBTAINED BY THE USE OF ANY GOODS BY CUSTOMER, ITS SUBSIDIARIES, AFFILIATES, AGENTS, OR EMPLOYEES, WHETHER IN TERMS OF OPERATING COSTS, GENERAL EFFECTIVENESS, SUCCESS, OR FAILURE, AND REGARDLESS OF ANY ORAL OR WRITTEN STATEMENTS MADE BY WSECO, BY WAY OF TECHNICAL ADVICE, CONSULTING, DEMOS, TRAINING, OR OTHERWISE, RELATED TO THE USE OF THE GOODS.

**19. INDEMNITY:** Customer agrees to indemnify, defend and hold harmless WSECO from and against any and all claims, actions, suits, proceedings, costs, expenses, damages (including but not limited to consequential and incidental damages), liabilities, deficiencies, fees, interest, awards, penalties, fines, costs (including, but not limited to, attorney fees and court costs), judgments, and settlements, (including those brought or incurred by or in favor of Customer's employees, agents and subcontractors), arising out of or related to (i) the selection, delivery, loading, unloading, towing, possession, use, misuse, failure or maintenance of the Goods, operation, handling, retaking, or transportation of the Goods (inclusive of any of the foregoing by employees or agents of Customer, or third parties), (ii) personal injury, death or property damage or loss of any nature whatsoever arising out of or related to the Goods subject to this Sales Agreement, (iii) any breach by Customer of this Sales Agreement or any applicable law, (iv) use of the Goods in any manner that does not materially conform with the usage specifications provided by WSECO or the equipment manufacturer, as applicable, or (v) any act or omission of Customer or Customer's employees, agents, contractors, subcontractors, affiliates or invitees. Additionally, Customer agrees to defend, at its expense, any and all suits brought against WSECO either alone or in conjunction with others (including any third-party suits or actions) and additionally to satisfy, pay and discharge any and all judgments and fines against WSECO in any such suits or actions, whether based in gross negligence, willful misconduct, negligence or otherwise.

**20. DEFAULT BY CUSTOMER:**

- a. Event of Default.** An "Event of Default" shall occur if (a) Customer fails to pay when due the sales price; (b) Customer fails to perform or observe any covenant, condition, or agreement to be performed by it hereunder; (c) Customer ceases doing business as a going concern, makes an assignment for the benefit of creditors, admits in writing an inability to pay debts as they become due, files a petition in bankruptcy, or if owners, shareholders, or members of Customer's business organization take actions towards dissolution or liquidation of Customer; (d) Customer attempts to sell, transfer, or encumber, sublease or convey the Goods or any part thereof; or (e) WSECO, in good faith deems itself, insecure relative to payment of the sales price.
- b. Occurrence of an Event of Default.** Upon the occurrence of any Event of Default, WSECO may exercise the following rights and remedies: (i) declare the sales price immediately due and payable; (ii) require Customer to assemble the Goods and make them available to WSECO at a place and time designated by WSECO; (iii) WSECO shall have full power to enter upon the property or jobsite of the Customer and take possession of and remove the Goods; (iv) WSECO shall have full power and authority to sell, lease,

transfer or otherwise deal with the Goods or proceeds thereof, and in connection therewith WSECO may bid on the Goods and that a commercially reasonable price for said reclaimed Goods may be determined by WSECO based upon current national auction values, market trends relating to supply and demand, and related factors for goods of similar type and condition; (v) if WSECO chooses to sell or lease the reclaimed Goods, WSECO may obtain a judgment against Customer for any deficiency remaining on the sales price after application of all amounts received from the exercise of its rights under this Sales Agreement; and (vi) all rights and remedies of a secured creditor under the provisions of the Idaho Uniform Commercial Code, as amended from time to time. All of WSECO's rights and remedies, whether evidenced by this Sales Agreement or other related agreement, shall be cumulative and may be exercised singularly or concurrently. Customer agrees to pay all costs incurred by WSECO in enforcing this Sales Agreement or any of its provisions, including without limitation reasonable attorney's fees and costs and all costs of reclaiming the Goods, whether or not legal action is commenced.

**21. EQUIPMENT DATA:** The Goods governed by this Sales Agreement may be equipped with a wireless data communication system or similar system. In such case, Customer understands data reflecting the machine performance, condition, operation, and other information is being transmitted to WSECO and Caterpillar, Inc., to better serve the Customer and to improve upon WSECO's and Caterpillar, Inc.'s products and services. Upon entering this Sales Agreement, Customer agrees to Western States Data Governance Statement, as set forth at [Western States Terms & Conditions | Western States Cat](#), and the Caterpillar, Inc. Data Governance Statement, as set forth at <https://www.caterpillar.com/en/legal-notice/data-governance-statement.html>, each as amended from time to time.

**22. MARKETING.** The Customer consents that, in conjunction with the sale of the Goods, Customer's equipment may be used in any WSECO or third-party promotional materials, pictures, videos, or other mediums. The Customer's name or trademarks shall not be used without express written consent from the Customer.

**23. WAIVER.** No waiver of any provision of this Sales Agreement shall be effective unless it shall (a) be in writing; (b) specifically identify this Sales Agreement; (c) specifically state that such document waives certain terms of this Sales Agreement; and (d) be accepted and signed by an authorized representative of WSECO. Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion. None of the following constitutes a waiver or estoppel of any right, remedy, power, privilege, or condition arising from this Sales Agreement: (i) any failure or delay in exercising any right, remedy, power, or privilege or in enforcing any condition under this Sales Agreement; or (ii) 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 (except as to the portion thereof actually received by the other Party in cash or other good funds).

**24. FORCE MAJEURE:** WSECO shall not be responsible or liable, and WSECO's obligation to perform under this Sales Agreement will be excused during each period of delay, for any delay or failure to deliver any or all of the Goods and/or performance of the services where such delay or failure is caused by any act of God, any worldwide or national epidemic or pandemic, fire, flood, inclement weather, explosion, war, insurrection, riot, embargo, statute, ordinance, regulation or order of any government or agent thereof, shortage of power, shortage of labor, material fuel,



supplies or transportation, strike or other labor dispute, or any other cause, contingency, occurrence or circumstance of any nature, whether or not similar to those herein before specified beyond WSECO's control, which prevents, hinders or interferes with manufacture, assembly or delivery of the Goods or performance of the services. Any such cause, contingency, occurrence, or circumstances shall release WSECO from performance of its obligations hereunder. In the event of a Force Majeure event, such party shall: (i) immediately notify the other party of the Force Majeure event and its expected duration, and (ii) take all reasonable steps to recommence performance as soon as possible.

**25. JURISDICTION AND VENUE:** This Sales Agreement and the relationship between WSECO and Customer shall be governed and construed according to the laws of the State of Idaho. At the sole and exclusive election of WSECO, jurisdiction and venue for any action or dispute arising under this Sales Agreement shall be in the in the Fourth Judicial District of the State of Idaho, in and for Ada County, which is WSECO's corporate headquarters and principal place of business, wherein the parties acknowledge having done business sufficient to establish minimum contacts under the Idaho long arm statute, and which is a mutually convenient forum. In addition, Customer waives any and all rights to jurisdiction and/or venue in any other forum, including waiver of any and all rights to remove the action from any court originally acquiring jurisdiction.

**26. FAILURE OR OMISSIONS.** No delay or failure by either party to exercise any right or remedy under this Sales Agreement, and no partial or single exercise of that right or remedy, shall constitute a waiver of that or any other right or remedy, unless otherwise expressly provided in this Sales Agreement.

**27. SEVERABILITY.** If any part of this Sales Agreement shall be determined to be invalid, illegal, or unenforceable, or declared null and void by any court of competent jurisdiction, then (i) such part shall be reformed, if possible, to conform to the law and (ii) in any event the remaining parts of this Sales Agreement shall be fully effective and operative insofar as reasonably possible.

**28. ASSIGNMENTS:** No right or interest in this Sales Agreement shall be assigned by Customer without the written permission of WSECO, and no delegation of any obligation owed or of the performance of any obligation by Customer shall be made without written permission of WSECO. Any attempted assignment or delegation by Customer shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

**29. AMENDMENTS.** No amendment to or modification of or rescission, termination or discharge of this Sales Agreement is effective unless in a writing signed by an authorized representative of each Party.

**30. ENTIRE AGREEMENT.** This Sales Agreement, and associated invoices, constitute the entire agreement between the parties and supersedes all prior oral and written agreements and understandings between the parties. The Parties intend for the express terms and conditions contained in this Sales Agreement (including any invoice and these Sales Agreement terms and conditions) to exclusively govern and control each of the Parties' respective rights and obligations regarding the subject matter of this Sales Agreement, and this Sales Agreement is expressly limited to such terms and conditions. Without limitation of the foregoing, any additional, contrary, or different terms contained in any purchase order, third-party agreement, or other request or communication by Customer pertaining to the purchase of Goods from WSECO, and any attempt to modify, supersede, supplement, or otherwise alter this Sales Agreement, will not modify this Sales Agreement (inclusive of any Customer's invoice) or be binding on the parties. The entering

of a Sales Agreement with WSECO, the issuance of a purchase order for the purchase of any Goods from WSECO, or the receipt, acknowledgement, or acceptance of equipment or Goods by Customer constitutes Customer's acceptance of the Sales Agreement, and these Sales Agreement Terms and Conditions exactly as written. WSECO reserves the right, in its sole discretion, to modify or replace any of these Terms and Conditions at any time, and such modifications or replacements shall apply to all rentals of equipment from WSECO after the date of such modification or replacement. It is Customer's responsibility to review the Sales Agreement Terms and Conditions each time Customer purchases Goods from WSECO.