

CREDIT TERMS AND CONDITIONS

OPEN ACCOUNT AGREEMENT BETWEEN APPLICANT/BUYER AND CATERPILLAR DEALER/SELLER

The aforesigned (hereinafter called "Buyer,) and Wagner Equipment Company (hereinafter called "Seller,) agrees that all purchases, rentals or leases of goods and services (hereinafter "goods") by Buyer from Seller on Open Account, or any other credit facility, shall be subject to the following terms and provisions:

- 1. Definition of Wagner Equipment and Seller.** Wagner Equipment/Wagner Rents and Seller are defined as Wagner Equipment Company.
- 2. Payment Due Date:** For all purchases made during any one calendar month (or such other billing period as Seller may from time to time establish by written notice to Buyer), payment shall be due and payable in full 30 days from the invoice date unless other specific terms of payment are stated in the body of the invoice (the "Payment Due Date"). Seller will furnish Buyer an Account Statement for each billing period, covering all goods and services delivered to or for the benefit of Buyer during such billing period (or since the last such Statement) and payment in full shall be due on or before the Payment Due Date as herein above stated.
- 3. Where To Make Payments:** Buyer acknowledges that this agreement does not require any sales on credit nor the deferred payment of all or any part of the agreed cash price or prices of goods and services, but to the contrary this agreement establishes for the convenience of the parties a date of payment for cash purchases in lieu of cash on delivery. Buyer agrees to pay in full on or before the Payment Due Date the aggregate Cash Purchase Price of all goods and services ordered by Buyer's Authorized Users, received by Buyer, or for Buyer's benefit since the date of Seller's last Account Statement and, as such, payments shall be made as follows: If the Buyer purchased goods and services from the Seller from Seller's locations in the states of Colorado, New Mexico and Texas, payments shall be made to the seller's bank lockbox address: Wagner Equipment Co. P.O. Box 919000 Denver, Colorado. 80291-9000
- 4. Interest:** Should Buyer fail to pay the entire balance owed on or before the Payment Due Date, Buyer agrees to pay interest on the unpaid portion thereof from the purchase date until paid in full at the maximum rate allowed by applicable law. Anti-Usury: Interest on any indebtedness owing to Seller by Buyer shall not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law; any interest in excess of that maximum amount shall be credited to the principal of the indebtedness or, if that has been paid, refunded. On any acceleration or required or permitted prepayment, any such excess shall be cancelled automatically as of the acceleration or prepayment, or if already paid, credited on the principal of the indebtedness or, if the principal has been paid, refunded. This provision overrides other provisions in this and all other instruments.
- 5. Security Interest in Goods and Financing Statements:** Buyer grants to Seller an express security interest under the Uniform Commercial Code covering any and all goods purchased hereunder, and grants permission to Seller file all security agreements, financing statements or other instruments appropriate to documents and perfect the security interest herein granted without Buyer's signature. Neither the agreement to pay interest herein contained, nor the payment thereof by Buyer, nor the acceptance thereof by Seller shall be construed as an extension of any payment due date nor any waiver by Seller of any remedy available to Seller, including but not limited to, the right to reclaim goods sold.
- 6. Cross-Collateralization of Security:** Any security interest granted to Seller by Buyer in this or any other agreement between the parties shall also secure and enforce the payment of all other indebtedness's of Buyer to Seller presently existing or which may in any manner or means hereafter be incurred by Buyer to Seller, and evidenced in any manner whatsoever, either by lease/rental agreements, equipment purchased, parts or labor, open accounts, promissory notes, advances, overdrafts

or any other mode or means. The fact of repayment of any or all indebtedness's to Seller shall not terminate such security agreement(s) and it shall nevertheless secure the payment of any future indebtedness's owing to Seller and it shall remain in full force and effect until it is fully and formally discharged in writing.

7. **Failure To Pay:** Should Buyer fail to pay promptly when any sum or sums are owed to Seller under the terms of the agreement or fail to keep, observe and perform the terms and provisions of this or any other agreement with Seller, then Seller as its option may declare any and all sums owed hereunder to be immediately due and payable. If any indebtedness now or hereafter due is placed in the hands of an attorney for collection or collected through probate, bankruptcy or other proceeding, Buyer agrees to pay reasonable attorneys' fees.
8. **Cross-Default Remedies:** It is agreed that should Buyer fail to pay any indebtedness owing to Seller as the same shall become due and payable to Seller including lease/rental agreements, equipment purchases, parts or labor, open accounts, promissory notes, advances, overdrafts, principal, interest, or any part thereof or any other mode or means, or should Buyer fail to comply with any of the covenants or obligations of any security agreement, lease/rental agreement, sales order, lease order, credit application, or any other documents securing or pertaining to such indebtedness, then such failure shall be a default and breach under this document and all other documents securing all other indebtedness's, and Seller shall be entitled to pursue any of the contractual remedies in such documents and any remedies allowed under applicable law.
9. **Notices:** Notices called for hereunder or required by law shall be deemed received by Buyer three (3) days after said notice is deposited in the United States mail, properly stamped and addressed to Buyer at its address(es).
10. **Jurisdiction, Venue and Choice of Law.** The Buyer expressly agrees if the Buyer purchases goods from the Seller from its places of business in the states of Colorado jurisdiction and venue of any dispute arising from this agreement shall be in Adams County, Colorado, the obligations shall be performable in Adams County, Colorado, and the laws of the state of Colorado shall govern the dispute. If the Buyer purchases goods from the Seller from its places of business in the state of New Mexico, jurisdiction and venue of any dispute arising from this agreement shall be in Bernalillo County, New Mexico, the obligations shall be performable in Bernalillo County, New Mexico, and the laws of the state of New Mexico shall govern the dispute. If the Buyer purchases goods from the Seller from its places of business in the state of Texas, jurisdiction and venue of any dispute arising from this agreement shall be in El Paso County, Texas, the obligations shall be performable in El Paso County, Texas, and the laws of the state of Texas shall govern the dispute.
11. **Revisions to Credit Application:** Buyer and Seller agree that this Credit Application may be changed from time to time by Seller, and that Buyer's credit arrangements with Seller shall be governed by the most current official Credit Application form (whether or not signed by Buyer) and said form shall govern all new accounts, pre-existing accounts, or any other debts now owed or hereafter owed by Buyer to Seller. The most current official Credit Application form may be downloaded at www.wagnerequipment.com/finance/.
12. **WAIVER OF JURY TRIAL.** Buyer hereby agrees not to elect a trial by jury-of any issue triable of right by jury-, and waives any: right to trial by jury-fully to the extent that any such right shall now or hereafter exist with regard to any dispute with Wagner Equipment Co. or Caterpillar Companies. This waiver of right to trial by jury is given knowingly and voluntarily by Buyer. Wagner Equipment Co. is authorized to file a copy of this document in any proceedings as conclusive evidence of this waiver by Buyer.