

# SJ Tractor and Equipment LLC

## TERMS AND CONDITIONS CONSTITUTING A PART OF REPAIR ORDER

This Repair Order ("Order"), including the front of this Order and these terms and conditions, constitute a contract for the Service Work for the Vehicle as described on the front side hereof, between the dealer SJ Tractor and Equipment LLC, ("Dealer") and the customer identified on the front side hereof ("Customer"). This Order is binding upon Dealer and Customer upon Customer's execution of the front side hereof or the commencement of the Service Work or any part thereof.

### 1. GENERAL:

- (a) ANY AND ALL ADDITIONAL, DIFFERENT OR CONFLICTING TERMS OR CONDITIONS SET FORTH IN ANY PURCHASE ORDER OR OTHER COMMUNICATION FROM CUSTOMER ARE OBJECTED TO BY DEALER AND SHALL NOT BE EFFECTIVE OR BINDING UNLESS SPECIFICALLY ACCEPTED IN A WRITING SIGNED BY A CORPORATE OFFICER OR AUTHORIZED MANAGER OF DEALER.
- (b) None of the terms and conditions contained in this Order may be added to, modified, superseded or otherwise altered except by a written instrument signed by a corporate officer or authorized manager of Dealer and delivered to Customer by Dealer. All Service Work shall be made only upon the terms and conditions herein, regardless of any terms and conditions that may be contained in any purchase order or other form of communication from Customer.

## 2. DISCLAIMER OF WARRANTY:

(a) Dealer shall perform the Service Work in a reasonable manner, provided, however, Dealer makes no warranty or guarantee of a result. Customer shall notify Dealer of any claim that Dealer did not reasonably perform the Service Work within ten (10) days after the discovery of same and in no event later than thirty (30) days after the performance of the Service Work. Within a reasonable time after notice from Customer, Dealer, at its sole option, shall correct the Service Work which was not reasonably performed. If Dealer is unable to correct such Service Work. Dealer, at its sole option, may refund to Customer the amount Customer paid to Dealer under this Order. These remedies shall be Customer's exclusive remedies for any breach of this Order by Dealer. Dealer shall not be responsible to correct: (i) any condition which reasonably could have been prevented or minimized by Customer, (iii) any condition constituting normal wear and tear; (iv) any condition caused by acts of God; (v) any condition caused by abuse or misuse; or (vi) any condition not caused by Dealer's failure to reasonably perform the Service Work.

(b) CUSTOMER HEREBY ACKNOWLEDGES THAT THE DEALER NOR ANYONE ACTING ON ITS BEHALF HAS MADE ANY AFFIRMATION OF FACT, REPRESENTATION, OR PROMISE RELATING TO THE SERVICE WORK THAT HAS BECOME A BASIS OF THIS TRANSACTION OR WHICH CREATES AN EXPRESS WARRANTY. TO THE FULLEST EXTENT PERMITTED BY LAW, DEALER DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, GOOD AND WORKMANLIKE SERVICES, INFRINGEMENT, AND THOSE ARISING OUT OF PERFORMANCE OR DEALING OR USAGE OF TRADE OR ANY OTHER IMPLIED WARRANTY WITH RESPECT TO THE SERVICE WORK.

(c) There are NO WARRANTIES, express or implied, made by the Dealer or the manufacturer of any parts or other goods incorporated in the Service Work, except for the manufacturer's written warranty applicable to such parts or goods. Such separate manufacturer's warranty shall be expressly IN LIEU OF any other express or implied warranty, condition or guarantee on said parts or goods. Customer hereby acknowledges that Dealer has not in any manner adopted the manufacturer's warranty, as a warranty of Dealer, including without limitation, by performing warranty work under the manufacturer's warranty, and Customer acknowledges, represents and warrants that it shall look solely to the manufacturer to perform or satisfy any obligation under the manufacturer's warranty.

3. LIMITATION OF LIABILITY: DEALER WILL NOT BE LIABLE TO CUSTOMER OR ANY OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR OTHER INDIRECT DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOST USE, LOST PROFITS, LOST SAVINGS OR OTHER COMMERCIAL OR ECONOMIC LOSS, EVEN IF DEALER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THEY ARE FORESEEABLE OR FOR CLAIMS MADE BY A THIRD PARTY. IN NO EVENT SHALL DEALER'S TOTAL AGGREGATE LIABILITY TO CUSTOMER OR ANY OTHER PARTY RELATING TO OR RESULTING FROM THIS ORDER OR THESE TERMS AND CONDITIONS EXCEED THE PRICE PAID BY CUSTOMER FOR SUCH SERVICE WORK. THESE LIMITATIONS APPLY WHETHER THE LIABILITY IS BASED ON CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY AND WHETHER THE ALLEGED BREACH OR DEFAULT IS A BREACH OF A FUNDAMENTAL CONDITION OR TERM, OR A FUNDAMENTAL BREACH. THESE LIMITATIONS APPLY TO THE FULLEST EXTENT PERMITTED BY LAW.

4 PAYMENT: Customer shall pay Dealer for the Service Work at Dealer's current standard rates for the Service Work, which shall be due in cash upon the tender by Dealer to Customer of the Vehicle upon which the Service Work is performed, unless and until credit terms for Customer are approved in a writing signed by a corporate officer or authorized manager of the Dealer. For Customers whose credit has been duly approved in advance by Dealer in a writing signed by a corporate officer or authorized manager of Dealer., the amounts due to Dealer for the Service Work shall be due in accordance with the Credit Agreement executed by Customer in connection with Customer's applying for credit with Dealer. The terms and provisions of any such Credit Agreement are hereby incorporated herein. If payment is not made in accordance with the foregoing terms, in addition to its other legal rights and remedies, Dealer shall (i) be entitled to charge Customer, effective from the date payment becomes due, interest at the rate of one and one-half percent (1.5%) per month or the highest rate allowable by law, whichever is less, until payment is made to Dealer by Customer, and (ii) be entitled to withhold delivery of the Vehicle until payment is made to Dealer by Customer.

5. SECURITY: Customer hereby grants Dealer a security interest in the Vehicle together with any replacements, additions or accessories thereto or the proceeds from the sale thereof (the "Collateral") to secure the amounts due to Dealer under this Order, any expenses and costs described in Paragraph 11 of this Order, and all other liabilities, debts and duties of Customer to Dealer now existing or hereinafter incurred, including any renewals or extensions thereof and substitutions therefor. Dealer hereby appoints Customer or Customer's attorney-in-fact to execute any and all documents and instruments, to file this Order or other documents as a financing statement and to take all other actions to perfect the security interest granted by Customer herein or to preserve and protect the Collateral. Customer shall also, when requested by Dealer, promptly execute and deliver to Dealer all other documents and instruments and take all actions to more fully evidence, protect, assure or to enforce the security interest granted by Customer to Dealer as described herein. In addition to all other rights and remedies Dealer may have, upon a default of Customer of any obligations or duties to Dealer, Dealer, by written notice to Customer, may require Customer to assemble the Collateral and deliver the Collateral to Dealer at a place designated by Dealer. Dealer shall give Customer reasonable notice of the time and place of any public sale of the Collateral or the time after which any private sale or other disposition of the Collateral is to be made. The requirement of reasonable notice shall be met if such notice is provided at least ten (10) days before the time of the sale or disposition.

6. INDEMNITY: Customer shall defend, indemnify and hold harmless Dealer, its agents, representatives and employees from and against, claims, liabilities, causes of action, costs and expenses, including but not limited to reasonable attorneys' fees and experts' fees arising out of the use, operation and maintenance of the Vehicle; any encumbrances against the Collateral; any violation of any applicable federal, state or local laws, statutes, ordinances or regulations by Customer, any environmental condition with respect to the Collateral; and any negligence or fault of Customer, Customer's agents, representatives or employees, or any person or entity for whose acts Customer is responsible, regardless of whether such claims, liabilities, causes of action, costs and expenses were in part caused by the fault or negligence of Dealer or Dealer's agents, representatives or employee. The indemnity obligations of Customer shall survive payment of this Order by Customer. The indemnity obligations of Customer hereunder shall not be limited by a limitation on amount or type of damages, compensation or benefit payable by Customer anyone

directly or indirectly employed by Customer, or a person or entity for whose acts Customer may be liable, under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

7. TAXES: Unless otherwise agreed to in a writing signed by Customer and Dealer, Customer shall be solely responsible for the payment of all sales, use, consumer and other taxes arising out of this Order mandated by any applicable federal, state and local laws, codes, ordinances, rules and regulations, whether currently in effect, scheduled to go in effect, or subsequently enacted, including but not limited to, any increase in such taxes taking effect after the date of this Order.

8. FAILURE OR DELAY OF DELIVERY; FORCE MAJEURE: Dealer shall not be liable for failure to deliver or delay in performance of the Service Work where such failure to deliver or delay is due, in whole or in part, to any cause other than the gross negligence of Dealer. Further, Dealer will not have any liability for any loss caused by extreme weather or other act of God, strike or other labor shortage or disturbance, fire, accident, war, terrorist act or civil disturbance, delay of carriers, failure of normal sources of supply, act of government, public health emergency, pandemic, or any other cause beyond the reasonable control of Dealer, including without limitation, any loss or damage to the Vehicle or any articles or property left in the Vehicle. Dealer is not responsible for loss of or damage to the Vehicle due to or arising from theft or any other cause except the sole negligence of Dealer. Dealer is not responsible for any loss or damage to articles of personal property that have been left in the Vehicle or for loss or damage to such personal property, including any cargo, materials or supplies carried on or in the Vehicle, whatever the cause.

9. NOTICES: It shall be a condition precedent to any liability of dealer, whether in contract, tort, or otherwise, arising out of this Order or any other dealings between the parties that Customer provide written notice to Dealer of any claim, controversy, or alleged breach of this Order in the time provided in Paragraph 2(a) hereof, and that Customer provide Dealer with a reasonable opportunity to cure the problems or issues giving rise to such claim, controversy, or alleged breach of this Order. Notwithstanding the foregoing, Purchaser must provide Dealer with notice of any claim, controversy, or alleged breach of this Order and demand for arbitration within twelve months of discovery or accrual of the same, whichever occurs first. It is understood and agreed by the parties that the foregoing provision is both a condition precedent to the right to take such

action, and a contractual modification to the statute of limitations for all actions, whether in contract, tort or otherwise, and failure to comply with this condition precedent and contractual statute of limitations shall be an absolute bar to recovery for any problems, issues, rights, claims or causes of action not specifically pled within the twelve month period. Whenever this Order requires that notice be provided to the other party, notice shall be deemed to have been validly given (i) if delivered in person to the party entitled to receive such notice, (ii) two (2) days after being sent by registered or certified mail, postage prepaid to the address indicated on the front side of this Order, or (iii) one (1) day after being sent via overnight mail through a respectable overnight delivery company.

**10. ARBITRATION:** Any controversy or claim arising out of or relating to this Order shall be decided by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, subject to the limitations and restrictions set forth in this Paragraph 10. A demand for arbitration shall be made within a reasonable time after a controversy or claim has arisen and in no event shall be made after the date when institution of legal or equitable proceedings based upon such claim or controversy would be barred by the applicable statute of limitations, subject to the restriction set forth in Paragraph 9. The arbitrator(s) shall have no authority to award punitive or other damages not measured by the prevailing party's actual damages. The parties acknowledge and agree that this Order evidences a transaction involving interstate commerce. Accordingly, the United States Arbitration Act (Title 9 of the United State Code) shall govern the interpretation, enforcement and proceedings pursuant to the arbitration provisions of this Order. The place of arbitration shall be in the American Arbitration Association's office closest to the location of Dealer designated on the front side hereof. The parties shall be entitled to discover all documents and information reasonably necessary for a full understanding of any relevant issue raised in the arbitration. Regardless of any term or provision herein to the contrary, claims for contribution or indemnity filed by a party in any lawsuit or action filed or asserted by a third party on account of personal injury or death of any person or damage to property shall not be subject to the terms and provisions of this Paragraph 10. The award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

11. EXPENSES AND COSTS: Should Dealer be required to institute any action, including any arbitration proceeding, to enforce any of its rights set forth in this Order, then Dealer shall be entitled to reimbursement from Customer for all expenses, including but not limited to, reasonable attorneys' and experts' fees, and costs incurred by Dealer in connection with such action. In the event Customer institutes any action, including any arbitration proceeding, against Dealer and in the further event Dealer prevails in such action, Customer shall pay Dealer the amount of all expenses, including but not limited to reasonable attorneys' and exerts' fees, and costs incurred by Dealer in connection with such action.

12. MISCELLANEOUS: This Order may not be changed, altered or amended in any way except in writing signed by a corporate officer or authorized manager of Dealer and an agent of Customer. Customer acknowledges and agrees that Customer has had an adequate opportunity to review and revise this Order and the Order shall not be construed against or in favor of Customer or Dealer, No waiver by either party of a breach or default hereunder will be deemed a waiver by such party of a subsequent breach or default of a like or similar nature. No waiver of any of these terms and conditions or any of the terms and conditions will be effective against Dealer unless in writing singed by a corporate officer or authorized manager of Dealer. No course of dealing or performance, usage of trade or failure to enforce any term or condition will be used to modify this Order. If any of these terms or conditions is unenforceable, such term or condition will be limited only to the extent necessary to make it enforceable, and all other terms and conditions will remain in full force and effect. This Order is deemed to have been entered in to in the state of the location of Dealer designated on the front side hereof and will be governed by the laws of the state of the location of Dealer designed on the front side hereof, without giving effect to the choice of laws provision thereof. The remedies expressly provided for in these conditions will be in addition to any other remedies that Dealer may have under the Uniform Commercial Code or other applicable law. Customer may not assign this Order without proper written consent of Dealer. These terms and conditions are for the exclusive benefit of Dealer and Customer and no other person will have rights hereunder.