

## **TERMS AND CONDITIONS**

(Alta Construction Equipment LLC; Alta Construction Equipment Illinois LLC; and Alta Construction Equipment of Florida, together, "ALTA")

**1. GENERAL.** These Terms and Conditions ("Terms") shall govern the sale or rental of products and services ("products") by ALTA to the customer indicated on the signature line ("Customer"). Customer's acceptance of ALTA's products represents acceptance in full of these Terms without modifications and shall be the contractual basis for any open-account relationship between Alta and Customer ("Account").

**2. PRICES AND TAXES.** All sales and prices quoted are F.O.B. Shipping Point. Customer shall be liable for and shall pay Alta for any sales tax, use tax, personal property tax, license and/or registration fees levied or based upon the sale, rental, or operation of the products.

**3. PAYMENT.**

**A. Billing Terms.** Customer agrees to accept ALTA's descriptive billing system accounting for all purchases made under any Account established by this credit application. ALTA's invoice number will be the reference number used for billing purposes to identify transactions regarding the products.

**B. Payment Terms.** All payments shall be in U.S. Dollars. Customer agrees to pay for all products purchased or rented under any Account established by this application. Equipment invoices are to be paid in full within twenty (20) days, and thirty (20) days from the date of the invoice for parts, service, and rental invoices. Customer agrees to notify ALTA in writing of any disputes within thirty (30) days of invoice date. ALTA may require full or partial payment in advance if ALTA, in its sole discretion, determines circumstances warrant such action.

**C. Default.** Customer shall be considered to be in "Default" under these Terms and Conditions if Customer fails to pay the full balance shown for each invoice listed on any statement of account by the Invoice Due Date shown on the statement, or fails to pay any other amount, including fees and finance charges when due, files for bankruptcy or similar protection (or has such proceedings filed against it), exceeds any applicable credit limit without prior authorization, defaults on any other agreement with ALTA or any of ALTA's affiliates, sells all or substantially all of its assets, undergoes a change of ownership or control or other significant reorganization of its business to which ALTA has not consented to in writing, suffers a material adverse change in business or financial condition about which ALTA has not been provided reasonable notice, or if Customer should violate any of these Terms and Conditions.

If the full invoice balance is not paid when due, Customer agrees to pay a time-price differential on the unpaid balance due, equal to 1.5% per month (18% per annum) or the maximum rate permitted by law, whichever is less, commencing on the invoice date and continuing until full payment is received by ALTA. In the event of Customer's Default, Customer agrees that ALTA may terminate any agreement ALTA may have with Customer, at ALTA's sole discretion, and that ALTA may demand immediate payment in full of any balance due. In the event of Customer's Default, Customer agrees to pay all costs of collection incurred by ALTA, including but not limited to, payment of ALTA's actual costs and actual attorney fees incurred in pursuit of collection.

**D. Application of Payment.** Payments received by ALTA shall be applied first against any accrued time price differential and then against unpaid invoice charges beginning with the oldest invoice.

**4. CONDITIONS OF SALE / MODIFICATION OF TERMS / SEVERABILITY.** Customer agrees that any purchase of products and/or rentals under this Agreement will be solely governed by these

Terms, those terms set forth in the "APPLICATION FOR CREDIT financed by North American Transaction Services," ALTA's invoices and account statements, and Customer agrees those documents shall constitute the entire Agreement between the parties. No other terms contained in any purchase order or other document shall apply to, or vary, these Terms even though such purchase order or different form may be submitted to or accepted by ALTA in connection with a transaction. These Terms shall not be modified unless in writing signed by a credit manager or an officer of ALTA. If any provision in these Terms is determined to be unenforceable, all other provisions of these Terms shall remain valid and enforceable.

**5. SECURITY INTEREST.** ALTA retains and Customer grants a purchase money security interest under the Uniform Commercial Code in all products purchased or rented under any Account established by this Agreement until each item is fully paid for. If Customer defaults in payment, ALTA may repossess and sell any or all of this collateral as permitted by law. ALTA may also enforce any lien rights available to ALTA in relation to any transaction with Customer. These remedies are not exclusive and shall not limit any rights or remedies which may otherwise be available to ALTA at law or in equity.

**6. DISCLAIMER OF WARRANTY.** ALTA's warranty obligations to Customer are specifically limited to the following, only: In the event products of ALTA are found to be defective within the warranty period established by the manufacturer, ALTA's only obligation and Customer's exclusive remedy shall be, at ALTA's option; 1) the repair, or 2) replacement of any defective part at ALTA's facilities, but only to the extent covered by the manufacturer's warranty. Shipping costs to ALTA's facilities shall be borne by Customer. Parts and labor for warranty work will be provided at no charge. All replaced parts shall be the property of ALTA. ALTA shall have no obligation to repair or replace: (1) products altered or repaired other than by ALTA; (2) products failing due to misuse, improper maintenance or operating environment, or negligence; (3) products damaged after delivery to Customer; (4) products with serial numbers which have been altered or removed; or (5) products for a Customer in Default. THE ABOVE WARRANTIES ARE LIMITED WARRANTIES AND THE ONLY WARRANTIES PROVIDED BY ALTA AND ALTA EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY ARISING OUT OF THE COURSE OF DEALING, CUSTOM OR USAGE OF TRADE. THE REMEDIES OF CUSTOMER'S WITH RESPECT TO THE PRODUCTS, WHETHER IN CONTRACT OR IN TORT, SHALL BE EXCLUSIVELY AS SET FORTH IN THIS AGREEMENT.

**7. ACCORD AND SATISFACTION.** Any payment by Customer of an amount less than the amount reflected as owing in the records of ALTA shall be deemed a partial payment. No endorsement or statement on any check or any writing accompanying such check or payment shall be deemed an accord and satisfaction and ALTA may accept such check or payment without prejudice to its rights to recover the full unpaid balance or pursue other remedies against Customer.

**8. DELAYS.** ALTA shall not be liable for any failure or delay in manufacture, shipment or delivery of products. Shipping dates are approximate and are based on conditions at the time of quotation.

**9. LIABILITY LIMITATIONS.** ALTA shall not be liable for incidental, indirect, special, punitive or consequential damages of any kind, whether based in contract or tort, including lost profits, loss of financing,

**ALTA'S TERMS AND CONDITIONS CONTINUED**

lost production, additional labor costs, loss of anticipated profits or goodwill, loss by reason of plant shutdown, nonoperation or increased expense of operation, service interruption, cost of replacement power, loss of use, cost of replacement products, claims by customers of any nature, loss of use of capital or revenue, lost revenue, lost bonding, fines or penalties of any nature, claims of delay or liquidated damages. Additionally, the liability of ALTA shall not exceed the purchase price or rental cost of the products furnished.

**10. SHORTAGES.** Shortage claims shall be considered waived unless made within ten (10) days of Customer's receipt of products.

**11. RETURNS.** ALTA shall not be obligated to accept returned products unless ALTA shipped them in error. Return requests must be made within ten (10) days of receipt of products by Customer or they shall be denied. In the event ALTA determines, in its sole discretion, to accept a return, there shall be a fifteen percent (15%) re-stocking fee.

**12. CHOICE OF LAW.** Customer and ALTA agree all transactions regarding products between Customer and ALTA shall be deemed to have been made in the state of the branch for which the transaction originated and shall be governed by the laws of the State of Michigan. Customer and ALTA further agree if Customer files suit, ALTA may elect arbitration at its sole discretion, which shall be held in Wayne County, Michigan, or in the surrounding area, under the rules of the American Arbitration Association and any award shall be binding and enforceable by a court of competent jurisdiction.

**13. INDEMNITY.** Customer agrees to indemnify, hold harmless and defend ALTA from and against any claim, action, loss, liability, expense, damage or judgment, including litigation costs and actual attorney's fees, that arise as a result of any actions or inactions by Customer, its agents, employees, consultants or representatives in connection with Customer's possession, use or operation of the product(s) or arising out of these Terms and/or Customer's business with Alta.

**14. ASSIGNMENT.** Any attempted assignment by Customer of its rights hereunder without ALTA's prior written consent shall be void. ALTA may assign any of its rights or delegate any of its duties hereunder.

**15. SOLVENCY.** If at any time ALTA requests written assurances with respect to Customer's financial condition, Customer shall deliver such assurances. ALTA may suspend delivery of products until receipt of such assurances, or until payment in full of the purchase price or rental is received. Customer's action in accepting ALTA's products shall constitute; (A) Customer's authorization to ALTA to execute on behalf of Customer any financing statements, security agreements and like documents and to take any other action in order to create, perfect and/or maintain ALTA's security interest in the products; and (B) Customer's appointment of ALTA as Customer's attorney-in-fact to prepare, sign, file and record, in Customer's name, any such documents. Such appointment is coupled with an interest and is irrevocable.

**16. CREDIT INVESTIGATION AND RELEASE ACKNOWLEDGEMENT.** Customer authorizes ALTA, its affiliates or its assignee(s) to investigate Customer's credit history and that of the principal owners of Customer by obtaining information from any source including credit reporting agencies and hereby authorizes the above named bank(s), financial institutions(s) or trade references(s) to release such information as necessary to establish credit, financing or leasing arrangements with ALTA or Customer-approved financing companies. For purposes of clarity, ALTA does not make credit decisions on behalf of any third-party financing companies. This shall be a continuing authorization for all present and future inquiries and disclosures of account information and credit experience.

**17. AUTHORIZED PURCHASES.** Customer agrees ALTA may rely upon all reasonable representations of persons representing

themselves to be Customer's authorized agents with authority to make purchases against Customer's Account unless Customer has provided to ALTA's Credit Manager in writing, a list of Customer's authorized purchasers. Purchases and/or deliveries are authorized by Customer to be made verbally.

**18. CUSTOMER PROVISION OF INFORMATION.** Customer agrees to provide ALTA, within seven (7) days of use of any equipment purchased or rented from ALTA on any construction project site, for each construction project the equipment has been used on; with all information ALTA may need to enforce any potential lien rights, including, but not limited to: (1) the address of the construction project where the equipment was used; (2) the legal property description of the construction project site where the equipment was used; (3) the full legal name, mailing address, and contact information of the owner/owners of the construction project where the equipment was used; and (4) all dates the equipment was used on the construction project. Customer also agrees to provide ALTA, within seven (7) days of use of any equipment purchased or rented from ALTA on any construction project site, for each construction project, all Notices then-existing in relation to the construction project, including, but not limited to, the Notice of Commencement.

**Print Name** \_\_\_\_\_

**Authorized Signature** \_\_\_\_\_

**Title** \_\_\_\_\_

**Date** \_\_\_\_\_

**PERSONAL GUARANTY**

For consideration, the receipt and sufficiency of which is acknowledged, the undersigned PERSONALLY, UNCONDITIONALLY, and IRREVOCABLY guarantees to ALTA the prompt payment of all amounts due from Customer to ALTA, as well as full, and prompt performance of all obligations from Customer to ALTA. It is agreed the undersigned shall be jointly and severally liable for all indebtedness and obligations owed by Customer to ALTA. If Customer defaults in the payment of any sums payable by Customer to ALTA, the undersigned will immediately pay such sums to ALTA without notice or demand, and will perform all such terms and conditions, and will also immediately pay to ALTA all damages, costs and expenses that may arise as a consequence of any default by Customer under the above Terms, including, without limitation, actual costs and actual attorneys' fees. This Personal Guaranty shall be a continuing Personal Guaranty and the liability and obligation of the undersigned shall be absolute and unconditional irrespective of any amendment, modification, supplement to, extension or renewal of the Agreement, and the undersigned waives any and all notice requirements. The undersigned agrees to pay ALTA's actual attorneys' fees and all costs and expenses incurred in any collection relative to the obligations hereby guaranteed or in enforcing this Personal Guaranty against the undersigned. This Guaranty shall be governed by, and construed in accordance with, the laws of the State of Michigan. The undersigned provides this Personal Guaranty as an inducement for ALTA to extend credit to Customer.

**Print Name** \_\_\_\_\_

**Driver's License #** \_\_\_\_\_

**Driver's License State** \_\_\_\_\_

**Social Security #** \_\_\_\_\_

**Signature** \_\_\_\_\_

**Date** \_\_\_\_\_