

Used Equipment Terms and Conditions

1. **TERMS AND CONDITIONS CONTROL.** The following terms and conditions (these "Terms and Conditions"), are agreed to by Granite Heavy Equipment Sales, LLC . ("Seller") and the purchaser ("Purchaser"). Seller's acceptance of any order is subject to these Terms and Conditions. No contrary, additional or different terms, provisions or conditions shall be binding on Seller unless requested by Seller in writing.
2. **COMPLETE AGREEMENT.** This document represents the full and final agreement of the parties regarding these Terms and Conditions.
3. **MODIFICATION.** Purchaser understands and agrees that (a) no modification or waiver of these Terms and Conditions shall be effective unless made by an authorized representative of Seller in writing addressed to Purchaser and specifically referring to these Terms and Conditions; (b) no course of action on the part of Seller shall be deemed to modify these Terms and Conditions; and (c) Seller's acknowledgment or acceptance of anything in writing from Purchaser which is in conflict with these Terms and Conditions (including any purchase order forms containing different terms or conditions) and any subsequent delivery of Goods shall not constitute a modification or waiver of these Terms and Conditions.
4. **GOODS SOLD.** The final invoice shall cover the specific quantities of items listed on the face thereof (the "Goods").
5. **ACCEPTANCE BY PURCHASER.** Purchaser shall accept or reject Seller's sales proposal within ten (10) days from the date thereof. Purchaser's acceptance of any proposal, however, shall not result in a contract of sale, and Seller shall not be bound by any invoice, until such invoice has been approved by a duly authorized representative of Seller.
6. **TERMS OF PAYMENT.** The purchase price for the goods sold shall be as shown on the face of the invoice, F.O.B. Seller's place of business, unless otherwise agreed to in writing by the parties. The purchase price shall be payable in United States currency in accordance with the terms outlined in the invoice. All invoices rendered in accordance with the agreed terms which are not paid within 30 days shall be subject to interest at the rate of 1.5% per month from the date of the invoice until it is paid.
7. **DELIVERY** All costs of transport borne by Purchaser. Purchaser shall bear all risk of loss with respect to the Goods from the moment the Goods are delivered to the carrier.
8. **DISCLAIMER OF WARRANTIES ALL GOODS ARE PURCHASED BY THE PURCHASER "AS IS" AND "WITH ALL FAULTS", AND SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS, OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER MATTER WITH RESPECT TO THE GOODS.** Any affirmation of fact or promises made by Seller shall not be deemed to create an express warranty that the Goods shall conform to such affirmation or promise. Any descriptions, samples and specifications with respect to goods offered for sale herein are not warranted by Seller to be accurate or complete. If a model or sample was shown to Purchaser, such model or sample was used merely to illustrate the general type and quality of goods sold by Seller and not to represent that the Goods would necessarily conform to such model or sample. Any description is for the sole purpose of identifying the Goods and no affirmation, promise, description, sample or model shall be deemed part of the basis of the bargain. **SELLER STRONGLY RECOMMENDS THAT PURCHASER CONDUCT AN ON-SITE INSPECTION OF THE GOODS SOLD HEREUNDER. SELLER SHALL NOT BE RESPONSIBLE FOR THE CONSEQUENCES OF PURCHASER'S FAILURE TO INSPECT THE GOODS OR FOR ANY INACCURACIES, INSUFFICIENCIES, OR OMISSIONS IN SUCH DESCRIPTIONS, SAMPLES AND/OR SPECIFICATIONS.** The employees or representatives of Seller are not authorized to make any statement or representation as to the quality, character, size, condition, quantity, etc. of the goods offered for sale inconsistent with these Terms and Conditions. Any such statements made will not be binding on Seller or be grounds for any subsequent claim.
9. **SALES - USED EQUIPMENT.** Purchaser understands that the Goods described herein have been used by persons other than Seller. Purchaser is warned and acknowledges that such Goods may bear or contain hazardous chemicals or other hazardous materials which may be or may become, by chemical reaction or otherwise, directly or indirectly hazardous to life, to health, or to

property (by reason of toxicity, flammability, explosiveness or for other similar or different reasons during use, handling, cleaning, reconditioning, disposal or at any other time after the article leaves the possession and control of Seller). Purchaser does hereby discharge Seller from any and all liability directly or indirectly resulting from the presence of the aforesaid chemicals or materials, including and not limited to any and all liability directly or indirectly resulting from the failure of Seller to give more specific warning with respect to individual articles or substances or from the inadequacy of any warning.

10. **DISCLAIMER OF LIABILITY.** Purchaser acknowledges that the Goods sold herein may be dangerous if improperly used. Purchaser acknowledges that it must contact the original manufacturer to obtain up-to-date installation and operation manuals and other information to insure the safe operation of Goods. Seller will not be responsible for any loss or injury resulting from defects or alleged defects in the Goods sold or from the subsequent use of the items. Purchaser agrees to defend any suit, action or cause of action brought against Seller, its directors, officers, employees and other agents and representatives by any person based on any such alleged injury, illness, or damage and to pay all damages, costs and expenses including, but not limited to, attorney's fees or legal expenses in connection therewith or resulting therefrom.
11. **INDEMNIFICATION.** Purchaser hereby agrees to defend, indemnify and hold harmless Seller its directors, officers, employees and other agents and representatives from and against any and all liabilities, judgments, claims, settlements, losses, damages, penalties, obligations and expenses, including attorney's fees and expenses and other professional fees and expenses, incurred or suffered by such person arising from, by reason of, or in connection with any loss, damage or injury to person or property arising from, by reason of or in connection with the Goods sold hereunder. This indemnification shall survive delivery of the Goods to Purchaser and any subsequent sale or other transfer of the Goods to a third party.
12. **INSURANCE AND SAFETY RULES.** Purchaser shall not move, load, transport or otherwise handle the Goods on Seller's premises without first having obtained insurance coverage satisfactory to Seller. Such insurance shall include "Workers Compensation", employer's liability, public liability (bodily injury, property damage and contractual liability) and automobile liability (bodily injury and property damage) insurance. Certificates of insurance evidencing the aforementioned insurance coverages shall be furnished to and shall be approved by Seller. Purchaser shall comply with Seller's plant safety rules and regulations.
13. **FORCE MAJEURE.** Seller's ability to ship the Goods may be affected in case of an act of force majeure, such as an act of God, war, sabotage, accidents, riots, fire, explosion, flood, strike, lockout, injunction, inability to obtain fuel, power, raw materials, labor, containers or transportation facilities, accident, breakage of machinery or apparatus, national defense requirements, or any other cause beyond the control of Seller. Seller shall have no liability for the failure to ship or deliver goods in the event of such force majeure and Seller's obligation to complete the delivery of Goods shall be suspended during such force majeure event and for a reasonable period of time thereafter; provided, however, that these Terms and Conditions shall otherwise remain in effect.
14. **PURCHASERS' CREDIT.** In the event Purchaser fails to remit payment for any one shipment when same becomes due, Seller reserves the right, among other remedies, either to terminate the contract or to suspend further deliveries. Should Purchaser's financial responsibility become unsatisfactory to Seller, in Seller's sole and absolute discretion, cash payments or security satisfactory to Seller, in its sole and absolute discretion, may be required by Seller before future deliveries of Goods are made by Seller.
15. **INSPECTION.** Purchaser has inspected the Goods or hereby acknowledges that Seller invited, urged and cautioned Purchaser to inspect the Goods and Purchaser declined to examine the same.
16. **LIMITATION OF DAMAGES.** Seller's liability with respect to Goods sold to Purchaser shall be limited to refunding any payments made by Purchaser (i) with respect to Goods returned to and accepted by Seller or (ii) with respect to Goods ordered but not shipped by Seller upon Seller's cancellation of the invoice. In no event shall Seller be liable for incidental, special, or

consequential damages, lost profits, or any expenses of Purchaser, including, but not limited to, shipping costs.

17. ASSIGNMENT. Purchaser may not assign its rights or delegate its performance in whole or in part under any invoice without the prior written consent of Seller and any attempted assignment or delegation without such consent shall be void.
18. GOVERNING LAW. All invoices and these Terms and Conditions shall be construed according to the laws of the State of NEW HAMPSHIRE. The parties agree that venue for any claim or controversy arising from or relating to invoices, these Terms and Conditions or the performance or breach thereof shall be exclusively laid and limited to NH state law.
19. TAXES. All taxes assessed to any order are the responsibility of Purchaser, including, but not limited to, local and regional sales taxes and personal property tax, or if applicable, Purchaser is to provide Seller with a valid tax exemption certificate. In the event that Purchaser either fails to pay the tax or other charges as agreed above or fails to provide a valid exemption certificate, Purchaser agrees to indemnify and hold Seller harmless from any liability and expense by reason of Purchaser's failure. Such indemnification shall include, but not be limited to, attorneys' fees and/or other legal expenses relating to such failure.
20. REPAIR. Seller is not obligated to do any repair work or modifications upon the Goods prior to sale or delivery. Any repair work or modifications performed by Seller on the Goods prior to sale shall be performed as a result of the sole request of Purchaser using designs and instructions provided by Purchaser. Accordingly, Seller shall not be liable for any alleged damages caused by or resulting from the repairs or modifications.
21. SELLER GIVES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE QUALITY, MERCHANTABILITY, WORKMANSHIP OR ANY OTHER MATTER WITH RESPECT TO ANY SUCH REPAIRS OR MODIFICATIONS.
22. SEVERABILITY. If any provision of the invoice or these Terms and Conditions is determined illegal or unenforceable, it shall not affect the enforceability of any other provision or paragraph of the invoice or these Terms and Conditions.
23. FEES AND COSTS. In the event any party institutes legal proceedings to enforce its respective rights arising out of the invoice and these Terms and Conditions, the prevailing party shall be entitled to the award of attorneys' fees and court costs, plus cost of executing, enforcing and/or collecting any judgment at all trial and appellate levels.
24. There is no cooling off period for sales.