

## RIGHTS AND RESPONSIBILITIES OF CREDIT TERMS

### 1. OPEN ACCOUNT PAYMENT TERMS:

Applicant agrees to pay for goods, services, leases, and other items charged to its open account upon receipt of invoice. **Payment is late if not received by WMC at PO Box 413071 Salt Lake City, Utah 84141 within ten (10) days of invoice date for machine sales and within thirty (30) days of invoice date on all other invoices.** If no invoice is issued or received, Applicant agrees to pay upon receipt of the monthly statement or within thirty (30) days of delivery of goods or services, whichever occurs first. All amounts charged to the Applicant's open account are Applicant's responsibility. In the event a credit account is not approved, or credit terms have been rescinded, all goods and services must be paid for at the time of delivery or order. A late charge of two percent (2%) per month will be assessed on the past due balance until it is paid in full. Applicant is required to advise WMC of any disputed transactions or statements within ten (10) days of receipt. Failure to notify WMC of any dispute with respect to defective goods or billing within such time shall constitute a waiver of all such disputes.

### 2. BUSINESS PURPOSE:

Applicant represents and warrants that all goods and services purchased, or leased, by Applicant from WMC are for business, commercial or agricultural purposes, and not for personal, family, or household use.

### 3. DEFAULT:

Payment shall be made when due. Failure to make a timely payment or otherwise comply with the terms of this agreement shall result in a default. In the event of a default, Applicant agrees to reimburse and pay WMC for all expenses, costs, collection agency costs, and attorney's fees incurred or expended by WMC as a result, whether or not suit is commenced. Applicant agrees that the laws of the State of Utah shall govern all transactions and agreements between WMC and Applicant and any enforcement or lawsuit relating to said transactions and agreements shall be brought in the state or federal court located in Salt Lake City, Utah. Applicant expressly waives sovereign immunity and all other venue rights and consents to the exclusive enforcement of this and any other agreement with WMC in Salt Lake County, Utah. If Applicant becomes insolvent or if Applicant breaches any term or condition herein, or breaches any other agreement between WMC and Applicant, or if for any reason WMC deems itself insecure, WMC may terminate the agreement and close the credit account immediately. **Applicant expressly waives sovereign immunity with respect to any default hereunder and under any other agreement with WMC.**

### 4. INDEMNITY:

Applicant shall indemnify and hold WMC harmless from any and all liability, claims, losses, damages or expenses, including without limitation attorney fees and costs, arising by reason of the death or injury of any person, or by reason of the damage or destruction of any property, caused or allegedly caused by any goods, machinery, parts, tools or services sold, leased or delivered by WMC, except as expressly otherwise agreed in writing by WMC and Applicant. Applicant agrees that in no event shall Applicant or any person claiming by, through or under Applicant, have the right to claim or recover consequential damages, including but not limited to lost profits or loss of use, concerning goods, machinery, parts, tools or services sold, leased or delivered by WMC. WMC makes no warranties, either expressed or implied, as to any goods, machinery, parts, tools or services whatsoever, except as may be contained in a separate writing signed by an authorized agent of WMC, including without limitation the condition of the equipment, its merchantability, or its fitness for any particular purpose. Operator training is the applicant's responsibility for all equipment.

## **5. GOVERNING DOCUMENTS:**

The Account Terms and Conditions set forth herein govern the credit relationship between WMC and the Applicant. Applicant agrees to be bound exclusively by the Account Terms and Conditions and all the term and conditions of WMC's underlying sale, lease, service, parts invoices and other agreements, all of which are intended to be incorporated herein by this reference. Applicant's issuance of a purchase order or acceptance of goods or services constitutes acceptance of the Account Terms and Conditions and WMC's other underlying agreements. Notwithstanding anything to the contrary in the purchase order or other documents(s) issued by Applicant, WMC rejects additional or different terms proposed by Applicant or any attempt by Applicant to vary the Account Terms and Conditions, or the terms of any of WMC's other underlying agreements. Any additions or modifications to these terms shall not be binding on WMC, unless they are set forth in a written document executed by a General Manager of WMC. Applicant acknowledges and agrees that if WMC receives a purchase order from Applicant, WMC has no obligation to verify its accuracy or validity.

## **6. NON-WAIVER:**

Nothing contained herein shall be construed as a waiver by WMC of any lien rights or any rights which it may now have, or hereafter acquire, by law nor shall anything stated herein be construed as an obligation to extend credit to Applicant under any circumstances . No waiver or modification of any part of this agreement shall be valid unless expressed in writing and executed by Applicant and WMC.

## **7. INSURANCE & RISK OF LOSS:**

Applicant, at its expense, shall keep leased/rented equipment insured for the term of any lease/rental and any renewals or extensions thereof, for the full retail fair market value thereof, against all risk of loss or damage including without limitation public liability and property damage. Applicant shall on request of WMC deliver to WMC the policies or evidence of insurance. All insurance policies must provide that no cancelation thereof shall be effective without thirty (30) days

prior written notice to WMC. Risk of loss of goods shall pass to Applicant as soon as the goods are properly loaded on the carrier. WMC's responsibility for shipment ceases upon delivery of the goods to a transportation company. Applicant shall carry such fire and other insurance as necessary to protect its interest and the interest of WMC. Any claim by Applicant for shortage in shipment shall be made within ten (10) days after receipt of the shipment. It is specifically agreed that the risk of loss shall not be altered by the fact that the conduct of either party hereto may constitute a default or breach.

## **8. SECURITY INTEREST:**

To secure payment and performance of all obligations to WMC, Applicant hereby grants WMC a continuing security interest in all 1 ) equipment, machinery, machinery attachments, and materials; 2 ) contract rights; 3 ) inventory, chattel paper, proceeds, and fixtures; and 4 ) products provided to Applicant by WMC.

## **9. ASSIGNMENT:**

No right or interest in this agreement shall be assigned by Applicant without the written permission of WMC, and no delegation of any obligation owed or of the performance of any obligation by Applicant shall be made without written permission of WMC. Any attempted assignment or delegation by Applicant shall be wholly void and totally ineffective for all purposes unless made in conformity stated. Applicant agrees that WMC may assign, sell or encumber all or any part of this account with or without notice to Applicant.

## **10. RENTAL/LEASE REPAIRS:**

Applicant, at its own cost, shall keep rental/leased equipment in good repair and working order. If Applicant fails to properly maintain and repair the equipment, WMC, whether during or after the rental/lease, may repair the equipment without prior notice to Applicant. Applicant shall be responsible for all damages to said equipment beyond normal wear and tear and for the cost of repair. Rent shall continue until the equipment is returned in good repair.

## **11. CHANGE OF TERMS:**

The terms and conditions of Applicant's accounts may be changed by WMC at any time, without written notice to Applicant.

## **12. MISCELLANEOUS:**

Any and all contracts, certificates, invoices and other writings signed on behalf of Applicant by any employee of Applicant shall be deemed to have been executed on behalf of Applicant with full authority. Applicant shall furnish to WMC, from time to time, promptly upon request, a) complete financial statements pertaining to Applicant's operations and financial condition, in such form and detail as WMC shall request; and b) all other information and documents that WMC may reasonably request. Applicant acknowledges that by transmitting a facsimile copy, electronic copy or photocopy of this document to WMC, CAA, Applicant, and the Guarantor (if applicable) agree to be bound by the terms and conditions contained in this document to the same extent as if an original were transmitted to WMC. Applicant agrees to an inactivity fee of \$60 per year against any credit balance presumed abandoned (no activity for 12 months) by Applicant. A \$30 service charge applies to each dishonored check, similar instrument, or electronic payment received by WMC. In case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. Applicant must notify WMC in writing of any change of ownership, the name of the business or structure of the business under which credit is established. WMC reserves the right to cancel its agreement to extend credit and to reevaluate the credit worthiness of the Applicant under its new name, ownership or structure. If WMC denies Applicant's application for business credit, Applicant has the right to a written statement for the specific reasons for the denial. To obtain such statement, please send a written request to WMC, PO BOX 413071 SLC, UT 84141-3071 within sixty (60) days from the date on which Applicant was notified of the denial. WMC will send Applicant a written statement with reason for the denial with thirty (30) days from receiving Applicant's written request.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit Applicants on the basis of race, color, religion, national origin, sex marital status, age (provided the Applicant had the capacity to enter into a binding contract); because all or part of the Applicant's income derives from any public assistance program; or because the Applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers our compliance with this law is the FTC Regional Office for the region in which we operate or the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580

