

## **TOROMONT CAT POWER SYSTEMS TERMS AND CONDITIONS OF SALE**

### **1. ACCEPTANCE**

This Quotation, if signed overleaf by an authorized signatory of Toromont Cat Power Systems, is an offer by Toromont Cat Power Systems, a division of Toromont Industries Ltd. ("Toromont Cat") to manufacture or supply goods or supply services or both as described overleaf on the terms and conditions set out on this page. This Quotation may be withdrawn at any time before it is accepted by Purchaser. This Quotation is open for acceptance by Purchaser only within 30 days of the date hereof. Acceptance is accomplished by Purchaser giving Toromont Cat written notice of acceptance of this Quotation by signing and returning to Toromont Cat a copy of this Quotation. This Quotation does not apply to subsequent orders from Purchaser for the same goods or services or both.

### **2. ENTIRE AGREEMENT**

This Quotation includes the terms and conditions set out on this page, any specifications and drawings attached hereto, and any additional written terms and conditions incorporated into and attached hereto. This Quotation, upon acceptance by Purchaser, constitutes the entire agreement between the parties. Other than the terms and conditions set out or incorporated herein, there are no agreements, undertakings, representations, warranties, covenants, conditions, terms or reservations, oral or written, between Toromont Cat and Purchaser respecting the subject matter of this Quotation. No change, alteration or modification of this Quotation is valid unless in writing and signed by an authorized signatory of Toromont Cat, and no course of dealings is deemed to alter the terms hereof. All sale of goods legislation, statutory warranties and warranties implied by law including fitness for purpose are expressly excluded.

### **3. TERMS OF AGREEMENT**

This Quotation supersedes all previous quotations for the same subject matter from Toromont Cat, and all purchase orders and terms and conditions from Purchaser. If Purchaser issues a purchase order or other document respecting its obligations to pay any sum set forth herein, the terms and conditions of that purchase order or other document do not supersede, amend or vary the terms and conditions of this Quotation, even if a copy of the purchase order is executed by Toromont Cat to facilitate payment of charges pursuant to this Quotation. If there is any conflict or inconsistency whatsoever between this Quotation, and the terms and conditions of a purchase order or other document of Purchaser, then the terms and conditions of this Quotation govern, regardless of which document was first executed and regardless of the terms of the purchase order or other document. Purchaser's receipt and acceptance of goods or services or both from Toromont Cat also constitutes acceptance of and consent to the terms and conditions of this Quotation. No consideration has been given to Toromont Cat for terms and conditions other than as found herein.

### **4. SUPPLY OF GOODS**

Toromont Cat hereby agrees to sell to Purchaser the goods and services described overleaf, with delivery by the delivery date specified overleaf for each item of the goods. Toromont Cat warrants and represents that it has good title to the goods, and the full right and authority to sell the goods to Purchaser. The goods upon sale to Purchaser are free and clear of all liens, claims, encumbrances, taxes, duties and charges except those taxes, duties and charges for which Purchaser is responsible pursuant to this Quotation. Title in the

goods transfers to Purchaser upon full payment of all amounts owed to Toromont Cat pursuant to this Quotation. Purchaser is required to maintain property insurance of sufficient value to cover the replacement value of goods supplied pursuant to this Quotation until the transfer of title in the goods from Toromont Cat to Purchaser. Purchaser will supply proof of such insurance upon request of Toromont Cat. Toromont Cat reserves the right to conduct monthly on-site visits of goods delivered to site for the purposes of fulfilling its contractual obligations and to review the state of such goods until title to the goods has transferred to the Purchaser. However, in no event does such right relieve Purchaser of any liability for damage or risk of loss to the goods.

### **5. SUPPLY OF SERVICES**

Toromont Cat shall perform all services described overleaf by the delivery date specified overleaf for each item of services except where otherwise provided in this Quotation. Toromont Cat shall perform its services in an efficient and top quality workmanlike manner in accordance with the usual and customary procedures followed by prudent operators in the industry performing similar work. Provision of engineering services to the Purchaser, if applicable, is intended solely for the project and purpose quoted, and shall in no event be applied to another project or purpose or relied upon by a third party. If quoted, time for services rendered is during regular business hours unless otherwise stated, and for the number of days or trips stated. Additional labour hours incurred by Toromont Cat to participate in site-specific safety training or orientation programs not disclosed by Purchaser at the time of quotation are subject to additional fees at the sole discretion of Toromont Cat. Current prevailing rates for additional regular time, overtime, premium time, travel time and mileage are available upon request. Subsurface or otherwise concealed conditions that materially affect this Quotation are subject to a price and/or delivery adjustment in accordance with Article 8 CHANGE ORDERS.

### **6. DELAY IN COMPLETION**

Each delivery date stated overleaf is approximate only and if Toromont Cat delays or fails to deliver goods or supply services or both due to any reason (except wilful misconduct) including without limitation as a result of an event of Force Majeure, change orders by Purchaser or any other action, inaction or interference by Purchaser, then Toromont Cat is not liable to Purchaser for any damages of any type whatsoever, including aggravated, consequential, indirect or punitive damages.

### **7. QUOTATION PERFORMANCE**

Toromont Cat may subcontract or assign any part or all its rights and obligations pursuant to this Quotation, without the consent of Purchaser. Toromont Cat remains liable for performance of all its obligations hereunder notwithstanding any such subcontract or assignment. Toromont Cat will ensure any such subcontractor or assignee is qualified to provide services hereunder.

### **8. CHANGE ORDERS**

Purchaser may modify, add or delete the quantities, types or specifications of any goods or services to be supplied pursuant to this Quotation provided that no such change is effective unless a written change order is accepted and signed by an authorized signatory of Toromont Cat. If a change order results in the imposition of costs or charges on Toromont Cat or an increase in price or time required for supply of any part of the goods or services or both to be supplied pursuant to this Quotation, then Toromont Cat may adjust the price, delivery date or both such costs or charges and such adjustments are binding upon Purchaser. If Toromont Cat makes no delivery date adjustment as a result of a change order, the delivery date for the

change order work is deemed to be the original delivery date applicable to the goods or services supplied hereunder. All change orders accepted by Toromont Cat are subject to all the terms and conditions of this Quotation as if the change order formed part of this Quotation.

## 9. SHIPPING

All goods are at the risk of Purchaser upon delivery of the goods to Purchaser, its agent or a carrier for shipment to Purchaser, whichever delivery first occurs. Toromont Cat at its own expense shall pack the goods for domestic shipment. Purchaser shall pay Toromont Cat its reasonable costs for special domestic or export packing. All shipments are FCA (Toromont Cat, Brampton, ON, Canada yard) Incoterms 2010 unless otherwise specified overleaf. All insurance charges and related taxes and duties are for Purchaser's account unless otherwise specified overleaf. Toromont Cat may deliver the goods in instalments. Unless Purchaser specifies the routing and method of shipment, Toromont Cat shall ship by a common carrier of Toromont Cat's choice. Accessibility of the delivery location and off-loading and placement of the goods remains the responsibility of Purchaser unless otherwise stated. Toromont Cat is not liable for any delays in delivery, non-delivery or damage or breakage during delivery after Toromont Cat has delivered the goods to Purchaser, Purchaser's agent or a common carrier.

## 10. STORAGE

In the event that Toromont Cat stores the equipment outlined in this quotation at its facility on behalf of the Purchaser (at the Purchaser's risk), the Purchaser will be charged at a rate of \$2000.00 per month or 1% of the total contract per month (whichever is greater) for as long as the equipment is in storage (payment is net 30 days from the end of each month in storage). All insurance on the equipment shall be the sole responsibility of the Purchaser. Upon placement in storage (at Toromont Cat or elsewhere), the equipment shall be deemed to have been delivered to the Purchaser and any payment milestones triggered by delivery or readiness to ship shall be due and invoiced (net 30 days), any and all outstanding milestones shall be deemed to have occurred 90 days from beginning of storage date and will be invoiced net 30 days at that time.

## 11. INSPECTION

Purchaser and its agents have reasonable access, upon prior written notice, to Toromont Cat, Brampton facility for the purpose of inspection and testing of goods. Purchaser is deemed to have accepted the goods unless it notifies Toromont Cat in writing of non-acceptance and the reasons therefor, within 14 days of Purchaser's receipt of the goods from Toromont Cat, Purchaser's agent or a common carrier, whichever event occurs first. Purchaser, upon giving such notice, shall with reasonable care hold the unaccepted goods at Toromont Cat risk and reasonable cost pending Toromont Cat disposition instructions. No inspection, acceptance or testing of the goods by Purchaser or its agents, or failure to test or inspect, relieves Toromont Cat of its warranty obligations hereunder.

## 12. PRICE

The prices quoted overleaf are based in part on cost of materials to Toromont Cat. Toromont Cat may reduce or increase the prices quoted overleaf prior to completion of manufacture or supply of the goods to Purchaser as a result of clerical errors in price calculation, changes in foreign currency rates if the price is not quoted in Canadian dollars or if materials are purchased outside of Canada, and changes in labour or materials costs. All prices quoted are in Canadian dollars, unless stated otherwise overleaf. The prices quoted do not include taxes, duties or any other charges of any kind levied by any governmental or regulatory authority on the prices or any part of

them, all of which taxes, duties and other charges are to the account of and shall be paid by Purchaser. Where price is on a cost plus basis, Toromont Cat shall maintain full accounts and records regarding the goods for 36 months from date of acceptance by Purchaser, and Purchaser may upon reasonable prior written notice inspect such accounts and records and Toromont Cat shall cooperate as may be necessary to permit Purchaser to conduct such inspections.

## 13. PAYMENT

This Quotation is subject to approval of the Purchaser's credit worthiness by Toromont Cat, as determined in its sole discretion. Unless specified otherwise overleaf, Purchaser shall pay, as a non-refundable deposit, 10% of the total price stated overleaf, plus 10% of all applicable taxes, duties and other charges required to be paid by Purchaser hereunder, to Toromont Cat immediately upon Purchaser's acceptance of this Quotation pursuant to Article 1 ACCEPTANCE. Toromont Cat is not obligated to commence work associated with this Quotation until such amount is paid. If commissioning services are included in this Quotation, the Purchaser shall pay 85% of the total price stated overleaf, plus 85% of all applicable taxes, duties and other charges required to be paid by Purchaser hereunder, to Toromont Cat within 30 days of readiness to ship as indicated by Toromont Cat. If commissioning services are not included, the Purchaser shall pay 90% of the total price stated overleaf, plus 90% of all applicable taxes, duties and other charges required to be paid by Purchaser hereunder, to Toromont Cat within 30 days of readiness to ship as indicated by Toromont Cat. The balance is due within 30 days upon Toromont Cat's completion of supply of services pursuant to this Quotation (if any) and/or upon 90 days from readiness to ship as indicated by Toromont Cat, whichever is earlier. Purchaser shall pay Toromont Cat interest monthly, calculated from the due date for payments at the rate of 1.5% per month (18% per year) on all amounts which are outstanding for more than 30 days after payment is due, until the date of actual payment, whether before or after judgment. Purchaser shall pay all costs and expenses of Toromont Cat incurred in collecting payment of any overdue amount or interest from Purchaser, including actual legal fees paid or payable by Toromont Cat. Toromont Cat may set off any amount owing from Purchaser to Toromont Cat against any amount due or owing to Purchaser. It is understood that no holdbacks shall be applied to any contract arising from this quotation except as specifically agreed to in a written contract between the parties.

## 14. PERSONAL PROPERTY SECURITY ACT

Purchaser hereby grants Toromont Cat a purchase money security interest in the goods supplied by Toromont Cat to Purchaser pursuant to this Quotation, and in the proceeds of those goods, pursuant to the Personal Property Security Act (Ontario) (or equivalent provincial legislation as applicable), as security for all amounts remaining unpaid by Purchaser pursuant to this Quotation. Toromont Cat may register financing statements pursuant to the Personal Property Security Act (Ontario) (or equivalent provincial legislation as applicable), and Purchaser hereby waives its right to receive copies of such financing statements or any financing change statements. Purchaser hereby acknowledges receipt of a copy of this Quotation.

## 15. LIENS

The provision of services and/or goods hereunder is subject to Toromont Cat's lien rights under the applicable lien legislation in the Province in which the services are provided and goods delivered including the Construction Lien Act and the Repair and Storage Liens Act in Ontario, as applicable. The Customer agrees to execute and deliver to Toromont Cat such documentation as necessary to perfect liens under the applicable lien legislation.

## 16. TAXES AND DUTIES

All invoices from Toromont Cat shall show any duty, sales tax, excise tax and goods and services tax separately, which amounts are additional to the prices quoted herein and which shall be paid by Purchaser. Upon request, Toromont Cat shall supply all documents Purchaser requires for duty drawback purposes. Upon request and at no charge Toromont Cat shall supply all customs invoices, declarations and evidence of import costs as Purchaser may reasonably require.

## 17. STOPPAGE

Toromont Cat may stop work at any time and withhold the supply of goods or services or both to be performed pursuant to this Quotation if any payment due from Purchaser to Toromont Cat is not paid to Toromont Cat by its due date, and if Toromont Cat exercises this stoppage right then this Quotation is deemed terminated pursuant to the Optional Termination provision set out below and Purchaser shall forthwith pay Toromont Cat all amounts required to be paid by Purchaser pursuant to that provision.

## 18. OPTIONAL TERMINATION

This Quotation may be terminated by Purchaser at its option, in whole or in part, at any time by written notice to Toromont Cat. Upon such termination, Purchaser shall pay Toromont Cat the price of all goods and services which have been delivered or provided pursuant to this Quotation, including work in progress in proportion to the total work to be performed under this Quotation, as reasonably determined by Toromont Cat, and all materials ordered by Toromont Cat for the performance of this Quotation plus any penalties or charges from suppliers. Purchaser shall also pay Toromont Cat an amount equal to 10% of the total price of this Quotation, which the parties hereto agree is a genuine, reasonable pre-estimate of the loss of profit and damages suffered by Toromont Cat as a result of this termination and not as a penalty. Upon payment pursuant to this clause, Toromont Cat releases all other claims it may have against Purchaser arising from the termination and shall sell and deliver the goods purchased hereunder free of liens, claims and encumbrances and otherwise subject to the provisions of this Quotation. If Purchaser incorrectly terminates this Quotation for breach, such termination is deemed to be a termination under this clause.

## 19. DEFAULT AND TERMINATION

Either party may terminate this Quotation in part as to goods or services specified by the terminating party, or in full, at any time by written notice to the other party if: (a) the other party does not cure a material breach of this agreement within 30 days after receipt of written notice of breach from the party giving notice; or (b) prior to completion of supply of goods or services or both, the party receiving notice becomes insolvent, assigns itself or is petitioned into bankruptcy or a receiver is appointed over any part or all of its business or other similar action is taken in respect of the party receiving notice. If Purchaser terminates this Quotation pursuant to this clause, Purchaser shall forthwith pay Toromont Cat all amounts required to be paid by Purchaser under the Optional Termination clause, except the 10% damages amount. Purchaser releases all claims it may have against Toromont Cat as a result of Toromont Cat's breach and the termination. If Toromont Cat terminates this Quotation pursuant to this clause, Purchaser shall pay forthwith to Toromont Cat all amounts which Purchaser is required to pay under the Optional Termination clause, plus any additional damages, of any nature, which Toromont Cat has suffered as a result of Purchaser's breach.

## 20. INTELLECTUAL PROPERTY AND PATENTS

Toromont Cat warrants and shall ensure that all goods supplied pursuant this Quotation do not infringe any patent, trade secret, copyright, trademark or other intellectual property right of another party in Canada or the United States. Toromont Cat shall hold harmless and indemnify Purchaser against any claim or legal action brought against Purchaser alleging that any goods supplied by Toromont Cat hereunder infringe any patent, trade secret, copyright, trademark or other intellectual property right. Toromont Cat shall defend any such claim or action and pay all costs and expenses arising therefrom. This provision does not apply to any goods manufactured to Purchaser's designs and specifications where such designs and specifications form the basis of the claim or action, in which case, Purchaser shall indemnify and hold harmless Toromont Cat against all claims and legal actions brought against Toromont Cat alleging that any goods supplied by Toromont Cat hereunder infringe any patent, trade secret, copyright, trademark or other intellectual property right. Purchaser shall defend all such claims and actions and pay all costs and expenses arising therefrom.

## 21. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

(a) If Toromont Cat generated or supplied the designs for any goods to be supplied pursuant to this Quotation, then this Quotation and such designs, including all drawings, specifications, engineering calculations, programming code, software and information relating to them, are confidential and the property of Toromont Cat or the originating third party, if applicable. Purchaser shall use such confidential materials only as required to install, operate and maintain the goods for their intended purpose. Such confidential materials may only be copied and distributed to the extent required to fulfill this purpose and cannot be modified without the written permission of Toromont Cat, which may be arbitrarily withheld. Purchaser shall not disclose any confidential materials without the prior written consent of Toromont Cat, which may be arbitrarily withheld. Purchaser shall give such other assurances and enter into such additional secrecy agreements as Toromont Cat may require.

(b) If Purchaser generated or supplied the designs for any goods to be supplied pursuant to this Quotation, then such designs, including all drawings, specifications, engineering calculations, programming code, software and information relating to them, are confidential and the property of Purchaser or the originating third party, if applicable. Toromont Cat shall use such confidential materials only as required to manufacture the goods. Such confidential materials may only be copied and distributed to the extent required to fulfill this purpose and cannot be modified without the written permission of Purchaser, which may be arbitrarily withheld. Toromont Cat shall not disclose any confidential materials without the prior written consent of Purchaser, which may be arbitrarily withheld. Toromont Cat shall give such other assurances and enter into such additional secrecy agreements as Purchaser may require. Upon completion of manufacture of goods based on Purchaser's designs, Toromont Cat shall upon request return to Purchaser all drawings, specifications, engineering calculations, programming code, software and information supplied by Purchaser respecting those goods. If no request is received within 30 days after delivery of goods, Toromont Cat may destroy Purchaser's drawings, specifications, engineering calculations, programming code, software and other printed or electronic information.

(c) The confidentiality obligations stated above do not apply to information which (i) is in the public domain; (ii) was known to the recipient prior to this Quotation; (iii) was disclosed to the recipient by a third party and without violating any obligations of confidentiality or non-disclosure; (iv) was independently developed by the recipient or

(v) is required to be disclosed by law, government, regulatory or court order. These Confidentiality provisions indefinitely survive the termination or completion of the supply of goods and services pursuant to this Quotation.

## **22. FORCE MAJEURE**

Toromont Cat is not liable for any delay or failure to perform any of its obligations pursuant to this Quotation by reason of any event beyond its control, including an Act of God, war, revolution, insurrection, rebellion, civil commotion, riot, terrorism, act of a public enemy, sabotage, labour dispute or strike or lockout or slowdown, explosion, fire, flood or storm or other natural catastrophe, equipment failure, power or other utility failure, inability to obtain sufficient, suitable or timely labour or materials, embargo, law or ordinance or regulation, or plant breakdown. If an event of Force Majeure prevents Toromont Cat from performance of its obligations for a period of less than 90 days, then Toromont Cat performance of its obligations is suspended for the period of Force Majeure and the delivery dates for goods are deemed extended by the period of Force Majeure. If an event of Force Majeure prevents Toromont Cat from performance of its obligations for a period of 90 days or more, then Purchaser may give written notice to Toromont Cat of termination, whereupon this Quotation is deemed terminated as if terminated by Purchaser pursuant to the Optional Termination provisions, but Purchaser is not obligated to pay the 10% damages required to be paid pursuant to those provisions.

## **23. EXPORT COMPLIANCE**

Goods supplied pursuant to this Quotation may be subject to laws and regulations governing the export of goods and technology from Canada and the United States. If goods supplied hereunder are to be exported from Canada, then Toromont Cat's performance of its obligations hereunder is subject to Purchaser obtaining the necessary approvals, licenses and permits required by Canadian and/or American law. Purchaser shall not ship or divert any of the goods hereunder, or any technical information relating thereto, to any country outside Canada in violation of Canadian and/or American export laws. Purchaser shall indemnify Toromont Cat from all claims, damages, costs and expenses resulting from any breach of these provisions by Purchaser.

## **24. LIMIT OF LIABILITY**

Under no circumstances will Toromont Cat be liable for damages or costs of any nature in a dollar amount above the value of any contract arising from this quotation should they be selected as the successful vendor. Neither party is liable for any aggravated, indirect, consequential, punitive or special damages, including loss of profits or loss of anticipated profits, however arising and sustained by the other party in the performance, purported performance or non-performance of this Agreement. Upon completion of the supply of goods and services by Toromont Cat pursuant to this Agreement, and subject only to the payment by Purchaser of the final monies owing to Toromont Cat, any outstanding claims previously communicated in writing and any applicable warranty obligations, both Purchaser and Toromont Cat hereby release and forever discharge the other party, and its affiliates, divisions, subsidiaries, predecessors, successors, assigns, agents, servants, employees, officers and directors, of and from any and all claims (whether in negligence, contract or otherwise), demands, actions, causes of action of every kind, known or unknown, arising out of or in any way related to this Agreement (including all loss or damage not now known or anticipated but which may arise in the future) and all effects and consequences thereof.

## **25. GENERAL**

This Quotation is governed by the laws of the Province of Ontario and its courts have exclusive jurisdiction over any disputes arising from this Quotation. Time is of the essence in the performance of

obligations under this Quotation. No waiver by either party of the full and strict performance of any obligation of the other party pursuant to this Quotation is effective unless in writing. All post-delivery obligations and indemnities survive any termination of this Quotation. Purchaser may not assign its rights and obligations under this Quotation without the prior written consent of Toromont Cat, which may be arbitrarily withheld. Consent to assignment does not release Purchaser from its obligations under this Quotation. All notices required or permitted to be given under this Quotation are properly given if in writing and delivered by whatever means to the parties at their addresses shown in this Quotation. Notices are deemed received only upon their actual arrival at the addressee's address as aforesaid. Either party may change its address by notice as aforesaid. This Quotation is binding upon and ensures to the benefit of the parties hereto and their successors and permitted assigns.