

SERVICES AND PARTS – TERMS AND CONDITIONS

1. **Exclusive Terms and Conditions.** These terms and conditions (the “Terms”) exclusively govern the provision of services and parts listed in the quote, statement of work, or work order (the “Quote”) issued by Thompson Tractor Co., Inc. (“Thompson”) to buyer (“Buyer”) and all services, repairs, inspections, parts, and other work performed or provided by Thompson in connection with the Quote (collectively the “Work”). Provision of the Work by Thompson is expressly conditioned upon Buyer’s acceptance of these Terms. Acceptance of the Quote, authorization by Buyer to commence the Work, acceptance of the Work, or payment for any Work constitutes Buyer’s acceptance of these Terms. Buyer’s issuance of a purchase order following receipt of Thompson’s Quote shall be deemed solely an authorization to proceed and shall not modify the Quote, these Terms, or constitute Thompson’s acceptance of Buyer’s terms and conditions. Any additional, different, or conflicting terms contained in any purchase order, portal, hyperlink, vendor onboarding materials, or other ancillary documents provided by Buyer are expressly rejected and shall have no force or effect, and Thompson’s failure to object to any such additional, different, or conflicting terms shall not constitute acceptance of Buyer’s terms and conditions. Thompson’s performance, invoicing, acceptance of payment, or other conduct shall not be deemed acceptance of any terms proposed by Buyer. In the event of any conflict between the Quote, these Terms, and Buyer’s purchase order or other document, these Terms shall control.
2. **Time for Completion of Work (Estimate Only).** Any time quoted for completion of Work is an estimate only; provided, however, that Thompson will use commercially reasonable efforts to perform all Work within a reasonable time consistent with the Quote. Buyer acknowledges and agrees that Thompson is a third-party distributor and not the manufacturer of any materials, parts, and other tangible goods (collectively “Parts”), and that Thompson does not and cannot control the manufacturing schedule of the Parts. To the extent within its control, Thompson will use its reasonable best efforts to order and facilitate the delivery of the Parts to meet the agreed upon delivery schedules, and will promptly notify Buyer of any delays or issues which may affect the delivery schedule.
3. **Taxes and Duties.** All prices are exclusive of, and Buyer is solely responsible for and shall pay, all taxes, tariffs, duties, import fees, levies, customs fees, charges, fees, or withholdings imposed, levied, withheld or assessed by any governmental authority with respect to, or measured by, the manufacture, sale, shipment, importation, use, or price of the Work (including interest and penalties thereon); provided, however, that Buyer will not be responsible for any taxes imposed on, or with respect to, Thompson’s income, revenues, gross receipts, personnel or real or personal property. Buyer acknowledges and agrees that any import fees listed on the Quote are estimates only, that import fees at the time of importing such Parts may differ from the estimate, and that Buyer will be responsible for the actual import fees in the event such import fees differ from the price estimated on the Quote.
4. **Payment Terms; Late Payment.** If Buyer has a credit account with Thompson, Buyer shall pay for the Work according to the terms of its credit account. If Buyer does not have a credit account with Thompson, or if Buyer’s credit account with Thompson is suspended, or if Buyer’s credit account with Thompson does not specify timing for payment, Buyer shall pay Thompson for Work as follows: (i) Buyer shall pay Thompson for each Part upon notice that such Part is ready for pickup or shipment; and (ii) Buyer shall pay Thompson for all services upon completion of such services. Buyer shall make all payments in US dollars to the account set forth by Thompson and using only such method of payment authorized by Thompson. Buyer shall pay interest on all late payments calculated daily and compounded monthly, at the lesser of the rate of one and one-half percent (1.5%) per month and the highest rate permissible under applicable law. Buyer shall reimburse Thompson for all reasonable costs incurred by Thompson in collecting or attempting to collect any past due amounts, including attorneys’ fees and court costs. In addition to all other remedies available in the Terms or at law, if Buyer fails to pay any undisputed amounts when due under these Terms, Thompson may suspend performance of any Work.
5. **No Set-off Right.** Buyer shall not have, and acknowledges that it does not have, any right to withhold, offset, recoup or debit any amounts owed (or to become due and owing) to Thompson in connection with the Work.
6. **Termination.** In addition to any remedies that may be available at law or provided by these Terms, Thompson may terminate the Quote immediately upon written notice (email acceptable) to Buyer, if Buyer: (a) fails to pay any amount when due and such amount is not paid within five days after notice (email acceptable) of non-payment is provided to Buyer; (b) has not otherwise performed or complied with any of these Terms in whole or in part and such breach continues for five days after notice (email acceptable) of such breach is provided to Buyer; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors. Notwithstanding any early termination of the Quote by Thompson, Buyer shall remain responsible for payment of all Work performed by Thompson through the termination date.
7. **Sea Trials.** Buyer shall be solely responsible for the operation, navigation, safety, seaworthiness, maintenance, security, and condition of the vessel for which the Work is performed (the “Vessel”). Buyer shall be solely responsible for navigation and operation of the Vessel during all sea trials, dock trials, test runs and other tests and operations of the Vessel (collectively

“Sea Trials”). Thompson’s participation in any Sea Trial shall not constitute assumption of command, custody, control, operation, navigation, or seaworthiness responsibilities.

8. Buyer Compliance. Buyer represents, warrants, and covenants that: (a) Buyer will cooperate with and provide timely access to the Vessel and any information necessary for Thompson to perform the Work; and (b) Buyer will comply with all applicable laws governing health and safety.

9. Limited Warranty; Disclaimer of Warranties.

a. 90 Day Limited Services Warranty. With respect only to services provided as part of the Work, Thompson represents and warrants for a period of ninety (90) days following completion of the Work: (A) that the Work will conform with the specifications set forth in the Quote; and (B) that the Work will be performed in a workmanlike manner in accordance with industry standards for similar services. Upon receiving a claim from Buyer during the warranty period alleging that services are non-conforming, Thompson shall determine, in its reasonable discretion, whether such services are nonconforming (and Buyer will provide Thompson access to inspect the Work to make such determination). If Thompson determines that its services are nonconforming to the limited warranty, Thompson will, at Thompson’s election, either: (a) correct, repair, or replace the non-conforming services at Thompson’s expense; or (b) refund the price paid for the non-conforming services; or (c) issue a credit to Buyer in the amount paid for the non-conforming services. The remedial actions listed in the prior sentence are Buyer’s sole and exclusive remedy for non-conforming services. Services that are corrected, repaired, or replaced will only be warranted for the time remaining in the original ninety (90) day warranty. Any warranty by Thompson shall be null and void and have no legal effect if Buyer does not pay for the Work at issue.

b. Transferrable Warranty on Parts (No Warranty By Thompson). With respect to Parts provided as part of the Work, Buyer hereby acknowledges and agrees that: (i) Thompson is not the manufacturer of any Parts and such Parts, if new, are only sold subject to the manufacturer’s warranty (if any); and (ii) Thompson makes no representation or warranty with respect to such Parts against latent or patent defects in material or workmanship, no warranty of performance, and no warranty that Parts will meet the requirements of any law, regulation, specification or contract term that provides for or requires specific capacity or methods of operation. To the extent transferable, Thompson agrees to transfer to Buyer any third-party manufacturer’s warranty of the Parts at the time of delivery. With respect to Parts described on a Quote as “used” or “other,” Buyer acknowledges and agrees that all such goods are sold “AS IS” and with all faults or defects except as otherwise expressly provided in any express warranty specifically set forth in a separate writing by Thompson.

c. No Warranty Regarding Buyer Supplied Equipment. Thompson makes no warranty regarding Buyer-supplied equipment, materials, or parts and Thompson shall not be responsible for failures related thereto. Thompson shall not be responsible for failures or damages resulting from pre-existing defects, corrosion, contamination, improper maintenance, prior repairs, hidden conditions, or components not repaired or supplied by Thompson.

d. DISCLAIMER. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 9(a): (i) NEITHER THOMPSON NOR ANY PERSON ON THOMPSON’S BEHALF HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER, EITHER ORAL OR WRITTEN, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED; AND (ii) BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY THOMPSON, OR ANY OTHER PERSON ON THOMPSON’S BEHALF; AND (iii) THOMPSON DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SEAWORTHINESS, WORKMANLIKE PERFORMANCE, AND WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.

10. Limitation of Liability. In no event shall Thompson be liable for loss of use, Vessel downtime, charter losses, lost profits, loss of revenue, diminution in value, demurrage, loss of contracts, loss of cargo, towing expenses, substitute vessel costs, or any consequential, incidental, indirect, special, punitive, or exemplary damages in connection with the Work, regardless of whether or not: (a) such damages were foreseeable, (b) Thompson was advised of the possibility of such damages; or (c) the legal or equitable theory (contract, tort or otherwise) upon which the claim is based, and notwithstanding the failure of any agreed or other remedy of its essential purpose. Except with respect to indemnification obligations set forth in Section 11 below, in no event shall Thompson’s aggregate liability arising out of or related to the Work, whether arising out of or related to breach of contract, tort (including negligence), strict liability, or otherwise, exceed the amount paid to Thompson for the specific Work giving rise to the claim.
11. Mutual Indemnity. Subject to the limitations set forth in the first sentence of Section 10 above, Thompson and Buyer shall each indemnify, defend, and hold harmless one another from and against any claims, liabilities, direct damages, losses, and

reasonable attorneys' fees resulting from bodily injury, death, or damage to tangible property caused by the indemnifying party's negligence or willful misconduct (each a "Claim"). The obligations set forth in this Section shall apply only to the extent of the indemnifying party's proportionate responsibility for the Claim and shall not apply to the extent such Claim is caused by the party to whom indemnification is owed.

12. Assumption of Risk. Risk of Loss. Risk of loss, damage, theft, or destruction of Parts transfers to Buyer upon delivery of Parts to Buyer.
13. Force Majeure. Thompson shall not be liable for any failure or delay in performing the Work caused by any event beyond its reasonable control, including, but not limited to, any act of God, natural disaster, hurricane, war, terrorism, civil disturbance, epidemic, pandemic, manufacturer delay, shipping or transportation delay, vessel access restriction, port delay, or government action.
14. Arbitration. Thompson and Buyer acknowledge that the transaction between them involves "commerce" as that term is used in the Federal Arbitration Act ("FAA"), 9 U.S.C. Section 1 et seq. Thompson and Buyer agree that all disputes, controversies, or claims of any kind and character whatsoever arising out of or related to the Quote or the Work, any relationship that results from any of the foregoing, or any dispute regarding the validity of this arbitration clause, whether based in tort, contract, warranty, or statutory or strict liability, shall be submitted to binding arbitration under the FAA in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). The location of any such arbitration shall be at a location mutually agreed upon by Thompson and Buyer negotiating in good faith. In the event a location cannot be agreed upon, the location shall be Birmingham, Alabama. Thompson and Buyer shall negotiate in good faith to select an arbitrator in a reasonable time following either party's request for arbitration. If an arbitrator cannot be mutually agreed upon, the arbitrator shall be selected by the AAA in accordance with its rules. The arbitrator shall be well versed in maritime issues involving repairs of vessels. Thompson and Buyer shall each be responsible for their own attorneys' fees and costs except as awarded by the arbitrator. Judgment on the arbitrator's award may be entered by any court of competent jurisdiction.
15. Miscellaneous. The captions and headings in these Terms are meant for convenience and general reference only and shall not be construed to define or limit the scope or intent of the provisions of these Terms. If any word, sentence, or other provision of these Terms is found by a court of competent jurisdiction to be totally or partially invalid, illegal, or unenforceable: (i) the same will be deemed to be modified or restricted to the extent and in the manner necessary to make it valid, legal or enforceable; or (ii) only if unable to be so modified or restricted, it will be excised from these Terms without affecting any other provision of these Terms, which will be enforced to the maximum extent provided by law as if the modified or restricted provision was originally included or as if the excised provision was originally excluded. Any rule of construction that ambiguities are to be resolved against the drafting party shall not apply in interpreting these Terms or the Quote. Buyer acknowledges that it has been provided a full and fair opportunity to review and consider these Terms and the Quote prior to purchasing the Work. No waiver of any provision of these Terms by Thompson will be effective unless in writing and signed by an authorized officer of Thompson. None of the following constitutes a waiver or estoppel of any right or remedy arising from these Terms: (a) any failure or delay by Thompson in exercising any right or remedy or in enforcing any condition under these Terms; or (b) any act, omission or course of dealing between Thompson and Buyer. Thompson's remedies hereunder shall not be exclusive, but shall be cumulative and in addition to all other remedies existing at law or in equity. The receipt, acceptance and/or negotiation of, or any endorsement on, any check or amounts received by Thompson will not operate to waive or release, in whole or in part, any claim of Thompson against Buyer.
16. Governing Law; Jury Waiver. These Terms, the Quote, and the Work, shall be governed by and construed in accordance with the laws of the State of Alabama, without regard to conflict of laws principles. THOMPSON AND BUYER EACH HEREBY WAIVE ANY RIGHT IT MAY HAVE TO A JURY TRIAL ARISING FROM ANY DISPUTES RELATED IN ANY WAY TO THESE TERMS.
17. Amendment; Entire Agreement. No amendment to or modification, rescission, or termination of the Quote or these Terms shall be effective unless it: (a) is in writing; (b) specifically identifies the Quote and these Terms; (c) specifically states that such document amends, modifies, rescinds, terminates or supersedes the Quote and these Terms; and (d) is accepted and signed by an authorized representative of Thompson. Buyer may not transfer or assign the Quote or any of its rights, duties, or obligations without the prior written consent of Thompson, and any transfer or assignment in violation of this provision shall be void. The Quote together with these Terms constitutes the entire agreement between Thompson and Buyer regarding the Work and supersedes all prior and contemporaneous understandings and agreements, both written and oral, regarding the Work.