



# SALES AGREEMENT

DATE Jan 08, 2021

Butler Machinery Company, 3401 - 33rd Street S, Fargo, North Dakota 58104 Phone: 701-280-3100

PURCHASER <u>CITY OF HARRISBURG</u>			
STREET ADDRESS <u>PO BOX 26</u>		<SAME>	
S O L D	CITY/STATE <u>HARRISBURG, SD</u>	COUNTY <u>LINCOLN</u>	S H I P
	POSTAL CODE <u>57032-0026</u>	PHONE NO. <u>605-743-5872</u>	
T O	EQUIPMENT <u>TOBY HUIZENGA - PHONE NO. 605-231-6168</u>	T	
	PRODUCT SUPPORT <u>TOBY HUIZENGA - PHONE NO. 605-231-6168</u>	O	
INDUSTRY CODE: <u>GOVT. - CITY - MUNICIPAL(950 )</u>		PRINCIPAL WORK CODE _____	
CUSTOMER NUMBER <u>C40185</u>		Sales Tax Exemption # (if applicable) <u>1014-4081-RG</u>	CUSTOMER PO NUMBER _____
PAYMENT TERMS: _____ (All terms and payments are subject to Finance Company - OAC approval)			
T E R M S	NET PAYMENT ON INVOICE <input type="checkbox"/>	CASH <input type="checkbox"/>	FINANCIAL SERVICES <input type="checkbox"/>
	CONTRACT <input type="checkbox"/>		LEASE <input type="checkbox"/>
	CASH WITH ORDER _____	BALANCE TO FINANCE _____	CONTRACT INTEREST RATE <u>0</u>
PAYMENT PERIOD _____		PAYMENT AMOUNT <u>0.00</u>	NUMBER OF PAYMENTS _____
		OPTIONAL BUY-OUT <u>\$0.00</u>	

DESCRIPTION OF EQUIPMENT ORDERED / PURCHASED			
MAKE: CATERPILLAR	MODEL: 299D3 C3H3	YEAR: 2021	NEW <input checked="" type="checkbox"/> USED <input type="checkbox"/>
STOCK NUMBER: M029585	SERIAL NUMBER: DY903980	APPROX HOURS: 3	
299D3 CTL DCA6C	LANE 2 ORDER		
299D3 COMPACT TRACK LOADER	INSTRUCTIONS, ANSI, USA		
CAB PACKAGE, ULTRA	FILM, SELF LEVEL, ANSI		
DEBRIS MGMT PKG, NONE (DM0)	TRACK, RUBBER, 450MM(17.7 IN)BAR		
BATTERY, EXTRA HD, DISC, 1000 CCA	RIDE CONTROL		
REAR LIGHTS	FILM, RIDE CONTROL, ANSI		
DOOR, CAB, POLYCARBONATE	SERIALIZED TECHNICAL MEDIA KIT		
SEAT BELT, 2"	PACK, DOMESTIC TRUCK		
PRODUCT LINK, CELLULAR PL243	SHIPPING/STORAGE PROTECTION		
QUICK COUPLER, HYDRAULIC	COUNTERWEIGHT, MACHINE, EXTERNAL		
CERTIFICATION ARR, P65	BUCKET-GP, 86", BOCE - X053290		
HEATER, ENGINE COOLANT, 120V	BUCKET-GP, 86", BOT		

TRADE-IN EQUIPMENT		EXCLUSION OF PRODUCT WARRANTY	
MODEL: _____	YEAR: _____	SELL PRICE	\$76,570.65
VALUE: _____	AMOUNT: _____	EXT WARRANTY	Included
MODEL: _____	YEAR: _____	NET TRADE DIFFERENCE	\$76,570.65
VALUE: _____	AMOUNT: _____	BALANCE DUE	\$76,570.65
MODEL: _____	YEAR: _____	<p>1. EXCLUSION OF IMPLIED WARRANTIES: BUTLER MACHINERY COMPANY / NCRL LLC, as Seller, and the above Buyer agree that any IMPLIED WARRANTIES OR MERCHANTABILITY OR IMPLIED WARRANTY OR FITNESS FOR A PARTICULAR PURPOSE and all other warranties, express or implied, except for any express written warranties applicable hereto, are EXCLUDED from this transaction by BUTLER MACHINERY COMPANY / NCRL LLC AND ANY OF THEIR AFFILIATES and shall not apply to any product sold hereunder.</p> <p>2. Buyer further agrees that his SOLE AND EXCLUSIVE remedy, if any, against BUTLER MACHINERY COMPANY / NCRL LLC AND ANY OF THEIR AFFILIATES and Manufacturer shall be as contained in any express written warranty applicable hereto, if any. To the extent applicable, Buyer acknowledges that he has received, read, understands and accepts the terms contained therein. The Buyer agrees that no other remedy (including but not limited to claims for LOST PROFITS, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, OR ANY CAUSE, LOSS, ACTION, CLAIM OR DAMAGE WHATSOEVER OR INJURY TO PERSON OR PROPERTY OR ANY OTHER CONSEQUENTIAL, PUNITIVE, ECONOMIC OR INCIDENTAL LOSS) shall be available to him or any of his successors or assignees.</p>	
MODEL: _____	YEAR: _____		
MODEL: _____	YEAR: _____		
MODEL: _____	YEAR: _____		
<p>ALL TRADE-INS ARE SUBJECT TO EQUIPMENT BEING IN "AS INSPECTED CONDITION" BY VENDOR AT TIME OF DELIVERY OF REPLACEMENT MACHINE PURCHASE ABOVE.</p> <p>PURCHASER HEREBY SELLS THE TRADE-IN EQUIPMENT DESCRIBED ABOVE TO THE VENDOR AND WARRANTS IT TO BE FREE AND CLEAR OF ALL CLAIMS, LIENS, MORTGAGES AND SECURITY INTEREST EXCEPT AS SHOWN ABOVE.</p>			

<input checked="" type="checkbox"/> CATERPILLAR EQUIPMENT WARRANTY	INITIAL _____	<input type="checkbox"/> USED EQUIPMENT WARRANTY	INITIAL _____
<p>The customer acknowledges that he has received a copy of the BUTLER MACHINERY COMPANY / NCRL LLC/Caterpillar Warranty and has read and understood said warranty. Scheduled oil sampling (S.O.S.) is mandatory with this warranty. The customer is responsible for taking oil samples at designated intervals from all power train components and failure to do so may result in voiding the warranty.</p> <p>Warranty applicable including expiration date where necessary:  <u>24 Months / 2000 Hours Standard Warranty excluding Mileage</u></p> <p><u>299-60 MO/2000 HR PREMIER</u></p>		<p>When equipment covered by this order is used, BUYER AFFIRMS AND ACKNOWLEDGES THAT HE HAS EXAMINED THE EQUIPMENT and is buying the equipment "AS IS" and with NO OTHER REPRESENTATIONS OR WARRANTIES, unless otherwise specified in writing below.</p> <p>Warranty applicable: _____</p>	

CSA: \_\_\_\_\_

NOTES: Caterpillar Sourcwell Contract #032119-CAT / City of Harrisburg Sourcwell ID# 110532

### THIS AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS ON THE REVERSE

Accepted by BUTLER MACHINERY COMPANY / NCRL LLC at Fargo, ND

PURCHASER

BY \_\_\_\_\_ DATE \_\_\_\_\_

Authorized Signature

TITLE \_\_\_\_\_

SALESMAN Phil Melmer

BUTLER MACHINERY COMPANY / NCRL LLC

APPROVED AND ACCEPTED ON \_\_\_\_\_

CITY OF HARRISBURG

BY \_\_\_\_\_ PURCHASER

SIGNATURE \_\_\_\_\_

TITLE \_\_\_\_\_ BUYER

**THIS ORDER IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

1. **Acceptance.** Seller reserves the right to accept or reject this order and shall not be required to give any reason for non-acceptance. This order when accepted by Seller shall become a binding contract but shall be subject to strike, lock-outs, accidents, fire, delays in manufacture or transportation, acts of God, embargos, or governmental or administrative action or any other causes beyond the control of Seller whether the same as or different from the matters and things hereinbefore specifically enumerated, and any of said causes shall absolutely absolve Seller from any liability to Buyer under the terms hereof.
2. **Security Interest.** Unless the machinery is paid for in full in cash at time of delivery, Buyer grants and Seller retains a continuing security interest in such machinery within the meaning of the Uniform Commercial Code together with all and any substitutions, additions or accessions, and in any and all proceeds from the use, sale, exchange or disposal thereof (collectively, the "Equipment"). Buyer, prior to or after delivery, specifically agrees to enter into and execute a Financing Statement, or statements, and a Security Agreement with Seller, the entire balance of the purchase price shall, solely at Seller's option, become due and payable, and Seller shall have all remedies available to it provided for and set out in the Uniform Commercial Code, and, solely at Seller's option, this order may be treated by Seller as a Security Agreement insofar as the law allows and insofar as Seller's security interest is perfected. Buyer further agrees to execute and deliver to Seller any other Notes, or evidences of indebtedness that may be required by Seller. However, any Note taken herewith shall evidence indebtedness only and is not to be considered or construed to be payment for said Equipment.
3. **Risk of Loss/Delivery.** Seller's responsibility for shipment ceases upon delivery to a carrier for shipment to Buyer and Buyer shall bear the risk of loss at such point, including, but not limited to, any claims for shortages, delays or damages occurring thereafter, all of which shall be made by the Buyer direct to the carrier. Buyer shall make any claims against the Seller for shortages in shipments within fifteen days after receipt of shipment and absent such claims Buyer will be deemed to acknowledge receipt in full.
4. **Insurance.** If the Equipment is not paid for in full at time of delivery, Buyer shall, at Buyer's cost, keep the Equipment insured against all risks and perils customarily covered under "all risk" policies including, but not limited to, loss or damage by theft, vandalism, malicious mischief, fire, flood, windstorm, and explosion, and with an extended coverage endorsement covering all such other risks and perils in an amount satisfactory to Seller in which Seller is named as mortgagee and loss payee, and shall furnish proof of such coverage satisfactory to Seller, which shall not be cancelable without thirty day's written notice to Seller.
5. **Buyer's Representations and Warranties.** To induce Seller to enter into this order, Buyer represents, warrants and covenants as follows: (a) if Buyer is a corporation, then it is duly organized, existing and in good standing under the laws of the state of its incorporation and it has full power and authority to enter into this order; and the execution, delivery and performance of this order have been duly authorized; (b) if Buyer is a limited liability company, then it is duly organized and existing under the laws of its state of organization/formation and it has the full power and authority to enter into this order; and the execution and delivery of this order on behalf of Buyer by the person whose signature appears on this order, and the performance of this order, have been duly authorized; (c) if Buyer is a partnership, then it has full power and authority to enter into this order and the execution, delivery and performance of this order have been duly authorized by all of the partners of the partnership; (d) if Buyer is an individual, then he or she has full power and authority to enter into this order; (e) this order has been duly entered into and delivered and constitutes a legal, valid and binding obligation of Buyer enforceable in accordance with its terms; and (f) all financial statements, certificates or other information submitted to Seller concerning Buyer's financial condition, are in all respects accurate, true and complete.
6. **Events of Default.** If the Equipment is not paid for in full at time of delivery, the occurrence of any of the following Events of Default shall, solely at the option of the Seller and without necessity for demand or notice, constitute a default hereunder, entitling Seller to pursue its remedies under Section 7 of this order: (a) if Buyer fails to pay any of the installments of the Secured Obligations when and as due and payable, or to accept delivery of any of the Equipment or has made any untrue representation to Seller in connection with this transaction; (b) if Buyer does any act or makes any use of the Equipment that is prohibited by this order, or otherwise violates any provision hereof; (c) if the Equipment is levied on, seized or attached; (d) if Buyer sells or disposes of any of the Equipment without Seller's permission, or becomes bankrupt or insolvent, or if a petition in bankruptcy is filed by or against or if a receiver is appointed for, Buyer or any guarantor or endorser of the Secured Obligations; (e) if any default shall occur under any other agreement between Seller and Buyer; (f) if, in the opinion of Seller, either the market value or the actual value of the Equipment is insufficient to provide an adequate margin of security with respect to the Secured Obligations; or (g) if Seller shall reasonably deem itself insecure or in good faith believes that the prospect of payment or performance is impaired and Buyer fails, on Seller's demand, to provide additional security satisfactory to Seller.
7. **Remedies of Default.** Upon the occurrence of an Event of Default, Seller may, solely at its option, exercise any or all of the following rights and remedies, all of which shall be cumulative to the greatest extent permitted by applicable law: (a) if the default results from Buyer's failure to do or perform any of the acts, or things required to be done, by Buyer under the terms of this order, Seller may do and perform any such acts on the Buyer's behalf, and all money advanced or paid by Seller in doing so shall be added to and be deemed a part of the balance due hereunder and shall be subject to a finance charge calculated at the same rate as the finance charge set forth on the reverse side hereof; (b) Seller may without notice elect to accelerate and treat the entire remaining balance, together with all late and delinquency charges, as immediately due and payable; (c) Seller may require Buyer to store the Equipment, at Buyer's own cost and risk, on behalf of Seller, and such storage shall be in such a manner as to prevent any deterioration of the Equipment, and shall be for a reasonable time pending the sale or other disposition of the Equipment; (d) Seller may avail itself of any or all remedies provided by the laws of the state in which the Equipment is located or by the laws of the State of North Dakota; and (e) Seller shall be entitled to recover from Buyer Seller's fees and expenses, including but not limited to attorneys' fees and expenses, and reasonable expenses of retaking, holding, preparing for sale or lease, selling or leasing the Equipment and its bond premiums and court costs. All amounts in default shall bear interest and finance charges as provided herein from the date of default until paid in full.
8. **USED MACHINE WARRANTY AND DISCLAIMER OF WARRANTIES.** The Seller agrees to stand \_\_\_\_ per cent of the cost of labor and material for repairs made by, or approved in advance by Seller, to correct mechanical failure, due to defective parts or workmanship, which prevents USED equipment sold pursuant to this order from functioning normally during the first \_\_\_\_\_ service meter units or \_\_\_\_\_ days, whichever comes first, of operation, dated from day of delivery. The cost, if any, of transporting said used machine from and to the Seller's place of business shall be paid by the Buyer. This warranty is void unless claim is made by Buyer to Seller within three (3) days after discovery of the defect upon which the claim is based. This warranty shall not apply to parts made unserviceable due to lack of lubrication, neglect, abuse, improper operation, application, or installation by Buyer, overwork, or for normal wear and tear. (In addition to any other items that are not covered by this warranty, tires and undercarriage components are not covered by this warranty.) No guarantee is made or authorized by Seller, other than that set forth above. Seller, not being the manufacturer of the machine, nor the manufacturer's agent, makes no warranty against patent or latent defects in material, workmanship or capacity of the Equipment, nor warranty that the Equipment will satisfy any requirements of any law, rule, specification or contract which provides for specific equipment or operators, or special methods; all liabilities arising therefrom are assumed by Buyer at its sole risk and expense. **THIS USED EQUIPMENT WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND SELLER DOES NOT MAKE AND HEREBY DISCLAIMS ANY AND ALL SUCH OTHER WARRANTIES.** If the blank items are not filled in or marked "N/A", SELLER DOES NOT MAKE ANY WARRANTY, USED OR OTHERWISE. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES; AND NO CAUSE, LOSS, ACTION, CLAIM OR DAMAGE WHATSOEVER OR INJURY TO PERSON OR PROPERTY OR ANY OTHER CONSEQUENTIAL, ECONOMIC OR INCIDENTAL LOSS SHALL BE AVAILABLE TO BUYER.
9. **WARRANTY WORK AT OTHER THAN REGULAR TIME HOURS.** Under the terms of this order Seller is obligated to make warranty repairs during regular working hours at regular time labor rates. If, at the request of Buyer, such warranty repairs are performed during overtime hours, Seller shall charge Buyer the difference between amounts computed at Seller's regular time rates and overtime labor rates and shall be paid this amount by Buyer as a condition of this order.
10. **Liability and Indemnification.** Seller shall not be held liable or responsible for any damages, whether on account of personal injuries or otherwise suffered or sustained in the operation of said machine, nor for any damages resulting to Buyer by reason of any delays or any alleged failure of any machine to operate. Buyer shall defend, indemnify and hold harmless Seller, its subsidiary and affiliated companies, their officers, agents and employees, from and against all loss liability, claim, action or expense including reasonable attorney's fees by reason of bodily injury including death, and property damage, sustained by any person or persons, including but not limited to employees of Buyer, as a result of the maintenance, ownership, use, operation, storage, erection, dismantling, servicing or transportation of Equipment or Buyer's failure to comply with this order.
11. **Waivers.** Any forbearance, failure or delay by Seller in the exercise of any right, power or remedy hereunder shall not be deemed to be a waiver of any such right, power or remedy, and any single or partial exercise of any right, power or remedy shall not preclude the further exercise thereof. Every right, power and remedy of Seller shall continue in full force and effect until such right, power or remedy is specifically waived in writing by Seller.
12. **General.** It is agreed that (a) time is of the essence; (b) this order may be assigned by Seller without notice to Buyer; (c) Buyer may not assign this order without Seller's consent, which may be withheld at Seller's sole discretion; (d) this order constitutes the entire agreement between Buyer and Seller in respect to the delivery and sale of the Equipment and it is expressly agreed that there are no promises or understandings outside of this order and that no agent or salesperson has authority to obligate Seller to any undertakings, conditions or terms not contained herein; (e) this order and all matters relating to the Equipment shall be governed by the laws of North Dakota; (f) copies of this order and/or any financing statement listing the Equipment as collateral may be recorded to the same extent as the originals thereof; and (g) should any portion of this order be declared invalid under applicable law or regulation, the remaining provision hereof shall remain in full force and effect.

**PRODUCT LINK USER AGREEMENT**

In the event this machine is equipped with Product Link, I understand data concerning this machine, its condition, and its operation is being transmitted by Product Link to Caterpillar and/or its dealers to better serve me and to improve upon Caterpillar products and services. The information transmitted may include: machine serial number, machine location, and operational data, including but not limited to: fault codes, emissions data, fuel usage, service meter hours, software and hardware version numbers, and installed attachments. Caterpillar will not sell or rent collected information to any other third party and will exercise reasonable efforts to keep the information secure. Caterpillar Inc. recognizes and respects customer privacy. I agree to allow this data to be accessed by Caterpillar and/or its dealers.

FARGO, ND (701)280-3100	BISMARCK, ND (701)223-0890	MINOT, ND (701)852-3508	GRAND FORKS, ND (701)775-4238	JAMESTOWN, ND (701)251-1400	DICKINSON, ND (701)225-4508	HANKINSON, ND (701)242-7474	HOOPLE, ND (701)894-6363
SIoux FALLS, SD (605)336-3010	RAPID CITY, SD (605)342-4850	ABERDEEN, SD (605)225-2540	PIERRE, SD (605)224-5400	HURON, SD (605)353-1200	FREMONT, NE (402)721-2800	KEARNEY, NE (308)236-6460	PICKRELL, NE (402)673-4200
CHADRON, NE (308)432-5593							

Data and Privacy policy: protecting the security and privacy of your data is important to us. Please see our website for our complete Data and Privacy Policy.