



Cat Financial Commercial Account Customer Agreement

Contents and Effectiveness of Agreement. This Customer Agreement (the "**Agreement**") governs your credit account with us (the "**Account**"). It consists of this document, the application for an Account, and other documents that this document may refer to as part of this Agreement. The Agreement becomes effective either when you apply for the Account and agree to its terms by either signing the application or indicating agreement if applying online or using your Account. Our obligations shall not be effective until we approve your application for an Account.

Parties to Agreement. "**CFCA**" refers to Caterpillar Financial Commercial Account Corporation, a Nevada corporation. "**Accountholder**" refers to the legal entity, partnership or individual whose name appears on a Statement and/or authorized users who use this Account. In this Agreement the words you, your and yours mean each person and/or business who applies for and is granted an Account, as well as any person permitted to use the Account. The words we, us and our mean CFCA or any subsequent holder of the Account or any balances arising under the Account.

Types of Transactions. You may use your Account for the following types of commercial transactions:

Purchases. Purchases of goods and services from any merchant authorized by CFCA ("**Dealer**") may be charged to your Account.

Rentals. Rentals of equipment, damages, transportation, and related rental charges ("**Rental Transactions**") from Dealers may be charged to your Account. Rental Transactions are required to be paid in full each month and cannot be deferred or "revolved" to a future payment date. Rental Transactions are different from Purchases and Balance Transfers in this respect.

Balance Transfers. In the event the current balance on an existing open account with a Dealer is transferred to your Account, these Balance Transfers shall be subject to the finance charges, payment terms, and other terms and conditions of this Agreement the same as Purchases except where indicated otherwise.

Special Promotions. From time to time special financing terms (such as extended interest free periods, incentive interest rates for certain purchases or rentals or other limited time special promotions) may be available for the purchase or rent of certain items from Dealers. These special terms will be disclosed at the time of purchase. Purchases you make during these special promotions will be separately identified on the billing statement that you will receive monthly (the "**Statement**") and will become part of the amount on which your Finance Charge and minimum payment designated on your Statement are calculated (such amount being the "**Account Balance**"). If your Purchase is defined as a Promotional Installment Purchase (each being an "**Installment**"), these will be separately identified on your statement and the Finance Charge will be calculated on the Average Daily Balance method (as defined below).

Limitations on Use

GENERAL; COMMERCIAL ACCOUNT. EACH TIME YOU OR ANY AUTHORIZED USER USES THE ACCOUNT, YOU AGREE THAT THE TRANSACTION IS FOR A BUSINESS PURPOSE ONLY AND NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES.

Credit Limit. Your Account has a **Credit Limit** shown on your Statement. You will not allow your Account Balance to exceed the amount of this credit limit. We may change your limit at any time. We may, but are not required to, approve transactions that exceed your available credit limit.

Authorizations. All transactions require our prior authorization. We may deny authorization if you are in default, if we suspect fraudulent activity or for other reasons. We are not liable for any failure to authorize a transaction. In the event we authorize a transaction that causes you to exceed the limits of your Credit Limit, you remain liable for these charges.

Finance Charge Grace Period. We will assess a **Finance Charge** if your Account Balance is not paid in full on or before the **Due Date**. You must pay your Account Balance in full by the Due Date listed on your Statement to avoid Finance Charges.

Periodic Finance Charge Calculation. For each day in the Billing Cycle, CFCA takes your previous Account Balance, adds any Purchases and Balance Transfers, and subtracts any Payments Received, disputed amounts or other credits. This gives us that day's Daily Balance. CFCA totals the Daily Balance's for that Billing Cycle and divides that amount by the actual number of days in the Billing Cycle to arrive at the **Average Daily Balance**. The Average Daily Balance is then multiplied by **Daily Periodic Rate** to calculate the Finance Charge. If this calculation results in a figure less than \$1.00, a minimum finance charge of \$1.00 will be assessed. Finance Charges begin to accrue from the earlier of the posting date of the transaction or the Billing Date of the Statement on which the transaction appears. In addition, CFCA will charge the Finance Charge on any disputed amount from the date of posting of that Purchase, on that amount, if the dispute is resolved in favor of the Dealer.

Rates. The Monthly Periodic Rates and the corresponding **Annual Percentage Rates** for your Account are shown on your Statement. The Monthly Periodic Rate is the corresponding Annual Percentage Rate divided by the number of months in a year rounded to the next highest hundred thousandth of a percentage point.

Variable Rate Information. Finance charges on your Account will be calculated using variable rates that are determined by using an Index Rate and adding that rate to a Margin to arrive at the Annual Percentage Rate. The **Index Rate** is the prime rate published in the Money Rates section of The Wall Street Journal in effect on the last day of each calendar month (the "**Index Date(s)**"). This rate does not necessarily represent the lowest prime rate. The variable Monthly Periodic Rates and corresponding Annual Percentage Rates will increase if the Index increases or decrease if the Index decreases. The changes to these variable rates will become effective on the first day of your Billing Cycle that begins in the calendar month following the Index Date. The **Margin** that will be added to your Index Rate to create the Annual Percentage Rate that will apply to the Finance Charges on your account will be 8%. An increase to your Monthly Periodic Rate and corresponding Annual Percentage Rate will increase the amount of Finance Charges on your Account and may increase your **Minimum Payment Due**. CFCA reserves the right to increase the Margin added to your Index Rate to 12.00% if you have not made the minimum payment on any Statement within 60 days from the due date of that Statement.

Both you and we intend to conform strictly to applicable usury laws as presently in effect. Accordingly, both parties agree that, notwithstanding anything to the contrary herein, the sum of all consideration that constitutes interest under applicable law which is contracted for, charged, or received under this Agreement shall under no circumstance, exceed the maximum lawful rate of interest permitted by applicable law. Any excess interest shall be credited to you or, if your Account shall have been paid in full, refunded to you by us.

OTHER FEES AND CHARGES

Types of Other Fees and Charges. We will charge the following fees and other charges:

Late Payment Fee on Unpaid Account Balance. If the Minimum Payment Due is not paid by the Due Date, you shall pay a late payment fee equal to 1.50% of the total unpaid Purchases, Rentals and Installments.

Returned Payment Fee. A Returned Payment Fee in the amount \$25.00 will be charged to your Account for any payment on your Account, either by check or other means, that is returned to us unpaid and or dishonored.

Report Charges. We will make available to you a variety of optional reports that you can request from time to time. The types of reports that are available and the applicable charges for each are available upon request.

Service Fees. We will add to your Account a reasonable charge for photocopies and reprints of Account and transaction documents that you may request and for other special services. We may assess a charge not to exceed \$25 per hour, or for any portion thereof, for research performed on your Account per your request, whether performed by us or our service provider. Any such charges will be subject to a Finance Charge in the same manner as Purchases are treated.

ACCOUNTHOLDER LIABILITY

Liable Parties. The legal entity, individual or partnership whose name appears on your Statement is liable on the Account. By using your Account or making a payment on the Account, you agree that our records are accurate with regard to the information provided in any Statement or correspondence from us to you.

Authorized Users of the Account. You can notify us of the names of the individuals that you wish to be **Authorized Users**. Such notification must be in writing. You are liable for all transactions made by any Authorized User even if you did not approve or give authorization for a specific transaction.

Liability for Subsidiaries and Affiliated Entities. Accountholders with affiliated or subsidiary entities are liable for all transactions conducted by those entities using the Account. If you do not wish to be liable for these transactions then an Account must be established for the subsidiary or affiliated entity.

PAYMENT

Promise to Pay. You promise to pay us for all transactions on your Account for which you are liable under this Agreement or by law. If an Account payment is invalid or misapplied, we will reverse any credit previously provided for such payment.

Place of Payment. You will send the monthly payment to the payment address shown on your Statement. You may not combine any payment on the Account with any other payment due any other Caterpillar entity. You may not send payments to a Dealer. In the event you combine a payment on the Account with any payment to another Caterpillar entity or any Caterpillar dealer, you authorize such Caterpillar entity or Dealer to forward such payment to us.

Allocation of Payments. Unless prohibited by applicable law, we apply payments in the following order: Past due installment finance charges, Past due installment principle, current installment finance charges, current installment principle, past due finance charges other than installments (rentals and other), past due rentals, past due balances, current finance charges other than installments, current rental transactions, current purchase transactions, other fees and charges and any other amounts then due, unstatemented charges, same as cash balances that have not expired and installments not yet due. Notwithstanding the foregoing but subject to applicable law, you agree that we may apply payments in any order and at our discretion and we may change the order in which we apply payments on your Account without notice to you. You cannot require an alternative allocation of payments.

Minimum Payment Due. You agree to pay at least the Minimum Payment Due on your Statement by the Payment Due Date. The "**Minimum Payment Due**" is any Past Due amount, *plus* the full amount of all Rental Transactions, *plus* 10.00% of the new Purchase amount (\$100.00 minimum) *plus* the sum of all Periodic Rate Finance Charges and Other Fees and Charges. If your Account Balance is less than \$100, then the Minimum Payment Due is the Account Balance.

Form of Payment. All payments are due and payable in U.S. Dollars and must be drawn from funds on deposit in a U.S. depository financial institution. We are not required to accept any payment that we deem to require special handling.

Payments Marked "Paid In Full". We may accept letters, checks or other types of payment showing "payment in full" or using other language to indicate satisfaction of your debt, without waiving any of our rights to receive full payment under this Agreement. Satisfaction of your debt for less than the full amount due requires a written agreement signed by one of our authorized representatives.

Due In Full Provision for Governmental Accounts. If you are a local, state or federal government agency or department, you agree to pay the entire Account Balance of your Account by the Due Date shown on your Statement.

OTHER IMPORTANT INFORMATION

Change of Information. You will notify us in writing immediately if you change your name, address or telephone number. If we do not have a valid address because you failed to update our information, then you are responsible for obtaining any Account materials we would normally have delivered to your address.

Credit Information. We may periodically review your credit standing by obtaining information from credit reporting agencies and others concerning your accounts. You will provide updated financial information upon our request. In addition, we may report information about you to credit reporting agencies.

Sharing Information. We may share information about the Account with our Caterpillar affiliates and/or Dealers. We may also share information with outside companies that work for us. These companies act on our behalf and are obligated to keep the information that we provide to them confidential.

Transactions with Caterpillar Dealers

Return Policy. If a Dealer discloses a policy such as "no returns", "no refund", "no return or credit without receipt", "as is", "store credit only", or "all sales final", you will be bound by that policy when you use your Account for Purchases and Rentals from that Dealer.

Recurring Transactions. If you authorize a Dealer to charge your Account for repeat transactions, you must notify the Dealer when you want to discontinue the repeat transactions.

Dispute Procedure. If you disagree with a transaction on your Statement you have the right to dispute that transaction. If you elect to dispute a transaction, within 30 days from the Due Date of the first Statement on which the transaction appears, you must (i) give us notice of your intention to dispute such transaction, which notice describes the basis for your dispute in reasonable detail and (ii) supply all documents and other materials and information supporting the basis for your dispute. Once you have notified us of the disputed transaction and complied with both clauses (i) and (ii) of the prior sentence, we will contact the Dealer identified with such transaction, and that Dealer will, within a reasonable time, either correct the transaction to your satisfaction or supply us with information validating the transaction. You agree that we may share with the Dealer all the documents and other materials and information you provided to us. You must provide any information reasonably requested by the Dealer or us and must cooperate and respond to the Dealer or us in an effort to resolve the dispute. We have the right, but not the obligation, to investigate and discuss the matter with both parties without the presence of the other party and, after such investigation, to make a determination as to whether the transaction and related charges are valid. In the event we determine that the transaction and related charges are valid, you agree that you will pay the amount of the transaction and Finance Charges will be calculated on the disputed amount from the date they first appeared on a Statement. You agree that you shall pay as required by the terms hereof any undisputed portion of a charge related to a transaction that is subject to a dispute.

Default. Your Account is in default if you fail to comply with any of the terms of this Agreement or any other loan agreement, lease agreement or any other agreement evidencing obligations or indebtedness with us or any other Caterpillar entity; in the event of your bankruptcy, insolvency, fraud or misrepresentation; or if we reasonably believe that you will be unwilling or unable to pay debts you owe to anyone. If you are in default, we may close your Account without notice, and you must immediately pay your unpaid Account Balance. To the extent not prohibited by law, if you are in default, you will pay our collection costs, {attorneys'} fees (including allocated costs for attorneys who are employed by us), court costs and all other expenses of enforcing our rights under this Agreement.

Cross Security. In the event of default, all of your current and after acquired collateral used to secure obligations to any Caterpillar entity shall also secure the payment and performance of all of your liabilities and obligations to us, of every kind and character. The Agreement is a "security agreement" as that term is defined in the Uniform Commercial Code and this provision is intended to provide that any collateral securing obligations to any other Caterpillar entity shall secure this Account.

Guaranty of Payment. You hereby guaranty payment of any Account or sub-account of any your subsidiaries. If we notify you of a default by any of your subsidiaries, full payment of the subsidiary's account is due immediately.

Closing Your Account. You may close your Account to further charges by notifying us. We may close your Account or suspend your credit privileges at any time without prior notice except as required by law. In the event your Account is closed, you continue to remain liable for all charges and any fees then owing or any made in the future.

Amendment of this Agreement. We may amend this Agreement by changing, adding or deleting any term, condition, service or feature ("**New Term**") of your Account or of this Agreement at any time. We will provide you with notice of the amendment to the extent required by law. Unless we state otherwise, any New Term will apply to your Account's unpaid Account Balance and to new activity on your Account. If the amendment includes any change to the rate or rates of periodic interest that applies to your existing Account Balance, we will obtain your consent (or your consent will be deemed to have been given) before that New Term becomes effective in any one or more of the following ways: (a) by your usage of the Account after we give you notice of the amendment; or (b) by your affirmative agreement which may be obtained verbally, in writing or electronically; or (c) if you do not close your Account prior to the effective date of the amendment. Any other term in the amendment will become effective without your consent, although you may be able to avoid a fee or charge by closing the Account or by not making the type of transaction to which it applies after the effective date of the amendment.

Telephone Monitoring. We may listen to and record telephone calls between any of your representatives and us or our agents for the purpose of monitoring and improving the quality of service you receive.

Electronic Disclosure. You agree that any notices and disclosures related to your Account can be delivered to you in printed form or by electronic means if you provide an electronic mail address to us when you applied for this Account or at a later date. Until we receive notice of a new electronic mail address, we may continue to send such notices and disclosures to the electronic mail address you most recently provided to us.

Enforceability. Our failure to exercise any of our rights under this Agreement will not waive any of our rights in the future. If any terms of this Agreement are found to be unenforceable, all other provisions will remain in full force.

Security Interest. You grant us a purchase money security interest in all merchandise purchased through your Account, and its proceeds, including insurance proceeds.

Governing Law. This Agreement shall be deemed performed in Tennessee and governed and construed in accordance with the substantive laws of the State of Tennessee without regard to the conflicts of laws principles thereof.

Dispute Resolution. The following provisions shall apply to all Claims (as defined below) of the parties.

Agreement to Arbitrate. PLEASE READ THIS PROVISION OF THE AGREEMENT CAREFULLY. IT PROVIDES THAT ANY DISPUTE MAY BE RESOLVED BY BINDING ARBITRATION. ARBITRATION REPLACES THE RIGHT TO GO TO COURT, INCLUDING THE RIGHT TO A JURY AND THE RIGHT TO PARTICIPATE IN A CLASS ACTION OR SIMILAR PROCEEDING.

For the purposes of this Arbitration provision, “we”, “us”, and “our” also includes our parent, subsidiaries, affiliates, licensees, predecessors, successors, assigns, any purchaser of your Account, and all of their officers, directors, employees, agents, and assigns or any and all of them. Either you or we may, without the other’s consent, elect mandatory, binding arbitration (“**Arbitration**”) of any claim, dispute or controversy by either you or us against the other, or against the employees, parents, subsidiaries, affiliates, beneficiaries, agents or assigns of the other, arising from or relating in any way to the Agreement, your Account or the advertising, application or approval of your Account (“**Claim**”). This Arbitration provision governs all Claims, whether such Claims are based on law, statute, contract, regulation, ordinance, tort, common law, constitutional provision, or any legal theory of law such as respondent superior, or any other legal or equitable ground and whether such Claims seek as remedies money damages, penalties, injunctions, or declaratory or equitable relief. Claims subject to Arbitration include Claims that are made as counterclaims, cross claims, third party claims, interpleaders or otherwise, and a party who initiates a proceeding in court may elect Arbitration with respect to any of such Claims advanced in the lawsuit by any party or parties. The parties expressly waive judicial determination of issues of substantive and procedural arbitrability. This Arbitration provision is made pursuant to a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act 9 U.S.C. §§ 1-16.

Waiver of Class Action. If a party elects to arbitrate a Claim, the Arbitration will be conducted as an individual action. Neither you nor we agree to any Arbitration on a class or representative basis or as a private attorney general, and the arbitrator shall have no authority to proceed on such basis. No arbitration will be consolidated with any other arbitration proceeding without the consent of all parties. The only Claims that may be joined in an individual action under this Arbitration provision are (1) those brought by us against you and any co-applicant, joint Account holder, or authorized user of your Account, or your heirs or your trustee in bankruptcy or (2) those brought by you and any co-applicant, joint Account holder, or authorized user of your Account, or your heirs or your trustee in bankruptcy against us.

Procedure and Awards. The National Arbitration Forum (“**NAF**”) shall be the Arbitration administrator. Any Arbitration hearing that you attend shall be held at a place in accordance with NAF Code of Procedure in effect at the time the Claim is filed, or at some other place to which you and we agree in writing. The arbitration shall be conducted under the Code of Procedure in effect at the time the Claim is filed. Rules and forms of the National Arbitration Forum may be obtained and claims may be filed at any National Arbitration Forum office, www.arbitration-forum.com, or P.O. Box 50191 Minneapolis, MN 55405, telephone 1-800-474-2371.

A single, neutral arbitrator appointed by NAF will resolve Claims. The Arbitration will be conducted under the Code of Procedure in effect at the time the Claim is filed, unless those procedures and rules are inconsistent with this Arbitration provision, in which case this Agreement will prevail. You may choose to have a hearing and be represented by counsel. The arbitrator shall have no power to award damages (such as punitive, exemplary, statutory or consequential damages) in addition to compensatory damages and each party hereby irrevocably waives any right to recover such damages. The arbitrator will make any award in writing but need not provide a statement of reasons unless requested by a party. The arbitrator shall have the power to award costs, fees and expenses (including attorney’s fees, expert fees, witness fees, arbitrator fees and expenses, etc.) to the prevailing party in accordance with the provisions of this Agreement. The arbitrator shall not have the power to order specific performance of any obligation or duty of any party to this Agreement or to issue injunctions.

In the event of the failure of a party to appear at a hearing, the arbitrator shall render a decision based upon the facts presented at the hearing; provided, however that if the arbitrator finds that the party failing to appear has good reason for such failure, such hearing shall be re-scheduled by the arbitrator so that both parties can attend.

Any decision rendered in such Arbitration proceeding will be final and binding on the parties and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereto pursuant to applicable law. Nothing in this Arbitration provisions nor the exercise of any right to Arbitration nor the commencement or pendency of any proceeding shall limit the right of any party to this Agreement to exercise any self-help rights or any other rights or remedies available to it by contract or applicable statutory or case law (including but not limited to the filing of an involuntary petition in bankruptcy, the right of set off, attachment, recoupment, foreclosure or repossession) with respect to its extension of credit, the protection and preservation of collateral, the liquidation and realization of collateral, the protection, continuation and preservation of lien rights and priorities, the collection of indebtedness, and the processing and payment or return of checks, whether such occurs before, during or after the pendency of any negotiation or Arbitration proceeding.

Application of Law. The parties agree that the arbitrator shall give effect to the substantive law of the State of Tennessee, including but not limited to conflicts of law provisions, statutes of limitation, and matters pertaining to the validity of this Arbitration provision in determining matters submitted to Arbitration hereunder; provided, however that the Federal Arbitration Act, to the extent inconsistent, will supersede the laws of such State and govern.

Survival. This Arbitration provision shall survive: (i) termination or changes in the Agreement, the Account and the relationship between you and us concerning the Account, such as the issuing of a new account number or the transferring of the Account Balance to another account; (ii) the bankruptcy of any party or any similar proceeding initiated by you or on your behalf; and (iii) payment of the debt in full by you or by a third party. If any portion of this Arbitration provisions is deemed invalid or unenforceable, the remaining portions shall nevertheless remain in force.

Licensing. CFCA is registered as an Industrial Loan and Thrift Company under the laws of the state of Tennessee and is licensed pursuant to the California Finance Lenders Law, North Dakota Consumer Finance Law, South Dakota Finance Lender Law and the Wyoming Consumer Finance Law.