

**CATERPILLAR FINANCIAL COMMERCIAL ACCOUNT
DOCUMENT PACKAGE**

Welcome to the Cat Financial Commercial Account. We hope that we can serve all your Caterpillar-related parts, services and rental financing needs. This package includes the documents we need to get started. Please read each document carefully.

The first document is a credit application. The credit application provides information necessary for us to do our due diligence and to establish your account. It also includes a disclosure statement that provides you with important disclosures in respect of your account.

The second document is the customer agreement. The customer agreement contains many of the terms and conditions that will govern your account, and your and our rights and responsibilities in connection with your account.

Our obligation to open an account for you is subject to our satisfaction with such due diligence investigation as may be necessary for us to make an informed credit evaluation. Depending on the results of our credit evaluation, we may require additional or different documents and agreements (such as a guaranty) and/or may include additional terms and conditions in the documents and agreements as we think appropriate under the circumstances as a condition of opening an account for you.

Please complete the attached by inserting the required information and signing on the last page. When complete please fax to 615-341-5925 or mail to Caterpillar Financial Commercial Account Corporation, P.O. Box 15059, Station A, Toronto, Ontario M5W 1C1. If you have any questions or comments about the attached or how we can meet your Caterpillar equipment financing needs call 1-866-686-5024 or go to our website at <http://cafinance.cat.com/commercialaccount>.

Cat Financial Commercial Account Corporation
APPLICATION FOR COMMERCIAL FINANCING

Section 1 General Information

An * denotes a required field.

*Dealer Name _____ Promotional Code _____
*Business/Individual Name _____ Trade Name (if different) _____
*Physical Address _____ *City _____ *Province _____ *Postal Code _____
*Primary Account Contact (Name) _____ Title _____ E-Mail _____
*Business Phone _____ Cell _____ Fax _____
*Is Billing Address same as Physical Address (circle one) Yes or No
*Billing Address _____ *City _____ *Province _____ *Postal Code _____
*Billing Contact Name _____ Phone _____
*Requested Credit Limit \$ _____ CFSL Customer # _____

Section 2 Commercial Account Information

Authorized Users - These are the only individuals permitted to make charges to your Account. If you require more authorized users, please call 1-866-686-5024 after your application has been submitted.

*Name _____ Name _____ Name _____

Card Image: Please choose from the following images (to view images visit <http://cafinance.cat.com/commercialaccount>).

___Tracks ___Machine ___Marine ___Road ___Energy ___Power Systems

Section 3 Business Financial Information

*Description of Business _____ *Years in Business _____
*If applicant's physical address is in Alberta, Saskatchewan or Prince Edward Island, check box if applicant is in the business of farming, ranching, fishing or is a feedlot:
*Type of Business (circle one) Sole Proprietorship Corporation General Partnership Other _____
Estimated Annual Revenue \$ _____ # of Employees _____
*GST Number _____
*Has the Business/ Principal ever filed Bankruptcy? Y or N If yes, Date Filed _____
*Are there any outstanding liens or judgments? Y or N If yes, Dollar Amount \$ _____

Section 4 Company References

Bank / Finance References

Name _____ Phone _____ Account # _____
Chequing / Savings / Loan (circle one) Balance \$ _____
Name _____ Phone _____ Account # _____
Chequing / Savings / Loan (circle one) Balance \$ _____

Trade References

Trade Name _____ Account # _____ Contact Name _____
Address _____ City _____ Province _____ Postal Code _____ Phone _____
Trade Name _____ Account # _____ Contact Name _____
Address _____ City _____ Province _____ Postal Code _____ Phone _____

Section 5 Personal Information on Owners / Guarantors (Attach additional sheets if necessary)

Owner OR Guarantor
*Name _____
*Address _____ *City _____ *Province _____ *Postal Code _____ *Phone _____
*% Ownership _____ DOB _____ SIN _____ Net Worth _____ Annual Income _____ Mo. House Pmt _____
 Owner OR Guarantor
*Name _____
*Address _____ *City _____ *Province _____ *Postal Code _____ *Phone _____
*% Ownership _____ DOB _____ SIN _____ Net Worth _____ Annual Income _____ Mo. House Pmt _____

Section 6 Application Terms and Conditions

THIS APPLICATION IS FOR COMMERCIAL OR BUSINESS CREDIT PURPOSES ONLY AND NOT FOR PERSONAL, FAMILY OR HOUSEHOLD CREDIT.
Applicant warrants that the information provided above and otherwise in connection with this application is true and correct. The undersigned agrees that Caterpillar Financial Commercial Account ("CFCA") may obtain credit, financial and related personal or business information (including credit information reports) about the Applicant from time to time from any dealer of Caterpillar products, any affiliate of CFCA, any credit bureau, any credit reporting agency, any reference Applicant has provided in this application and from other parties with whom the Applicant has had a financial or credit relationship (collectively, the information obtained from the above parties and from the Applicant in connection with this application is referred to as the "Information"). The undersigned consents, effective the date indicated on the last page of this document package, to the disclosure of the Information by such parties to CFCA and by CFCA to such parties and this consent shall remain effective so long as Applicant and CFCA have an ongoing relationship. CFCA may also use and disclose Information for the purposes of verifying and evaluating this application, the Information, and the identity and creditworthiness of the undersigned. Social Insurance Numbers, birth dates and other personal identifiers, if provided, may be used for identity verification, including matching credit records and checking identities against watch lists established by regulatory agencies and similar bodies in Canada and foreign countries. The undersigned consents to the collection, use and disclosure of Information as described above and below, and as further described in any financing agreements or other agreements resulting from this application or in the CFCA Canadian Privacy Statement available at <http://cafinance.cat.com/commercialaccount>.

By its signature hereto, the person signing on behalf of Applicant confirms and acknowledges that he/s has read the Application and the Customer Agreement and that, on behalf of the Applicant, they agree to the terms and conditions of each and further agree to be bound thereby.

Signature _____ Print Name _____ Title _____

(For office use only) CFCA has accepted Applicant's Application on and this Agreement is dated and effective as of _____.

CFCA also may collect and use your credit, financial and related personal information from time to time for the purposes of: (i) opening, administering, servicing, collecting and enforcing your account; (ii) providing products and services you have requested from CFCA or any of its affiliates; and (iii) communicating with you for the foregoing purposes.

Social Insurance Numbers or other personal identification may also be used by CFCA for the purposes of meeting legal, regulatory, audit, processing and security purposes (including fraud prevention), and as otherwise permitted or required by law (including by foreign laws applicable to CFCA) and the CFCA Canadian Privacy Statement.

For the above purposes and for providing credit information to potential creditors, CFCA may disclose credit, financial and related personal information from time to time to, and collect such information, from: (i) CFCA's respective affiliates, agents and representatives; (ii) credit bureaus and reporting agencies; (iii) Caterpillar dealers and businesses and financial institutions with whom you have had or may have a financial relationship; (iv) the references you have provided; and (v) in connection with the contemplated or actual financing, insuring, securitization, sale, assignment or other disposal of all or part of CFCA's business or assets (including, without limitation, assignment of your obligations to any Caterpillar dealer, CFCA affiliate or any financial institution), including for the purposes of: (a) determining whether to proceed or continue with such transaction or business relationship; (b) fulfilling any reporting or audit requirements to such parties; and (c) the use and disclosure of personal information by such parties for substantially the same purposes as described herein. You consent to the disclosure of such information by and between these parties and CFCA.

CFCA may use agents and service providers to collect, use or process personal information on its behalf, including in jurisdictions outside of Canada.

In addition, if you consent below, CFCA may use your account and related personal information (including your payment history) from time to time or disclose such personal information to its affiliates in order to be able to anticipate and service your future needs and offer additional products or financing opportunities. Individuals may withdraw consent for this purpose by contacting CFCA at Cat Financial Commercial Account, attention: "Customer Service", 2120 West End Avenue, Nashville, TN 37203. **Individual applicants:** check here if you do not want to receive periodic information about additional products and financing opportunities.

CFCA employees and agents that need access to your personal information to fulfill their job requirements will have access to your file, which will be accessible at 2120 West End Avenue, Nashville, TN 37203. You may request access to or correction of personal information in CFCA's possession by writing to the above address, attention "Customer Service".

The fact that this application contains reference to "amount of credit applied for" shall not be deemed a limitation of liability by Applicant. Applicant acknowledges, agrees and understands that CFCA may, in its sole discretion, refuse to extend credit to Applicant in connection with any credit transaction.

Section 7 below is the disclosure statement that outlines many of the important provisions of the attached customer agreement. Applicant may also call 1-866-686-5024 for such information Monday through Friday (except for holidays) during the hours of 7:00 AM to 10:00 PM (EST).

Section 7 Disclosure Statement

This statement sets out your cost of credit. All capitalized terms used below and not otherwise defined will have the same meaning as set out in the customer agreement. This statement forms part of your customer agreement.

Date Interest Starts to Accrue: Interest will be charged on all Purchase Transactions and Balance Transfers from the posting date if you do not pay your Statement balance in full each month.

Minimum Periodic Payment: Your minimum periodic payment on your Account is due monthly, on the due date of your Statement and is the greater of (i) any past due amount, plus the full value of all new Rental Transactions plus 10% of new Purchase Transactions (including Finance Charges); or (ii) \$100 (if Balance is less than \$100, the minimum payment shall be the Balance).

Initial Annual Interest Rate/Cost of Borrowing expressed as an annual percentage rate: 11.00 %, which is Toronto Dominion Bank Prime (as of November 11, 2011), 3.00% plus 8%. We do not compound interest.

Method for determining Annual Interest Rate: The Annual Interest Rate is The Toronto Dominion Bank Prime Rate (the "Index Rate") plus 8%. The Index Rate is published at <http://www.tdcanadatrust.com/Numbers/prime.jsp>. The Index Rate for any given month is set on the 15th day of the prior calendar month.

Sample Interest Calculations: For any 30-day month in which the average daily balance ("ADB") is \$500, or \$1000, finance charges based on a sample annual interest rate of 11.25%, are \$4.62, \$8.42 respectively. For any 30-day month in which the ADB is \$500.00 or \$1,000.00, finance charges based on a sample annual interest rate of 15.25%, are \$6.27, \$12.53 respectively.

Manner of Calculating the Cost of Borrowing: The cost of borrowing in respect of a period shall be calculated by multiplying the portion of the annual interest rate that the period is of one year by the principal amount outstanding at the end of the period. You can avoid finance charges by ensuring that we always receive payment in full of your balance every month by the Payment Due Date.

Non Interest Finance Charges/Default Charges:

- 1.5% late payment fee of Rental Transaction (where permitted by law).
- 1.5% late payment fee of Purchase Transaction (where permitted by law).
- Returned Cheque or other returned item fee: \$25
- Upon default, the annual interest rate may be increased to the Index Rate plus 12% per annum.

Grace Periods on Interest: 30 days on new Purchase Transactions and Balance Transfers so long as you pay the entire balance by the Due Date of your monthly Statement.

Statements: We will send you a statement for each month during which there is any activity or balance on your Account.

Account Inquiries: You may call our toll free number 1-866-686-5024 Monday through Friday (except on holidays) during the hours of 7:00 a.m. to 10:00 p.m. (EST).

Payment Details, including Interest Charges and Other Charges: Refer to Sections 5 and 6 of the attached customer agreement.

Prepayment: You may prepay the full outstanding balance under your Account at any time without any prepayment charge or penalty.

Description of Goods Financed: If we intend to register a security interest in any goods acquired with credit made available by the Account, we will deliver to you promptly a financing or other statement containing a description of the same.

Special Promotions: From time to time special financing terms may be available for the purchase of certain items from Dealers. These special terms will be disclosed at the time of purchase.

Cat Financial Commercial Account Corporation CANADIAN CUSTOMER AGREEMENT

1. Parties to Agreement and Definitions. In this Customer Agreement (the "Agreement"), "CFCA" refers to Cat Financial Commercial Account Corporation, a Nevada corporation. "Accountholder" refers to the legal entity, partnership or individual whose signature appears below, and the words *you*, *your* and *yours* mean the Accountholder. The words *we*, *us* and *our* mean CFCA or any subsequent holder of the Account or any balances arising under the Account. "Account" means your credit account with us. "Account Balance" refers to the outstanding balance on your Account at any given time and is the amount on which your Finance Charge and minimum payment shown on your Statement are calculated. "Billing Cycle" means the period of time covered by one Statement. "Dealer" refers to any merchant in Canada that is authorized by CFCA to accept the Account as a method of payment. "Finance Charges" refers to interest and any other credit charges. "Statement" refers to the billing statement that you will receive monthly for each month during which there is any activity or balance on your Account.

2. Contents and Effectiveness of Agreement. This Agreement governs the Account. This Agreement incorporates your Application for Commercial Financing (the "Application"), the Disclosure Statement, and the other documents that are attached hereto or are referred to herein. This Agreement shall not be effective until we approve the Application at our offices in Nashville, Tennessee or such other location that we may designate from time to time.

3. Types of Transactions. You may use your Account to obtain credit for the following types of commercial transactions, each of which will be added to the Account Balance that you agree to repay to us:

- (a) **Purchase Transactions.** You charge to the Account the cost of goods and services you purchase from a Dealer (a "Purchase Transaction").
- (b) **Rentals Transactions.** You charge to the Account the cost of your rental of equipment from a Dealer and any related charges (a "Rental Transaction"). Rental Transactions must be paid in full each month by the Due Date (as defined below) and cannot be deferred or "revolved" to a future payment date. Rental Transactions are different from Purchase Transactions and Balance Transfers (as defined below) in this respect.
- (c) **Balance Transfers.** In the event the current balance on an existing open account with a Dealer is transferred to your Account (a "Balance Transfer"), such Balance Transfer shall be subject to the same Finance Charges, payment terms, and other terms and conditions of this Agreement that apply to Purchase Transactions except where indicated otherwise.
- (d) **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. Purchase Transactions you make during these special promotions will be separately identified on the Statement and will become part of the Account Balance. If your Purchase Transaction is defined as a Promotional Installment Purchase (each being an "Installment") the Finance Charge is calculated on the ending Account Balance for that Billing Cycle, and is not calculated on the average daily balance method.

4. Limitations on Use; General Commercial Account.

- (a) **Commercial Use Only.** EACH TIME YOU OR ANY AUTHORIZED USER USES THE ACCOUNT, YOU AGREE THAT THE TRANSACTION IS FOR A BUSINESS PURPOSE AND NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES.
- (b) **Credit Limit.** Your Account has a credit limit shown on the Statement. You agree not to allow your Account Balance to exceed the amount of the credit limit. Where permitted by law we may change your credit limit at any time.
- (c) **Authorizations.** All transactions require our prior authorization. We may deny authorization if you are in default hereunder or for other reasons. We are not liable for any failure to authorize a transaction. If, in our sole discretion, we authorize a transaction that causes you to exceed your credit limit, you remain liable for all charges incurred in connection with such transaction.

5. Rates; Variable Rate Information. Finance Charges on your Account Balance will be calculated using variable rates that are determined by using an index rate ("Index Rate") and adding that rate to a Margin (as defined below) to arrive at the Annual Interest Rate ("AIR"). The Index Rate is a variable rate of interest per annum, equal to the rate of interest determined by the Toronto-Dominion Bank as its prime rate for Canadian Dollar loans as published on <http://www.tdcanadatrust.com/Numbers/prime.jsp> or in any successor website or publication. The Index Rate is set as of the 15th day of the prior calendar month (the "Index Date"). If the 15th day falls on a Saturday, Sunday or holiday, the Index Rate will be set on the next business day. The Index Rate does not necessarily represent the lowest prime rate available in Canada. The rates of interest under this Agreement are nominal rates, and not effective rates or yields. **The interest rate payable hereunder is a variable rate and therefore there may be frequent changes in the cost of borrowing. AIR will increase if the Index Rate increases or decrease if the Index Rate decreases.** The changes to these variable rates will become effective on the first day of your Billing Cycle that ends in the calendar month following the Index Date on which such change occurs. The Margin that will be added to your Index Rate to create the AIR will be 8.0% per annum (the "Margin"). Both you and we intend to conform strictly to applicable usury laws. 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.

- 6. Periodic Finance Charge Calculation.** We calculate the Finance Charge on your Statement by taking the average daily balance (“ADB”) times the number of calendar days in the Billing Cycle times the daily periodic rate (“DPR”). ADB is determined by adding each daily balance (being the owing under the Account as of the end of any day) subject to the Finance Charge and dividing the sum thereof by the number of calendar days in the Billing Cycle. DPR is the corresponding AIR divided by 365 days. We do not daily compound Finance Charges and do not assess Finance Charges on Finance Charges. You can avoid Finance Charges on Purchase Transactions and Balance Transfers by ensuring that we always receive payment in full of your Account Balance every month by the due date provided on your Statement (“Due Date”). If we do not receive payment in full of your Account Balance by the Due Date provided on your current Statement, we will then charge a Finance Charge on the Purchase Transactions from the posting date until that amount has been paid in full. When we do not receive payment in full of your Account Balance, Finance Charges on Purchase Transactions that show on the current Statement will begin to appear on the next Statement, which will then be assessed retroactively from the posting date until the date on which that amount has been paid in full. Once we have received payment in full of the Account Balance by the Due Date on your current Statement, any new Purchase Transactions after that payment was received will not be subject to Finance Charges so long as we continue to receive payment in full of your Account Balance every month by the Due Date shown on your Statement.
- 7. Other Fees and Charges.** We will charge the following fees and other charges:
- (a) **Late Payment Fees.** Where permitted by law, (i) a late payment fee in an amount of 1.5% of the Purchase Transaction amount overdue will be charged to your Account if the Minimum Payment (as defined below) due is not paid by the Due Date and (ii) a late payment fee of 1.5% of the total Rental Transaction balance will be charged to your Account if the total Rental Transaction balance is not paid by the Due Date.
- (b) **Returned Payment Fee.** A returned payment fee in the amount \$25.00 will be charged to your Account for any payment you make to us, either by cheque or other means, that is returned to us unpaid or dishonored.
- 8. Accountholder Liability; Authorized Users of the Account.** Unless you promptly notify us of your belief that an error exists, you agree that the Statement is accurate with regard to the information provided thereon. You can notify us of the names of the individuals that you wish to be designated as Authorized Users. Such notification must be in writing.
- 9. Promise to Pay.** You agree to repay to us the amount of all transactions, Finance Charges, and other fees and charges charged to your Account under this Agreement. You agree to pay at least the Minimum Payment shown on each Statement by the Due Date. The “Minimum Payment” is the greater of (i) any past due amount, plus the full amount of all new Rental Transactions, plus 10.00% of the new Purchase Transaction balance including Finance Charges or (ii) \$100 (if your Account Balance is less than \$100 the Minimum Payment shall be the Account Balance). Except as provided herein with respect to amounts that are being disputed (but only until that dispute is resolved as provided herein), you agree that the obligations you have incurred in connection with the Account are and shall be absolute and unconditional and shall not be affected by any circumstances whatsoever, including any right of setoff, counterclaim, recoupment, deduction, defense or other right which you may have against us, the Dealer or the manufacturer of any goods acquired or rented by you with credit extended by us, the provider of any services obtained by you with credit extended by us, or anyone else, for any reason whatsoever. If an Account payment is invalid or misapplied, we will reverse any credit previously provided for such payment. You are liable for all transactions made by any Authorized User even if you did not approve or give authorization for a specific transaction.
- 10. Form and Place of Payment.** All payments are due and payable in Canadian Dollars and must be drawn from funds on deposit in a Canadian depository financial institution. We are not required to accept any payment that we deem to require special handling. 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.
- 11. Allocation of Payments.** Unless prohibited by applicable law, we apply payments in the following order: past due Finance Charges other than with respect to Installments, past due Rental Transaction balances, past due Purchase Transaction balances, past due Installment Finance Charges, past due Installments, current Installment Finance Charges, current Installments, current Finance Charges other than with respect to Installments, current Rental Transaction balances, current Purchase Transaction balances, Other Fees and Charges and any other amounts then due, and any excess amounts shall be applied to unstatemented charges in the order set forth herein. 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.
- 12. Payments Marked “Paid In Full”.** We may accept letters, cheques 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.
- 13. Change of Information.** You will notify us in writing at least 30 days in advance of any change in your name, address or telephone number. If we do not have a valid address because you failed to send such notice, you are responsible for obtaining any Account materials that we attempted to deliver to your old address.
- 14. Your Credit Information.** We may periodically review your credit standing by obtaining information from credit reporting agencies and others concerning your credit history. You will provide updated financial information to us upon our request. In addition, as disclosed in the application, we may report information about you to credit reporting agencies.
- 15. Return Policy; Recurring Transactions.** 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 Purchase Transactions and Rentals Transactions from that Dealer. 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.
- 16. Dispute Assistance.** If you disagree with a transaction on your Statement or have a dispute with the Dealer about a transaction, you are responsible for notifying us within 30 days from the Due Date of the first Statement on which the transaction appears. Once you have notified us of the disputed transaction, we will either (a) provide you with a dispute resolution form which you must complete and fax back to us within 5 days of receipt or (b) fill out the dispute resolution form with information that you provide to us over the telephone. We will then forward the dispute resolution form to the Dealer and then you must attempt to resolve the dispute directly with the Dealer. You must provide any information reasonably requested by the Dealer or us and must cooperate and respond to the Dealer 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 which of the two parties shall be responsible. In the event we determine that you are responsible, 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.
- 17. Default.** You shall be in default hereunder (i) if you fail to make on the date due thereof any payment owing hereunder or under any loan agreement, lease agreement or any other agreement with us or any other Caterpillar entity; (ii) if there is a material inaccuracy in any representation or breach of any warranty by you (including any false or misleading representation or warranty) in any agreement between us and you or in any information supplied by you to us; (iii) if there occurs a default or anticipatory repudiation under any guaranty executed in connection with the Account; (iv) upon the commencement of any bankruptcy, insolvency, receivership or similar proceeding by or against you or any of your properties or business or upon your failure to pay your debts as they become due or upon your admission in writing of its inability to pay the same; or (v) if you breach any covenant, condition or agreement contained herein. Upon your default, we shall have all the rights and remedies available to a creditor under applicable law and 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. Where permitted by law, upon a default we may increase the AIR (including any promotional AIR) on your Account Balance up to a Margin of 12.00% that will be added to your Index Rate to create the AIR that will apply to the Finance Charges on your Account.
- 18. Closing Your Account.** You may close your Account to further charges by notifying us in writing that your Account should be closed. 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.
- 19. Amendment of this Agreement.** Subject to applicable law, 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 New Term and obtain your consent thereto 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 your consent is not required under applicable law, any New Term will become effective immediately or as otherwise provided by law, although you may be able to avoid a fee or charge by paying your outstanding Account Balance in full and closing the Account.
- 20. 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.
- 21. Notices.** All notices and other communications hereunder shall be in writing, personally delivered or sent by facsimile or certified mail, return receipt requested, addressed to the other party at the address set forth in the attached credit application or at such other address provided by such party for such purpose as such party shall from time to time designate in writing to the other party; and shall be effective from the date of receipt. Notices and other communications from us to you may be delivered or furnished by electronic communication (including e-mail and Internet websites) and any notices delivered pursuant to those procedures shall be deemed to be compliant with and effective with respect to this Agreement.
- 22. Severability.** If any terms of this Agreement are found to be unenforceable, all other provisions will remain in full force.
- 23. Security Interest.** To secure the payment and performance of all your obligations owing to us and our affiliates now or hereafter existing, whether direct or indirect, absolute or contingent, and whether for principal, interest, fees, premiums, indemnifications, contract causes of action, costs, expenses or otherwise, you hereby grant to us a security interest in all goods acquired with credit made available by the Account or with funds advanced by us or our affiliates (and the proceeds thereof), and to the extent those goods are described in an invoice, purchase order, bill of sale or other writing from a Dealer such invoice, purchase order, bill of sale or other writing is deemed incorporated herein and made a part hereof. Upon our request you agree to promptly forward to us such invoice, purchase order, bill of sale or other writing. In the event of default hereunder, 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. You authorize us to take and you will assist us in taking, any measures we deem advisable in connection with securing and/or perfecting our interest in such collateral.
- 24. Governing Law.** Subject to the next sentence, 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. If applicable law invalidates or renders unenforceable the choice of law stated in the prior sentence, this Agreement shall be governed by and construed in accordance with the laws of your province or territory.
- 25. Agreement to Arbitrate. PLEASE READ THIS PROVISION OF THE AGREEMENT CAREFULLY. IT PROVIDES THAT MOST DISPUTES ARISING HEREUNDER SHALL 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.** The parties agree that they will endeavor to settle a dispute or claim arising out of or relating to this Agreement by mediation administered by the Commercial Arbitration and Mediation Center for the Americas under its rules before resorting to arbitration. Thereafter, any dispute, controversy or claim arising out of or relating to this contract shall be settled by arbitration administered by the Commercial Arbitration and Mediation Center for the Americas in accordance with its rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The requirement of filing a notice of claim with respect to the dispute, controversy or claim submitted to mediation shall be suspended until the conclusion of the mediation process. Any such mediation or arbitration shall be in English, shall be heard by one mediator/arbitrator and shall be held in Nashville, TN. Such mediator/arbitrator shall apply the law of Tennessee.
- Nothing in this Section 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 cheques, whether such occurs before, during or after the pendency of any negotiation or arbitration proceeding. The exercise of rights granted under this paragraph shall not be deemed a waiver of the right to compel arbitration.
- 26. Taxes.** Any and all payments required to be made by you under this Agreement shall be made free and clear of and without deduction or withholding for any taxes; provided that if you are required to deduct or withhold any taxes from any payment, then (i) the amount payable by you shall be increased so that, after making all required deductions or withholdings we receive an amount equal to the sum we would have received had no such deduction or withholding been made, (ii) you shall make the required deduction or withholding, and (iii) you shall pay to the relevant government authority in accordance with applicable law the full amount deducted or withheld.