

CEI EQUIPMENT COMPANY LLC d/b/a KT Pacer
TERMS AND CONDITIONS OF SALE

1. Acceptance; Agreement. These terms and conditions of sale (these “Terms and Conditions”) are the only terms which govern the sale of the goods (“Goods”) and/or services (“Services” and together with Goods, the “Deliverables”) by CEI Equipment Company, LLC d/b/a KT Pacer, Seller, to the Buyer; provided, however, if a written agreement signed by both parties is in existence covering the sale of the Deliverables covered hereby, the terms and conditions of said agreement shall prevail to the extent they are inconsistent with these Terms and Conditions. Other than the foregoing, these Terms and Conditions supersede all other terms and conditions, oral or written, and all other communications between the parties suggesting additional or different terms and may be amended or cancelled only by written agreement signed by both parties; provided, however, that terms on the face of Seller’s quote will govern in the event of a conflict with these Terms and Conditions. These Terms and Conditions expressly limit acceptance to these provisions. No order shall have any force or effect until acknowledged in writing by Seller. Any proposal for additional or different terms or any attempt by Buyer to vary in any degree any of the provisions of these Terms and Conditions is hereby deemed material and is objected to and rejected. No terms of any document or form submitted by Buyer shall be effective to alter or add to the provisions contained in these Terms and Conditions. Unless otherwise stated herein, Buyer’s receipt of any portion of the Goods or Services shall constitute acceptance of these Terms and Conditions unless, with respect to Goods, Buyer returns all such Goods within twenty-four (24) hours of receipt of Goods.

2. Prices. Seller’s prices quoted are in U.S. Dollars and are subject to change without notice. Quoted prices are valid during the period specified on the face of the quote (and if not so noted, then thirty (30) days from the date of the quote), and only binding upon acceptance of a 30% non-refundable down payment or acceptance of a PO from the Buyer consistent with the pricing and other terms in the quote (unless otherwise specified in writing on the quotation). Regardless of the pricing provided in the quote, Seller will have the right to requote pricing no less than ninety (90) days prior to the scheduled production build. Clerical errors are subject to correction by Seller without liability.

3. Terms of Payment. Unless otherwise indicated by Seller in writing, full and final payment for the Deliverables is due prior to delivery, pick-up, shipment or receipt of the Deliverables. For all other invoices, unless otherwise indicated on the face of the invoice, payment is due NET 30 days from date of invoice, without any right of abatement, deduction, or setoff. All orders are subject to acceptance by Seller. No discounts shall be taken except as specifically allowed in writing by Seller. The date of payment of an invoice shall be the date the payment is received by Seller at the location designated on the invoice. Late payments are subject to a service charge of the lesser of 1.5% per month or the highest rate permitted under applicable Law. Buyer shall be liable for all costs and expenses related to collection of past due amounts, including, without limitation, attorneys’ fees and costs. If, in Seller’s judgment, the financial condition of Buyer does not justify continuance on the terms of payment above, Seller may require full or partial payment in advance or otherwise adjust the terms including ceasing to supply Buyer.

4. Taxes. Unless specifically noted in the price description, prices do not include any sales, use, VAT, excise, privilege, or other taxes, duties, tariffs or assessments now or hereafter imposed or

levied by or under the authority of any Federal, State, provincial or local law, rule, or regulation concerning the Goods sold hereunder or the manufacture or sale thereof. If Seller pays any such taxes or assessments, Buyer shall, upon demand, reimburse Seller for such amounts within two days (48 hours).

5. Delivery and Risk of Loss. Seller will invoice Buyer, and title and risk of loss for the Deliverables will pass to Buyer, upon the completion of the manufacture of the Goods for Buyer by the Seller, or completion of the Services, as the case may be. This completes the transfer of ownership.

All completion dates are estimates and are based upon prompt receipt of all necessary information and materials from Buyer. Delays in securing Buyer's approval of necessary specifications or samples of products and materials shall, if Seller so chooses, extend such dates. Seller shall not be liable for any claim, loss, expense, or damage of any kind whatsoever for any such delays. Seller shall not be liable for any claim, loss, expense, or damage of any kind whatsoever for delays, or loss or damage in transit. Claims for loss or damage occurring in transit shall be made solely against the carrier. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.

6. Inspection. Buyer shall inspect the Deliverables as soon as possible, but at least within seven days after receipt, and Buyer shall immediately notify Seller in writing of any claims that the Deliverables do not conform to Seller's warranty for such Deliverables, whereupon Seller shall determine the remedy pursuant to these terms. Buyer's failure to give such written notice during such period will constitute irrevocable acceptance by Buyer of all Deliverables. Goods may not be returned without prior written authorization of Seller and compliance with Seller's return policies and procedures then in effect.

7. Storage. Seller may invoice Buyer and ship the Deliverables once the Goods are completed. If, because of Buyer's inability to take delivery once manufacture of Goods or provision of Services are completed, the Deliverables are not shipped, not picked up by Seller, stopped in transit or returned, or if Buyer fails to timely pick up the Deliverables, then Seller may, at its option, store the Deliverables and bill Buyer for the storage charges. In all cases, risk of loss shall pass to Buyer in accordance with Section 5 and the warranty period shall begin at such time.

8. Warranties and LIMITATIONS ON WARRANTIES.

A. The only express warranties made by the Seller are those contained in the written warranty(ies) in effect for the Deliverables at the time of sale and provided to the Buyer upon delivery of the Deliverables. Said warranty(ies) are also available at <https://ktpacer.com/terms-and-conditions/>. THESE ARE SELLER'S ONLY WARRANTIES. SELLER MAKES NO OTHER EXPRESS WARRANTIES OF ANY KIND WHATSOEVER AND HEREBY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. SELLER EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES FOR OR CONCERNING BUYER PROVIDED SPECIFICATIONS, MODIFICATIONS, ALTERATIONS, SPECIAL REQUESTS OR OTHER DEVIATIONS FROM SELLER'S STANDARD DESIGNS. All written warranties provided by Seller must be passed on by Buyer to the end user of the Deliverables.

B. Seller's liability to Buyer, or anyone claiming through or on behalf of Buyer, with respect to any claim or loss arising out of any Deliverables sold by Seller to Buyer or alleged to have resulted from an act or omission of Seller, whether negligent or otherwise, and whether in tort, contract, or otherwise, including failure to deliver, delay in delivery, or breach of warranty, shall be limited to an amount equal to the purchase price of the Deliverables or part thereof with respect to which such liability is claimed or, where appropriate and at the option of Seller, to the then replacement value of the Goods or part thereof or re-performance of the Services, as the case may be. In no event shall Seller be liable for any bodily injury, death, or property damage resulting from or in any way arising out of the Deliverables or their marketing, sale, use, or manufacture. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY OTHER PERSON OR ENTITY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, LOSSES, OR EXPENSES INCLUDING ANY DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF USE, REVENUE OR PROFIT, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE BUYER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY OTHER PERSON OR ENTITY FOR ANY CLAIMS, DAMAGES OR LOSSES ARISING OUT OF OR RELATED TO BUYER PROVIDED SPECIFICATIONS, MODIFICATIONS, ALTERATIONS, SPECIAL REQUESTS OR OTHER DEVIATIONS FROM SELLER'S STANDARD DESIGNS. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE BUYER'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

C. Upon the occurrence of any event described in Section 9(e)(i)-(vi) without the prior written consent of Seller, this warranty shall be void.

9. Indemnification. Buyer shall indemnify, defend, and hold harmless Seller, its affiliates and their respective officers, directors, members, managers, representatives, agents and employees against all claims, suits, demands, losses, liabilities, damages (including without limitation injury and death) and expenses (including, without limitation, attorneys' fees), which Seller may incur or become liable to pay which arise from or relate to: (a) specifications, design, structure, operation, material or method of making Deliverables provided by or on behalf of Buyer, including any Buyer special requests, Buyer requested deviations from standard Seller designs, or other directions provided by Buyer ("Buyer's Specifications"), (b) Buyer's use, misuse or disposal of Deliverables or materials; (c) Buyer's non-compliance with any Law; (d) breach of these Terms by Buyer; and (e) Deliverables subjected to: (i) improper installation or storage; (ii) accident, damage, abuse or misuse; (iii) abnormal operating conditions or applications; (iv) operating conditions or applications above the rated capacity of the Deliverables; (v) repairs or modifications made to all or part of the Deliverables without the prior written consent of Seller; or (vi) a use or application other than or varying in any degree from the specifications and Seller's instructions.

10. Insurance.

A. Buyer shall maintain in force, and shall continue to maintain in force, insurance with a carrier(s) with financial strength of at least A- VII or better as defined by AM Best (in amounts and coverage satisfactory to Seller) sufficient to cover any and all product liability claims but in no event less than \$2 million per occurrence and \$4 million annual aggregate for bodily injury and property damage with a combined single limit for products and completed operations liability, which may be brought

with respect to the Deliverables, whether by Seller or any third party. The Buyer's insurance will be (i) primary and non-contributory; (ii) name the Seller as an Additional Insured as its interests applies per this written agreement; (iii) and provide a Waiver of Subrogation in favor of the Seller. Buyer shall furnish Seller with a Certificate of Insurance evidencing such coverage.

B. Buyer shall maintain in force, and shall continue to maintain in force, Workers' Compensation insurance with a carrier(s) with financial strength of at least A- VII or better as defined by AM Best, including coverage for all costs, benefits, and liabilities under Workers' Compensation and similar laws which may accrue in favor of any person employed by Buyer, for all States in which the Buyer will perform services for Seller, and Employer's Liability insurance with limits of liability of at least \$500,000 per accident or disease and \$1,000,000 aggregate by disease. Buyer warrants that its subcontractors will maintain Workers' Compensation and Employer's Liability insurance, and Buyer shall indemnify Seller for any loss, cost, liability, expense and/or damage suffered by Seller as a result of failure of its subcontractors to maintain such insurance. Buyer further warrants that, if a subcontractor does not maintain Workers' Compensation insurance, Buyer's Workers' Compensation insurance shall insure the subcontractor. Buyer may self-insure Workers' Compensation only in States where the governing State bureau has issued to the Buyer a qualified self-insurance license for Workers' Compensation. The Buyer's insurance will be (i) primary and non-contributory; (ii) name the Seller as an Additional Insured as its interests applies per this written agreement; (iii) and provide a Waiver of Subrogation in favor of the Seller. Buyer shall furnish Seller with a Certificate of Insurance evidencing such coverage.

C. Buyer shall maintain in force, and shall continue to maintain in force, Automobile Liability insurance with a carrier(s) with financial strength of at least A- VII or better as defined by AM Best for owned, non-owned and hired vehicles, with limits of at least \$1,000,000 per occurrence for bodily injury and property damage combined. If Buyer does not own or lease any vehicles, the Buyer's Commercial General Liability insurance shall be extended to provide insurance for non-owned and hired automobiles in lieu of separate Automobile Liability insurance. The Buyer's insurance will be (i) primary and non-contributory; (ii) name the Seller as an Additional Insured as its interests applies per this written agreement; (iii) and provide a Waiver of Subrogation in favor of the Seller. Buyer shall furnish Seller with a Certificate of Insurance evidencing such coverage. The existence of insurance or Buyer's failure to furnish Seller evidence of coverage shall not limit Buyer's liability.

11. **Patents.** Provided Buyer has made all payments due hereunder, Seller shall defend, at its expense, any suit or proceeding brought against Buyer based upon any claim that the Deliverables or any part thereof infringe any United States patent issued as of the date of Seller's quotation and shall pay any damages and costs awarded therein against Buyer, provided that Seller is notified within 10 days in writing of such claim and is given full authority, information and assistance by Buyer to defend or settle the suit. Notwithstanding anything to the contrary, Seller will have no liability to the extent that the suit is based upon: (i) modifications to any Deliverables or part made by or on behalf of the Buyer in a manner that causes the infringement; (ii) use of any item in combination with the Deliverables that cause the infringement; (iii) the failure of the Buyer to use corrections or enhancements to the Deliverables that are made available by Seller; (iv) Buyer's Specifications; (v) Buyer's distribution, marketing or use for the benefit of third parties of the Deliverables; or (vi) use not authorized under these Terms. If the Deliverables or any part thereof

are deemed to infringe any such patent, Seller shall, at its expense and sole option either: (a) procure for Buyer the right to continue using said Deliverables or part; (b) replace them with non-infringing Deliverables or parts; (c) modify or re-perform them so they become non-infringing; or (d) remove them and refund an amount equal to its then depreciated value (depreciated over no more than 3 years), but in no event to exceed the purchase price actually paid for them.

12. Force Majeure. Seller shall not be liable for any delay in or failure of performance hereunder due to any cause, matter, event or contingency beyond its reasonable control including acts of God, epidemics, acts of war whether declared or undeclared, blockades, labor disputes (whether of Seller's employees or the employees of others), raw material shortages and material increases in costs of raw materials, including those material increases in costs resulting from the imposition of tariffs. In the event of Force Majeure, the time for performance will extend for such time as reasonably necessary to enable Seller to perform. Seller may, during any period of shortage due to any of the above circumstances, allocate its available supply of Deliverables among itself and its purchasers in such manner as Seller, in its sole judgement, deems fair and equitable.

13. Termination. Seller shall have the right to terminate these Terms and Conditions or to cease work hereunder, in whole or in part, at any time, if (i) Buyer is in default of or commits a breach of any of the provisions of these Terms and Conditions or any other agreement it has with Seller, or Seller's affiliates; (ii) a petition initiating a proceeding under any applicable law relating to bankruptcy, insolvency, or reorganization is filed by or against Buyer; (iii) Buyer executes an assignment for benefit or creditors; (iv) a receiver is appointed for Buyer or any substantial part of its assets; or (v) Seller shall have any reasonable ground for insecurity with respect to Buyer's ability to perform and Buyer is unable to provide Seller with adequate assurance of its ability to perform upon Seller's written request. Seller's right to terminate under this section is not an exclusive remedy. Seller shall be entitled to all other rights and remedies it may either at law or in equity. No termination hereunder shall affect any accrued rights or obligations of either party as of the effective date of such termination and those provisions which, by their nature, should or are intended by Seller to survive shall survive notwithstanding such termination.

14. Waiver. Failure of Seller at any time to require Buyer's performance of any obligation hereunder shall not affect Seller's right to require performance of that obligation or of any other obligation of Buyer hereunder. No delay, or omission in the exercise of any right, power, or remedy hereunder shall impair such right, power, or remedy or be considered to be a waiver of any default or acquiescence therein.

15. Miscellaneous. Buyer shall not assign any of its rights or obligations hereunder without Seller's prior written consent. These Terms and Conditions shall be construed in accordance with the laws of the State of IOWA without regard to any rules on conflicts of laws. Any contract created between Seller and Buyer is subject to the specific conditions that (a) Seller is not obligated to provide insurance or indemnify Buyer, and (b) there are no flow-downs from any person or entity including the federal government that become part of the contract. The section headings contained herein are not part of these Terms and Conditions and are included solely for the convenience of the parties.