

Section E – ECOA Notice (to be retained by Applicant)

Thank you for your business credit application. If your application for business credit is denied, you have the right to a written statement on the specific reasons for your denial. To obtain that statement, please contact us within 60 days from the date that you are notified of our decision. We will send you a written statement of the reasons for the denial within 30 days of your request for the statement. NOTICE: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act. The federal agency that administers our compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Section F – Terms and Conditions

This Agreement and any sale made by NMC to Applicant is subject to the following additional terms and conditions:

- 1. Timely Payments:** Unless other agreed in writing by the parties, all amounts payable to NMC are due the 15th day of the following month following the date of purchase and should be made payable to Nebraska Machinery Company at the address set forth above or as otherwise provided by NMC to Applicant from time to time. Payments made payable to third parties (including agents of NMC) are not valid unless authorized in writing by NMC's Branch Manager or Sales Manager. All amounts not paid for products or services purchased from NMC ("Products") when due shall be considered past due. Interest shall be payable by Applicant on any amount not paid when due at the rate of one and one-half percent (1.5%) per month, or the maximum rate allowable by law, whichever is less. Any returned checks will be assessed a \$25 fee.
- 2. Excusable Delivery Delays:** Delays in delivery shall be excused when caused, directly or indirectly, by strikes, wars, lockouts, accidents, terrorism, insurrection, riots, fires, floods or other natural disasters, delays of manufacturer or carrier, acts of God, embargoes, or governmental action or any other cause beyond the reasonable control of the NMC, whether the same as, or different from, the matters and things hereinbefore specifically enumerated, and if for such reasons, NMC is unable to make delivery within a reasonable time after the time stipulated for delivery, NMC, may at its option, cancel any purchase order by Applicant without liability, except for return of the amounts paid under such purchase order.
- 3. Title and Risk of Loss:** Passage of title and risk of loss shall be as follows: (a) if NMC is to deliver the Products to Applicant (or to Applicant's designated agent, carrier or transportation company), title and risk of loss shall pass to Applicant upon NMC's tender of delivery at the location agreed to between the parties; (b) if Applicant, Applicant's agent, carrier or transportation company of Applicant's choosing is to pick up the Products from NMC's facility or such other location agreed to between the parties, title and risk of loss shall pass to Applicant when the Products are made ready for delivery from NMC's facility or other location agreed to between the parties; and (c) if the Products are to be shipped via common carrier, title and risk of loss shall pass to Applicant when the Products are delivered to the common carrier. Upon receipt of the Products, Applicant shall make all necessary inspections and tests of the Products. Applicant shall promptly notify NMC, in writing, of any defect or other proper objection to the type or condition of the Products. Applicant's failure to notify NMC in writing of any deficiencies in the Products within (7) days after receipt of the Products shall be Applicant's acknowledgment that the Products were in good, safe and serviceable condition and fit for their intended use.
- 4. Security Interest:** Applicant hereby grants to NMC a purchase money security interest to secure payment, performance and satisfaction of all present and future debts, obligations or other indebtedness of Applicant to NMC in the following property: all of Applicant's products, equipment or inventory now or hereafter acquired from NMC, together with all additions, accessories, attachments, parts and equipment now or hereafter affixed thereto or used in connection therewith and all substitutions, replacements and proceeds of the foregoing. Applicant, at Applicant's sole cost and expense, hereby irrevocably (a) authorizes NMC from time to time to file a copy of any initial financing statements, continuation statements and any amendments thereto to perfect its security interests, (b) authorizes NMC to notify other creditors of Applicant to the extent necessary to perfect its security interests, and (c) agrees to provide any other information required to make any such filings and to cooperate with NMC and take all necessary actions, including without limitation, executing any and all additional documents, or taking such action requested by NMC to avail itself, in addition to all other rights and remedies available at law, in equity or as contemplated herein, of all rights and remedies of a holder of a purchase money security interest under the Uniform Commercial Code. Applicant shall provide NMC with not less than forty-five (45) days' prior written notice of any name change, change in place of business, or, if more than one, its chief executive office, or its mailing address, its organizational number, type of organization, jurisdiction of organization or other legal structure. Applicant hereby appoints NMC as Applicant's attorney-in-fact for the purposes of carrying out the provisions of this section and taking any action and executing any instrument which NMC may deem necessary or advisable to accomplish the purposes hereof, which appointment is irrevocable and coupled with an interest.
- 5. Default:** An "Event of Default" shall occur if Applicant fails to observe or perform any other covenant, agreement, condition or obligation to be observed or performed by Applicant hereunder or any representation or warranty made by Applicant is or fails to be true and correct in any material respect. Additionally, unless the Products are paid for in full in cash at the time of delivery, an Event of Default shall also occur if: (a) Applicant fails to pay any payment when due; (b) Applicant ceases doing business as a going concern, makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts as they become due or becomes insolvent; (c) there is filed by or against Applicant a proceeding in bankruptcy, or of reorganization, receivership, insolvency, liquidation, dissolution or similar relief; (d) a trustee, receiver, or liquidator is appointed for Applicant, or of all or any substantial part of Applicant's assets or properties; (e) any sale or other disposition of the Products other than in Applicant's normal course of business; (f) Applicant dies; (g) any guarantor of any liability or obligation described in this Agreement, any purchase order or any other agreement between the parties denies that it has any or further liability or obligations hereunder; (h) any financial or credit information submitted by or on behalf of Applicant is proven to have been false or misleading in any respect when submitted; or (i) NMC determines, in its sole discretion, that any material adverse change has occurred in Applicant's financial condition, in the value of the Products, or in the prospect for full and punctual payment and performance of all Applicant's obligations under any purchase order or any other agreement between the parties.
- 6. Remedies:** Upon the occurrence of an Event of Default, NMC may (a) terminate this Agreement, any purchase order, other agreement between the parties or any open account or other credit accommodations, if any, at which time all payments, including any payment due at a later date, shall become immediately due and owing without further notice or demand, and/or (b) exercise any or all other rights and remedies available at law, in equity or as contemplated herein or in any purchase order or any other agreement between the parties, including without limitation, all rights and remedies of a holder of a purchase money security interest under the Uniform Commercial Code. In any case, upon an Event of Default, NMC may recover all expenses incurred by reason of an Event of Default or the exercise of any remedy hereunder, including expenses of repossession, repair, storage, transportation, and disposition of the Products. Remedies provided herein or under any purchase order or agreement shall be cumulative and non-exclusive.
- 7. Disclaimer of Warranties:** If the Products are described herein as "new", such Products may be sold subject to manufacturer's warranties. HOWEVER, APPLICANT ACKNOWLEDGES THAT NMC IS NOT THE MANUFACTURER OF THE PRODUCTS, AND UNLESS OTHERWISE PROVIDED HEREIN, NMC MAKES NO WARRANTIES WHATSOEVER WITH RESPECT TO ANY PRODUCTS OR SERVICES PROVIDED BY NMC, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, VALUE, CONDITION, QUALITY, DESIGN, CAPACITY, MATERIAL WORKMANSHIP, FITNESS OR SUITABILITY FOR ANY PURPOSE OR USE AND, AS BETWEEN APPLICANT AND NMC, APPLICANT TAKES ANY PRODUCTS "AS IS" AND WITH ALL FAULTS OR DEFECTS, AND ALL RISK, AS BETWEEN APPLICANT AND NMC SHALL BE BORNE BY APPLICANT, AT APPLICANT'S EXPENSE.

