

**EXCLUSIVE CONSIGNMENT AGREEMENT**

Owner Name: Arrendadora Construplan SA de CV		Jesse Guerrero	
Owner Address: Callejon Camino a Las Graveras S/N Entre Avenida Del Mexquite y Villa de AL Col. La Manga. Sonora, Mexico 83280			
Street		City	State Zip Code
Contact Name: Javier Elias	Phone Number: +52 662 108 0500		

DESCRIPTION OF EQUIPMENT

Machine Make: Caterpillar Model: 789D Year: 2019
Serial #: 0SPD00822 Hour Meter Reading: 36460

EQUIPMENT CONFIGURATION & ATTACHMENTS (boom and stick length, auxiliary plumbing, couplers, tire size, cab, A/C, 4x4, E-stick, etc.):

MACHINE CONDITION (paint, tires, undercarriage, hour meter working, recent component rebuilds, etc.):

Working order

EQUIPMENT LOCATION (Name of Empire location or description of owner's storage location):

Mina la Herradura, Sonora, Mexico

PRICING AND SALES COMMISSION

Market/Advertised Sale Price (Machinery Trader and CatUsed.com):

Commission: ☐ 12% ☐ Other: 8 %

Authorized Minimum Sale Price:

\$ 1,570,556.00

Minimum Net to Owner if Sold at Minimum Sale Price:

\$ 1,413,500.00

\$ 1,300,000.00

APPLICATION OF OWNER'S NET PROCEEDS

1st: Apply net proceeds to pay off amounts due to lien holder(s)

2nd: Apply net proceeds to payment of all amounts due to Empire

3rd: Credit net proceeds to: (Specific name of person or business)

NET PROCEEDS - PAYMENT TYPE

- ☐ Wire Transfer
☐ Check
☐ On Account for Trade

WIRE TRANSFER - BANK NAME AND ADDRESS:

BANAMEX 363 C.F. KINO, HERMOSILLO LUIS ENCINAS JOHNSON 219

ACCT #: 143944432

ABA #: 002760700098702356

LIEN HOLDERS/UCC-1 FILINGS (List all lien holders) None

AGREEMENT START/COMMENCEMENT DATE: 8/3/2025

TERMINATION DATE: After 160 days from start/commencement date, this agreement terminates. (Per section 3 of Terms & Conditions)

TRANSPORTATION COST: Owner agrees to provide transport or pay Empire for any transportation required until machine is sold or is removed from consignment.

MINOR REPAIRS AND SERVICES REQUIRED FOR SALE OR SALE DEMONSTRATION: Owner agrees to pay Empire for minor repairs and services required for demonstration (fuel, lubricants, batteries, battery maintenance, tire repair or maintenance).

OWNER (Owner accepts terms and conditions on following page.)

By: Gerardo Reinero
Name (Print)

Signature

EMPIRE SOUTHWEST, LLC

By: Rick Scott
Name (Print)

Signature

CONSIGNMENT AGREEMENT – TERMS AND CONDITIONS

(Commission)

1. **Entire Agreement.** This Consignment Agreement shall consist of the consignment information set forth on the first page (the "Information Page") and these terms and conditions (the "Terms and Conditions"). The Information Page and the Terms and Conditions are collectively referred to as the "Agreement". This Agreement is the entire agreement between Owner and Empire with respect to this consignment. Neither party may rely upon any oral representations, claims or disclaimers.
2. **Exclusive Agent.**
 - (a) Owner grants to Empire the exclusive and irrevocable right to sell the equipment described on the Information Page (the "Equipment"), during the term set forth in Section 3 below (the "Term"), in accordance with this Agreement. If, during the Term, any other person or company sells the Equipment on behalf of Owner, Owner shall immediately pay the "Commission" (as defined in Section 4 below) to Empire. If Owner or any other person or company sells the Equipment within one hundred and eighty (180) days after expiration of the Term to a buyer introduced to Owner by Empire, Owner shall immediately pay Empire the Commission.
 - (b) Empire agrees to use reasonable efforts to obtain a "Buyer" (as defined in Section 4 below) for the Equipment and to inform any Buyer that the Equipment is on consignment. Empire shall display and demonstrate the Equipment to prospective Buyers but will not make any other use thereof.
3. **Term.** The Term of this Agreement shall commence on the "Commencement Date" set forth on the Information Page and shall expire on the earliest of the following events: (i) the sale of the Equipment; (ii) the termination of this Agreement in accordance with Section 13; or (iii) the "Termination Date" set forth on the Information Page.
4. **Sale Price; Payment.**
 - (a) Owner hereby authorizes Empire to sell the Equipment for any amount equal to or greater than the "Minimum Sale Price" set forth on the Information Page. Empire may agree to sell the Equipment for an amount less than the Minimum Sale Price only with the prior written consent of Owner. The actual sale price of the Equipment shall be referred to herein as the "Actual Sale Price". To effect the sale of the Equipment, Owner shall sell the Equipment to Empire for the Actual Sale Price, less the Commission percentage set forth on the Information Page (the "Commission"); such amount shall be referred to herein as the "Owner Sale Amount". Empire shall then sell the Equipment to the end customer (the "Buyer") for the Actual Sale Price and retain the full amount of the Actual Sale Price.
 - (b) Owner and Empire intend that Empire shall acquire the Equipment from Owner immediately prior to Empire's sale of the Equipment to the Buyer. Empire shall have no obligation to purchase the Equipment from Owner until Buyer has presented Empire with the funds necessary to purchase the Equipment from Empire.
 - (c) Owner unconditionally and irrevocably directs Empire to apply the proceeds of the Owner Sale Amount as specified in the "Application of Owner's Net Proceeds" section of the Information Page. Owner shall transfer the Equipment to Empire in accordance with this Section 4 free and clear of all liens and encumbrances. If Owner is past due on any other payment obligation to Empire, Owner authorizes Empire to deduct any such past due amounts from the Owner Sale Amount.
5. **Conveyance of Equipment.** Within five (5) days following the Commencement Date, Owner shall deliver to Empire all documents evidencing ownership of the Equipment. In order to accomplish the sale of the Equipment pursuant to Section 4 above, Owner shall execute all documents reasonably required to transfer the Equipment to Empire.
6. **Owner Repairs.** It is Owner's responsibility to present the Equipment in a clean, marketable and saleable condition. If Owner desires that Empire perform service or repairs to the Equipment prior to the sale (the "Owner Repairs") and Empire agrees, then Owner and Empire shall enter into a separate written quote or agreement setting forth the Owner Repairs and the payment terms for such Owner Repairs. Owner's obligation to pay for any Owner Repairs shall not be contingent upon the sale of the Equipment. Within thirty (30) days of receiving an invoice from Empire, Owner shall pay Empire for the supply of such consumables, including but not limited to fuel, lubricants, batteries, battery maintenance, fire maintenance, coolant and hydraulic fluid, as Empire reasonably determines necessary for the demonstration and sale of the Equipment, and for all service charges associated with supplying such consumables. If Owner has not paid Empire all sums required by this Section 6 by the date Empire purchases the Equipment from Owner, Owner hereby authorizes Empire to deduct any such outstanding charges from the Owner Sale Amount.
7. **Buyer Repairs.** The Buyer may request that additional repairs, restoration, or painting of the Equipment be performed prior to Buyer's acquisition of the Equipment (the "Buyer Repairs"). Additional charges may be added to the Actual Sale Price for costs associated with the Buyer Repairs. Owner agrees that Empire shall be entitled to retain all charges associated with the Buyer Repairs. Owner hereby authorizes the completion of Buyer Repairs during Owner's term of ownership prior to the transfer of the Equipment to Empire. All such Buyer Repairs shall be performed at Buyer's sole cost and expense and, in no event, shall Owner be financially responsible for the Buyer Repairs.
8. **Location of Equipment.**
 - (a) During the Term, the Equipment shall be located at the site set forth on the Information Page (the "Equipment Location").
 - (b) If the Equipment Location is an Empire branch, Owner shall deliver the Equipment to the Equipment Location within five (5) business days of the Commencement Date, at Owner's sole cost and expense. If Owner desires that Empire transport the Equipment to the Equipment Location and Empire agrees, Owner and Empire shall enter into a separate written transport agreement, purchase order or invoice setting forth the location for pick up, the Equipment Location and the payment terms for such transport. Owner's obligation to pay for any transport charges shall not be contingent upon the sale of the Equipment. If Owner has not paid Empire all costs of transport pursuant to this Section 8 by the date Empire purchases the Equipment from Owner, Owner hereby authorizes Empire to deduct any such outstanding charges from the Owner Sale Amount.
 - (c) If the Equipment Location is not an Empire branch, upon 24 hours prior notice from Empire, Owner shall provide Empire and prospective buyers with access to the Equipment, and Owner shall shut down the Equipment (if in operation) for the purpose of inspection and demonstration.
9. **Removal of Equipment.** If the Term expires without the sale of the Equipment and the Equipment Location is an Empire branch, Owner, at its sole cost and expense, shall remove the Equipment from Empire's premises within seven (7) days or pay monthly storage charges of two percent (2%) of the Minimum Sale Price. Owner shall pay all storage charges as a condition precedent to the release of the Equipment by Empire.
10. **Owner's Representations.** Owner represents and warrants to Empire, and Owner authorizes Empire to represent and warrant to any prospective Buyer, that: (i) the description of the Equipment set forth on the Information Page is complete and accurate; (ii) Owner owns the Equipment free and clear of any actual or threatened liens, charges or encumbrances, except as specified on the "Lien Holders" section of the Information Page; and (iii) Owner has previously paid all taxes and other charges levied by any governmental authority with respect to the Equipment. Owner covenants and agrees to defend, indemnify, and hold harmless Empire (including its subsidiaries, affiliates, agents and employees) and any Buyer for, from, and against any all losses, expenses, liens, claims, demands, suits, causes of action, damages, costs and liability (including costs, attorneys' fees and settlements) related to any breach of the foregoing representations and warranties.
11. **Taxes.** Owner is also responsible for paying all deficits, fees, compensation, taxes, tariffs, duties, and other amounts owed to governmental authorities, trustees, and/or lien holders that relate to or arise from the Equipment, sale of Equipment, Empire's ownership of the Equipment, or the transfer of the Equipment to Empire or to the Buyer. If Owner has not paid any such amount, Owner hereby authorizes Empire to deduct such from the Owner Sale Amount.
12. **Transportation and Disassembly.** Any disassembly and shipping preparation will be performed by Owner's personnel. Any Equipment movement, transportation, disassembly, or handling will be done at Owner's expense, except as may be reimbursed through the sale or as may be paid by the Buyer. If Empire incurs any costs or expenses relating to the Equipment or sale of the Equipment, and to the extent such costs or expenses are not paid to Empire by the Buyer or from any escrow, Owner will immediately reimburse Empire for such costs and expenses.
13. **Insurance.** During the Term and for any additional period that the Equipment remains in Empire's possession, Owner agrees to (i) insure the Equipment against all property damage, theft, or other loss, however caused, in an amount not less than the Minimum Sale Price; and (ii) maintain general liability insurance, including contractual liability coverage, in an amount not less than \$1,000,000 per occurrence. Owner shall add Empire as an additional insured and loss payee on the foregoing policies. In addition, Owner releases Empire and its affiliates, agents, and employees from any and all liability for loss or damage to the Equipment, whether or not such loss or damage is caused or contributed to, by the negligence or default of Empire or its affiliates, agents, or employees.
14. **Indemnification.** Owner shall defend, indemnify, and hold harmless Empire (including its subsidiaries, affiliates, agents, and employees) for, from, and against any and all losses, expenses, taxes, fines, penalties, tariffs, liens, claims, demands, suits, causes of action, damages, costs (including attorneys' fees and settlements), injuries (including death), property damage, or any liability related to the Equipment, ownership of the Equipment, the sale of the Equipment, transfer of the Equipment, or Empire acting under this Agreement, unless such loss is caused by the sole and exclusive negligence of Empire. Without limiting the generality of the foregoing, this includes the obligation to defend, indemnify, and hold harmless Empire against claims or liabilities that are caused by, arise from, or relate to: (i) anyone asserting a lien or interest in the Equipment; (ii) Empire's ownership of the Equipment, or the transfer of the Equipment to Empire or to the Buyer; (iii) any unauthorized use of a trademark, copyright, or patent that Owner had authorized Empire to use; (iv) violations of laws or regulations; (v) transportation, export, use, maintenance, demonstrations, repairs, or condition of the Equipment; and/or (vi) taxes, tariffs, or other charges levied by any governmental authority.
15. **Limitation on Liability.** Empire's maximum aggregate liability (whether in contract, warranty, indemnity, tort, strict liability, or any other theory of law or equity) for damages or loss, however arising or caused, shall in no event exceed the amount Empire actually received as a commission for the sale of the Equipment. In no event may Empire be liable for consequential, indirect, incidental, special, exemplary, or punitive damages, or for lost profits or revenue loss, diminution in value, downtime, loss of opportunity or contract, loss of use, business interruption, or loss of production, regardless of whether: (i) any damages were foreseeable, (ii) either party was advised of the possibility of the damages, or (iii) the liability is based in contract, tort, strict liability, or any other theory of law or equity.
16. **Termination.** Empire may terminate this Agreement at any time, without penalty, after thirty (30) days prior written notice to Owner. Either Empire or Owner may terminate this Agreement immediately, without penalty, if the other party breaches this Agreement and the breach is not remedied within ten (10) days after notice from the non-breaching party.
17. **Notices.** All notices and other communications under this Agreement shall be in writing and shall be delivered in person; or by certified or registered mail, postage prepaid, return receipt requested.
18. **Attorneys' Fees.** In the event of any action instituted in connection with the enforcement or breach of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all of the prevailing party's reasonable attorneys' fees, expert witness fees and costs.
19. **Time is of the Essence.** Time is of the essence of this Agreement and no extension of time shall act as a waiver of any or all of the terms and conditions of this Agreement.
20. **General Provisions.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, without regard to its conflict of laws provisions. The terms of the United Nations Convention on Contracts for the International Sale of Goods do not apply to this Agreement. Owner agrees to the exclusive jurisdiction and venue in the courts of Maricopa County, Arizona. The invalidity or unenforceability of any provisions of this Agreement shall in no way affect the validity or enforceability of any other provisions of this Agreement. Any invalid or unenforceable provisions shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the provisions held to be invalid or unenforceable. The failure of either party to insist on strict performance of any of the agreements, terms, and conditions of this Agreement shall not be deemed a waiver of any rights or remedies that party may have for any subsequent breach, default or non-performance, and either party's right to insist on strict performance of this Agreement shall not be affected by any previous waiver or course of dealing.

