



FABICK CAT PARTS ONLINE TERMS & CONDITIONS

These terms and conditions govern the sale of Parts (as defined below) from Fabick Cat (“Fabick Cat”) to its customer (“Customer”; individually Fabick Cat and Customer may be referred to below as “Party” or collectively as “Parties”).

FORMATION OF CONTRACT

Customer makes a firm offer to purchase the parts (“Parts”) described in an order (“Order”) submitted (a) through Fabick Cat’s website at <https://parts.cat.com/fabick>; or (b) by fax, email or other contact with Fabick Cat’s Parts Department using the procedures described in such website and under these Terms and Conditions. Except as otherwise specified herein, Fabick Cat accepts Customer’s offer at the earlier of when (i) Fabick Cat sends Customer a written acceptance (by e-mail, fax, or otherwise), (ii) Fabick Cat ships Customer’s Order, (iii) Fabick Cat accepts by the signature of its Parts Manager, or (iv) Fabick Cat begins fulfillment of Customer’s Order. Fabick Cat’s acceptance and this agreement is conditioned on Fabick Cat’s on-going determination that Customer and this agreement comply with all applicable laws and regulations. Fabick Cat reserves the right to make partial shipment of one or more Parts contained in the Order, and unless otherwise specified in Fabick Cat’s written acceptance, partial shipment of an Order shall be acceptance of only that portion of an Order. For Parts not currently in Fabick Cat’s inventory, Fabick Cat may place such Parts on backorder and notify Customer of such status, unless such Parts will be in Fabick Cat’s inventory within thirty (30) days. Notwithstanding the foregoing, acceptance is strictly limited to the terms and conditions in this agreement and Fabick Cat objects to and rejects any provision additional to or different from the terms hereof that may appear in Customer’s purchase order, acknowledgment, confirmation, writing, or in any other prior or later communication from Customer to Fabick Cat, or arising out of course of dealing or usage in the trade, unless such provision is expressly agreed to by Fabick Cat in a writing signed by an authorized representative of Fabick Cat.

ORDER AND DELIVERY OF PARTS

Customer shall have no right to cancel an Order for Parts once the Order is accepted by Fabick Cat; provided, however, some Parts may be returnable to Fabick Cat in accordance with Fabick Cat’s then current parts return policy (available here: <https://www.fabickcat.com/company/policies-and-statements/fabick-cat-parts-return-policy/>). Customer acknowledges that estimated delivery dates for Parts are estimates only; actual delivery dates depend on a variety of factors, including, but not limited to, the availability of product from manufacturers. Fabick Cat will use commercially reasonable efforts to meet estimated delivery dates but Fabick Cat shall have no liability for any loss associated with delay in the delivery of Parts. Parts shall be delivered EXW (as defined in Incoterms 2020) Fabick Cat’s facility, unless purchased Parts are shipped to Customer directly from the manufacturer, in which case pricing and risk of loss is EXW factory. Title passes to Customer upon delivery of the parts to EXW location. Any claims for shortages, damages, or delays in shipping must be made by Customer directly to the carrier.

PRICING

The price for Parts shall be the list price for such Parts on <https://parts.cat.com/fabick> as of the date such Parts are ordered by Customer.

TAXES

Customer is liable for and shall pay all taxes, impositions and charges imposed by any U.S. taxing authority arising out of or in connection with this agreement. “Taxes” are defined as all taxes, fees, charges or duties and any interest, penalties, fines or other additional tax, including but not limited to sales, use, value added, gross receipts, stamp, custom, withholding, excise, transfer and similar taxes, or other taxes imposed in connection with the performance of this agreement, except U.S. federal and state income taxes imposed on Fabick Cat. Customer will promptly reimburse Fabick Cat on demand for any Taxes that are imposed on and paid by Fabick Cat or for which Fabick Cat is responsible for collection in connection with this agreement.

PAYMENT TERMS

For Customers who do not have an open credit account with Fabick Cat, payment is due at time of Customer’s Order. For Customers with an open credit account with Fabick Cat, payments are due Net 30, subject to available credit and account status. Fabick Cat may, in its sole discretion, at any time: (a) revoke credit; (b) modify terms and conditions of credit; (c) require payment in advance; and/or (d) withhold Parts until receipt of payment. If Customer fails to pay for Parts as and when due, Customer shall pay a late charge of 1.5% of the invoice balance each month until charges are paid in full, and Customer shall pay Fabick Cat all reasonable attorneys’ fees and collection costs incurred by Fabick Cat. In addition to any other right of set-off or recoupment Fabick Cat has under applicable law, Customer agrees that, with respect to any amounts due from Customer or Customer’s affiliates to Fabick Cat or Fabick Cat’s affiliates, Fabick Cat and its affiliates may set-off such amounts against any amounts owing to Customer or Customer’s affiliates.

WARRANTY

Fabick Cat is not the manufacturer of the Parts. All Parts provided by Fabick Cat are provided with only those written warranties made by the manufacturer(s) of the Parts and are subject to any limitations or exclusions provided by such manufacturer(s). (A copy of Caterpillar's Parts Warranty can be viewed here: <https://www.fabickcat.com/wp-content/uploads/caterpillar-parts-warranty.pdf>). FABICK CAT MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PARTS OR CUSTOMER'S USE THEREOF. INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY OR ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE. TO THE MAXIMUM EXTENT PERMITTED BY LAW ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED BY FABICK CAT AND WAIVED BY CUSTOMER.

INDEMNIFICATION

Customer agrees to defend, indemnify and hold harmless Fabick Cat from and against any third party claims related to the Parts to the extent such third party claims (including, but not limited to claims related to the death or injury of any person(s) or damage to or destruction of any real or personal property) arise out of or relate to the acts or omissions of Customer.

LIABILITY LIMITATION

In no event shall Fabick Cat be liable, whether based in contract, warranty, indemnity, tort, strict liability or any other theory of law or equity, for any special, incidental, indirect, punitive, exemplary or consequential damages, including, but not limited to, lost profits, loss of use of property or equipment, downtime, loss of third party contracts or lost production, regardless of whether or not Fabick Cat was advised of the possibility of such damages. In addition, Fabick Cat's maximum aggregate liability (whether in contract, warranty, indemnity, tort, strict liability or any other theory of law or equity) for damages or loss, howsoever arising or caused, shall in no event exceed the amount Customer paid to Fabick Cat for the Parts to which the liability relates. The foregoing limitations shall be valid and enforceable, notwithstanding any alleged failure of essential purpose of the limited remedies set forth herein. Any and all claims arising out of or relating to the Parts will be barred unless a legal proceeding is commenced within one (1) year from delivery of the Parts to Customer.

FORCE MAJEURE

Fabick Cat shall not be liable for delays in performance from causes beyond the reasonable control of Fabick Cat, including, but not limited to, delays caused by acts of God, acts of war or terrorism, epidemics or pandemics, supply chain disruptions, fire or other casualty, storms or adverse weather, strikes, labor shortages or disturbances, shortages of materials, manufacturer delays, theft or vandalism, transport and handling accidents, or revisions to laws, regulations or governmental requirements.

PRIVACY POLICY

Customer consents to the collection, use, retention and disclosure of information by Fabick Cat and its parent, subsidiary and affiliated entities (collectively, "Fabick Cat Entities") in accordance with Fabick Cat's Privacy Policy, which is posted at <https://www.fabickcat.com/company/policies-and-statements/privacy/> (as such statement may be revised from time to time), and agrees that such information may be accessed by the Fabick Cat Entities and their partners and manufacturers with a legitimate business reason to access it, as well as third parties who may process such information on their behalf.

CHOICE OF LAW

These Terms shall be governed by and construed in accordance with the laws of the State of Missouri without giving effect to its conflict of law provisions. The parties agree that exclusive jurisdiction and venue for any proceeding at law or in equity will be in the state or federal courts located in St Louis County, Missouri.

GENERAL PROVISIONS

(a) Customer may not assign Customer's rights or obligations hereunder without Fabick Cat's prior written consent, and any such attempted assignment will be void. (b) If any provision in these Terms is found to be invalid, unlawful or unenforceable, the remaining provisions in these Terms shall remain in full force and effect. (c) A Party's waiver of any breach will not constitute a waiver of any different or subsequent breach. (d) No employment, agency, joint venture, or similar arrangement is created or intended between Customer and Fabick Cat. (e) Fabick Cat retains ownership of all records relating to Parts provided to Customer ("Records") and may disclose the Records pursuant to a court order or in the event disclosure of the Records becomes part of Fabick Cat's defense in a legal matter.

NOTICES

Any notice required or allowed under this agreement must be in writing and delivered to Fabick Cat at Fabick Cat, 1 Fabick Drive, Fenton, MO 63026 Attn: Legal Dept. and to Customer at the address stated in the Order or the place of delivery of the Parts, or such other address as a Party may provide to the other party by like notice.

INTERPRETATION

Headings used in these Terms and Conditions are for the convenience of the Parties and do not form a part of or may be used to construe this agreement. No consideration will be given to the fact or presumption that one Party had a greater or lesser hand in drafting this agreement. Neither Party has an employee, agent, "borrowed servant," partner, fiduciary, or other relationship, other than buyer and seller, and except as expressly stated herein, neither Party has the right to control or direct the other Party.

COMPLIANCE AND IMPORT/EXPORT

In performing the obligations of this agreement, Customer will comply with all applicable statutes and government rules, regulations and orders. Customer understands and agrees that the Parts may not be exported outside of the United States. Customer agrees to indemnify and hold harmless Fabick Cat from and against all claims, fees, expenses, fines, duties and other costs levied against Fabick Cat by any manufacturer of the Parts or any governmental entity if Customer exports the Parts or if the Parts are exported by any subsequent purchaser.

TERMINATION

Without limiting any other provision of this agreement, Fabick Cat may terminate this agreement at any time by giving ten (10) days written notice to Customer. Fabick Cat may terminate this agreement in the event of (a) Customer's suspension, dissolution or winding-up of Customer's business, (b) Customer's insolvency, or its inability to pay debts, or its nonpayment of debts, as they become due, (c) the institution of reorganization, liquidation or other such proceedings by or against Customer or the appointment of a custodian, trustee, receiver or similar person for Customer's properties or business, (d) an assignment by Customer for the benefit of its creditors, (e) any action of Customer for the purpose of effecting or facilitating any of the foregoing, or (f) unavailability of a Part from the manufacturer. Customer agrees that Fabick Cat's rights to terminate this agreement are reasonable, and that upon termination, Fabick Cat shall not be responsible to Customer and Customer shall not make any claim against Fabick Cat for any payment or indemnity for loss of goodwill, loss of profit, investments made, or otherwise.

WAIVER OF IMMUNITY

Customer unconditionally and irrevocably agrees that the execution, delivery, and performance of this agreement constitutes private and commercial acts rather than public or governmental acts, and agrees that in the event any legal proceedings are brought against it or its assets in relation to this agreement, no immunity (sovereign or otherwise) from such legal proceedings shall be claimed by it or on behalf of it, or with respect to its assets. Customer hereby waives any such rights or immunity (sovereign or otherwise) which it or its assets now have or may acquire in the future, to the maximum extent permitted by applicable law.

ATTORNEYS' FEES; EXPENSES

Customer agrees to reimburse Fabick Cat for the costs Fabick Cat incurs (including attorneys' fees) in any action or proceeding brought to enforce any provision of this agreement, or where any provision is validly asserted by Fabick Cat as a defense.

ENTIRE AGREEMENT

These Terms and Conditions and the Order contain the entire agreement of the Parties and supersedes any and all prior understandings and communications between Customer and Fabick Cat related to the subject matter of this agreement, unless the Parties have previously entered into a written agreement covering Parts sales which on its terms remains in effect. When in conflict, these Terms and Conditions control over the Order. No amendment or modification of this agreement shall bind either Party unless it is in writing and is signed by an authorized representative of Customer and Fabick Cat.