



# SALES AGREEMENT

Agenda Item # 23c

Date 4/20/22

11002 Sapp Bros. Dr.  
Omaha, NE 68138  
(800) 628-6025

AGREEMENT DATE 03/08/2022  
VALID UNTIL 04/06/2022  
AGREEMENT ID QTO066555-2


#63

**Quoted To:**

Dodge County Hwy Dept  
435 N Park Room 204  
Fremont, NE 68025  
USA

**Ship To:**

Dodge County Hwy Dept  
435 N Park Room 204  
Fremont, NE 68025  
USA

  
**COPY**

Invoice Account	Order Account	Customer PO	Delivery Method	Page
1705000	1705000	Sourcewelll 032119-CAT		1 of 5
Salesperson	Phone Number	Email Address		
Kevin L Petersen	+14028917637	KevinPetersen@nmccat.com		

**Item Information**

Machine Model: 320

Make: Caterpillar

Equipment ID: EQN146474 Year: 2021

Serial Number: MYK11326

Machine Model:  
5000000 WT HW

Make: Caterpillar

CONTINUED



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### Machine Specification

**Model:** 320

**Description**

320 07D HEX AM-N CFG4C  
LINES, QC, R9'6" STICK  
LINES, HP, R9'6" STICK  
COUPLER, PIN GRABBER B1 W/PINS  
WIPER, RADIAL W/LOWER  
SUN SCREEN, REAR  
GUARD, TRAVEL MOTOR, STD  
SUCTION LINE, PUMP, STD  
CYLINDER, BKT, B1  
STICK, R9'6" HD THUMB  
QUICK DRAINS READY  
SCREEN, RADIATOR  
LINKAGE, BKT, B1 W/EYE GRADE  
RADIO, W/BLUETOOTH  
TIP, PENETRATION PLUS ADVANSYS  
HANDHOLDS, RAD COMPARTMENT  
STARTING AID, ETHER  
GRADE W/2D, ASSIST&PAYLOAD  
GRADE SENSOR, REACH BOOM  
GRADE SENSOR, R9'6"/9'8" STICK  
CONTROL, QC  
TRACK, 31" TG  
GUARD, TRACK GUIDE, SEGMENTED  
FILM, EMC  
JOYSTICKS, VERTICAL SLIDER  
LINES, DRAIN, PG QUICK COUPLER  
NETWORK MANAGER, STD  
DECALS, STICK WARNING, ANSI  
DECAL, ROPS  
LINES, QC, REACH BOOM  
DECALS, CAB, ANSI  
GUARD, BOTTOM, STD  
STORAGE TRAY  
LIGHTS, CAB, W/O 360  
BOOM, REACH 18'8" HD  
DECALS, EXTERIOR, ANSI  
LINES, HP, REACH BOOM  
LIGHTS PKG, BOOM LH & RH  
MIRROR, CAB, W/O GUARD  
CYLINDER, STICK  
CAMERA, REAR & RH VIEW  
PROD LINK, PLE643/PLE743 RADIO  
HYDRAULIC PKG, COMB ADV HRF  
SIDE CUTTERS, HEAVY DUTY  
BKT HD 48" 1.56YD3 B  
STORAGE PROTECTION (EXPORT)  
ROLL ON-ROLL OFF  
INSTRUCTIONS, ENGLISH  
STORAGE PROTECTION (EXPORT)  
LANE 3 ORDER  
320 07 EXCAVATOR ARRANGEMENT  
COMMON ARRANGEMENT  
GUARD, SWIVEL, STD  
LINES, FRONT, STD  
COOLING, HIGH AMBIENT

CONTINUED



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PEDAL, STRAIGHT TRAVEL  
FINE SWING  
CYLINDER, BOOM  
BATTERIES, 2  
FRAME, SWING, HD  
MONITOR, 10"  
BOOM TUBE W/EOU  
SENSOR, PRESSURE, EOU  
FILM, OPERATING PATTERN, 2WAY  
MACHINE ECM  
CAB, DELUXE  
SWING DRIVE  
UNDERCARRIAGE HD, W/SD ROLLER  
COUNTERWEIGHT, 10,360LB  
BEARING, SWING, HD  
LIGHT, CHASSIS  
LINES, AIR CONDITIONER  
TRAVEL, ALARM  
LIGHT, BOOM LH  
LIGHT, BOOM RH  
RADIO MODULE, PL243 CELLULAR  
WIRING, PRODUCT LINK ELITE  
VALVE, HYDRAULIC, TCS, HL  
RETURN PIPE, TCS/TCS MP  
CIRCUIT, COMBINED, ADV HRF  
LINES, MAKE UP, TCS

### Machine Specification

Model: 5330878\_WT-HEX

#### Description

THUMB GROUP  
CONNECTOR LINES, THUMB  
BRACKET GP

Sell Price of 320	307,426.00
Less Gross Trade Allowance for 323fi	-145,000.00
Less Discount	-\$36,351.00
Document Fee	0.00
Net Balance Due	126,075.00
Sales Tax	0.00
After Tax Balance	126,075.00

Trade - Ins : All Trade-Ins Are Subject To Equipment Being In "As Inspected Condition" By Vendor At Time Of Delivery Of Replacement Machine Purchase. Purchaser Hereby Sells The Trade-In Equipment Described To The Vendor And Warrants It To Be Free And Clear Of All Claims, Liens, Mortgages, And Security Interest Except As Shown.

Model	Make	Serial Number	Year	Trade Allowance
323fi	Caterpillar			145,000.00

#### Warranty

Extended Warranty: 5Yr/ 5000Hr Premier

CONTINUED



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**Additional Terms:**

This Agreement is subject exclusively to the Terms and Conditions for Equipment Sale attached hereto as Exhibit A which is a part hereof and incorporated by reference herein. NMC specifically rejects any terms and conditions contained in documents provided by Buyer (including, without limitation any purchase order) even if signed by NMC. Such documents shall be solely for internal administration by Buyer and have no legal effect upon NMC. ALL SALES ARE FINAL.

Buyer's signature below signifies Buyer's agreement to these terms and constitutes Buyer's acknowledgment of the legally binding effect of this Agreement.

Nebraska Machinery Company

Customer Name: Dodge County Hwy Dept

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## Exhibit A-Terms and Conditions for Equipment Sale

The following terms and conditions form a material component of the Sales Agreement ("Agreement") between NMC and the Buyer for sale of the Equipment:

- 1. Definitions for this Agreement:** "Buyer" is the individual or entity listed as Buyer on this Agreement's front page. "Delivery" shall occur and Equipment shall be considered "delivered" when NMC delivers the Equipment to Buyer, Buyer's agent or to the transportation company that is to transport the Equipment to Buyer, whichever occurs first. "Equipment" is the equipment listed by model and description this Agreement's front page. "NMC" is Nebraska Machinery Company or any affiliated company of Nebraska Machinery Company selling the Equipment under this Agreement.
- 2. Payment:** Buyer shall pay NMC in full at the time Buyer signs this Agreement, unless otherwise specifically noted on this Agreement's front page.
- 3. Excusable Delivery Delays:** In the event of a delay in delivery, the delay shall be excused when caused by events beyond NMC's reasonable control (including by way of example, but not limitation, strike, accident, transportation interruption, actions of third parties and reduction or unavailability of components or machinery at NMC's normal source of supply). If such a delay continues for a period greater than sixty (60) days, either party may, at its option, cancel this Agreement without liability (other than NMC's return of the amounts paid by Buyer on this Agreement).
- 4. Duration of Offer:** Buyer's signature on this Agreement shall constitute an offer to buy the Equipment pursuant to this Agreement. NMC's acceptance of the offer shall be indicated by its signature on this Agreement. Buyer shall not revoke or countermand said offer for ten (10) days from the date of this Agreement; thereafter it may be countermanded or revoked by written notice to NMC until the time, if any, of NMC acceptance of this Agreement. If NMC accepts, this Agreement (and any Security Agreement and/or promissory note signed by Buyer and accepted by NMC in writing) shall constitute the entire understanding and agreement between the parties relating to the Equipment transaction.
- 5. Execution of Other Documents:** Unless the Equipment is fully paid for in cash at or before delivery, NMC retains a Uniform Commercial Code security interest in such Equipment together with all and any substitutions, additions, accessions, sale or other proceeds, and products thereof and thereto. Buyer shall execute and deliver to NMC any evidences of indebtedness that NMC may require. Any note so taken by NMC shall evidence indebtedness only and is not payment for the Equipment.
- 6. Disclaimer of Warranties and Limitation of Liability:** WITH REGARD TO NEW EQUIPMENT, THE APPLICABLE WARRANTY PROVIDED BY THE EQUIPMENT MANUFACTURER SHALL APPLY IN LIEU OF ANY OTHER WARRANTIES WHETHER EXPRESS OR IMPLIED (INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE). IT IS UNDERSTOOD THAT UNDER NO CIRCUMSTANCES DOES NMC MAKE ANY WARRANTIES WHATSOEVER. BUYER UNDERSTANDS AND AGREES THAT ANY USED EQUIPMENT IS SOLD "AS IS" AND WITH ALL FAULTS OR DEFECTS. NMC SHALL NOT BE RESPONSIBLE FOR ANY INDIRECT, EXEMPLARY, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES (EVEN IF NMC HAS BEEN ADVISED SUCH DAMAGES ARE POSSIBLE), AND BUYER HEREBY WAIVES THEM TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW.
- 7. Taxes:** Unless otherwise specifically stated on this Agreement's front page, quoted prices do not include sales or any other taxes. Buyer shall be responsible for and promptly pay all taxes unless NMC approves a Buyer tax-exemption certificate.
- 8. Insurance:** At all times after delivery, the Equipment shall be the responsibility solely of Buyer, and Buyer shall assume all risks of Equipment damage, delay or loss. Buyer shall maintain and provide proper proof to NMC of insurance on the Equipment, in amounts, form, and with an insurer approved by NMC, adequate to protect NMC's interest in the Equipment until such time as Buyer fully pays for the Equipment. NMC shall be named as additional insured, co-beneficiary and loss payee on any liability insurance for Equipment for the full insurable value. Until and unless Buyer obtains and proves such insurance, NMC may in NMC's discretion insure the Equipment for NMC's benefit. In such event, Buyer shall pay NMC for insurance premiums.
- 9. Data:** Buyer authorizes NMC, NMC affiliates, any data processor contracted with by NMC, the Equipment manufacturers and their affiliates, to access, monitor and use any data and information provided through the Equipment (including through ProductLink and/or VisionLink) or the customer relationship in accordance with their respective Privacy Policies.
- 10. Exportation and Other Laws:** Buyer represents and warrants that in exporting any Equipment, Buyer shall at all times comply with all applicable U.S. export rules, regulations and other laws. Buyer shall also comply with any and all rules, regulations and other laws relating, in any way, to Equipment use, warnings, re-sale, dismantling and/or disposal.
- 11. Default, Remedies:** Buyer shall be in default under this Agreement if Buyer fails to observe or perform any Buyer obligation under this Agreement, is or becomes insolvent, is or becomes the subject of a tax lien, if an individual dies or if an entity dissolves, or becomes the subject of a proceeding in bankruptcy, receivership, insolvency, or similar relief. To the extent permitted by law, if Buyer defaults, Buyer shall pay to NMC all fees and expenses incurred to enforce NMC's rights, including but not limited to court costs, attorney fees, and fees paid to other professionals, arbitrators or agencies.
- 12. Assignment:** NMC may freely assign its rights under this Agreement. Buyer may assign rights under this Agreement only with NMC's express written consent. No such assignment shall reduce Buyer's obligations to NMC, and all Buyer obligations under this Agreement shall bind Buyer's successors and permitted assigns.
- 13. General:** (a) This Agreement's provisions shall be deemed severable. Unenforceability of any provision shall not impair enforceability of the other provisions. (b) No course of conduct or dealing and no NMC delay or failure in exercising any right or remedy shall rescind, modify or waive any NMC right or protection under this Agreement. All consents, waivers and authorizations by Buyer are irrevocable. (c) Time is of the essence of Buyer's obligations. (d) This Agreement constitutes the final written expression of the terms of agreement between the parties in relation to this transaction and it is the complete and exclusive statement of those terms. This Agreement supersedes and merges all prior or collateral agreements, discussions and/or understandings (oral, written or of any other type) between the parties hereto. No promises, representations, warranties, inducements, covenants or undertakings not expressly set forth in this Agreement shall bind any party hereto. In the event that Buyer issues a purchase order or similar document in connection with the purchase of the Equipment, its purpose will be for Buyer's internal documentation and no terms and conditions contained within it shall act to modify or supersede this Agreement or otherwise be binding upon NMC (even if such terms state that they control over the terms of this Agreement or NMC signs such document) (e) This Agreement shall be governed by the laws of the state of Nebraska without giving effect to its conflict of laws provisions. Unless waived in writing by NMC, any action to interpret or enforce this Agreement, or otherwise pertaining to rights against Buyer or NMC encompassed by this Agreement, or concerning its negotiation, implementation or Equipment, shall be brought in a state or federal court located in Douglas County, Nebraska, the propriety of which jurisdiction is acknowledged and consented to by Buyer. As to actions pertaining to this Agreement, Buyer hereby waives any defense of inconvenient forum concerning said Nebraska court. (f) If requested by NMC, Buyer also agrees to binding arbitration in Douglas County, Nebraska, to settle any disputes, with such arbitration to be governed by the American Arbitration Association's current rules. (g) Waiver of any provision on any one occasion shall not be deemed to waive that provision on any other occasion. This Agreement may be modified or rescinded only by a written agreement signed by the party against whom the modification or rescission is sought to be enforced. (h) Buyer and, if Buyer is an entity, the individual signing for Buyer, jointly and severally warrant that said individual is authorized by Buyer to bind Buyer to this Agreement. (i) This Agreement may be executed in counterparts, all of which together shall constitute the same document.
- 14. Due to supply chain constraints and other commerce issues beyond NMC's control, it is understood by the parties to this Agreement that, notwithstanding anything to the contrary contained in this Agreement or any other documents related to this transaction, NMC does not represent or guarantee the availability or delivery timing of any items purchased hereunder. NMC shall not be liable under any circumstances for any damages related to its inability to provide the items purchased hereunder or delays in its delivery.**