

# **MESSER ATTACHMENTS LLC**

## **Limited Warranty and Terms and Conditions of Sale**

The following limited warranty, and terms and conditions of sale (the “Limited Warranty”) apply to all equipment, products, parts, and goods (any of the foregoing are referred to herein as “Equipment”) sold by Messer Attachments LLC (“Messer”):

1. Covers All Equipment. Each purchase of Equipment by a purchaser is expressly made conditional on purchaser’s assent to the terms and conditions in this Limited Warranty.
2. Limited Warranty. Messer warrants that for a period of 24 months from the date of purchase, the Equipment will remain free from defects in material and workmanship under normal use and proper maintenance. Messer’s obligation under the warranty shall be limited to the repair or replacement (at Messer’s option) of the Equipment. Notwithstanding the foregoing, if the Equipment is used for commercial purposes or is rented or leased out by the purchaser, then, the foregoing warranty shall only be for a period of 180 days and not 24 months.
3. No Warranty For Equipment Components From Third Parties. Notwithstanding the limited warranty terms set forth above, **MESSER OFFERS NO WARRANTY WHATSOEVER WITH RESPECT TO ANY COMPONENTS OF THE EQUIPMENT MADE OR PROVIDED TO MESSER BY OTHER MANUFACTURERS, PRODUCERS, OR SELLERS** (the “Purchased Components”). The sole and exclusive warranty for each the Purchased Components shall be limited to the express written warranty with respect to the Purchased Component as provided by the manufacturer, producer, or seller of such Purchased Component. Messer’s responsibility and liability for the Purchased Components shall be limited to the assignment of the Purchased Components’ express written warranties applicable to the Purchased Components. Purchased Components include, without limitation, the following: axles, tires and rims; trailer hitch components and jacks; hydraulic pumps, motors, cylinders and components; and bales spears, pallet tines, and bucket teeth.
4. No Other Warranties. **THE FOREGOING REPAIR AND REPLACEMENT OBLIGATIONS IN SECTION 2 ARE IN LIEU OF ALL OTHER WARRANTIES, LIABILITIES AND OBLIGATIONS, INCLUDING ALL WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE, EXPRESSED OR IMPLIED IN FACT OR BY LAW, AND STATE MESSER’S ENTIRE AND EXCLUSIVE LIABILITY AND PURCHASER’S EXCLUSIVE REMEDY FOR ANY CLAIM IN CONNECTION WITH THE SALE AND PURCHASE OF EQUIPMENT (AND ALL COMPONENTS THEREOF), THEIR DESIGN, SUITABILITY FOR USE, INSTALLATION OR OPERATIONS.**
5. Location of Warranty Repairs. All warranty repairs pursuant to this Limited Warranty shall be made at Messer’s corporate manufacturing plant, or other location as determined by Messer, at its discretion. Purchaser shall be responsible for and pay for any transportation expenses necessary for Limited Warranty repairs.
6. Limited Warranty Voidable. The limited warranty herein is void and deemed waived if the purchaser fails to give written notice to Messer of any alleged defect under the limited warranty herein within 20 days of its discovery; or (a) purchaser or parties other than Messer or its authorized representatives attempts to remedy or fix the alleged Equipment defects; or (b) purchaser has used the Equipment for purposes it was not intended to be used for; or (c) purchaser has not operated the Equipment in a manner consistent with Messer’s instructions for the Equipment; or (d) the Equipment has been modified, altered, abused, or misused; or (e) the Equipment has been damaged pursuant to accident, fire, flood, or other Act of God.
7. No Consequential Damages. **IN NO EVENT SHALL MESSER BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES WHATSOEVER, AND MESSER’S LIABILITY,**

UNDER NO CIRCUMSTANCES, WILL EXCEED THE PRICE PAID FOR THE EQUIPMENT FOR WHICH LIABILITY IS CLAIMED.

8. Governing Law. This contract shall be governed by the laws of the State of Minnesota.

9. Arbitration. Any controversy or claim arising out of or relating to the limited warranty provided herein, or any alleged breach thereof, shall be settled exclusively by arbitration in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall be conducted in Minneapolis, MN, by one arbitrator selected by Messer and Purchaser, or, if they cannot agree, the President of the American Arbitration Association.