

# VOLVO

## Volvo Construction Equipment North America, LLC 24 Hour Part Guarantee

Volvo Construction Equipment North America, LLC ("Volvo CE") hereby extends to its end-use customers ("Buyer"), who currently own or who purchase a Volvo machine ("Product") from Volvo or any authorized Volvo dealer, the following limited parts availability guarantee ("Guarantee"). This Guarantee shall commence on March 7, 2017 and the ability of Buyer to avail himself of it shall automatically terminate on December 31, 2018 ("Term").

Subject to the exceptions, disclaimers and limitations set forth below, Volvo CE will guarantee that parts ("Parts") ordered by a Buyer will be delivered to Buyer within 24 hours of the placement of an order.

### **CONDITIONS OF THE GUARANTEE**

These Volvo CE terms and conditions, contained in this Guarantee, supersede all previous terms and conditions, amendments, supplements, and other prior statements concerning the rates and conditions of Volvo CE's Guarantee apply. The conditions constitute the entire agreement between the parties and supersedes all previous agreements and understandings, whether oral or written, between the parties or any agents, affiliates or subcontractors thereof. Any failure to enforce or apply a term, condition, or provision of the Guarantee shall not constitute a waiver of that term, condition or provision or otherwise impair our right to enforce such term, condition or provision in the future. Buyer understands that Volvo CE may extend, terminate, add, delete, change or otherwise modify any or all of this Guarantee at any time, for any reason, and without a duty to provide Buyer notice of any kind..

- Guarantee applies only to Class 1 machine down orders;
- Product must be less than 10 years old as measured from the commencement of this Guarantee to take advantage of the Guarantee;
- New Products purchased during the Term shall enjoy the Guarantee for one full year from the date of title transfer;
- Guarantee applies only to Parts shipped by air freight, at Buyer's expense;
- Parts shipped to Hawaii or Canada, or Parts exceeding 150lbs, or Parts of abnormally large volume will be delivered within 48 hours;
- Guarantee only applies to normal, Volvo business days. For example, an order placed on a Friday and delivered the following Monday shall, for the purposes of this Guarantee, be considered to fulfill the 24 hour requirement;
- This Guarantee expressly excludes made to order parts, programmable parts, hazardous parts and any other parts which Volvo CE decides to exclude, in its sole discretion;
- All orders must be placed by 5pm EDT or they will be considered placed on the next business day;
- Guarantee only extends to Buyer (end customer) and specifically excludes any dealer rental fleet or similar;

### **LIMITATIONS OF LIABILITY, DAMAGES, NOTICE AND MISC.**

Any claim against Volvo CE which is in any way related to the Guarantee, whether in in contract, tort (negligence or strict liability) or otherwise, Volvo CE's total liability for all losses, damages or expenses of any kind are limited, unless otherwise prohibited by law, to an amount not exceeding the cost of shipping the Part. Further, any right Buyer may have to damages, refunds, credits, recovery of reliance interests, disgorgement, restitution, injunctive relief, declaratory relief, whatsoever against Volvo CE under any cause of action arising from or relating to the Guarantee shall be extinguished unless an action is filed within one year from the date of the shipment of the Part. Any right to any damages mentioned above shall also be extinguished unless Buyer timely notifies Volvo CE of Buyer's intent to file claim. For the purpose of this section, timely notification shall be deemed to be made if Buyer provides written notice of its intent to file claim within 30 days of the date the Part shipped. Buyer agrees that Buyer will not sue as a class plaintiff or class representative, join as a class member, or participate as an adverse party in any way in a class-action lawsuit against Volvo CE. Notwithstanding, nothing shall limit Buyer ability to bring suit as an individual plaintiff. To the extent any court finds that state rather than federal law applies to any provision of this contract, the controlling law is the substantive law of the state in which the Part shipped from. Except for performing the obligations of the Guarantee in accordance with the terms contained herein and subject to the limitations of liability and damages above, , Volvo CE shall have no liability for any loss, damage, or expense, directly or indirectly, attributable to a loss of use of a Product, loss or damage to property other than the Product, loss or damage to the Product or any part thereof, any bodily injury or death arising from or related to the use or misuse of a Product, or any other economic or commercial loss, including, without limitation, lost profits or special or consequential damages (except liability for any type of consequential damages which by law may not be disclaimed). The parties intend that this prohibition against consequential and similar damages will survive and be effective even if the limitation of remedies in the foregoing sections is found to fail of its essential purpose under section 2-719 of the Uniform Commercial Code.

## **ALLOCATION OF RISK**

The foregoing Guarantee, limitations of liability and limitation of remedies are bargained allocations of risks among the Buyer who purchased the Product and Volvo CE. The Buyer of the Product accepts the foregoing warranty and the other bargained for allocations of risk as part of the agreed price for the purchase of the Product to which the foregoing applies. Volvo CE is prepared to offer different warranties and other allocations of risk for other prices. However, any such change in the warranty or the allocation of risks must be confirmed in writing by Volvo CE.

## **STATUTE OF LIMITATIONS**

Any action by a Buyer of a Product for breach of contract, for breach of warranty arising under, or for a cause of action arising out of the sale of a Product and / or this Guarantee, whether based on contract, tort (negligence or strict liability) or otherwise, shall be commenced within one (1) year after the cause of action has accrued.